

House Bill 673

By: Representative Lim of the 98th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to procedure for sentencing and imposition of punishment, so as to provide for
3 limitations on bars to first offender treatment for certain minor offenders adjudicated as
4 adults; to amend Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia
5 Annotated, relating to first offenders, so as to provide for retroactive first offender treatment
6 under certain circumstances for offenders who were adjudicated as minors; to revise
7 sentencing laws in conflict with these provisions; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
12 procedure for sentencing and imposition of punishment, is amended by revising paragraph
13 (3) of subsection (b) of Code Section 17-10-6.1, relating to punishment for serious offenders
14 and authorization for reduction in mandatory minimum sentencing, as follows:

15 "(3) Except as provided in paragraph (2) of subsection (a) of Code Section 42-8-60, no
16 No person convicted of a serious violent felony shall be sentenced as a first offender

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17 pursuant to Article 3 of Chapter 8 of Title 42, relating to probation for first offenders, or
 18 any other provision of Georgia law relating to the sentencing of first offenders. The State
 19 of Georgia shall have the right to appeal any sentence which is imposed by the superior
 20 court which does not conform to the provisions of this subsection in the same manner as
 21 is provided for other appeals by the state in accordance with Chapter 7 of Title 5, relating
 22 to appeals or certiorari by the state."

23 **SECTION 2.**

24 Said article is further amended by revising subsection (b) of Code Section 17-10-6.2, relating
 25 to punishment for sex offenders, as follows:

26 "(b) Except as provided in subsection (c) of this Code section, and notwithstanding any
 27 other provisions of law to the contrary, any person convicted of a sexual offense shall be
 28 sentenced to a split sentence which shall include the minimum term of imprisonment
 29 specified in the Code section applicable to such sexual offense. No portion of the
 30 mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or
 31 withheld by the court. Any such sentence shall include, in addition to the mandatory term
 32 of imprisonment, an additional probated sentence of at least one year; provided, however,
 33 that when a court imposes consecutive sentences for sexual offenses, the requirement that
 34 the court impose a probated sentence of at least one year shall only apply to the final
 35 consecutive sentence imposed. Except as provided in paragraph (2) of subsection (a) of
 36 Code Section 42-8-60, no No person convicted of a sexual offense shall be sentenced as
 37 a first offender pursuant to Article 3 of Chapter 8 of Title 42 or any other provision of
 38 Georgia law relating to the sentencing of first offenders."

39 **SECTION 3.**

40 Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to first
 41 offenders, is amended by adding a new paragraph to subsection (f), by revising subsection

42 (j), and by adding a new subsection to Code Section 42-8-60, relating to probation prior to
43 adjudication of guilt, violation of probation, and review of criminal record by judge, to read
44 as follows:

45 "(a.1) When a defendant is under the age of 17 and is being adjudicated under Code
46 Section 15-11-560, the court may, upon a guilty verdict or plea of guilty or nolo contendere
47 and before an adjudication of guilt, without entering a judgment of guilt and with the
48 consent of the defendant, defer further proceedings and:

49 (1) Sentence the defendant to a term of confinement; and

50 (2) Sentence the defendant to a term of probation."

51 "(6) If the defendant is serving a probated sentence as provided by subsection (a.1) of this
52 Code section, whether under active probation supervision or without such supervision,
53 within 30 days of such defendant completing such sentence or being released by the court
54 prior to the termination of said sentence, it shall be the duty of the Department of
55 Community Supervision or any other entity or governing authority that is providing
56 supervision services as provided by Article 6 of this chapter to provide written
57 notification of the completion or release of said sentence to the clerk of court for the
58 jurisdiction where such sentenced was imposed, provided that:

59 (A) The defendant shall not have violated the terms of his or her first offender
60 probation, with the exception of a violation as provided in subsection (c) of Code
61 Section 42-8-34.1;

62 (B) If the defendant was convicted of a sexual offense as provided in Code Section
63 17-10-6.2, then such defendant shall have been classified as a Level I risk offender as
64 determined by the Georgia Sexual Offender Risk Review Board; and

65 (C) All other criteria relevant to first offender sentencing provisions have been
66 considered."

67 "(j) Except as provided in subsection (a.1) of this Code section, the ~~The~~ court shall not
68 sentence a defendant under the provisions of this article who has been found guilty of or
69 entered a plea of guilty or a plea of nolo contendere for:

70 (1) A serious violent felony as such term is defined in Code Section 17-10-6.1;

71 (2) A sexual offense as such term is defined in Code Section 17-10-6.2;

72 (3) Trafficking of persons for labor or sexual servitude as prohibited by Code Section
73 16-5-46;

74 (4) Neglecting disabled adults, elder persons, or residents as prohibited by Code Section
75 16-5-101;

76 (5) Exploitation and intimidation of disabled adults, elder persons, and residents as
77 prohibited by Code Section 16-5-102;

78 (6) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;

79 (7) Electronically furnishing obscene material to a minor as prohibited by Code Section
80 16-12-100.1;

81 (8) Computer pornography and child exploitation as prohibited by Code Section
82 16-12-100.2;

83 (9)(A) Any of the following offenses when such offense is committed against a law
84 enforcement officer while such officer is engaged in the performance of his or her
85 official duties:

86 (i) Aggravated assault in violation of Code Section 16-5-21;

87 (ii) Aggravated battery in violation of Code Section 16-5-24; or

88 (iii) Obstruction of a law enforcement officer in violation of subsection (b) of Code
89 Section 16-10-24, if such violation results in serious physical harm or injury to such
90 officer.

91 (B) As used in this paragraph, the term 'law enforcement officer' means:

92 (i) A peace officer as such term is defined in paragraph (8) of Code Section 35-8-2;

93 (ii) A law enforcement officer of the United States government;

- 94 (iii) An individual employed as a campus police officer or school security officer;
95 (iv) A game warden; and
96 (v) A jail officer employed at a county or municipal jail; or
97 (10) Driving under the influence as prohibited by Code Section 40-6-391."

98 **SECTION 4.**

99 Said article is further amended by adding a new paragraph to subsection (a) and by revising
100 subsection (d) of Code Section 42-8-66, relating to petition for exoneration and discharge,
101 hearing, retroactive grant of first offender status, and no filing fee, as follows:

102 "(3) An individual who was under the age of 17 and was sentenced as provided by Code
103 Section 15-11-560, or by any law repealed by said Code section, and fulfills all
104 requirements set forth in this article may with the consent of the prosecuting attorney
105 petition the court in which he or she was convicted for exoneration of guilt and discharge
106 pursuant to this article."

107 "(d) The court may issue an order retroactively granting first offender treatment and
108 discharge the defendant pursuant to this article if the court finds by a preponderance of the
109 evidence that the defendant was eligible for sentencing under the terms of this article at the
110 time he or she was originally sentenced or that he or she qualifies for sentencing under
111 paragraph (2) or (3) of subsection (a) of this Code section and the ends of justice and the
112 welfare of society are served by granting such petition."

113 **SECTION 5.**

114 All laws and parts of laws in conflict with this Act are repealed.