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JoAnne D. Spotts

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PENAL INSTITUTIONS

Sentence and Punishment: Provide for the Imposition of Life Sentence Without Parole

CODE SECTIONS: O.C.G.A. §§ 17-10-1, -2 (amended), 17-10-16, -30.1, -31.1, -32.1 (new)

BILL NUMBER: HB 485

ACT NUMBER: 569

SUMMARY: The Act provides for the imposition of a sentence of life imprisonment without parole on a defendant convicted of murder where the fact finder (judge or jury) has found one or more statutory aggravating circumstances. Imprisonment for life without parole means that the defendant shall be incarcerated for what remains of his natural life without eligibility for parole.

EFFECTIVE DATE: May 1, 1993

History

Prior to this Act, the State of Georgia provided only two sentencing options when a defendant had been convicted of a crime punishable by death: the death penalty and life imprisonment.¹ One problem with maintaining only these two options is that the concept of "life imprisonment" can be confusing to a jury.² When a jury is given the option of sentencing a defendant to life imprisonment, the jurors understand that the defendant will be in prison for his entire life.³ However, this is not the reality. The average inmate sentenced to "life" actually serves only twelve years of his sentence.⁴ Furthermore, he may be eligible for parole after seven years.⁵

A second problem with providing only the two possible sentences of life imprisonment or the death penalty for crimes that are punishable by death is that many of the smaller counties in Georgia can barely

1. Telephone Interview with Rep. Thurbert E. Baker, House District No. 70 (Apr. 15, 1992) [hereinafter Baker Interview]. Rep. Baker was the sponsor of HB 485. *Id.*; see O.C.G.A. §§ 17-10-30, -31 (1982); 1990 Ga. Laws 8 (formerly found at O.C.G.A. § 17-10-2(c) (1982)).

2. Baker Interview, *supra* note 1.

3. *Id.*

4. *Id.*

5. *Id.*

afford the high costs of trying capital cases.⁶ Paying for death penalty trials and retrials has become increasingly onerous for the taxpayers of less populous counties.⁷

HB 485

The 1993 Act amends chapter 10 of title 17 of the Official Code of Georgia Annotated to provide for the imposition of a criminal sentence of life imprisonment without parole.⁸

This Act creates a new Code section 17-10-16 that expressly provides for three options for sentencing defendants in cases where the death penalty may be imposed: death, life without parole, and life imprisonment.⁹ Specifically, the new section provides that a defendant who is sentenced to life without parole is not eligible for parole during his lifetime.¹⁰ Moreover, such defendants are not eligible for work release programs, leave, or any other program which would reduce the term of their imprisonment.¹¹ However, parole may be still granted if, after notice and a public hearing, the State Board of Pardons and Paroles or a Georgia court determines that the defendant was innocent of the offense for which he has been serving a life without parole sentence.¹²

The Act creates a second Code section providing that a sentence of life without parole can be imposed only for a murder case in which the court or jury finds one or more statutory aggravating circumstances.¹³ Both judge and jury are allowed to consider mitigating circumstances as provided for in Code section 17-10-30.¹⁴ However, when a jury is the fact finder, to impose life without parole it must list all the statutory aggravating circumstances which it found beyond a reasonable doubt.¹⁵

A third new Code section, 17-10-31.1(c), specifically describes the procedures a jury or judge must follow in order to impose a sentence of

6. *Id.*

7. Bill Saunders, *No Parole Option Gaining Support*, AUGUSTA CHRON., Dec. 25, 1993, at 4A.

8. O.C.G.A. § 17-10-16 (Supp. 1993).

9. *Id.* § 17-10-16(a) (Supp. 1993).

10. *Id.* § 17-10-16(b) (Supp. 1993).

11. *Id.*

12. *Id.*

13. *Id.* § 17-10-30.1(a) (Supp. 1993). These aggravating circumstances are defined in O.C.G.A. § 17-10-30(b). *Id.* § 17-10-30(b) (Supp. 1993). These are the same aggravating circumstances that were previously used to determine whether a defendant would be sentenced to death. *Id.*

14. *Id.* § 17-10-30.1(b) (Supp. 1993). Mitigating circumstances are not defined in the statute. *See id.* § 17-10-30 (1990).

15. *Id.* § 17-10-30.1(c) (Supp. 1993). A jury must do the same in order to sentence a defendant to death. *Id.* § 17-10-30(c) (1990).

life imprisonment without parole.¹⁶ A jury must find at least one statutory aggravating circumstance before imposing life without parole in murder cases.¹⁷ However, where a jury has found the existence of at least one statutory aggravating circumstance, but has failed to reach a unanimous verdict as to the sentence, the judge is directed to dismiss the jury and impose either life imprisonment or life without parole; the judge may not impose the death penalty in such a case.¹⁸

This new section was the only section changed from the bill as introduced. The original bill called for the judge to dismiss the jury and "impose sentence"¹⁹ without any clarification as to what sentence options were available to the judge. The House Judiciary Committee amended this section to provide that the judge "shall impose a sentence of either life imprisonment or imprisonment of life without parole."²⁰

The final draft of this third new Code section lists the three requirements for imposing a sentence of life without parole: the court must find, beyond a reasonable doubt, the existence of at least one statutory aggravating circumstance; that a majority of the jurors voted for a sentence of death or life without parole; and that the defendant committed a crime that is punishable by a sentence of life without parole by law.²¹ During the sentencing phase, both the State and defense counsel may petition the judge to define for the jury the terms "life without parole" and "life imprisonment."²²

A final Code section provides for a sentence of life without parole for defendants who enter a plea of guilty at any time after indictment.²³ This section mandates that a defendant who is indicted for a crime that may warrant the imposition of either the death penalty or life without

16. *Id.* § 17-10-31.1 (Supp. 1993).

17. *Id.* § 17-10-31.1(a) (Supp. 1993). This is followed by a reiteration of § 17-10-16 in O.C.G.A. § 17-10-31.1(b) which provides that: "Where a statutory aggravating circumstance is found and a recommendation of life without parole is made, the court shall sentence the defendant to imprisonment for life without parole as provided in Section 17-10-16." *Id.* § 17-10-31.1(b) (Supp. 1993).

18. *Id.* § 17-10-31.1(c) (Supp. 1993).

19. HB 485, as introduced, 1993 Ga. Gen. Assem.

20. O.C.G.A. § 17-10-31.1(c) (Supp. 1993).

21. *Id.* § 17-10-31.1(c) (Supp. 1993).

22. O.C.G.A. § 17-10-31.1(d) (Supp. 1993) provides that:

[T]he trial judge may instruct the jury:

(1) That "life without parole" means that the defendant shall be incarcerated for the remainder of his or her natural life and shall not be eligible for parole unless such person is subsequently adjudicated to be innocent of the offense for which he or she was sentenced; and

(2) That "life imprisonment" means that the defendant will be incarcerated for the remainder of his or her natural life but will be eligible for parole during the term of such sentence.

Id. § 17-10-31.1(d) (Supp. 1993).

23. *Id.* § 17-10-32.1 (Supp. 1993).

parole, and enters a plea of guilty, may, at the discretion of the superior court judge, be sentenced to life without parole or any other punishment allowed by law.²⁴ However, for the judge to sentence the defendant to death or life without parole, the district attorney must give notice that he intends to seek the death penalty and the judge must also find, beyond a reasonable doubt, the existence of at least one statutory aggravating circumstance, beyond a reasonable doubt.²⁵ If the district attorney does not give notice that the state intends to seek the death penalty, the judge must sentence the defendant to life imprisonment.²⁶ It is also provided that no person shall be sentenced to life without parole unless that person could have received the death sentence for the offense.²⁷

The Act further states that its provisions will apply prospectively and not to those offenses committed before the effective date of the Act.²⁸ However, a defendant whose offense was committed before the effective date of the Act may choose to be sentenced under the provisions of this Act. To do so, the defendant must enter such a request in writing and must receive the express written consent of the State.²⁹ Furthermore, for the Act to be applied to offenses committed before the effective date, one of two requirements must be satisfied: (1) jeopardy for the offense charged has not attached and the State has filed with the trial court notice of its intention to seek the death penalty; or (2) the defendant has already been sentenced to death but the conviction or sentence has been reversed on appeal and the State is not barred from seeking the death penalty after remand.³⁰

24. *Id.* § 17-10-32.1(a) (Supp. 1993).

25. *Id.* § 17-10-32.1(b) (Supp. 1993).

26. *Id.*

27. HB 485, as passed, 1993 Ga. Gen. Assem.

28. *Id.*

29. *Id.*

30. *Id.* The Act also includes two other sections that merely add the option of life imprisonment without parole to the list of available sentences in the previously existing law relative to those sentences. *Id.* The Act's first section amends the fixing of sentences in the Code by adding life without parole as a third option between life imprisonment and the death penalty. *Id.* This section is amended to provide that a judge may fix the sentence of a defendant within the minimum and maximum terms for all cases "except in cases in which life imprisonment, life without parole, or the death penalty may be imposed" (the word "must" was stricken and replaced by "may"). O.C.G.A. § 17-10-1(a) (Supp. 1993). Furthermore, this section of the Act amends the portion of § 17-10-1(a) dealing with judges' power to revoke suspension and probation when the defendant has violated the rules and regulations of the court by allowing the judge "to suspend or probate the sentence under such rules and regulations as the judge deems proper, subject to the conditions set out in this subsection." *Id.* The second section of this Act changes the conduct of presentence hearings in felony cases by adding life without parole as a sentencing option in cases where the death penalty may be imposed and clarifying the language by changing

Moreover, a life without parole sentence is already an option in the federal court system.³¹ While laws providing for life without parole have been established in approximately thirty other states, this Act is the first attempt by the State of Georgia to provide a third option for sentencing defendants in capital murder cases.³² The intent of the Act in providing this option is to keep dangerous criminals from being released after serving minimal time under a life imprisonment sentence, thereby restoring public confidence in the State's judicial system³³ and providing peace of mind for the families and friends of the victims.³⁴

HB 485 was proposed by Governor Zell Miller as part of his criminal justice legislative package.³⁵ One of its stated purposes is to clarify the death sentence so that there would be a third sentencing option in situations where a death sentence is susceptible to being overturned in appeals.³⁶ The life without parole sentence fills the gap between the extremes of life imprisonment and the death penalty.³⁷ This additional sentencing option allows the death penalty to be imposed only for the "worst of the worst" offenses.³⁸ Proponents of this bill can be found on both the prosecutorial and defense sides of the criminal justice system.³⁹

Critics of the bill voice three concerns. The first is that the bill has no teeth without a constitutional amendment to remove the power of the State Board of Pardons and Paroles to grant parole since the Board is vested with the executive power of granting parole.⁴⁰ However,

parts of the section that read "his counsel" and "his trial" to "the defendant's counsel" and "the defendant's trial." *Id.* This section also provides for the judge to follow procedures set out in the new O.C.G.A. § 17-10-30.1 which is added by the passage of this Act. *Id.* § 17-10-2 (Supp. 1993).

31. *Bill Goes to the Governor*, BRUNSWICK NEWS, Mar. 17, 1993, at A2.

32. At this time, thirty-two other states have similar statutes that provide for a life sentence without parole including Alabama, Arkansas, and Louisiana. *Justice Demands Better Than This*, ATLANTA J. & CONST., Dec. 24, 1992, at B5.

33. Remarks of Rep. Thurbert E. Baker, House District No. 70, *Lawmakers '93* (WGTV television broadcast, Mar. 3, 1993) [hereinafter Baker Remarks] (videotape available in Georgia State University College of Law Library).

34. Remarks of Sen. Mark Taylor, Senate District No. 12, *Lawmakers '93* (WGTV television broadcast, Mar. 16, 1993) [hereinafter Taylor Remarks] (videotape available in Georgia State University College of Law Library).

35. *Both Houses Approve Life-Without-Parole Bill*, ATLANTA J. & CONST., Mar. 17, 1993, at D3.

36. Baker Interview, *supra* note 1.

37. *Id.*

38. *Id.*

39. *Id.* Eleven state prosecutors from across Georgia stood behind Gov. Miller in his endorsement of the life without parole sentencing option. Frank LoMonte, *Miller Pushes "Life With No Parole" Option For Juries*, AUGUSTA CHRON., Dec. 24, 1992, at 9A.

40. *Both Houses Approve Life-Without-Parole Bill*, *supra* note 35. Speaker of the

supporters disagree and believe that the State Board of Pardons and Paroles will comply by not issuing parole for defendants sentenced to life without parole.⁴¹

Additionally, allowing for the option of sentencing a defendant to life imprisonment without parole could result in higher costs in day to day operations of prisons and providing medical care for elderly inmates.⁴² It would also exacerbate the present problem of overcrowded prison conditions.⁴³

Finally, there is a concern that imprisoning a defendant with no hope ever of release is dehumanizing and will make defendants sentenced to life without parole more difficult to manage.⁴⁴ However, the bill's proponents see these last two negative effects as trade-offs for important advantages such as restoring public confidence in the justice system, keeping the most dangerous criminals off the streets and in prison, and providing peace of mind for the families of crime victims.⁴⁵

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House Thomas Murphy, House District No. 18, spoke in opposition to this bill when it came up for a vote in the Georgia House of Representatives. *Lawmakers '93* (WGTV television broadcast, Mar. 2, 1993) [hereinafter Murphy Remarks] (videotape available in Georgia State University College of Law Library). He stated that this bill would have little effect because the constitution gives the Board of Pardons and Parole the power to grant parole to defendants sentenced to life imprisonment and this bill does not change or amend that power for a sentence of life imprisonment without parole. *Id.* The Georgia Constitution provides that "the State Board of Pardons and Paroles shall be vested with the power of executive clemency, including the powers to grant reprieves, pardons, and paroles. . . ." GA. CONST. art. IV, § 2, ¶ 2(a).

41. When the bill reached the Senate floor, Sen. Mark Taylor, Senate District No. 12, stated that he was confident that the Board of Pardons and Parole would comply with the mandates of the bill. He also added that though the Board is a nonpolitical entity, the members are not outside of public opinion. Taylor Remarks, *supra* note 34.

42. *Id.*

43. *Justice Demands Better Than This*, *supra* note 32.

44. Murphy Remarks, *supra* note 40. Teresa Nelson, Executive Director of the American Civil Liberties Union of Georgia, adds that some of the defendants who may be sentenced to life without parole are individuals who might totally rehabilitate themselves. *Justice Demands Better Than This*, *supra* note 32.

45. Baker Remarks, *supra* note 33. District Attorney Spencer Lawton of Savannah cites a New York Study which shows that inmates serving life imprisonment sentences without parole turned out to be quite productive inmates within the prison community. *Miller Pushes "Life With No Parole" Option For Juries*, *supra* note 39.