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## CRIMINAL PROCEDURE Sentence and Punishment: Provide that Persons Who are Convicted of Certain Serious Violent Felonies Shall Serve Minimum Prison Sentences and Other Court Ordered Sentences in Their Entirety; Provide that a Person Who Has Been Convicted of a Serious Violent Felony for the Second Time Shall Be Sentenced to Life Imprisonment Without Parole

Carolyn Rigot Seabolt

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## CRIMINAL PROCEDURE

***Sentence and Punishment: Provide that Persons Who are Convicted of Certain Serious Violent Felonies Shall Serve Minimum Prison Sentences and Other Court Ordered Sentences in Their Entirety; Provide that a Person Who Has Been Convicted of a Serious Violent Felony for the Second Time Shall Be Sentenced to Life Imprisonment Without Parole***

**CODE SECTIONS:** O.C.G.A. §§ 16-5-40, 16-6-1 to -2, -4, -22.2, 16-8-41, 17-10-1, -6 (amended), -6.1 (new), -7, 42-9-39, -45 (amended)

**BILL NUMBER:** SB 441

**ACT NUMBER:** 1265

**SUMMARY:** The Sentence Reform Act of 1994 provides for a minimum sentence of ten years for persons convicted for the first time of "serious violent felonies" with the sentence to be served in its entirety. Furthermore, the Act provides that when the court orders sentences for first-time conviction of serious violent felonies, even when the sentences are beyond the minimum sentence required, the sentence will be served in its entirety and shall not be reduced by parole or any other sentence-reducing measures. The Act also amends certain Code sections dealing with Crimes and Offenses to provide for a ten year minimum sentence requirement for six serious violent felonies. The Act amends the procedures for sentencing and the imposition of punishment to incorporate the new minimum sentence requirements and the new restrictions on suspension or probation of sentences for persons convicted of serious violent felonies. Furthermore, the Act provides that prison sentences for the conviction of a serious violent felony shall not be reviewable by a three-judge panel like other sentences, and persons convicted for the second time of a serious violent felony shall face the sentence of life imprisonment without parole. The Act further amends certain Code sections dealing with the granting of pardons and paroles to comply with the new restrictions on the suspension of certain sentences. Finally, the Act changes provisions

relating to the general rule-making power of the State Board of Pardons and Paroles to incorporate the new changes in the sentencing procedures.

**EFFECTIVE DATE:** January 1, 1995, provided that the proposed amendment to Article IV, Section 2, Paragraph 2 of the Georgia Constitution is ratified by the voters at the 1994 November general election, otherwise the Act will be null and void.

### *History*

The Act passed with much support from Governor Zell Miller arising from his great concern for the average Georgian's fear of violent crimes and frustrations with the criminal justice system in general.<sup>1</sup> The bill was introduced to help deal with Georgia's crime problem and to make "truth in sentencing" a reality.<sup>2</sup> According to Governor Miller, a criminal justice system in which a twenty-year sentence might only mean three years in a prison cell frustrated law-abiding Georgians.<sup>3</sup> Governor Miller wanted to make sure that violent criminals would get tougher sentences and that they would serve the sentence the judge gave them.<sup>4</sup> He stated that "in Georgia, if you do the crime, you are going to do the time."<sup>5</sup>

Governor Miller also wanted to "get tough" on repeat offenders of violent crimes.<sup>6</sup> In addressing this problem, he looked at the State of Washington's recent statute giving life without parole to offenders who

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1. Telephone Interview with Sen. Mark Taylor, Senate District No. 12 (Mar. 23, 1994) [hereinafter Taylor Interview]. Sen. Taylor drafted the bill. *Id.*

2. Telephone Interview with Stephen J. Caffarelli, Assistant Executive Counsel to Governor Miller (Mar. 24, 1994) [hereinafter Caffarelli Interview]. The Board of Pardons and Paroles was a strong proponent of this Act from the beginning. Taylor Interview, *supra* note 1.

3. Office of the Governor of the State of Georgia, Facts on Governor Miller's Sentence Reform Proposal (available in Georgia State University College of Law Library) [hereinafter Reform Proposal].

[G]ood, decent, law-abiding citizens are frustrated by a criminal justice system that doesn't work, a system where a 20 year sentence really means just a bunch of words on a piece of paper, and maybe, just maybe, 3 years in a prison cell. Where criminals escape with plea bargains and no time. Where a system seems better at letting criminals go, instead of keeping criminals locked away serving their time.

*Id.*

4. Office of the Governor of the State of Georgia, Press Advisory, Jan. 12, 1993 (available in Georgia State University College of Law Library) [hereinafter Press Advisory].

5. *Id.*

6. *Id.*

commit three violent crimes in their lifetime.<sup>7</sup> He also considered the federal government's "Three Strikes and You're Out" plan.<sup>8</sup>

The Act gives Georgia the toughest sentencing measures in the country.<sup>9</sup> With this Act, Georgia is sending a message to hardened criminals that if they commit two serious violent felonies, they are never going to get out of jail.<sup>10</sup> The hope is that the Act will be a significant deterrent to potential criminals in Georgia.<sup>11</sup>

### SB 441

The Act amends various sections of the Code relating to crimes and offenses to provide for a minimum mandatory ten-year sentence upon a first conviction of a serious violent felony. The Act provides that a person convicted of a first offense of kidnapping, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery shall serve a mandatory minimum sentence of ten years.<sup>12</sup>

The Act also amends Code section 17-10-1 relating to the fixing of sentences to provide that, in cases involving misdemeanors or felonies, the judge's sentence must be in conformity with the new ten-year mandatory minimum sentences, if applicable.<sup>13</sup>

The Act also amends Code section 17-10-6 relating to the review of sentences by a three-judge panel.<sup>14</sup> The Act provides that sentences imposed for "serious violent felonies" as defined in the Code are not subject to review by a three-judge panel.<sup>15</sup> The purpose of the Act is to ensure that upon the conviction for a serious violent felony, the offender will serve the full sentence ordered by the court.<sup>16</sup>

In addition, the Act adds defines the term "serious violent felony."<sup>17</sup>

7. Reform Proposal, *supra* note 3; See WASH. REV. CODE ANN. § 9.94A.030 (West Supp. 1994); WASH. REV. CODE ANN. § 9.94A.120 (West Supp. 1994).

8. Reform Proposal, *supra* note 3; see Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.

9. Telephone Interview with Rep. Thurbert Baker, House District No. 70 (Apr. 6, 1994) [hereinafter Baker Interview].

10. *Id.*

11. *Id.*

12. 1994 Ga. Laws 1959.

13. *Id.* § 9.

14. *Id.* § 10.

15. *Id.*

16. *Id.* § 2.

17. *Id.* § 11.

(a) As used in this Code section, the term "serious violent felony" means:

- (1) Murder or felony murder, as defined in Code Section 16-5-1;
- (2) Armed robbery, as defined in Code Section 16-8-41;
- (3) Kidnapping, as defined in Code Section 16-5-40;
- (4) Rape, as defined in Code Section 16-6-1;

The Act provides that any person convicted of a serious violent felony as defined with the exception of murder or felony murder shall serve a mandatory minimum prison term of ten years.<sup>18</sup> Subsection (b) provides that the mandatory minimum sentence shall not be "suspended, stayed, probated, deferred or withheld by the sentencing court and shall not be reduced by any form of pardon, parole or commutation of sentence by the State Board of Pardons and Paroles."<sup>19</sup> The purpose of this subsection is to clarify that the minimum ten-year sentence will be served in its entirety.<sup>20</sup> According to Senator Mark Taylor, who drafted the bill, ten years was chosen as the penalty due to the very serious and violent nature of the crimes involved.<sup>21</sup>

Subsection (c)(1) to Code section 17-10-6.1 provides that when a person is sentenced to life imprisonment upon the first conviction of a serious violent felony, the person must serve a minimum of fourteen years before becoming eligible for parole.<sup>22</sup> The minimum term of fourteen years will not be reduced by any "earned time, early release, work release, leave, or other sentence-reducing measures."<sup>23</sup> Subsection (c)(2) provides that when a person is sentenced to death upon a first conviction of a serious violent felony, but the sentence is commuted to life imprisonment, this person shall not be eligible for parole or early release until serving a minimum of twenty-five years.<sup>24</sup> Finally, subsection (c)(3) provides that any sentence imposed for a first conviction of any serious violent felony, other than life, life without parole, or death, will be served in its entirety.<sup>25</sup> Thus, under subsection (c)(3), the offender must serve all of the years in prison that the court orders, whether it is fifteen years, eighteen years, or twenty years.<sup>26</sup>

The Act amends the Code section dealing with the punishment of repeat offenders.<sup>27</sup> The section also contains Governor Miller's "Two Strikes and You're Gone" provision.<sup>28</sup> This section provides that any

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(5) Aggravated child molestation, as defined in Code Section 16-6-4;

(6) Aggravated sodomy, as defined in Code Section 16-6-2;

(7) Aggravated sexual battery, as defined in Code Section 16-6-22.2.

*Id.*

18. *Id.*

19. *Id.*

20. Taylor Interview, *supra* note 1.

21. *Id.*

22. 1994 Ga. Laws 1959, § 11.

23. *Id.*

24. *Id.*

25. *Id.*

26. Taylor Interview, *supra* note 1.

27. Compare 1994 Ga. Laws 1959, § 12 with O.C.G.A. § 17-10-7 (1990).

28. 1994 Ga. Laws 1959, § 12; see Press Advisory, *supra* note 4.

person convicted of a serious violent felony in this state<sup>29</sup> and then later convicted of another serious violent felony for which they are not sentenced to death, shall be sentenced to life without parole.<sup>30</sup> The life without parole sentence shall not be “suspended, stayed, probated, deferred, or withheld, and any such person sentenced pursuant to this paragraph shall not be eligible for any form of pardon, parole, or early release except as may be authorized by . . . the Constitution.”<sup>31</sup>

This Act focuses on seven violent crimes usually committed with some type of deadly weapon and on the people with the propensity to commit those crimes.<sup>32</sup> The Act implies that a person may deserve a second chance after one serious violent felony conviction, but they do not deserve a third chance.<sup>33</sup>

The Act amends Code section 42-9-39(b) by inserting the phrase “[e]xcept as otherwise provided in subsection (b) of Code section 17-10-7” to make the section secondary to the “Two Strikes and You’re Gone” section.<sup>34</sup> Finally, the Act amends Code section 42-9-45 relating to the general rule-making power of the State Board of Pardons and Paroles.<sup>35</sup> The Act amends subsection (b) to include the phrase “except as otherwise provided in Code sections 17-10-6.1 and -7.”<sup>36</sup> The purpose of this addition is to make the parole eligibility requirements for a person serving time for a felony conviction subject to the “Two Strikes and You’re Gone” provision, the minimum-mandatory-sentence-for-violent-felonies provision, and the mandatory-sentence-for-a-first-time-conviction-of-a-serious-violent-felony provision.<sup>37</sup> The Act adds subsection (g) to provide that no inmate serving a sentence for one of the seven violent crimes as defined in the Code<sup>38</sup> shall be released on parole for the purpose of regulating jail populations.<sup>39</sup>

The House Committee on Judiciary offered some major changes to the bill.<sup>40</sup> The House Committee substitute provided that, upon the second conviction of a serious violent felony, the offender will be

29. 1994 Ga. Laws 1959, § 12. This section also includes the case in which a person is convicted of a crime in another state or under the laws of the United States which if committed within this state would be a serious violent felony. *Id.*

30. *Id.*

31. *Id.*

32. Taylor Interview, *supra* note 1.

33. *Id.*

34. 1994 Ga. Laws 1959, § 14.

35. *Id.* § 15.

36. *Id.*

37. *Id.* § 2.

38. *Id.* § 11. The seven violent felonies are murder, armed robbery, kidnapping, rape, aggravated sexual battery, aggravated child molestation, and aggravated sodomy. *Id.*

39. *Id.* § 15.

40. See SB 441 (HCS), 1994 Ga. Gen. Assem.

sentenced to life without parole "if one or more statutory aggravating circumstances are found by the court or jury pursuant to the provisions of Code section 17-10-7.1."<sup>41</sup> The substitute then offered a new Code section, 17-10-7.1, which provided that:

In all cases for which life without parole may be authorized, the judge shall consider . . . any mitigating circumstances or any of the statutory aggravating circumstances specified by Code Section 17-10-30 which may be supported by evidence . . . . The jury, if its verdict is a recommendation of life without parole, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt.<sup>42</sup>

However, the changes did not survive and the bill was returned to its original form by floor amendments.<sup>43</sup>

Fears that people convicted of "borderline felonies" would unjustifiably receive a life without parole sentence fueled the attempt to add the "statutory aggravating circumstances" language.<sup>44</sup> Thus, the change was meant to add a step to the sentencing process which would act as a "safety net."<sup>45</sup>

The Act will not become effective unless voters ratify a proposed constitutional amendment in the 1994 November general election.<sup>46</sup> The amendment is necessary to put the Act into effect because the Act limits the powers of the Board of Pardons and Paroles, which derives its power from the constitution.<sup>47</sup> If the people ratify the constitutional amendment, the Act will apply to offenses committed on or after January 1, 1995.<sup>48</sup> However, a conviction occurring prior to, on, or after the effective date of the Act will count as a "conviction" for all purposes of the Act.<sup>49</sup>

According to Senator Taylor, this Act will force Georgia to construct more jails since more violent offenders will be serving life sentences.<sup>50</sup> Currently, Georgia's prison budget is \$616 million a year.<sup>51</sup>

41. *Id.*

42. *Id.*

43. SB 441 (HCSFA), 1994 Ga. Gen. Assem.

44. Baker Interview, *supra* note 9.

45. *Id.*

46. 1994 Ga. Laws 1959, § 18; see *Legislative Review*, 11 GA. ST. U. L. REV. 37 (1994).

47. Taylor Interview, *supra* note 1; see GA. CONST. art. IV, § 2.

48. 1994 Ga. Laws 1959, §§ 16, 18.

49. *Id.* § 16.

50. Taylor Interview, *supra* note 1.

51. *Id.* By 2010, there will be a more dramatic impact on prison construction. According to Sen. Taylor, we will need an estimated \$90 million to construct prison

This Act will apply to juveniles whom the court will try as adults because of another bill that passed this legislative session.<sup>52</sup> The Sentence Reform Act of 1994<sup>53</sup> has been criticized because of the possibility of “minimum sentences aimed at career criminals be[ing] applied to thirteen-year-olds.”<sup>54</sup> For example, if a thirteen-year-old is convicted of rape, he will serve a minimum of ten years.<sup>55</sup> If he then commits a second violent crime as an adult, he will be sentenced to life without parole.<sup>56</sup> Some people think this is a harsh result.<sup>57</sup> However, as Senator Taylor pointed out, from the moment the juvenile is indicted for the first offense, he is on notice of the provisions of this Act.<sup>58</sup> When the juvenile gets out of jail, the juvenile will be an adult who should be held accountable for his or her actions.<sup>59</sup>

*Carolyn Rigot Seabolt*

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facilities. The estimated prison budget in 2010 will be one billion dollars. Thus, the cost to construct new prisons will be less than 10% of the projected budget. *Id.*

52. See O.C.G.A. § 15-11-5 (1994); see also *Legislative Review*, 11 GA. ST. U. L. REV. 81 (1994).

53. This is the short title of SB 441. 1994 Ga. Laws 1959, § 1.

54. Editorial, *Worthwhile Crime Bills Carry Risks to Reform*, ATLANTA CONST., Mar. 11, 1994, at A16.

55. Taylor Interview, *supra* note 1.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*