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# CRIMES AND OFFENSES, CRIMINAL PROCEDURE Crimes Against the Person, Sentence and Punishment: Amend Section 1 of Article 1 of Chapter 5 of Title 16, and Chapter 10 of Title 17 of the Official Code of Georgia Annotated, Relating to Murder and Felony Murder and Sentencing and Punishment, Respectively, so as to Provide for the Imposition of Life Without Parole of Persons Convicted of Murder Independently of a Death Penalty Prosecution; Provide That the Sentence of Life Without Parole May be Imposed Without the Necessity of the Trier of Facts Making a Recommendation of Such Sentence or Finding

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Statutory Aggravating Circumstances; Change Certain Provisions Relating to Punishment for Serious Violent Offenders; Repeal Certain Provisions Relating to Imprisonment for Life Without Parole and Finding Statutory Aggravating Circumstances; Provide for Certain Information to Be Reported to the Court Under Certain Circumstances; Repeal Provisions Relating to Duties of the Judge and Certain Jury Instructions; Repeal Provisions Relating to Sentencing of Person Subject to Death Penalty or Life Without Parole Upon a Plea of Guilty and the Duties of the Judge; Provide for Related Matters; Provide an Effective Date; Provide for Applicability; Repeal Conflicting Laws; and for Other Purposes.

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## CRIMES AND OFFENSES, CRIMINAL PROCEDURE

***Crimes Against the Person, Sentence and Punishment: Amend Section 1 of Article 1 of Chapter 5 of Title 16, and Chapter 10 of Title 17 of the Official Code of Georgia Annotated, Relating to Murder and Felony Murder and Sentencing and Punishment, Respectively, so as to Provide for the Imposition of Life Without Parole of Persons Convicted of Murder Independently of a Death Penalty Prosecution; Provide That the Sentence of Life Without Parole May be Imposed Without the Necessity of the Trier of Facts Making a Recommendation of Such Sentence or Finding Statutory Aggravating Circumstances; Change Certain Provisions Relating to Punishment for Serious Violent Offenders; Repeal Certain Provisions Relating to Imprisonment for Life Without Parole and Finding Statutory Aggravating Circumstances; Provide for Certain Information to Be Reported to the Court Under Certain Circumstances; Repeal Provisions Relating to Duties of the Judge and Certain Jury Instructions; Repeal Provisions Relating to Sentencing of Person Subject to Death Penalty or Life Without Parole Upon a Plea of Guilty and the Duties of the Judge; Provide for Related Matters; Provide an Effective Date; Provide for Applicability; Repeal Conflicting Laws; and for Other Purposes.***

CODE SECTIONS:	O.C.G.A. § 16-5-1 (amended); O.C.G.A. §§ 17-10-2 (amended), 17- 10-6.1 (amended), 17-10-30.1 (repealed), 17-10-31 (amended), 17-10- 31.1 (repealed), 17-10-32.1 (repealed)
BILL NUMBER:	SB 13
ACT NUMBER:	62
GEORGIA LAWS:	2009 Ga. Laws 62
SUMMARY:	The Act provides for the imposition of life without parole for persons convicted of murder independent of a death penalty prosecution. The Act provides that the sentence of life without parole may be imposed without

the necessity of the trier of fact making a recommendation of such sentence or finding statutory aggravating circumstances. The Act provides jury instructions as to the definitions of “life imprisonment” and “life without parole.” The Act amends existing law relating to prehearing sentences in felony cases. The Act repeals all conflicting laws.

EFFECTIVE DATE: April 29, 2009

### *History*

Before passage of the Act, prosecutors—in a murder trial—were precluded from seeking a sentence of life without parole without first seeking the death penalty.<sup>1</sup> In fact, life without parole did not even exist as a sentencing option in Georgia before 1993, when the General Assembly, pushed by the then Governor Zell Miller, passed it into law.<sup>2</sup> This legislation (Act 569<sup>3</sup>) was introduced in part to fill “the gap between the extremes of life imprisonment and the death penalty.”<sup>4</sup> The Georgia Supreme Court discussed this first life-without-parole legislation in *State v. Ingram*.<sup>5</sup>

1. See *State v. Ingram*, 266 Ga. 324, 324 (1996); see also Video Recording of Senate Proceedings, Feb. 3, 2009 at 53 min., 23 sec. (remarks by Sen. Preston Smith), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_129987583,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_129987583,00.html) [hereinafter Senate Video].

2. JoAnne D. Spotts, *Review of Selected 1993 Georgia Legislation: Penal Institutions*, 10 GA. ST. U. L. REV. 183, 187 (1993) (describing the legislative history behind Act 569 which allowed for the sentence of life without parole); see also Rhonda Cook, *Fewer Convicts Expected to Get Death Penalty, Ga. Juries Now Can Sentence Life Without Parole*, ATLANTA J.-CONST., Aug. 24, 1993, at C1, available at 1993 WLNR 2357710; Rhonda Cook, *Board OKs Life Without Parole in Some Cases Vote Implements Miller Legislation*, ATLANTA J.-CONST., Aug. 23, 1993, at A1, available at 1993 WLNR 3801145; David Pendered, *Life-Without-Parole Effective Today—but to What Effect?*, ATLANTA J.-CONST., May 1, 1993, at B3, available at 1993 WLNR 2333975.

3. Spotts, *supra* note 2, at 183. Act 569 amended O.C.G.A. §§ 17-10-1 and 17-10-2 and added four new sections, 17-10-16, -30.1, -31.1, and -32.1. *Id.*

4. Spotts, *supra* note 2. In 1993, a murder defendant who was sentenced to life could be eligible for parole in seven years. Mandatory prison time was later increased to fourteen years, and now, a person who is sentenced to life can only be eligible for parole after thirty years in prison. *E.g.*, Interview with

In *Ingram*, the defendants were charged with murder, among other things, and the prosecution sought life without parole without seeking the death penalty.<sup>6</sup> The court first noted that, under the Georgia statutory scheme, the death penalty statutes must be utilized in order to seek the sentence of life without parole.<sup>7</sup> The court succinctly laid out this statutory scheme as follows:

OCGA § 17-10-16(a) sets forth that a person convicted of an offense committed after May 1, 1993, for which the death penalty may be imposed “may be sentenced to death, imprisonment for life without parole, or life imprisonment *as provided in Article 2 of this chapter.*” OCGA § 17-10-30.1(a) provides that a sentence of life without parole applies to murder cases in which the court or the jury finds one or more statutory aggravating circumstances. OCGA § 17-10-31.1(a) creates three threshold requirements for imposition of a sentence of life without parole by a jury: (a) the defendant must be convicted of murder; (b) the jury must include a finding of one statutory aggravating circumstance; and (c) the jury must affirmatively recommend life without parole. Pursuant to OCGA § 17-10-32.1, defendants who enter a guilty plea after indictment for an offense for which the death penalty or life without parole may be imposed, may be sentenced to life imprisonment . . . ; however, where the State has filed a notice of intent to seek the death penalty and a statutory aggravating circumstance exists, the judge may sentence a defendant to death or life without parole.<sup>8</sup>

Based on the above provisions, the court concluded that “the Legislature intended the sentence of life without parole be considered and imposed only when seeking the death penalty.”<sup>9</sup> Notably, the

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Sara Totonchi, Public Policy Director, Southern Center for Human Rights (Mar. 25, 2009) [hereinafter Totonchi Interview].

5. *See generally Ingram*, 266 Ga. at 324.

6. *Id.* at 324–25.

7. *Id.* at 325.

8. *Id.* at 325–326.

9. *State v. Ingram*, 266 Ga. 324, 326 (1996). For its holding, the court also referenced the 1993 Act, which added the four new Code sections described above: sections 17-10-16, 17-10-30.1, 17-10-31.1,

court also suggested that, under Code section 17-10-31.1(a), life without parole can only be imposed for murder, and not for “other offenses for which the death penalty may be authorized.”<sup>10</sup> Therefore, life without parole was only available for murder where the jury found at least one aggravating circumstance beyond a reasonable doubt,<sup>11</sup> or where the defendant was previously convicted of a serious violent felony.<sup>12</sup>

SB 13 was introduced because several problems stemmed from the inability of prosecutors to seek life without parole without also seeking the death penalty. First, unlike with any other crime in Georgia, the judge did not have any discretion in sentencing defendants who were convicted of non-capital murder.<sup>13</sup> The only sentencing option available was life with parole, and the judge did not have “a range of sentencing options to consider in weighing out the factors and deciding whether or not the maximum is the appropriate punishment or something less than the maximum.”<sup>14</sup>

Second, there was a direct conflict in Georgia law with respect to rape because the law expressly authorizes the imposition of life without parole for the crime of rape.<sup>15</sup> The court of appeals noted the problem in *Velazquez v. State*, stating that “[a]lthough we recognize

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and 17-10-32.1. *Id.* Section 9 of the Act provided that “[n]o person shall be sentenced to life without parole unless such person could have received the death penalty under the laws of the state.” *Id.* (quoting 1993 Ga. Laws 1654).

10. *Ingram*, 266 Ga. at 326 n.7. At that time, Section 17-10-31.1(a) provided the following: “Where, upon a trial by jury, a person is convicted of *murder*, a sentence of death or life without parole shall not be imposed unless the jury verdict includes a finding of at least one statutory aggravating circumstance and a recommendation that such sentence be imposed.” O.C.G.A. § 17-10-31.1 (2008) (emphasis added). The Georgia Code authorizes the death penalty for armed robbery and rape. O.C.G.A. §§ 16-6-1, 16-8-41 (2007); *see infra* notes 115, 118–19.

11. O.C.G.A. § 17-10-30 (2008) (listing eleven aggravating factors, one or more of which must be proved beyond a reasonable doubt for the death penalty to apply (excluding treason and airplane hijacking, for which the death penalty may be imposed in any case)).

12. O.C.G.A. § 17-10-7(b)(2) (2008) (“Any person who has been convicted of a serious violent felony . . . and who after such first conviction subsequently commits and is convicted of a serious violent felony for which such person is not sentenced to death shall be sentenced to imprisonment for life without parole.”).

13. *Id.*

14. *Id.*

15. O.C.G.A. § 16-6-1(b) (2007) (“A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life.”).

the inconsistency between the authority for imposing a sentence of life without parole in Code section 16-6-1(b) [rape statute] and the limitation on imposing that sentence in Code section 17-10-16(a), only the General Assembly has the power to rectify that problem.”<sup>16</sup>

Additionally, in many non-capital murder cases, the victims’ families were not satisfied with the possibility that the killer of their loved ones could ever walk free.<sup>17</sup> Even the mandatory thirty years that a person must serve before being eligible for parole was often not enough.<sup>18</sup> According to Douglas County District Attorney, David McDade, “a lot of people commit crimes when they’re young. So if a person commits a murder when he’s twenty, he still could get out when he’s fifty, and that doesn’t give closure to victim’s families.”<sup>19</sup> The families “want to be assured that the person who took their loved one from them will never ever, ever walk in society.”<sup>20</sup>

Furthermore, in many murder cases, even if death is a possibility, prosecutors may only want life without parole. These cases fall into the so-called “gray area” where, as McDade stated, “if I took an aggressive posture on the facts, I could contend ethically that it could possibly be a death penalty case, but it’s not the type of case where the appellate courts wholeheartedly approve it nor is it what the victim’s family wants.”<sup>21</sup> Thus “district attorneys often mount[ed] costly death penalty prosecutions when they would [have been] more than satisfied with sentences of life in prison without the possibility of parole.”<sup>22</sup>

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16. *Velazquez v. State*, 283 Ga. App. 863, 864 (2007) (holding that prosecution could not seek life without parole for a first-time conviction of rape).

17. Video Recording of House Proceedings, Feb. 9, 2009 at 36 min., 26 sec. (remarks by David McDade, Georgia District Attorney’s Association) [hereinafter House Video].

18. *Id.*; see O.C.G.A. § 17-10-6.1(c)(1) (2008) (“[F]or a first conviction of a serious violent felony in which the defendant has been sentenced to life imprisonment, that person shall not be eligible for any form of parole . . . until that person has served a minimum of 30 years in prison.”).

19. Interview with David McDade, Georgia District Attorney’s Association (Mar. 25, 2009) [hereinafter McDade Interview].

20. House Video, *supra* note 17, at 36 min., 26 sec. (remarks by David McDade, Georgia District Attorney’s Association).

21. *Id.*

22. Bill Rankin, *DAs May Get Death Penalty Alternative: Senate Bill 13: Bill Allowing Option of a Life Without Parole Sentence Would Fix ‘Gaping Hole in Georgia Law,’* ATLANTA J.-CONST., Feb. 9, 2009, at A1, available at 2009 WLNR 2527696.

It is important to note that seeking the death penalty is very expensive: a death penalty trial usually costs several times more than a regular murder trial, both for the prosecution and the defense.<sup>23</sup> Moreover, a study conducted by the Atlanta Journal-Constitution in 2007 found that the death penalty in Georgia is arbitrarily imposed, especially in the aforementioned “gray area” cases.<sup>24</sup> Therefore, it made much sense to amend the law so that prosecutors could seek life without parole “from the beginning . . . without having to back into it years and perhaps millions of dollars down the road.”<sup>25</sup>

### *Bill Tracking of SB 13*

#### *Consideration and Passage by the Senate*

Senators Preston Smith (R-52nd), Bill Cowsert (R-46th), Ed Tarver (D-22nd), Kasim Reed (D-35th), and Bill Hamrick (R-30th), respectively, sponsored SB 13.<sup>26</sup> The Senate read the bill for the first time on January 14, 2009.<sup>27</sup> Senate President Pro Tempore Tommie Williams (R-19th) assigned it to the Senate Committee on Judiciary.<sup>28</sup> The committee, without making any changes, favorably reported the bill on January 27, 2009.<sup>29</sup> The following day, January 28, 2009, the Senate read the bill for the second time.<sup>30</sup> SB 13 was then read for the third time on February 3, 2009.<sup>31</sup> On the same day, the bill was submitted to the Senate floor for debate.<sup>32</sup> Senator Preston Smith (R-52nd) discussed how the Georgia code currently

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23. Stephen Gurr, *The High Cost of Death: Death Penalty Trials Like the One Starting Monday Cost Four Times As Much As a Regular Trial*, GAINESVILLE TIMES, Oct. 5, 2008, available at <http://www.gainesvilletimes.com/news/archive/7755>; see also Rankin, *supra* note 22. According to Jerry Word, the head of Georgia’s Capital Defender Office, defending a capital case costs at least \$100,000 (and often much more).

24. *Id.*

25. See Senate Video, *supra* note 1, at 53 min., 23 sec. (remarks by Sen. Preston Smith).

26. See SB 13, as introduced, 2009 Ga. Gen. Assem.

27. State of Georgia Final Composite Status Sheet, SB 13, April 3, 2009.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

allowed only two sentencing options for murder—death or life imprisonment.<sup>33</sup> He described how under current law, convicted murderers could only be sentenced to life without parole if the prosecutor sought the death penalty.<sup>34</sup> Senator Smith then stated that the purpose of SB 13 was to allow prosecutors to seek a sentence of life without parole for accused murderers on the front end, without having to initially seek the death penalty.<sup>35</sup> No other senators spoke on behalf of, or in opposition to, SB 13.<sup>36</sup> Thereafter, the Senate unanimously passed the bill by a vote of 54 to 0.<sup>37</sup>

After the House of Representatives passed a House Committee substitute version of the bill, with the only change being the effective date of the legislation,<sup>38</sup> the Senate unanimously passed the substitute version by a vote of 47 to 0.<sup>39</sup> Governor Sonny Perdue signed the bill into law on April 29, 2009.

#### *Consideration and Passage by the House*

On February 4, 2009, the House of Representatives read SB 13 for the first time and, the following day, read the bill for the second time.<sup>40</sup> Speaker of the House Glenn Richardson (R-19th) assigned it to the House Committee on the Judiciary Non-Civil.<sup>41</sup> The bill, as introduced, proposed to change existing Georgia law to allow prosecutors to seek a sentence of life without parole for accused murderers without first having to seek the death penalty.<sup>42</sup> The bill also allowed for the imposition of life without parole without the trier of fact having to find statutory aggravating circumstances, repealed

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33. See Senate Video, *supra* note 1, at 53 min., 23 sec. (remarks by Sen. Preston Smith); see also O.C.G.A. § 16-5-1 (2007).

34. Senate Video, *supra* note 1, at 53 min., 23 sec. (remarks by Sen. Preston Smith).

35. *Id.*

36. *Id.*

37. *Id.* at 1 hr., 5 min.; see also Georgia Senate Voting Record, SB 13 (Feb. 3, 2009).

38. See discussion *infra* *Consideration and Passage by the House*.

39. State of Georgia Final Composite Status Sheet, SB 13, Apr. 3, 2009; see also Georgia Senate Voting Record, SB 13 (Mar. 26, 2009).

40. State of Georgia Final Composite Status Sheet, SB 13, Apr. 3, 2009.

41. *Id.*

42. Senate Video, *supra* note 1, at 53 min., 23 sec. (remarks by Sen. Preston Smith); see also SB 13, as introduced, 2009 Ga. Gen. Assem.

current sections of the Georgia code in conflict with SB 13, and provided for an effective date of July 1, 2009.<sup>43</sup>

The House Committee on the Judiciary Non-Civil met on February 9, 2009 to discuss SB 13.<sup>44</sup> Senator Preston Smith (R-52nd) spoke on behalf of the bill first, reiterating his February 3, 2009 statements on the Senate floor<sup>45</sup> that the bill, as introduced, gave prosecutors the discretion to seek a sentence of life without parole for accused murderers on the front end of a prosecution.<sup>46</sup> He also discussed how the bill, as presented, provided for jury instructions as to the definitions of “life imprisonment” and “life without parole.”<sup>47</sup>

Senator Smith also discussed the effective date of the bill, which, as introduced, was scheduled for July 1, 2009.<sup>48</sup> According to the Senator, the combination of the possibility of the Georgia General Assembly session’s running into the month of June along with Governor Sonny Perdue’s conceivably taking the full amount of time to consider the bill created a potential problem.<sup>49</sup> If the Governor did not sign the bill into law until after July 1, 2009, then the effective date would bump to January 1, 2010.<sup>50</sup> Senator Smith then stated that to prevent delaying the effective date of the legislation, “we could certainly make [the effective date] upon the Governor’s signature or one month after the Governor’s signature.”<sup>51</sup> None of the committee members queried or commented further about the effective date of SB 13.<sup>52</sup> As it turned out, the only change made to the bill from its original version was a House Committee substitute providing for an effective date “upon its approval by the Governor.”<sup>53</sup>

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43. See SB 13, as introduced, 2009 Ga. Gen. Assem.

44. House Video, *supra* note 17, at 0 min., 13 sec. (remarks by Rep. Rich Golick).

45. See discussion *supra* *Consideration and Passage by the Senate*.

46. House Video, *supra* note 17, at 2 min., 36 sec. (remarks by Sen. Preston Smith).

47. *Id.*

48. *Id.*

49. *Id.* (“[The possibility of being signed by the Governor after July 1, 2009 is] a little bit problematic on this bill because we’ve created something of a split effective date by saying crimes committed before July 1, 2009 are treated one way and those created after are treated another way, unlike a typical bill that might just say the effective date is July 1, 2009.”).

50. *Id.*

51. *Id.*

52. See generally House Video, *supra* note 17.

53. See discussion *infra*.

Senator Smith also discussed the wide range of support the bill had received, with backing from both the state prosecutors and many of the criminal defense attorneys.<sup>54</sup> As to the possibility of amendments, Senator Smith expressed confidence that as long as SB 13 remained in its basic form, there should be no difficulty passing the bill into law.<sup>55</sup>

David McDade, a District Attorney in Douglas County, then spoke for the bill on behalf of the District Attorney's Association of Georgia.<sup>56</sup> Mr. McDade stated that the bill was the number one priority for state prosecutors.<sup>57</sup> Mr. McDade referred to the legislation as a "victim's bill" because it allowed for closure to victim's families who often are not satisfied when the individual convicted of murdering their loved one had the possibility of being released on parole after serving a "life" sentence.<sup>58</sup> Mr. McDade then reiterated many of Senator Smith's comments, including the statement that the bill did not require either an initial finding of statutory aggravating circumstances or a statutory death penalty case to impose the life without parole sentence.<sup>59</sup> Mr. McDade also discussed how passage of the bill would put Georgia in line with many other states in providing a sentencing range to judges for murders in non-capital cases.<sup>60</sup>

Gerald Word then spoke for the bill on behalf of both the Georgia Capital Defenders<sup>61</sup> and the Georgia Public Defenders.<sup>62</sup> Mr. Word

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54. House Video, *supra* note 17, at 14 min., 45 sec. (remarks by Sen. Preston Smith) ("[SB 13] is probably the only thing I've worked on down here where there is general agreement between the prosecutors and defense attorneys that this is a good bill and a good idea to have incorporated into the law with the caveat that some of the capital defense attorneys and some of the criminal defense attorneys believe it might be used as a negotiating hammer. But most of them . . . think that it is a good idea.").

55. *Id.* at 24 min., 0 sec. (remarks by Sen. Preston Smith).

56. *Id.* at 36 min., 26 sec. (remarks by David McDade, District Attorney's Association of Georgia).

57. *Id.*

58. *Id.*; *see also id.* at 25 min., 50 sec. (remarks by Sen. Preston Smith) (stating that felons sentenced to "life imprisonment" for murder were eligible for parole after thirty years).

59. House Video, *supra* note 17, at 36 min., 26 sec. (remarks by David McDade, District Attorney's Association of Georgia).

60. *Id.* at 47 min., 55 sec. (remarks by David McDade, District Attorney's Association of Georgia).

61. *See* Georgia Capital Defenders, <http://www.gacapdef.org/main.htm> (last visited Oct. 18, 2009) ("[T]he office is available in every capitally charged felony case to serve as a resource and to provide consultation to locally appointed counsel.").

stated that he anticipated the new legislation would actually reduce the number of cases in which the Georgia Capital Defenders would be involved, because the bill, as introduced, amended existing law which actually enticed prosecutors to seek the death penalty simply to back into a life without parole sentence.<sup>63</sup> Mr. Word also stated that, in regards to the circuit defenders, SB 13 may require additional work for the defenders to mitigate the sentencing on behalf of the accused.<sup>64</sup> Representative Mark Hatfield (R-177th) then queried Mr. Word as to the possibility that, absent a statutory trigger, the sentencing option of life without parole could either endanger the death penalty or lead to litigation in which the appellate courts begin overturning life without parole sentences.<sup>65</sup> Mr. Word responded that he believed SB 13 would actually alleviate the criticism of the death penalty.<sup>66</sup> As to the potential of litigation, Mr. Word stated that the only difficulties he foresaw “that could be a problem” lay in the public defenders’ potential failure to perform their “due diligence” and present mitigating factors during the sentencing phase.<sup>67</sup> Mr. Word then stated that the defense bar would have to take responsibility to educate its members to ensure that appropriate due diligence is taken.<sup>68</sup>

After Mr. Word spoke, Mr. McDade was recalled to testify about the aggravating circumstances that must exist before an accused can be subject to the death penalty.<sup>69</sup> When questioned by Representative

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62. See Georgia Public Defender Standards Council, About Us, <http://www.gpdsc.com/aboutus-main.htm> (last visited Oct. 19, 2009) (stating that each of Georgia’s 49 circuits has a circuit-wide public defender’s office to provide for indigent defense).

63. House Video, *supra* note 17, at 49 min., 13 sec. (remarks by Jerry Word, Director, Georgia Capital Defender).

64. *Id.* at 51 min., 49 sec. (remarks by Jerry Word, Director, Georgia Capital Defender) (“The only impact I can really see is that . . . the circuit defenders would have an obligation, because under the old system there was only one option and that was life with parole, I think they will now have to seek out the mitigation and be a little more diligent in their presentation of the sentencing. Because before, quite frankly, they knew they were gonna get locked up for life so it didn’t matter—they didn’t put up those family members or that psychology.”).

65. *Id.* at 54 min., 52 sec. (remarks by Rep. Mark Hatfield (R-177th)).

66. *Id.* at 55 min., 33 sec. (remarks by Jerry Word, Director, Georgia Capital Defender).

67. *Id.*

68. *Id.*

69. House Video, *supra* note 17, at 56 min., 47 sec. (remarks by David McDade, District Attorney’s Association of Georgia) (stating that at least one of ten aggravating circumstances under O.C.G.A. § 17-10-30 must be proven beyond a reasonable doubt for an accused to be sentenced to death).

Hatfield regarding the need for a statutory trigger before life without parole could be imposed, Mr. McDade responded that, because the judge makes the decision regarding sentencing in non-death penalty cases,<sup>70</sup> the bench would keep any overreaching prosecutors in check.<sup>71</sup>

Two days later, on February 11, 2009, the House Committee on the Judiciary Non-Civil favorably reported SB 13.<sup>72</sup> Thereafter, on March 17, 2009, SB 13 was recommitted to the House Rules Committee.<sup>73</sup> A House Committee substitute for SB 13 was presented for its third read on the House floor on March 25, 2009.<sup>74</sup> This substitute version kept all of the original language of SB 13 as introduced, except that the effective date of the bill was amended from July 1, 2009 to “upon its approval by the Governor.”<sup>75</sup> This change was in line with Senator Smith’s concerns that, should the bill not be signed into law by the Governor before July 1st, the effective date of the legislation would be pushed back to January 1, 2010.<sup>76</sup> The House Committee substitute was then unanimously passed by the House on March 25, 2009 by a vote of 164 to 0.<sup>77</sup> SB 13 was then sent back to the Senate where it passed unanimously the following day.<sup>78</sup>

### *The Act*

The Act amends Chapter 10 of Title 17 to provide for the imposition of life without parole [hereinafter LWOP] for persons convicted of murder independently of a death penalty prosecution and without the requirement that the trier of fact recommend the

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70. *See id.* at 31 min., 25 sec. (remarks by Sen. Preston Smith).

71. *Id.* at 58 min., 38 sec. (remarks by David McDade, District Attorney’s Association of Georgia).

72. State of Georgia Final Composite Status Sheet, SB 13, April 3, 2009.

73. *Id.*; *see also* Rankin, *supra* note 22, at B6 (“House Rules Committee Chairman Earl Ehrhart [R-36th] pulled the bill off the House floor just before the vote so it could be amended with nonunanimous jury legislation.”).

74. State of Georgia Final Composite Status Sheet, SB 13, Apr. 3, 2009.

75. *See* SB 13 (HCS), 2009 Ga. Gen. Assem. No additions were made regarding nonunanimous jury legislation. *Id.*

76. *See* Rankin, *supra* note 22.

77. Georgia House of Representatives Voting Record, SB 13 (Mar. 25, 2009).

78. State of Georgia Final Composite Status Sheet, SB 13, Apr. 3, 2009.

sentence or find statutory aggravating circumstances.<sup>79</sup> The Act also repeals three sections of Chapter 10 of Title 17 that are inconsistent with the legislation.<sup>80</sup>

Section 1 of the Act amends subsection (d) of Code section 16-5-1 by adding “by imprisonment for life without parole” to the sentencing range available for persons convicted of murder.<sup>81</sup>

Code section 17-10-2 relates to presentencing hearings in felony cases.<sup>82</sup> Section 2 of the Act amends subsections (a)(1), (a)(2), and (c) of Code section 17-10-2 by substituting the word “accused” in place of the word “defendant.”<sup>83</sup> Section 2 also removes reference to “life without parole” in subsection (a)(1), thus mandating that the judge conduct a presentence hearing to determine the punishment in all cases except those where the death penalty may be imposed.<sup>84</sup>

Section 2 also amends Code section 17-10-2(b) by deleting reference to Code section 17-10-30.1, which is repealed under section 4 of the Act.<sup>85</sup> Section 2 further amends Code section 17-10-2(b) by removing reference to “life without parole.”<sup>86</sup> The end result of these changes to subsection (b) is that only in cases where the death penalty may be imposed, the judge, in a bench trial, is required to follow the procedures established in Code section 17-10-2(a) relating to conducting a presentencing hearing as well as the procedures outlined in Code section 17-10-30 relating to the imposition of the death penalty.<sup>87</sup> Section 2 also deletes reference to LWOP in subsection (c)

79. See O.C.G.A. §§ 16-5-1, 17-10-2, 17-10-6.1, 17-10-31, 17-10-32.1 (Supp. 2009).

80. See O.C.G.A. §§ 17-10-30.1, 17-10-31.1 (2008).

81. O.C.G.A. § 16-5-1 (Supp. 2009).

82. *Id.* § 17-10-2.

83. *Id.*; see also House Video, *supra* note 17, at 12 min., 53 sec. (remarks by Jill Travis, Office of Legislative Counsel) (stating that “accused” is a better term than “defendant” because, since the Georgia evidence code applies to both civil and criminal proceedings, “accused” clearly indicates to the reader that the reference applies to a criminal proceeding).

84. O.C.G.A. § 17-10-2(a)(1) (Supp. 2009); House Video, *supra* note 17, at 36 min., 26 sec. (remarks by David McDade, District Attorney’s Association of Georgia) (“What this bill does is it simply gives the sentencing authority, and that means the judge in a non death penalty case, the same discretion that judge has in every other crime in Georgia.”).

85. See discussion *infra*.

86. O.C.G.A. § 17-10-2(b) (Supp. 2009).

87. *Id.*; see also O.C.G.A. § 17-10-30 (2008) (outlining crimes where the death penalty may be imposed as well as the statutory aggravating circumstances required to be present before the death penalty may be imposed as a sentence).

of Code section 17-10-2, thus mandating that only in cases in which the death penalty may be imposed and in which the jury returns a finding of “guilty” should the court conduct a presentence hearing before the jury.<sup>88</sup>

Code section 17-10-6.1 relates to the punishment for serious violent offenders.<sup>89</sup> Section 3 of the Act amends subsection (c) of Code section 17-10-6.1 by substituting the word “accused” for the word “defendant” in subsections (c)(1) and (c)(2).<sup>90</sup> Section 3 fully amends Code section 17-10-6.1(c)(3) by stating that, for a first conviction of a serious violent felony in which the accused is sentenced to LWOP, the person shall not be eligible for any form of early release or parole.<sup>91</sup> Section 3 also amends subsection (c)(4) of Code section 17-10-6.1 by substituting the introductory phrase “[e]xcept as otherwise provided in this subsection, any” for the prior language of “[f]or purposes of this Code section.”<sup>92</sup> Subsection (c)(4) is further amended by deleting the phrase “other than a sentence of life imprisonment or life without parole or death.”<sup>93</sup> The effect of the changes to Code section 17-10-6.1(c)(4) is that any sentence imposed for the first conviction of a serious felony is required to be served in its entirety unless an exception is provided elsewhere within subsection (c).<sup>94</sup>

Section 4 of the Act repeals Code section 17-10-30.1, which required the finding of statutory aggravating circumstances in order for LWOP to be imposed.<sup>95</sup>

Section 5 of the Act amends Code section 17-30-31 by taking the original language, renaming it subsection (a), and then providing the

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88. O.C.G.A. § 17-10-2(c) (Supp. 2009).

89. *Id.* § 17-10-6.1.

90. *Id.* § 17-10-6.1(c).

91. *Id.* § 17-10-6.1(c)(3).

92. *Id.* § 17-10-6.1(c)(4).

93. *Id.*

94. O.C.G.A. § 17-10-6.1(c)(4) (Supp. 2009); *see also id.* §§ 17-10-6.1(c)(1) and 17-10-6.1(c)(2) (providing that those sentenced to life imprisonment or those who were originally sentenced to death but had their sentences commuted to life imprisonment are not eligible for parole or any other form of early release until they have served a minimum of thirty years in prison).

95. SB 13 (HCS), 2009 Ga. Gen. Assem.; *see also* O.C.G.A. § 17-10-30.1 (2008) (delineating the statutory aggravating circumstances required).

following changes:<sup>96</sup> the word “accused” is substituted for the word “defendant;”<sup>97</sup> reference to the court sentencing a convicted individual to imprisonment “as provided by law” when a sentence of death is not recommended by the jury is deleted;<sup>98</sup> and, in its place, the legislature specified that, “[w]here a statutory aggravating circumstance is not found or . . . a recommendation of death is not made, the jury shall decide whether to recommend a sentence of” LWOP or life imprisonment with the possibility of parole.<sup>99</sup>

Section 5 thereafter adds a subsection (b) to Code section 17-10-31, which allows, during the sentencing phase before a jury, for the state and the accused to argue and the trial judge to instruct the jury as to the definitions of LWOP and life imprisonment.<sup>100</sup> Section 5 also adds a subsection (c) to Code section 17-10-31 which provides that, should the jury be unable to reach a unanimous verdict as to sentence, the judge shall dismiss the jury and impose a sentence of either life imprisonment or LWOP.<sup>101</sup>

Section 6 of the Act repeals Code section 17-10-31.1, which related to a requirement that the jury both find an aggravating circumstance and recommend the sentence in order for death or life without parole to be imposed for murder convictions.<sup>102</sup>

Section 7 of the Act repealed Code section 17-10-32.1, which gave judges the discretion to reduce the sentence for those individuals who pled guilty to crimes for which the death penalty or LWOP could be imposed.<sup>103</sup> Code section 17-10-32.1 also mandated that the judge find, beyond a reasonable doubt, the existence of a statutory

96. O.C.G.A. § 17-10-31(a) (Supp. 2009). The original version of O.C.G.A. § 17-10-31 (2008) mandated, in order for the death penalty to be imposed as a sentence, the jury was required to find at least one aggravating circumstance as well as recommended the death sentence itself.

97. O.C.G.A. § 17-10-31(a) (Supp. 2009).

98. *Id.* § 17-10-31(a).

99. *Id.*

100. *Id.* § 17-10-31(b) (stating that LWOP means accused is incarcerated for life with no possibility of parole and that “life imprisonment” indicates that accused will be eligible for parole). Although the instructions do not expressly allow letting the jury know how much time a defendant must serve before being eligible for parole (currently, thirty years), they do not prohibit it either, and thus the release of this information to the jury may rest with judge’s discretion. Telephone Interview with Sen. Preston Smith (R-52nd) (June 8, 2009) [hereinafter Smith Interview].

101. O.C.G.A. § 17-10-31(c) (Supp. 2009).

102. SB 13 (HCS), 2009 Ga. Gen. Assem.

103. *Id.*

aggravating circumstance to sentence an individual to death or LWOP.<sup>104</sup>

Section 8 of the Act specifies that the legislation only applies to offenses committed after the effective date. However, an accused, with express written consent of the state, could choose to subject his offense to the provisions of the Act even though it was committed before the effective date.<sup>105</sup>

Section 9 mandates that any amendments or repeals of Code sections governed by the Act shall not affect any sentence imposed by any state court prior to the effective date.<sup>106</sup> Section 10 summarizes the main purpose of SB 13: “A person may be sentenced to life without parole without the prosecutor seeking the death penalty under the laws of this state.”<sup>107</sup>

Section 11 states that the Act shall become effective upon approval by the Governor and shall apply to all crimes committed on or after that date, except in situations where the accused chooses to be bound by the terms of this Act for prior offenses as provided for in section 8 of the Act.<sup>108</sup>

### *Analysis*

The Act was meant to close a “gaping hole in Georgia Law”<sup>109</sup> by allowing prosecutors to seek life without parole in serious murder cases without going through the procedural and financial difficulties of seeking death.<sup>110</sup> This is not only good for the Georgia budget, but also significantly helps victims’ families by bringing them closure

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104. *Id.*

105. SB 13 (HCS), 2009 Ga. Gen. Assem. (“[A]n accused . . . may elect . . . to be sentenced under the provisions of this Act, provided that: (1) jeopardy for the offense charged has not attached or (2) the accused has been sentenced to death but the conviction or sentence has been reversed on appeal and the state is not barred from seeking prosecution after the remand.”).

106. SB 13 (HCS), 2009 Ga. Gen. Assem.

107. *Id.*; see also House Video, *supra* note 17, at 23 min., 10 sec. (remarks by Jill Travis, Office of Legislative Counsel) (stating that Section 10 merely serves as a summary of the legislation and is redundant to the language in the previous sections of the Act).

108. SB 13 (HCS), 2009 Ga. Gen. Assem. (stating that the Act becomes law upon Governor’s signature or upon its becoming law without such approval).

109. Rankin, *supra* note 22 (quoting Sen. Preston Smith (R-52nd)).

110. *Id.*

through knowledge that the killer of their loved ones will never see the light of day.<sup>111</sup> Though the Act was supported by both prosecutors and defense attorneys alike and is relatively free from controversy,<sup>112</sup> it may have some undesirable, or at least unforeseen, effects.

### *Effect on Crimes Other Than Murder*

On its face and judging by the legislative committee discussions, the Act was only meant to introduce life without parole as a sentencing option for the crime of murder, and not any other serious felony.<sup>113</sup> However, the Act's effect may be somewhat broader because it essentially allows LWOP independently of the death penalty, without finding any aggravating circumstances,<sup>114</sup> thus making the sentence potentially available for other crimes. As discussed above, *State v. Ingram* previously prohibited the seeking of life without parole without first seeking the death penalty.<sup>115</sup> Because generally only capital murder (murder with a finding of at least one aggravating circumstance) is eligible for the death penalty, and LWOP could not be imposed without seeking death, LWOP was not an option for crimes lesser than capital murder.<sup>116</sup> With the removal

111. House Video, *supra* note 17, at 36 min, 26 sec. (remarks by David McDade, Georgia District Attorney's Association).

112. Senate Video, *supra* note 1, at 53 min., 23 sec. (remarks by Sen. Preston Smith).

113. *Id.* (“[I]n a murder conviction, you only get the options of life [with parole] or death. There is no sentencing option of life without parole. And that is the problem than Senate Bill 13 seeks to correct.”); House Video, *supra* note 17, at 3 min., 52 sec. (remarks by Sen. Preston Smith) (“[A]t its heart, what this bill does is seek to allow prosecutors to seek a life without parole sentence for the crime of murder . . . .”); *see also* House Video, *supra* note 17, at 44 min, 07 sec. (remarks by David McDade, Georgia District Attorney's Association) (“This bill does not authorize life without parole for any conviction—other than murder—that doesn't already exist in the law.”); McDade Interview, *supra* note 19 (“[SB 13] is only intended for murder.”).

114. *See* discussion *supra* *Consideration and Passage by the House*; *see also* SB 13 (HCS), § 10, 2009 Ga. Gen. Assem.; House Video, *supra* note 17, at 19 min., 10 sec. (remarks by Sen. Preston Smith); Electronic Mail Interview with Sen. Bill Hamrick (R-30th) (May 27, 2009) (on file with the Georgia State University Law Review) [hereinafter Hamrick Interview].

115. *State v. Ingram*, 266 Ga. 324, 326 (1996); *see* discussion *supra* *History*.

116. *Ingram*, 266 Ga. at 326 (holding that life without parole may only be imposed when seeking the death penalty). In addition to murder, the Georgia Code treats rape and armed robbery as capital crimes, O.C.G.A. §§ 16-6-1(b) and 16-8-41(b) (2007), respectively, but imposing the death penalty for these offenses has been disallowed. *Gregg v. State*, 233 Ga. 117, 127 (1974) (refusing to sustain a death

of the death condition, however, prosecutors will be able to seek LWOP for any serious felony where life without parole is authorized.<sup>117</sup>

For example, the Georgia Code expressly allows for the imposition of life without parole for rape.<sup>118</sup> However, *Ingram*'s reasoning led directly to a conclusion that, because one could not seek the death penalty for rape,<sup>119</sup> one also could not seek life without parole, and the Georgia Court of Appeals confirmed this.<sup>120</sup> But by no longer having to seek death first, prosecutors can now freely seek life without parole for the first offense of rape.<sup>121</sup>

Echoing the wider availability of LWOP, section 3 of the Act amends Code section 17-10-6.1(c) by adding a new sub-section to read as follows: "For a first conviction of a *serious violent felony* in which the accused has been sentenced to imprisonment for life without parole . . . ."<sup>122</sup> The broadness of this language suggests that life without parole is a possibility for any serious violent felony. Moreover, section 10, inversely tracking the language of *Ingram*,<sup>123</sup> broadly provides that "[a] person may be sentenced to life without parole without the prosecutor seeking the death penalty under the

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sentence for armed robbery), *aff'd*, *Gregg v. Georgia*, 428 U.S. 153, 205 (1976). For discussion of rape, see *infra* notes 118–19. For a list of aggravating circumstances, see O.C.G.A. § 17-10-30 (2008).

117. However, rape is currently the only serious violent felony besides murder for which life without parole is expressly authorized for the first offense. See generally O.C.G.A. § 17-10-6.1 (2008) (listing the seven offenses that are defined as "serious violent felon[ies]").

118. O.C.G.A. § 16-6-1(b) (2007) ("A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life . . . .").

119. Though the rape statute does allow for the punishment of death, *supra* note 118, the United States Supreme Court has held that the death penalty cannot be imposed for raping someone. *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (holding that the rape of an adult woman cannot be punished by death); *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2650–51 (2008) (holding that a death sentence for raping a child is also unconstitutional).

120. *Velazquez v. State*, 283 Ga. App. 863, 863–64 (2007) (holding that life without parole cannot be imposed for rape under the current Georgia law); accord *Johnson v. State*, 280 Ga. App. 341, 346 (2006) (same); McDade Interview, *supra* note 19 (saying that prosecutors do not seek life without parole for rape because the Georgia Supreme Court disallowed it).

121. See *State v. Ingram*, 266 Ga. 324, 325–27 (1996); Smith Interview, *supra* note 100.

122. SB 13 (HCS), § 3, 2009 Ga. Gen. Assem. A serious violent felony includes any of the seven offenses defined in O.C.G.A. § 17-10-6.1 (2008).

123. *Ingram*, 266 Ga. at 326 (1996) ("[T]he Legislature intended the sentence of life without parole be considered and imposed only when seeking the death penalty.") (emphasis added).

laws of this state.”<sup>124</sup> Therefore, although the language and purpose of the Act seem to be concerned only with murder, the Act enables the imposition of LWOP for rape and may make it easier for legislators to amend other criminal statutes to allow LWOP as an option for other felonies.<sup>125</sup>

### *Negative Effects of Life Without Parole*

Some in the legal community believe that life without parole is too harsh a punishment to be applied to non-capital criminal offenses.<sup>126</sup> “Life without parole is a very severe sentence because it offers no redemption whatsoever to defendants. In a sense, it is similar to the death penalty because the defendant will die in prison, even though his death may result from natural causes.”<sup>127</sup> Notably, the current law requires that murderers, even if eligible for parole, must serve a mandatory thirty years behind bars.<sup>128</sup> Although thirty years may not seem significantly different from life without parole, “the possibility of parole offers at least a hope of freedom and redemption while life without parole offers none.”<sup>129</sup>

The Act may also have negative practical consequences for Georgia because it is likely to drastically increase the number of life-long prisoners.<sup>130</sup> Without the practical and financial barriers of seeking the death penalty, prosecutors may pursue life without parole more aggressively in non-capital murder cases, thereby increasing the number of defendants sentenced to life without parole.<sup>131</sup> Moreover, the chances of a successful appeal from a non-death conviction are

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124. SB 13 (HCS), § 10, 2009 Ga. Gen. Assem. Though this section is not codified and is not technically binding on the courts, it reflects what the Act accomplishes as a whole. House Video, *supra* note 17, at 19 min., 10 sec. (remarks by Sen. Preston Smith).

125. *Contra* McDade Interview, *supra* note 19.

126. Totonchi Interview, *supra* note 4.

127. *Id.*; see also Catherine Appleton, *The Pros and Cons of Life Without Parole*, 47 BRIT. J. CRIMINOLOGY 597, 611 (2007) (“[Life without parole] removes any prospect of reward for change and is therefore fundamentally inhumane.”).

128. O.C.G.A. § 17-10-6.1(c)(1) (2008).

129. Totonchi Interview, *supra* note 4.

130. Note, *A Matter of Life and Death: The Effect of Life-Without-Parole Statutes on Capital Punishment*, 119 HARV. L. REV. 1838, 1851–53 (2006).

131. See Totonchi Interview, *supra* note 4; *A Matter of Life and Death*, *supra* note 130, at 1851.

very small.<sup>132</sup> Unlike the death penalty, “life-without-parole sentences receive no special consideration from appellate tribunals.”<sup>133</sup>

An increase in the number of prisoners serving life without parole may have serious financial consequences for Georgia because a large population of elderly prisoners will create the need for more special elderly and geriatric care facilities.<sup>134</sup> And although the dangerousness of prisoners falls drastically with age, “older prisoners have triple the healthcare costs of younger inmates.”<sup>135</sup> Thus, Georgia faces a risk of supporting “hundreds of individuals who would have been eligible for parole as senior citizens [but] now find themselves playing shuffleboard in a prison cell.”<sup>136</sup> On the other hand, if an increase in LWOPs stems from a decrease in the number of death penalty trials and sentences, then this geriatric problem should not be cause for concern because the death penalty overall is more expensive than LWOP.<sup>137</sup>

#### *Effect on the Death Penalty*

Some death penalty advocates have voiced concerns that the Act will decrease the number of death penalties in Georgia.<sup>138</sup> However, while the number of death penalties *sought* may decrease, the number of death penalties actually imposed is unlikely to go down.<sup>139</sup> It is true that the Act will eliminate the need to seek the death penalty in the “gray area”<sup>140</sup> cases where prosecutors only want life without

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132. *A Matter of Life and Death*, *supra* note 130, at 1853 (quoting Ira Robbins, *Towards a More Just and Effective System of Review in State Death Penalty Cases*, 40 AM. U. L. REV. 53, 109 (1990)) (“The rate of success for appeals from denial of habeas corpus relief in non-capital cases typically is estimated at 7% or less.”).

133. *Id.* at 1853.

134. *See* Appleton, *supra* note 127, at 604.

135. *A Matter of Life and Death*, *supra* note 130, at 1852.

136. *Id.* at 1853; *see also* Appleton, *supra* note 127, at 604. (“[P]risons that are essentially geriatric wards for aged convicts who pose a minimal risk to the public can serve no public safety objective and are very costly for criminal justice systems.”).

137. Smith Interview, *supra* note 100.

138. *See* House Video, *supra* note 17, at 31 min., 25 sec. (remarks by Rep. Timothy Bearden).

139. *See, e.g.*, Hamrick Interview, *supra* note 114; House Video, *supra* note 17, at 36 min., 26 sec. (remarks by David McDade, District Attorney’s Association of Georgia).

140. *See supra* text accompanying notes 21–22.

parole; and those “gray area” situations happen “more often than the public would ever imagine.”<sup>141</sup> However, prosecutors will continue to seek death for those defendants who they truly believe deserve it and who will likely be sentenced to death by a jury.<sup>142</sup> Therefore, while the process of seeking the death penalty will become more “pure,” the number of executions is unlikely to decrease.<sup>143</sup>

Furthermore, the Act is not meant to indicate the phasing out or mitigation of the death penalty in Georgia.<sup>144</sup> “The death penalty has always been a very strong part of Georgia’s criminal justice system. Georgia is one of the leading states in the nation in imposing the death penalty, with one of the highest per capita incarceration rates, and that’s unlikely to change anytime soon.”<sup>145</sup> Moreover, a study of death-penalty states reveals that life-without-parole statutes have only a minor effect on the imposition of the death penalty.<sup>146</sup>

#### *Effect on Defense Attorneys*

Although the Act will give significantly more discretion and freedom to prosecutors, it is unlikely to substantially affect the defense bar.<sup>147</sup> The only change is that defense attorneys will now need to be more diligent in defending regular murder cases.<sup>148</sup> Before the Act, there was only one possible punishment available to a defendant in a non-capital murder case—life with the possibility of parole.<sup>149</sup> Accordingly, defense attorneys did not need to present any evidence to specifically mitigate the punishment in cases of

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141. Rankin, *supra* note 22 (quoting Mike Mears, Professor, John Marshall Law School); *see also* House Video, *supra* note 17, at 49 min., 13 sec. (remarks by Jerry Word, Director, Georgia Capital Defender).

142. *E.g.*, House Video, *supra* note 17, at 36 min., 26 sec. (remarks by David McDade, Georgia District Attorney’s Association).

143. *Id.* at 49 min., 13 sec. (remarks of Jerry Word, Director, Georgia Capital Defender).

144. *See id.* at 31 min., 25 sec. (remarks by Sen. Preston Smith); Hamrick Interview, *supra* note 114.

145. Totonchi Interview, *supra* note 4; *see also* Emanuella Grinberg, *Budget Concerns Force States to Reconsider the Death Penalty*, CNN.COM, Mar. 2, 2009, <http://www.cnn.com/2009/CRIME/03/02/economy.death.penalty>.

146. *A Matter of Life and Death*, *supra* note 130, at 1845–51.

147. House Video, *supra* note 17, at 51 min., 49 sec. (remarks of Jerry Word, Director, Georgia Capital Defender).

148. *Id.*

149. *Id.*

conviction.<sup>150</sup> As noted by Jerry Word, the head of Georgia Capital Defender, “they knew they were gonna get locked up for life so it didn’t matter—they didn’t put up those family members or that psychology.”<sup>151</sup> However, because the punishment of life without parole is now a distinct possibility, defense attorneys will have to put forth extra effort in looking for mitigating circumstances and presenting them into evidence.<sup>152</sup>

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150. *Id.*

151. *Id.*

152. *Id.*