

HB 1059: Sex Offender Legislation Abstract and Summary

For the full text of the legislation, see:

http://www.legis.state.ga.us/legis/2005_06/pdf/hb1059.pdf

Abstract

Section 1 defines the purposes of and justifications for the new legislation. The stated purposes of the new legislation are to incarcerate sexual offenders, to require registration of sexual offenders, to provide the community with public notification that sex offenders are present, to collect data about sexual offenses and sexual offenders, to require sex offenders to wear an electronic monitoring system for the remainder of their lives, and to prohibit sex offenders from working with children.

Sections 2 and 3 provide for appeals by defendants and the state to judicial orders concerning the new legislation.

Sections 4 through 16 all relate to sexual offenses. The new changes in the laws function almost entirely to elevate the sentences for these crimes. For example, most of the crimes that had a mandatory minimum sentence of ten years under the old code have been changed so that the mandatory minimum sentences are now twenty-five years.

Section 17 adds a new provision to the Georgia Code that punishes anyone who harbors or conceals sexual offenders, attempts to harbor or conceal sexual offenders, or gives false information to the police about a sexual offender. The punishment for a violation of this law is imprisonment of not less than five years and not more than twenty years.

Section 18 adds child molestation to the list of crimes in which no appeal bond shall be granted. It also changes the minimum sentence for which an appeal bond cannot be granted from seven years to five years for all of the listed offenses, not just sex crimes.

Section 19 relates to sentencing and punishment. Under Georgia law, if the punishment for a crime is not life imprisonment, life without parole, or death, the judge has the discretion to probate or minimize the sentence. Under the new code, the judge no longer has that discretion if the crime is a sexual offense.

Accordingly, sections 4 through 16 sections describe the new minimum sentences for sexual offenses. Combined with Section 19, the minimum sentence is assured because the judge no longer has the discretion to minimize the sentence.

Section 20 relates to sentencing and punishment for serious violent felonies. This section raises the mandatory minimum sentences for certain sex crimes, and substantially increases the time before people convicted of serious violent felonies are eligible for parole.

Section 21 adds a new provision to the Georgia Code that defines the term “sexual offense”, and allows the judge to reduce sentences in for sex offenses in extremely limited circumstances.

Section 22 unconstitutionally expands the reach of the death penalty in Georgia to include murders, rapes, or kidnappings committed by persons previously convicted of rape, aggravated sodomy, aggravated child molestation, or aggravated sexual battery. In the case of *Coker v. Georgia*, the United States Supreme Court ruled that it is unconstitutional to sentence someone to death for the rape of an adult woman.

Section 23 includes the age and sex of each victim in an individual's criminal history records.

Section 24 relates to registration of sex offenders and the prohibition on living or working within 1,000 feet of a school, child-care facility, or places where minors congregate.

The new code creates extensive, rigorous requirements for registration. A registrant must provide an exhaustive list of information to the county sheriff where they live. If they move to another county, they must notify the sheriff of the county they are leaving 72 hours prior to moving and notify the sheriff of the country they are coming to within 72 hours of the move.

In addition, a registrant must re-register two times per year: once within 72 hours prior to their birthday, and once six months from the registrant's birth month. This re-registration requires a personal visit to the sheriff, the registrant must update the exhaustive list of information, and get new photos and fingerprints each time.

If a person fails to comply with this extensive registration process in any way, they are guilty of a felony and will receive 10 to 30 years in jail. A second offense yields life imprisonment.

Section 25 provides that those who are on probation for dangerous sexual offenses against a minor are prohibited from loitering in areas where minors congregate, including churches, and prevents them from running for positions on local boards of education.

Section 26 limits the discretion of the judge to substitute probation for jail time for the listed sex offenses.

Section 27 increases the length of time people who are convicted of murder and have previously been sentenced to life imprisonment must serve before they are eligible for parole.

Sections 28 and 29 repeal prior legislation.

Section 30 implements the legislation.

Section 31 asserts the dominance of this legislation over any conflicting legislation.

Technical Summary – Section by Section (only relevant sections included)

Section 4

This section amends the aggravated assault statute (16-5-21). Under the new code, aggravated assault with intent to rape a child under 14 is punishable by 25-50 years. A person convicted under this section is subject to the registration requirements of the new code.

Section 5

This section amends the kidnapping statute (16-5-40). A person found guilty of kidnapping a victim who is fourteen years of age or older shall be imprisoned for not less than ten and not more than twenty years. If the victim was less than fourteen years of age, the offender shall be imprisoned either for life, or for not less than twenty-five years and not more than life, followed by probation for life. If the kidnapping was for ransom or if the kidnapping resulted in bodily injury to the victim, the offender shall receive either life imprisonment or death. A person

Section 6

This section amends the false imprisonment statute (16-5-41). If the victim is not the child of the defendant and the victim is less than fourteen years of age, the defendant is subject to the registration provisions of the new code.

Section 7

This section amends the statute dealing with publication of notices and information required for registered sex offenders, assessment for costs, and certain immunity (16-5-110). It now requires the sex offender to report to the sheriff not just after release from confinement, but also after placement on probation or upon establishing residence in the county. It also provides for the sheriff to give multiple notices to the community at or near the time the person registers with the sheriff.

Section 8

This section amends the rape statute (16-6-1). The punishment for rape under the new code is either death, life without parole, life imprisonment, or a split sentence of imprisonment for not less than twenty-five years and not exceeding life imprisonment, followed by probation for life.

Section 9

This section amends the statute relating to sodomy and aggravated sodomy (16-6-2). The punishment for aggravated sodomy under the new code is either life imprisonment or a split sentence of imprisonment for not less than twenty-five years and not exceeding life imprisonment, followed by probation for life. If the victim is between thirteen and sixteen years of age and the person convicted is eighteen or younger and is no more than four years older than the victim, the convicted person is guilty of a misdemeanor and will not be subject to the requirements of the new code.

Section 10

This section amends the statutory rape statute (16-6-3). The punishment for statutory rape under the new code is practically the same. The only difference is that under the new code, the maximum age that a convicted person can be and still be charged with a misdemeanor instead of

a felony is eighteen instead of nineteen. If a person is convicted of felony statutory rape, they are subject to the requirements of the new code.

Section 11

This section amends the statute relating to child molestation and aggravated child molestation (16-6-4). For child molestation, if the victim is at least fourteen but less than sixteen years of age, and the convicted person is eighteen or younger and is not more than four years older than the victim, the crime shall be a misdemeanor and not subject to the requirements of the new code. For aggravated child molestation, the amendments change the penalty to life imprisonment or a split sentence of imprisonment for not less than twenty-five years and not exceeding life imprisonment, followed by probation for life. However, if the victim is at least thirteen but not older than sixteen years of age, the convicted person is eighteen years of age or younger and is not more than four years older than victim, and the basis of the charge of aggravated child molestation involves an act of sodomy, the convicted person is guilty of a misdemeanor and not subject to the requirements of the new code.

Section 12

This section amends the statute relating to enticing a child for indecent purposes (16-6-5). The amendments change the minimum penalty to ten years and the maximum penalty to thirty years. However, if the victim is at least fourteen but less than sixteen years of age, and the convicted person is eighteen or younger and is not more than four years older than the victim, the crime shall be a misdemeanor and not subject to the requirements of the new code.

Section 13

This section amends the statute relating to sexual assault against persons in custody (16-6-5.1). 16-6-5.1(b) relates to sexual assault by a probation or parole officer. Under the new code, the punishment is 10-30 years (not 1-3 years); if the victim is under fourteen years, the punishment is 25-50 years. A person convicted under this provision is now subject to the requirements of the new code. 16-6-5.1(c) relates to sexual assault by a person of authority (like a boss, superior, doctor). Under the new code, the punishment is 10-30 years (not 1-3 years). A person convicted under this provision is now subject to the requirements of the new code. 16-6-5.1(d) relates to sexual assault by a health care workers (like an in-home assistant, hospice, long-term care). Under the new code, the punishment is 10-30 years (not 1-3 years). A person convicted under this provision is now subject to the requirements of the new code.

Section 14

This section amends the incest statute (16-6-22). Under the new code, the punishment is 10-30 years (not 1-20 years). If the victim is under fourteen years of age, the punishment is 25-50 years. A person convicted under this section is subject to the requirements of the new code.

Section 15

This section amends the sexual battery statute (16-6-22.1). A person convicted under this statute is now subject to the requirements of the new code.

Section 16

This section amends the aggravated sexual battery statute (16-6-22.2). The new code amends the sentencing portion of this statute so the penalty is life imprisonment or a split sentence of imprisonment for not less than twenty-five years and not exceeding life imprisonment, followed by probation for life. The convicted person is also subject to the requirements of the new code.

Section 17

This section adds a new Code section to the Georgia Code (16-6-25). Under this section, any person who knows or reasonably believes that a sexual offender is not complying, or has not complied, with the new code requirements of 42-1-12, and with the intent of assisting such sexual offender in eluding a law enforcement unit that is seeking the sexual offender, harbors or conceals, attempts to harbor or conceal, or knowingly provides false information regarding the sex offender to the law enforcement unit, is guilty under this section and will be sentenced to 5-20 years in prison.

Law enforcement includes but is not limited to: state police, local police, Georgia Bureau of Investigation, Department of Corrections, State Board of Pardons and Paroles.

Section 18

This section amends a criminal procedure statute relating to where offenses are bailable and appeal bonds. The amendment adds child molestation to the list of felonies where no appeal bond will be granted. Further, the amendment changes the length of the sentence from seven years to five years for all the listed offenses so that for any listed sentence of five years or more, no appeal bond will be granted.

Section 19

This section limits judicial discretion at sentencing of a convicted person for all offenses subject to the requirements of the new code.

Section 20

This section amends 17-10-6.1, which relates to punishment and serious violent felonies. First, it mandates that if a person is convicted of kidnapping involving a victim who is fourteen years of age or older or armed robbery the mandatory minimum sentence shall be ten years imprisonment with no reduction for parole, pardon, or commutations of sentence by the State Board of Pardons and Paroles.

Next, the amendments mandate that for kidnapping involving a victim who is less than fourteen years of age, rape, aggravated child molestation, aggravated sexual battery, the convicted person shall be sentenced to either life imprisonment or a split sentence of imprisonment for not less than twenty-five years and not exceeding life imprisonment, followed by probation for life with no reduction for parole, pardon, or commutations of sentence by the State Board of Pardons and Paroles.

Finally, where any person is serving a term of life imprisonment for a serious violent felony, the amendments require the person to serve at least thirty years in prison before that person can be eligible for parole.

Section 21

This section creates a new Code section of the Georgia Code (17-10-6.2).

17-10-6.2(a) defines the term “sexual offense” to mean aggravated assault with intent to rape, false imprisonment where the victim is not the child of the defendant and the child is less than fourteen years of age, sodomy (felony), statutory rape (if the convicted person is twenty-one years of age or older), child molestation (felony), enticing a child for indecent purposes (felony), sexual assault against persons in custody, incest, a second or subsequent conviction for sexual battery, and sexual exploitation of children.

17-10-6.2(b) mandates that anyone convicted of a “sexual offense” must serve at least the mandatory minimum and must be followed by at least one year of probation.

17-10-6.2(c) provides a very limited exception where the court can deviate from the mandatory minimum sentence. If the convicted person is a first time offender, did not use an object that did or could have caused serious bodily harm, did not transport the victim, the victim was not intentionally harmed, the victim was not physically restrained, and the court finds no evidence of a relevant similar transaction, the court can deviate from the mandatory minimum sentence and sentence the offender to a lighter sentence.

Section 22

This section amends the statute relating to the procedure for sentencing a defendant to death. A jury can now sentence a defendant to death if it finds that “[t]he offense of murder, rape, or kidnapping was committed by a person previously convicted of rape, aggravated sodomy, aggravated child molestation, or aggravated sexual battery.”

Section 23

This section amends 35-3-30 so that the age and sex of each victim will appear on a person’s criminal record.

Section 24

The section creates four new Code sections of the Georgia Code (42-1-12, 42-1-13, 42-1-14, and 42-1-15), collectively known as Article 2.

42-1-12(a) defines many of the terms used in Article 2. The following are some of the most important:

“Area where minors congregate” includes all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, school bus stops, and public and community swimming pools.

“Church” means a place of public religious worship.

“Required registration information” means name; social security number; age; race; sex; date of birth; height; weight; hair color; eye color; fingerprints; and photograph for all those required to register. It also means address, regardless of whether the offender has a permanent home, live in

a vehicle or mobile home, lives in a manufactured home, or lives on a boat. It further means dates and places of employment, as well as the name of the employer, places and addresses of vocations, vehicle makes, models, colors, and license tag numbers, information about a school of higher education if the offender is enrolled, and the name of the crime or crimes for which the sexual offender is registering and the date released from prison or placed on probation, parole, or supervised leave.

“Sexual Offender” means any individual who has been convicted of a criminal offense against a victim who is a minor or any dangerous sexual offense.

42-1-12(e) defines those who are required to register pursuant to the new legislation. Essentially anyone who commits or has committed an offense against a minor, so long as he or she was released from prison on or after July 1, 1996 must register. Anyone convicted of a dangerous sexual offense on or after July 1, 2006 must register. Anyone who has previously been convicted of a sexually violent offense and may be released from prison or placed on parole, supervised release, or probation must register.

42-1-12(f) defines further obligations of those required to register under the new Code. The offender must register with the sheriff of the county in which he or she resides within 72 hours after his or her release from incarceration. The offender must renew the required registration information with the sheriff of the county in which the offender resides every year 72 hours prior to the offender’s birthday. If any of the offender’s required registration information changes, other than his or her address, the offender must update that information with the sheriff of the county in which the offender lives within 72 hours of any such change. If the change is a change of address, the offender must notify the sheriff of the county he last registered with 72 hours prior to any change of residence address and notify the sheriff of the county to which the offender is moving within 72 hours of establishing new residence. If the offender was convicted of a dangerous sexual offense on or after July 1, 2006, he or she must pay the sheriff of the county of his or her residence an annual registration fee of \$250.00.

42-1-12(h) defines when a court can release an offender from his or her registration obligations. If the offender meets the criteria of 17-10-6.2(c) (See Section 21 above) and ten years has elapsed since his or her release from prison, parole, supervised release, or probation, the offender can petition the court to release the offender from further registration. The court may grant the release if it finds that the offender does not pose a substantial risk of perpetrating any future dangerous sexual offenses.

42-1-12(n) states that an offender who is required to register and fails to comply, provides false information, or fails to renew his or her registration within 72 hours of his or her birthday shall be guilty of a felony and sentenced to 10-30 years in prison. A second offense can be up to a life sentence in prison.

42-1-14(d) states that any person classified as a sexually violent predatory prior to July 1, 2006 shall be classified as a sexually dangerous predator on and after Jul 1, 2006.

42-1-14(e) requires sexually dangerous predators to wear approved electronic monitoring devices at all times at cost to the offender.

42-1-14(f) requires sexually dangerous predators to report to the sheriff of the county of his or her residence within six months following his or her birth month to update or verify his or her required information.

42-1-15(a) prohibits any individual who is required to register under 42-1-12 to reside, work, or loiter within 1,000 feet of any child care facility, church, school, or areas where minors congregate. The distance is determined by measuring from the outer boundary of the residence or place of business to the outer boundary of the property of the child care facility, school, or church. It further prohibits offenders required to register to be employed by child care facilities, schools, or churches. Anyone who violates this section is guilty of a felony and will be imprisoned between 10-30 years.

Section 25

This section amends 42-8-35 which relates to terms and conditions of probation. The amendments say that a person convicted of a dangerous sexual offense can be prohibited from loitering in areas where minors congregate, child care facilities, churches, or schools. It also amends the statute so that these convicted persons cannot run for positions on the local board of education.

Section 26

This section amends 42-8-60, which relates to probation prior to adjudication of guilt. The amendments mandate that a judge does not have discretion to sentence a defendant for serious violent felonies as defined in 17-10-6.1, sexual offenses as defined by 17-10-6.2, sexual exploitation of a minor, electronically furnishing obscene material to a minor, and computer pornography and child exploitation.

Section 27

This section amends 42-9-39, which relates to restrictions on relief for persons serving a second life sentence. First, the amendments mandate that for persons sentenced to life imprisonment for murder who have previously been given a life sentence for another crime, that person must serve at least thirty years in prison before they can be pardoned or given parole. Second, the amendments mandate that for persons who receive consecutive life sentences, and one of those sentences is for murder, that person must serve at least thirty years in prison before they can be pardoned or given parole.