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Amy K. Waggoner

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AMENDMENT TO THE CONSTITUTION OF THE STATE OF GEORGIA

Article IV. Constitutional Boards and Commissions, Section II. State Board of Pardons and Paroles, Paragraph 11. Powers and Authority: Give the Legislature Power to Create Mandatory Minimum Sentences for Certain Violent Felonies

CODE SECTION:	GA. CONST. art. IV, § II, ¶ 11 (amended)
RESOLUTION NUMBER:	SR 395
ACT NUMBER:	114
SUMMARY:	This Resolution proposes an amendment to the Constitution to give the General Assembly authority to set mandatory minimum sentences and a sentence of life without parole for certain crimes. The proposed amendment would remove authority from the State Board of Pardons and Paroles to consider persons serving these sentences for pardon, parole, or commutation.
EFFECTIVE DATE:	January 1, 1995, if ratified.

History

SR 395 is a proposed constitutional amendment, which will, if ratified, enable SB 441, the anti-crime legislative package passed by the 1994 Georgia General Assembly, to become effective.[1] In response to growing public concern, Governor Zell Miller proposed an anti-crime legislative package that would increase penalties for violent offenders.[2] The legislation was intended to send a message to criminals: "[I]f you do the crime, you're going to do the time."[3] It also sought to reassure an uncertain public, promising "No parole. No loopholes. No exceptions."[4]

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1. Telephone Interview with Sen. Guy Middleton, Senate District No. 50 (Apr. 4, 1994) [hereinafter Middleton Interview]. Sen. Middleton cosponsored the resolution. *Id.* This proposed constitutional amendment tracks the language of SB 441. *See Legislative Review,* 11 GA. ST. U. L. REV. 159 (1994); *see also infra* notes 26-27 and accompanying text.

2. Governor Zell Miller, Remarks, 1994 Crime Proposals (Jan. 5, 1994) (available at Georgia State University College of Law Library).

3. Governor Zell Miller, State of the State Address (Jan. 11, 1994) (available at Georgia State University College of Law Library).

4. *Id.* This anti-crime legislative package was introduced as SB 441 and at this time remains pending enactment until the ratification of SR 395. *Legislative Review, supra* note 1.

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SR 395 also grew out of the General Assembly's continuing discussions and attempts to deal with the growing public discontent about the judicial system and the State Board of Pardons and Paroles (Board).[5] In 1993, the General Assembly passed a bill that included sentences of life without parole for persons convicted of murder; however, since the measure was statutory, not constitutional, it did not restrain the constitutional authority of the Board of Pardons and Paroles.[6] That measure, therefore, consisted of a statement of legislative intent, but had little practical effect.[7] Moreover, although the concept of life without parole was supported by the Board, the concept of mandatory minimum sentences was more difficult to implement without some constitutional authority.[8] The Resolution, therefore, is designed to give SB 441 its required constitutional "teeth."[9]

SR 395

The original version of SR 395 proposed a constitutional amendment for several purposes, including (1) providing mandatory minimum sentences for persons convicted of certain violent felonies; (2) prohibiting the Board from granting a pardon, parole, or commutation pursuant to these sentences; (3) prohibiting the Board from granting any form of early release to any person convicted of a second serious violent felony; and (4) prohibiting the Board from granting any form of early release to any person sentenced to a term of life without parole.[10]

The Resolution proposed an amendment to Article IV, Section II, Paragraph II of the Georgia Constitution which provided for a mandatory minimum sentence of ten years for a person convicted of any one of six enumerated violent felonies.[11] The proposed amendment also stripped the Board of the authority to release such offenders before the mandatory minimum sentence expired.[12] The amendment further proposed a term of life imprisonment without parole upon the commission of a second violent crime, and specified that the Board shall not have the authority to release such an offender unless the offender is

5. Telephone Interview with Sen. Mark Taylor, Senate District No. 12 (Apr. 5, 1994) [hereinafter Taylor Interview]. As Governor Miller's floor leader, Sen. Taylor was the primary sponsor of SR 395. *Id.*

6. *See* O.C.G.A. § 17-10-16 (Supp. 1994).

7. Taylor Interview, *supra* note 5.

8. *Id.*

9. Middleton Interview, *supra* note 1.

10. SR 395, as introduced, 1994 Ga. Gen. Assem.

11. *Id.* The felonies constituted of armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery. *Id.*

12. *Id.*

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found innocent of one of the qualifying crimes.[13] It also provided that the Board shall not have the authority to release an offender sentenced to life without parole during the offender's natural life.[14]

The Senate Judiciary Committee offered several substantive changes to the original resolution.[15] First, the committee substitute denied authority to the Board to pardon, parole, or commute the sentence of any offender sentenced to life imprisonment until that offender had served at least fourteen years.[16] However, the Resolution retained the ten-year mandatory minimum sentence for violent offenses and the restraint of the Board's authority to pardon, parole, or commute the sentence of any person sentenced to life in prison without parole.[17]

In addition to these changes, the Senate Judiciary's substitute resolution added a provision for medical reprieve in certain circumstances.[18] This provision allows the Board to issue a medical reprieve if the offender is at least seventy years old, has been confined at least thirty years, and is "suffering a progressively debilitating terminal illness."[19]

Near the end of the legislative session, the House Committee on Judiciary proposed a committee substitute which became the final version of the resolution.[20] Instead of writing mandatory minimum sentences directly into the Constitution, this version simply gave the General Assembly the power, if approved by two-thirds of each branch of the General Assembly, to set mandatory minimum sentences, mandatory second-conviction life sentences, and life without parole for certain violent offenses.[21] With this provision, the Committee ensured that sentences may be adjusted or repealed as necessary without the formality of the constitutional amendment process.[22]

In a departure from the previous two versions of the resolution, the House version also ratified all previously enacted general laws providing for life without parole.[23] In addition, the resolution's final version deleted the thirty-year minimum confinement for medical reprieves and reduced the eligible age to sixty-two, while still requiring

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13. *Id.*
14. *Id.*
15. *See* SR 395 (SCS), 1994 Ga. Gen. Assem.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. Middleton Interview, *supra* note 1; *see* SR 395 (HCS), 1994 Ga. Gen. Assem.
21. Taylor Interview, *supra* note 5; *see* SR 395 (HCS), 1994 Ga. Gen. Assem.
22. Telephone Interview with Rep. Denmark Groover, House District No. 125 (Apr. 5, 1994). Rep. Groover was instrumental in drafting the House Committee on Judiciary version of SR 395. *Id.*
23. 1994 Ga. Laws 2015; Middleton Interview, *supra* note 1.

that the person be suffering from a "progressively debilitating terminal illness."[24]

The amendment, if ratified, would constitutionally mandate judicial compliance with popular sentencing requirements.[25] Moreover, it restricts the power previously held by the Board. Because SB 441 attempts to redistribute these powers, voters must approve SR 395 before SB 441 can become effective.[26] Thus, SR 395 gives constitutional force to SB 441.[27]

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24. 1994 Ga. Laws 2015.
25. Taylor Interview, *supra* note 5.
26. *Id.*
27. *Id.* There is a strong likelihood the proposed amendment will pass. *Id.* However, even if the amendment does not pass, the resolution is evidence of the will of the General Assembly. *Id.* In this situation, a strong public and executive branch mandate would probably check the power of the State Board of Pardons and Paroles. *Id.*

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