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PENAL INSTITUTIONS Sentence and Punishment: Impose Mandatory Imprisonment Term for Serious Violent Felonies; Deny First Offender Treatment to Those Persons Committing Serious Violent Felonies

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PENAL INSTITUTIONS

Sentence and Punishment: Impose Mandatory Imprisonment Term for Serious Violent Felonies; Deny First Offender Treatment to Those Persons Committing Serious Violent Felonies

CODE SECTIONS:	O.C.G.A. §§ 17-10-6.1 (amended), 42-8-66 (new)
BILL NUMBER:	HB 1164
ACT NUMBER:	550
GEORGIA LAWS:	1998 Ga. Laws 180
SUMMARY:	The Act imposes a mandatory term of imprisonment of not less than ten years for a defendant who commits a serious violent felony. The Act further provides that no portion of the ten-year sentence may be suspended, stayed, or reduced by any form of parole or commutation. The seven serious violent felonies include murder, rape, armed robbery, kidnaping, aggravated sodomy, aggravated child molestation, and aggravated sexual battery. The Act also explicitly provides that a defendant convicted of a serious violent felony shall be ineligible for first offender treatment.
EFFECTIVE DATE:	March 27, 1998[1]

History

In 1994, the Georgia General Assembly passed the "Sentence Reform Act of 1994"[2] (the 1994 Act), also called the "two strikes" sentencing law.[3] The 1994 Act required a sentence of life in prison without parole for a defendant after a second conviction of one of the following seven serious violent felonies: murder, rape, armed robbery, kidnaping, aggravated sodomy, aggravated child molestation, and

1. *See* 1998 Ga. Laws 180, at 182. The Act became effective upon approval by the Governor. *See id.* § 4, at 182.
2. 1994 Ga. Laws 1959.
3. Charles Walston, *"Two Strikes" Law Gets Tougher*, ATLANTA J. & CONST., Mar. 19, 1998, at C4.

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aggravated sexual battery.[4] Further, the 1994 Act imposed a mandatory sentence of at least ten years for a defendant upon the first conviction for any of the seven serious violent felonies.[5]

The 1994 Act's first conviction provision proved ambiguous in a 1997 Georgia court case.[6] In *State v. Allmond*,[7] the defendant pleaded guilty to "six counts of armed robbery and two counts of possession of [a] firearm" while committing a felony, and was sentenced under the First Offender Act.[8] Under the First Offender Act, a defendant may receive immediate probation.[9] Further, if the defendant fulfills the terms of probation, the defendant's conviction will be removed from official records upon discharge by the court.[10] The Georgia Court of Appeals held that the defendant in *Allmond* was not subject to the 1994 Act's requirement imposing a mandatory ten-year term of imprisonment, because the statute was inapplicable unless the defendant was "convicted" for the crimes of which he was accused.[11] In *Allmond*, the defendant was not actually convicted of his alleged crimes; instead, he pled guilty.[12] Thus, according to the court, even though the defendant was "guilty" of a serious felony, he technically could receive First Offender treatment.[13] The Court of Appeals further

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4. *See* 1994 Ga. Laws 1959, § 11, at 1966 (formerly found at O.C.G.A. § 17-10-6.1(b) (1997)); Walston, *supra* note 3.

5. *See* 1994 Ga. Laws 1959, § 11, at 1966 (formerly found at O.C.G.A. § 17-10-6.1(b) (1997)); Walston, *supra* note 3.

6. *See* State v. Allmond, 225 Ga. App. 509, 484 S.E.2d 306 (1997); Walston, *supra* note 3; *see also* Telephone Interview with Rep. William Lee, House District No. 94 (July 1, 1998); Telephone Interview with Rep. Jim Martin, House District No. 47 (Aug. 28, 1998) [hereinafter Martin Interview].

7. 225 Ga. App. 509, 484 S.E.2d 306 (1997).

8. *Id.; see also* O.C.G.A. §§ 42-8-60 to -65 (1997). Subsequent to the *Allmond* decision, the General Assembly added Code section 42-8-66 to the First Offender Act, as described *infra* notes 24-29. *See* 1998 Ga. Laws 180, § 3, at 181 (codified at O.C.G.A. § 42-8-66 (Supp. 1998)).

9. *See* 1985 Ga. Laws 380, § 1, at 381 (codified at O.C.G.A. § 42-8-60(a)(1) (1997)). To be eligible for sentencing under the First Offender Act, the defendant must not have been convicted of a felony in the past, and must not have been previously sentenced under the First Offender Act. *See id.* (codified at O.C.G.A. § 42-8-60 (1997)). Moreover, the First Offender Act only applies if invoked before the court enters a judgment of guilt. *See id.*; Lewis v. State, 217 Ga. App. 758, 458 S.E.2d 861 (1995).

10. *See* 1990 Ga. Laws 735, § 1, at 735-36 (codified at O.C.G.A. § 42-8-62(a) (1997)).

11. *Allmond*, 225 Ga. App. at 509, 484 S.E.2d at 307.

12. *See id.* at 509, 484 S.E.2d at 306.

13. *See id.* at 509-10, 484 S.E.2d at 306-07. According to Rep. Jim Martin, the situation and facts arising in a case such as *State v. Allmond*, whereby a person convicted of a serious violent felony would be granted first offender treatment, are very rare, but the Democrats wanted to ensure that it would not occur. *See* Martin Interview, *supra* note

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indicated that if the Georgia General Assembly intended to deny first offender status to all "perpetrators of certain crimes," it should have explicitly stated that intent.[14] Thus, the Court of Appeals held that, under then existing law, Code section 17-10-6.1(b) did not "curtail the provisions of the First Offender Act."[15]

HB 1164

HB 1164 was sponsored by House Speaker Tom Murphy and Representatives Jack Connell, William J. Lee, Jim Martin, Jimmy Skipper, and Larry Walker.[16] The bill passed the House on February 2, 1998, and passed the Senate on March 18, 1998.[17] Governor Zell Miller signed the bill on March 27, 1998, and it became effective that same day.[18] The bill was part of a package introduced by the Democratic Party.[19]

The Act amended subsection (b) of Code section 17-10-6.1.[20] Under prior law, subsection (b) provided for a mandatory minimum term of imprisonment of ten years without possibility of parole, suspension or commutation, for any person convicted of a serious violent felony as defined by Code section 17-10-6.1(a)(1)-(7).[21] The new subsection keeps this provision and explicitly provides that "[n]o person convicted of a serious violent felony . . . shall be sentenced as a first offender."[22] The subsection further provides that the State of Georgia has the right to appeal any sentence handed down by a superior court judge which does not conform to this new subsection.[23]

The expressed intent of the Georgia General Assembly is to ensure that persons who commit a serious violent felony, as defined by the 1994 Act, are sentenced to a mandatory term of imprisonment of at

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14. *Allmond*, 225 Ga. App. at 510, 484 S.E.2d at 307.

15. *Id.*

16. *See* HB 1164, as introduced, 1998 Ga. Gen. Assem.

17. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998; Georgia House of Representatives Voting Record, HB 1164 (Feb. 2, 1998); Georgia Senate Voting Record, HB 1164 (Mar. 18, 1998).

18. *See* 1998 Ga. Laws 180, at 182.

19. *See* Martin Interview, *supra* note 6.

20. *See* 1998 Ga. Laws 180, § 2, at 181.

21. *See* 1994 Ga. Laws 1959, § 11, at 1966 (formerly found at O.C.G.A. § 17-10-6.1(b) (1997)).

22. O.C.G.A. § 17-10-6.1(b) (Supp. 1998).

23. *See id.; see also id.* §§ 5-7-1 to -5 (1997) (governing State's right to appeal and right of certiorari in criminal cases).

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least ten years and that they do not receive first offender treatment.[24] Thus, the provisions of Code section 42-8-60, granting probation to first offenders, are not available to any person convicted of a serious violent felony, even if the violent felony is their first offense.[25]

Accordingly, the Act adds new Code section 42-8-66 to Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia, which regulates probation.[26] To ensure that a first offender convicted of a serious violent felony is not offered probation, the new Code section expressly states that the provisions regarding probation *do not* apply to any defendant convicted of a serious violent felony, as defined by Code section 17-10-6.1(a)(1)-(7).[27] Supporters of the Act stress the need to keep violent criminals in jail.[28] According to Governor Miller, in its new and amended form, "[the Act] takes the strongest crime law in the United States and makes it stronger."[29]

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24. *See id.* § 17-10-6.1 (Supp. 1998); 1994 Ga. Laws 1959, at 1959-60; Telephone Interview with Rep. Jack Connell, House District No. 115 (Aug. 27, 1998) [hereinafter Connell Interview].
25. *See* O.C.G.A. § 17-10-6.1 (Supp. 1998).
26. *See id.* § 42-8-66.
27. *See id.*
28. *See* Connell Interview, *supra* note 24.
29. Walston, *supra* note 3 (quoting Gov. Zell Miller).

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