

## **Senate Bill 37 Summary and Analysis**

### **Origins of the Bill**

Senate Bill 37 (“SB 37”) was introduced by Senator Emanuel Jones on January 23 during the 2007 Georgia Assembly Legislative Session.

### **Legislative Purpose**

The proposed bill, if enacted, would revise § 17-10-1 of the Official Code of Georgia Annotated (O.C.G.A.) in order to permit the correction and modification of sentences of some teenagers who were convicted of sex offenses after engaging in mutual sexual activity and subsequently received mandatory minimum sentences prior to a 2006 change in the law. Such teenagers, if tried and convicted today, would fall under the exceptions created by the “Romeo and Juliet” clauses in H.B. 1059 (2006). Because the “Romeo and Juliet” provisions were not retroactive, SB 37 attempts to provide an avenue of relief for juveniles currently serving mandatory minimum sentences for offenses that are now classified as misdemeanors. The sponsor’s specific intent is to secure the release of Genarlow Wilson and young people like him. Genarlow engaged in consensual oral sex with a classmate and as a result was convicted of a felony and received a mandatory ten year sentence.

### **Summary and Explanation of the Proposed Changes**

SB 37 would allow sentencing courts to modify sentences for young people convicted of the crimes of sodomy, child molestation, aggravated child molestation, and enticing a child for indecent purposes after providing notice and an opportunity for a hearing to the prosecuting attorney. The bill would allow judges to, in effect, retroactively apply the “Romeo and Juliet” exceptions, passed during the 2006 legislative session as a part of HB 1059, to people convicted *before* July 1, 2006 when the new law went into effect. The “Romeo and Juliet” exceptions protect “consensual” or mutual sexual activity between teenagers from felony prosecution. These “Romeo and Juliet” clauses create misdemeanor offenses for mutual sexual activity and exclude these same offenses from the mandatory sex offender registration and monitoring requirements. The Romeo and Juliet clauses regarding teenagers charged with sodomy and aggravated child molestation, with sodomy as the aggravating factor, offer the following protection, children ages 13 through 18 engaging in mutual sexual activity will be protected from felony prosecution when there is no more than four years age difference between them. The Romeo and Juliet clauses for the offenses of statutory rape, child molestation, and enticing a child for indecent purposes protect children ages 14 through 18 engaging in mutual sexual activity, with no more than four years age difference between them, from felony prosecution. Since the “Romeo and

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<sup>1</sup> April 10, 2007 by Chandani Patel, Student Attorney, Emory University School of Law Class of 2008.

Juliet” provisions are not retroactive, SB 37 attempts to make the law effectively retroactive by revising O.C.G.A. § 17-10-1(f) as described below.

**(1) Creating an exemption to the statute of limitations for the correction, reduction, or modification of sentences.**

- a. Currently, O.C.G.A. § 17-10-1(f) allows the sentencing court to order the correction, reduction, or modification of sentences within one year of the date the sentence is imposed or, after direct appeal, within 120 days of the receipt of the remittitur affirming the judgment, whichever is later. Before the sentencing court orders the correction, reduction, or modification of the sentence, it must issue a notice and an opportunity for a hearing to the prosecuting authority.
- b. SB 37 proposes to add language and a new paragraph to O.C.G.A. § 17-10-1(f) that would provide an exemption to the time limits which govern when a sentencing court may modify a sentence. Under the language of SB 37, individuals convicted of a sexual offense prior to July 1, 2006, who would fall under the exceptions created by the “Romeo and Juliet” clauses in H.B. 1059 (2006) if their actions had occurred after the law went into effect, may have their sentences corrected, reduced, or modified by the sentencing court at any date after the sentence was imposed.

**Recommendations**

**(a) Issue:** The bill may not achieve the sponsor’s intent because the bill as written fails to adequately specify which sentencing guideline the court is to follow when correcting, reducing, or modifying a sentence. For example, if the court must apply the sentencing law that was in effect at the time of a criminal act committed before July 1, 2006, the “Romeo and Juliet” exceptions would not apply and, therefore, the sentence could not be reduced below the mandatory minimum sentence for the offense (ten years). On the other hand, if the court is permitted to apply the current law as revised in 2006, then the “Romeo and Juliet” exceptions make the offense a misdemeanor and exempt those convicted from the mandatory minimum sentence. In the latter case, the sentencing court could order either the reduction of the sentence below the minimum or the repeal of the sentence entirely. The Court of Appeals of Georgia requires greater clarity of the legislature’s intent to apply the 2006 sentencing structure retroactively than is currently provided by SB 37.

According to *Lockhart v. State*,<sup>2</sup> the sentencing court must sentence the defendant “in accordance to the sentencing provisions that existed at the time of his criminal act.”<sup>3</sup> In *Lockhart*, the defendant originally received a ten year sentence, five to serve, on a burglary charge and a ten year sentence, two to serve, on a rape charge.<sup>4</sup> However, the sentence was declared void because the sentencing guidelines at the time of his conviction mandated a

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<sup>2</sup> 489 S.E. 2d 594 (Court of Appeals of Georgia 1997)

<sup>3</sup> *Id.* at 595.

<sup>4</sup> *Id.*

ten-year sentence, without the possibility of parole, for the rape conviction.<sup>5</sup> The defendant was re-sentenced for the rape conviction and received the mandatory ten-year without the possibility of parole sentence.<sup>6</sup> Between the original conviction and the re-sentencing, the Georgia Legislative Assembly enacted legislation that made his original sentence valid.<sup>7</sup> In responding to Lockhart’s challenge to restore his original shorter sentence, the Court of Appeals of Georgia stated that “the fact [the law] . . . was subsequently amended to reduce the sentence for the crime has no bearing on this case, as laws . . . are prospective in nature and are not applied retroactively *absent a clear expression of the intent of the Georgia Assembly to do so.*”<sup>8</sup> Any sentence that is valid under the original law is not invalidated by a subsequent amendment.<sup>9</sup>

**(b) Recommended Language:** In order to clarify that the legislature intends to apply the 2006 sentencing scheme by passage of the proposed Code Section 17-10-1 (f)(2), the Barton Clinic proposes the following amendment. An additional sentence should be inserted at 17-10-1(f)(2)(D) after the phrase “any part of the sentence imposed,” which states:

Any modification of the sentence must be in accordance with § 16-6-2(d), 16-6-4(b)(2), 16-6-4(d)(2), or 16-6-6(c), with the applicable provision being dependent on the underlying offense of the sentence being modified.

### **Conclusion**

In order to achieve the intent of the bill’s sponsor and to comply with the conditions established by the Georgia Court of Appeals in *Lockhart v. State*, SB 37 should be amended to specify that sentence corrections, reductions, and modifications must be made in accordance with the sentencing guidelines current as of July 1, 2006.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *Id.*