

The House Committee on Special Judiciary offers the following substitute to HB 208:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
2 relating to dangerous instrumentalities and practices, so as to provide that any person who
3 is on probation as a felony first offender pursuant to Article 3 of Chapter 8 of Title 42 or who
4 has been convicted of a felony by a court of this state or any other state, by a court of the
5 United States including its territories, possessions, and dominions, or by a court of any
6 foreign nation and who receives, possesses, or transports any bulletproof vest commits a
7 felony; to provide that any person who is prohibited from possessing a bulletproof vest
8 because of conviction of a forcible felony or because of being on probation as a first offender
9 for a forcible felony pursuant to this Act and who attempts to purchase or obtain transfer of
10 a bulletproof vest shall be guilty of a felony; to define a certain term; to provide penalties;
11 to provide exceptions; to provide that it shall be unlawful for any person to possess or to use
12 any body armor or other protective covering for the body or any part thereof which is
13 designed to prevent, deflect, or defer penetration by ammunition, knives, or other weapons
14 during the commission or the attempted commission of certain offenses; to provide penalties;
15 to provide that punishment prescribed for certain violations of this Act shall not be probated
16 or suspended; to provide that certain crimes committed in violation of this Act shall be
17 considered a separate offense; to provide for related matters; to repeal conflicting laws; and
18 for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

20 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
21 dangerous instrumentalities and practices, is amended by striking in its entirety Code Section
22 16-11-131, relating to possession of firearms by convicted felons and first offender
23 probationers, and inserting in lieu thereof a new Code Section 16-11-131 to read as follows:

24 "16-11-131.

25 (a) As used in this Code section, the term:
26

1 (.5) 'Bulletproof vest' means and includes any body armor or other protective covering
2 for the body or any part thereof which is designed to prevent, deflect, or defer penetration
3 by ammunition, knives, or other weapons.

4 (1) 'Felony' means any offense punishable by imprisonment for a term of one year or
5 more and includes conviction by a court-martial under the Uniform Code of Military
6 Justice for an offense which would constitute a felony under the laws of the United
7 States.

8 (2) 'Firearm' includes any handgun, rifle, shotgun, or other weapon which will or can be
9 converted to expel a projectile by the action of an explosive or electrical charge.

10 (b) Any person who is on probation as a felony first offender pursuant to Article 3 of
11 Chapter 8 of Title 42 or who has been convicted of a felony by a court of this state or any
12 other state; by a court of the United States including its territories, possessions, and
13 dominions; or by a court of any foreign nation and who receives, possesses, or transports
14 any firearm or bulletproof vest commits a felony and, upon conviction thereof, shall be
15 imprisoned for not less than one nor more than five years; provided, however, that if the
16 felony as to which the person is on probation or has been previously convicted is a forcible
17 felony, then upon conviction of receiving, possessing, or transporting a firearm or
18 bulletproof vest, such person shall be imprisoned for a period of five years.

19 (b.1) Any person who is prohibited by this Code section from possessing a firearm or
20 bulletproof vest because of conviction of a forcible felony or because of being on probation
21 as a first offender for a forcible felony pursuant to this Code section and who attempts to
22 purchase or obtain transfer of a firearm or bulletproof vest shall be guilty of a felony and
23 shall be punished by imprisonment for not less than one nor more than five years.

24 (c) This Code section shall not apply to any person who has been pardoned for the felony
25 by the President of the United States, the State Board of Pardons and Paroles, or the person
26 or agency empowered to grant pardons under the constitutions or laws of the several states
27 or of a foreign nation and, by the terms of the pardon, has expressly been authorized to
28 receive, possess, or transport a firearm or bulletproof vest.

29 (d) A person who has been convicted of a felony, but who has been granted relief from the
30 disabilities imposed by the laws of the United States with respect to the acquisition, receipt,
31 transfer, shipment, or possession of firearms or bulletproof vest by the secretary of the
32 United States Department of the Treasury pursuant to 18 U.S.C. Section 925, shall, upon
33 presenting to the Board of Public Safety proof that the relief has been granted and it being
34 established from proof submitted by the applicant to the satisfaction of the Board of Public
35 Safety that the circumstances regarding the conviction and the applicant's record and
36 reputation are such that the acquisition, receipt, transfer, shipment, or possession of
37 firearms or bulletproof vest by the person would not present a threat to the safety of the

1 citizens of Georgia and that the granting of the relief sought would not be contrary to the
2 public interest, be granted relief from the disabilities imposed by this Code section. A
3 person who has been convicted under federal or state law of a felony pertaining to antitrust
4 violations, unfair trade practices, or restraint of trade shall, upon presenting to the Board
5 of Public Safety proof, and it being established from said proof, submitted by the applicant
6 to the satisfaction of the Board of Public Safety that the circumstances regarding the
7 conviction and the applicant's record and reputation are such that the acquisition, receipt,
8 transfer, shipment, or possession of firearms or bulletproof vest by the person would not
9 present a threat to the safety of the citizens of Georgia and that the granting of the relief
10 sought would not be contrary to the public interest, be granted relief from the disabilities
11 imposed by this Code section. A record that the relief has been granted by the board shall
12 be entered upon the criminal history of the person maintained by the Georgia Crime
13 Information Center and the board shall maintain a list of the names of such persons which
14 shall be open for public inspection.

15 (e) As used in this Code section, the term 'forcible felony' means any felony which
16 involves the use or threat of physical force or violence against any person and further
17 includes, without limitation, murder; felony murder; burglary; robbery; armed robbery;
18 kidnapping; hijacking of an aircraft or motor vehicle; aggravated stalking; rape; aggravated
19 child molestation; aggravated sexual battery; arson in the first degree; the manufacturing,
20 transporting, distribution, or possession of explosives with intent to kill, injure, or
21 intimidate individuals or destroy a public building; terroristic threats; or acts of treason or
22 insurrection.

23 (f) Any person placed on probation as a first offender pursuant to Article 3 of Chapter 8
24 of Title 42 and subsequently discharged without court adjudication of guilt pursuant to
25 Code Section 42-8-62 shall, upon such discharge, be relieved from the disabilities imposed
26 by this Code section."

27 SECTION 2.

28 Said article is further amended by striking in its entirety Code Section 16-11-160, relating
29 to use or possession of certain firearms during commission of certain offenses and enhanced
30 criminal penalties therefor, and inserting in lieu thereof a new Code Section 16-11-160 to
31 read as follows:

1 "16-11-160.

2 (a)(1) It shall be unlawful for any person to possess or to use a machine gun, sawed-off
3 rifle, sawed-off shotgun, or a firearm equipped with a silencer, as those terms are defined
4 in Code Section 16-11-121, during the commission or the attempted commission of any
5 of the following offenses:

6 ~~(1)~~(A) Aggravated assault as defined in Code Section 16-5-21;

7 ~~(2)~~(B) Aggravated battery as defined in Code Section 16-5-24;

8 ~~(3)~~(C) Robbery as defined in Code Section 16-8-40;

9 ~~(4)~~(D) Armed robbery as defined in Code Section 16-8-41;

10 ~~(5)~~(E) Murder or felony murder as defined in Code Section 16-5-1;

11 ~~(6)~~(F) Voluntary manslaughter as defined in Code Section 16-5-2;

12 ~~(7)~~(G) Involuntary manslaughter as defined in Code Section 16-5-3;

13 ~~(8)~~(H) Sale, possession for sale, transportation, manufacture, offer for sale, or offer to
14 manufacture controlled substances in violation of any provision of Article 2 of
15 Chapter 13 of this title, the 'Georgia Controlled Substances Act';

16 ~~(9)~~(I) Terroristic threats or acts as defined in Code Section 16-11-37;

17 ~~(10)~~(J) Arson as defined in Code Sections 16-7-60, 16-7-61, and 16-7-62;

18 ~~(11)~~(K) Influencing witnesses as defined in Code Section 16-10-93; and

19 ~~(12)~~(L) Participation in criminal gang activity as defined in Code Section 16-15-4.

20 (2) It shall be unlawful for any person to possess or to use any body armor or other
21 protective covering for the body or any part thereof which is designed to prevent, deflect,
22 or defer penetration by ammunition, knives, or other weapons during the commission or
23 the attempted commission of any of the following offenses:

24 (A) Aggravated assault as defined in Code Section 16-5-21;

25 (B) Aggravated battery as defined in Code Section 16-5-24;

26 (C) Robbery as defined in Code Section 16-8-40;

27 (D) Armed robbery as defined in Code Section 16-8-41;

28 (E) Murder or felony murder as defined in Code Section 16-5-1; and

29 (F) Sale, possession for sale, transportation, manufacture, offer for sale, or offer to
30 manufacture controlled substances in violation of any provision of Article 2 of
31 Chapter 13 of this title, the 'Georgia Controlled Substances Act.'

32 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony,
33 and, upon conviction thereof, shall be punished by confinement for a period of not less than
34 one nor more than ten years, such sentence to run consecutively to any other sentence
35 which the person has received.

36 (c) Upon the second or subsequent conviction of a person under this Code section, the
37 person shall be punished by life imprisonment. Notwithstanding any other law to the

1 contrary, the sentence of any person which is imposed for violating this Code section a
2 second or subsequent time shall not be suspended by a court or a probationary sentence
3 imposed in lieu thereof.

4 (d) The punishment prescribed for the violation of subsections (a) and (c) of this Code
5 section shall not be probated or suspended as is provided by Code Section 17-10-7.

6 (e) Any crime committed in violation of this Code section shall be considered a separate
7 offense."

8 **SECTION 3.**

9 All laws and parts of laws in conflict with this Act are repealed.