

The House Committee on State Institutions & Property offers the following substitute to HB 144:

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to provide for use of inmate labor to remove certain graffiti from private property as
3 a form of compensation to innocent victims of criminal trespass or criminal damage to
4 property in the second degree; to expressly provide that sovereign immunity is not waived
5 relative thereto; to define a term; to provide legislative findings and declarations; to amend
6 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to
7 change certain provisions relating to use of inmates for private gain; to change certain
8 provisions relating to hiring out of inmates, sales of products produced by inmates,
9 disposition of proceeds, and payments to inmates for services; to repeal conflicting laws; and
10 for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
14 amended by inserting a new chapter to read as follows:

15 **"CHAPTER 15A**

16 17-15A-1.

17 The provisions of this chapter are enacted pursuant Article III, Section VI, Paragraph VI(f)
18 of the Constitution and are in addition to those provisions for compensation of innocent
19 victims of other crimes under Chapter 15 of this title.

20 17-5A-2.

21 As used in this chapter, the term 'graffiti' means any inscriptions, words, figures, paintings,
22 or other defacements that are written, marked, etched, scratched, sprayed, drawn, painted,
23 or engraved on or otherwise affixed to any surface of real property or improvements

1 thereon without prior authorization of the owner or occupant of the property by means of
2 any aerosol paint container, broad-tipped marker, gum label, paint stick, graffiti stick,
3 etching equipment, brush, or other device capable of scarring or leaving a visible mark on
4 any surface.

5 17-15A-3.

6 The General Assembly finds and declares that:

7 (1) Criminal street gang activity is a serious and continuing public safety concern;
8 (2) Criminal trespass and criminal damage to property in the second degree caused by
9 graffiti being placed unlawfully upon private property are crimes frequently associated
10 with criminal street gang activity; and
11 (3) It is in the public interest, not only in the pursuit of justice but also as a means of
12 combating such criminal street gang activity and of contributing to the general public
13 welfare by improving the esthetics of public views, to compensate as provided in this
14 chapter those private property owners who are the innocent victims of such criminal
15 trespass or criminal damage to property in the second degree by using inmate labor to
16 remove or obliterate graffiti unlawfully placed on private properties when such graffiti
17 is visible from public roads or other public property.

18 17-15A-4.

19 In order to provide a form of compensation by the state to innocent victims of criminal
20 trespass in violation of Code Section 16-7-21 or criminal damage to property in the second
21 degree in violation of Code Section 16-7-23, either of which crime involved the unlawful
22 placement of graffiti upon private property by a person who was not the owner of such
23 property, the Board of Corrections or any political subdivision of this state may authorize
24 the use of labor by inmates from any penal institution or jail under its authority to remove
25 or obliterate such unlawfully placed graffiti when such graffiti is visible from any public
26 road or other public property. Any such authorization and related supervision of inmates
27 shall be a discretionary function within the meaning of paragraph (2) of Code Section
28 50-21-24 for purposes of sovereign immunity, and the sovereign immunity of neither the
29 state nor any political subdivision thereof is waived for any loss arising out of such
30 authorization or related supervision of inmates. The Board of Corrections shall provide
31 rules and regulations governing such use of labor by inmates from institutions under its
32 jurisdiction."

SECTION 2.

1 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
2 by striking subsection (d) of Code Section 42-1-5, relating to use of inmates for private gain,
3 and inserting in lieu thereof the following:

4 "(d) This Code section shall not apply to:

5 (1) Work on private property because of natural disasters;

6 (1.1) Work on private property as a form of victim compensation in accordance with
7 Chapter 15A of Title 17;

8 (2) Work or other programs or releases which have the prior approval of the board or
9 commissioner of corrections;

10 (3) Community service work programs; or

11 (4) Work-release programs."

SECTION 3.

12 Said title is further amended by striking subsection (e) of Code Section 42-5-60, relating to
13 hiring out of inmates, sales of products produced by inmates, disposition of proceeds, and
14 payments to inmates for services, and inserting in lieu thereof the following:

15 "(e) The department or any state correctional institution or county correctional institution
16 operating under jurisdiction of the board shall be authorized to require inmates coming into
17 its custody to labor on the public roads or public works or in such other manner as the
18 board may deem advisable, including without limitation any labor authorized under
19 Chapter 15A of Title 17. The department may also contract with municipalities, cities,
20 counties, the Department of Transportation, or any other political subdivision, public
21 authority, public corporation, or agency of state or local government created by law, which
22 entities are authorized by this Code section to contract with the department, for the
23 construction, repair, or maintenance of roads, bridges, public buildings, and any other
24 public works by use of penal labor."

SECTION 4.

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