

House Bill 144 (AS PASSED HOUSE AND SENATE)

By: Representatives Marin of the 66th, Floyd of the 69th, Post 2, Thompson of the 69th, Post 1, Coan of the 67th, Post 1, Casas of the 68th, and others

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 provide that local government graffiti removal programs shall not charge
6 certain fees; to define a term; to provide legislative findings and declarations; to amend Title
7 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to change
8 certain provisions relating to use of inmates for private gain; to change certain provisions
9 regarding inmate accounts; to change certain provisions relating to hiring out of inmates,
10 sales of products produced by inmates, disposition of proceeds, and payments to inmates for
11 services; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

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

16 style="text-align:center">"CHAPTER 15A

17 17-15A-1.

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

1 17-15A-2.

2 As used in this chapter, the term 'graffiti' means any inscriptions, words, figures, paintings,
3 or other defacements that are written, marked, etched, scratched, sprayed, drawn, painted,
4 or engraved on or otherwise affixed to any surface of real property or improvements
5 thereon without prior authorization of the owner or occupant of the property by means of
6 any aerosol paint container, broad-tipped marker, gum label, paint stick, graffiti stick,
7 etching equipment, brush, or other device capable of scarring or leaving a visible mark on
8 any surface.

9 17-15A-3.

10 The General Assembly finds and declares that:

11 (1) Criminal street gang activity is a serious and continuing public safety concern;

12 (2) Criminal trespass and criminal damage to property in the second degree caused by
13 graffiti being placed unlawfully upon private property are crimes frequently associated
14 with criminal street gang activity; and

15 (3) It is in the public interest, not only in the pursuit of justice but also as a means of
16 combating such criminal street gang activity and of contributing to the general public
17 welfare by improving the esthetics of public views, to compensate as provided in this
18 chapter those private property owners who are the innocent victims of such criminal
19 trespass or criminal damage to property in the second degree by using inmate labor to
20 remove or obliterate graffiti unlawfully placed on private properties when such graffiti
21 is visible from public roads or other public property.

22 17-15A-4.

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

1 rules and regulations governing such use of labor by inmates from institutions under its
2 jurisdiction.

3 (b) No graffiti removal program operated by any political subdivision of this state shall
4 charge any fee to any property owner or operator for removal of graffiti from such
5 property."

6 **SECTION 2.**

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

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

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

12 (1.1) Work on private property as a form of victim compensation in accordance with
13 Chapter 15A of Title 17;

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

16 (3) Community service work programs; or

17 (4) Work-release programs."

18 **SECTION 3.**

19 Said title is further amended by striking subsection (a) and subsection (b) of Code Section
20 42-5-55, relating to payments for certain damages and medical costs from inmate accounts,
21 and inserting in lieu thereof the following:

22 "(a) As used in this Code section, the term:

23 (1) 'Detention facility' means a state, ~~or~~ county, or private correctional institution,
24 workcamp, or other state or county detention facility used for the detention of persons
25 convicted of a felony or a misdemeanor.

26 (2) 'Inmate' means a person who is detained in a detention facility by reason of being
27 convicted of a felony or a misdemeanor.

28 (3) 'Medical treatment' means each visit initiated by the inmate to an institutional
29 physician; physician's extender, including a physician's assistant or a nurse practitioner;
30 registered nurse; licensed practical nurse; medical assistant; dentist; dental hygienist;
31 optometrist; or psychiatrist for examination or treatment.

32 (4) 'Officer in charge' means the warden, captain, or superintendent having the
33 supervision of any detention facility.

1 (b) The commissioner or, in the case of a county or private facility, the officer in charge
 2 may establish by rules or regulations criteria for a reasonable deduction from money
 3 credited to the account of an inmate to:

4 (1) Repay the costs of:

5 (A) Public property or private property in the case of an inmate housed in a private
 6 correctional facility willfully damaged or destroyed by the inmate during his or her
 7 incarceration;

8 (B) Medical treatment for injuries inflicted by the inmate upon himself or herself or
 9 others;

10 (C) Searching for and apprehending the inmate when he or she escapes or attempts to
 11 escape; such costs to be limited to those extraordinary costs incurred as a consequence
 12 of the escape; or

13 (D) Quelling any riot or other disturbance in which the inmate is unlawfully involved;
 14 or

15 (2) Defray the costs paid by the state or county for medical treatment for an inmate when
 16 the request for medical treatment has been initiated by the inmate.

18 **SECTION 4.**

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

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

32 **SECTION 5.**

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