

Senate Bill 119

By: Senators Hamrick of the 30th and Carter of the 13th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 17 and 24 of the Official Code of Georgia Annotated, relating to criminal
2 procedure and evidence, respectively, so as to provide victims of crime and members of their
3 immediate family with certain rights; to provide for certain procedures relating to a victim
4 of a crime or member of the immediate family; to provide for certain exemptions for a victim
5 of a crime; to provide certain requirements relating to the testimony of the victim of a crime;
6 to provide for application to certain juvenile delinquency proceedings; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

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

9 **SECTION 1.**

10 Title 17 of the Official Code of Georgia Annotated, relating to the criminal procedure, is
11 amended in Chapter 17, the "Crime Victims' Bill of Rights," by adding a new Code section
12 to read as follows:

13 "17-17-17.

14 (a) Notwithstanding any other provisions of law, a member of the immediate family of a
15 victim may not be excluded from any portion of any hearing, trial, or proceeding pertaining
16 to the offense based solely on the fact that such person is subpoenaed to testify unless the
17 party subpoenaing such person establishes that such family member is a material and
18 necessary witness to such hearing, trial, or proceeding and the court finds that there is a
19 substantial probability that such person's presence would impair the conduct of a fair trial.

20 (b) The provisions of this Code section shall apply to delinquency proceedings in juvenile
21 court.

22 (c) The provisions of this Code section shall not be construed as impairing the authority
23 of a judge to remove a person from a trial or hearing or any portion thereof for the same
24 causes and in same manner as the rules of court or law provides for the exclusion or
25 removal of the defendant."

SECTION 2.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by revising Code Section 24-9-61.1, relating to the presence in court of the victim of a criminal offense, as follows:

"24-9-61.1.

(a) The victim of a criminal offense ~~may~~ shall be entitled to be present in any court exercising jurisdiction over such offense, including a juvenile court. ~~It shall be within the sole discretion of the judge to implement the provisions of this Code section and determine when to allow such victim to be present in such court and, if such victim is permitted to be present, to determine the order in which the testimony of such victim shall be given. Such victim shall not be excluded from court during the trial or hearing or any portion thereof which pertains to such offense; provided, however, a judge may remove a victim from a trial or hearing or any portion thereof for the same causes and in same manner as the rules of court or law provides for the exclusion or removal of the defendant or, after notice and hearing, the court determines such person's presence would impair the conduct of a fair trial. A motion to exclude a victim from the courtroom for any reason other than misconduct must be made and determined prior to jeopardy attaching.~~

(b) A victim of a criminal offense who has been or may be subpoenaed to testify at such hearing or trial shall be exempt from the provisions of Code Section 24-9-21 requiring the separation or exclusion of witnesses from court; provided, however, that the court may require that the victim be scheduled to testify as early as practical in the proceedings.

~~(b)(c)~~ (c) The failure of a victim to exercise any right granted by this Code section shall not be a cause or ground for an appeal of a conviction by a defendant or for any court to set aside, reverse, or remand a criminal conviction."

SECTION 3.

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