

Senate Bill 219

By: Senators Hamrick of the 30th, Mullis of the 53rd and Carter of the 13th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual  
2 offenses, so as to provide for seizure and forfeiture of motor vehicles operated by a person  
3 to facilitate certain sexual offenses; to provide for procedure; to provide for related matters;  
4 to provide for an effective date and applicability; to repeal conflicting laws; and for other  
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses,  
9 is amended by adding a new Code section to read as follows:

10 "40-6-391.2.

11 (a) Except as provided in this Code section, any motor vehicle operated by a person to  
12 facilitate a violation of Code Section 16-6-1 with respect to the offense of rape; a violation  
13 of Code Section 16-6-2 with respect to the offense of aggravated sodomy; a violation of  
14 Code Section 16-6-4 with respect to the offenses of child molestation or aggravated child  
15 molestation; a violation of Code Section 16-6-5 with respect to the offense of enticing a  
16 child for indecent purposes; or a violation of Code Section 16-6-22.2 with respect to the  
17 offense of aggravated sexual battery; and where such offense involved a motor vehicle,  
18 said motor vehicle is declared to be contraband and subject to forfeiture to the state, as  
19 provided in this Code section, provided that said forfeiture shall not be absolute unless the  
20 defendant is finally convicted of such offense. As used in this Code section the term 'motor  
21 vehicle' means any motor vehicle as defined in Code Section 40-1-1.

22 (b) Any motor vehicle subject to forfeiture under subsection (a) of this Code section shall  
23 be seized immediately upon discovery by any law enforcement officer, peace officer, or  
24 law enforcement agency of this state or any political subdivision thereof who has the power  
25 to make arrests and whose duty it is to enforce this Code section, that said motor vehicle  
26 has been declared contraband. Said motor vehicle shall be delivered within 20 days to the

1 prosecuting attorney whose circuit includes the county in which a seizure is made or to the  
2 prosecuting attorney's duly authorized agent. At any time subsequent to the seizure, the  
3 chief officer of the seizing agency, his or her designee, or the prosecuting attorney may  
4 release the motor vehicle upon bond being posted in like manner as authorized in  
5 subsection (e) of this Code section.

6 (c) Within 60 days from the date of the seizure, the prosecuting attorney of the judicial  
7 circuit, or the director on his or her behalf, shall cause to be filed in the superior court of  
8 the county in which the motor vehicle is seized or detained an action for condemnation of  
9 such motor vehicle. The proceedings shall be brought in the name of the state by the  
10 prosecuting attorney of the circuit in which the motor vehicle was seized, and the action  
11 shall be verified by a duly authorized agent of the state in a manner required by the law of  
12 this state. The action shall describe the motor vehicle and state its location, present  
13 custodian, and the name of the owner, if known, to the duly authorized agent of the state;  
14 allege the essential elements of the violation which is claimed to exist; and conclude with  
15 a prayer of due process to enforce the forfeiture. Upon the filing of such an action, the  
16 court shall promptly cause process to issue to the present custodian in possession of the  
17 motor vehicle described in the action, commanding the custodian to seize the motor vehicle  
18 in the action and to hold that motor vehicle for further order of the court. The owner,  
19 lessee, or any person having a duly recorded security interest in or lien on such motor  
20 vehicle shall be notified by any means of service provided for in Title 9 or by delivery of  
21 a copy of the complaint and summons by registered or certified mail or statutory overnight  
22 delivery to said owner or lienholder or a person of suitable age or discretion having charge  
23 of said owner's premises. For purposes of this subsection, where forfeiture of a motor  
24 vehicle titled or registered in Georgia is sought, notice to the titleholder shall be deemed  
25 adequate if a copy of the complaint and summons is mailed by registered or certified mail  
26 or statutory overnight delivery to the titleholder at the address set out in the title and an  
27 additional copy is mailed by registered or certified mail or statutory overnight delivery to  
28 the firm, person, or corporation which holds the current registration for said motor vehicle,  
29 who shall be deemed agent for service for said titleholder, and said complaint is advertised  
30 once a week for two weeks as set out in this subsection. If the owner, lessee, or person  
31 having a duly recorded security interest in or lien on the contraband motor vehicle is  
32 unknown or resides out of the state or departs the state or cannot after due diligence be  
33 found within the state or conceals himself or herself so as to avoid notice, notice of the  
34 proceedings shall be published once a week for two weeks in the newspaper in which the  
35 sheriff's advertisements are published. Such publication shall be deemed notice to any and  
36 all persons having an interest in or right affected by such proceeding and any sale of the  
37 motor vehicle resulting therefrom, but shall not constitute notice to any person having a

1 duly recorded security interest in or lien upon such motor vehicle and required to be served  
2 under this Code section unless that person is unknown or resides out of the state or departs  
3 the state or cannot after due diligence be found within the state or conceals himself or  
4 herself to avoid notice.

5 (d)(1) Any party at interest may appear, by answer under oath, and file an intervention  
6 or defense within 30 days from the date of service on the condemnee of the action for  
7 condemnation. The owner, lessee, security interest holder, or lienholder shall be  
8 permitted to defend by showing that the motor vehicle seized was not subject to forfeiture  
9 under this Code section.

10 (2) A rented or leased motor vehicle shall not be subject to forfeiture unless it is  
11 established in the forfeiture proceedings that the owner of the rented or leased motor  
12 vehicle knew of or should have known of or consented to the operation of such motor  
13 vehicle in a manner which would subject the motor vehicle to forfeiture. Upon learning  
14 of the address or phone number of the rental or leasing company which owns such motor  
15 vehicle, the prosecuting attorney shall immediately contact the company to inform it that  
16 the motor vehicle is available for the company to take possession.

17 (e) The court to which any such petition for condemnation may be referred may, in its  
18 discretion, allow any party at interest, after making said defense under subsection (d) of  
19 this Code section, to give bond and take possession of the motor vehicle seized. Such  
20 motor vehicle shall not be sold or leased without prior approval of the court. In the event  
21 the court approves such sale or lease, the proceeds arising therefrom shall be deposited in  
22 the registry of the court, pending final adjudication of the forfeiture proceeding. The court  
23 shall determine whether the bond shall be a forthcoming bond or an eventual condemnation  
24 money bond and shall also determine the amount of the bond. The enforcement of any  
25 bond so given shall be regulated by the general law applicable to such cases.

26 (f) If no defense or intervention is filed within 30 days from the date of service on the  
27 condemnee of the petition, judgment shall be entered by the court and the motor vehicle  
28 shall be sold. The court may direct that such property be sold by:

29 (1) Judicial sale as provided in Article 7 of Chapter 13 of Title 9; provided, however, that  
30 the court may establish a minimum acceptable price for such property; or

31 (2) Any commercially feasible means.

32 (g)(1) When a motor vehicle is forfeited under this article, the court may:

33 (A) Order the property to be sold, with the proceeds of the sale to be distributed as  
34 provided in paragraph (3) of this subsection; or

35 (B) Provide for the in-kind distribution of the property as provided for in paragraph (3)  
36 of this subsection.

1 (2) Where a motor vehicle is to be sold pursuant to this subsection, the court may direct  
2 that such property be sold by:

3 (A) Judicial sale as provided in Article 7 of Chapter 13 of Title 9; provided, however,  
4 that the court may establish a minimum acceptable price for such motor vehicle; or

5 (B) Any commercially feasible means.

6 (3) All motor vehicles forfeited in the same forfeiture proceeding shall be pooled  
7 together for distribution as follows:

8 (A) A fair market value shall be assigned to the motor vehicles and a total value shall  
9 be established for the pool by adding together the fair market value of all motor  
10 vehicles in the pool;

11 (B) All costs, including court costs, costs incurred in the seizure, and any costs  
12 incurred in the storage, advertisement, maintenance, or care of each motor vehicle shall  
13 be paid and the remaining pool shall be distributed pro rata to the state and to local  
14 governments, according to the role which their law enforcement agencies played in the  
15 seizure of the motor vehicle; provided, however, that the amount distributed to the state  
16 shall not exceed 25 percent of the amount distributed; county governments are  
17 authorized upon request of the district attorney to provide for payment of any and all  
18 necessary expenses for the operation of the office from the said forfeiture pool up to 10  
19 percent of the amount distributed, in addition to any other expenses paid by the county  
20 to the district attorney's office;

21 (C) An order of distribution provided for in this subsection shall be submitted by the  
22 district attorney to the court for approval; and

23 (D)(i) Property and money distributed to a local government shall be passed through  
24 to the local law enforcement agency until the sum equals 33 1/3 percent of the amount  
25 of local funds appropriated or otherwise made available to such agency for the fiscal  
26 year in which such funds are distributed. Proceeds received may be used for any  
27 official law enforcement purpose except for the payment of salaries or rewards to law  
28 enforcement personnel, at the discretion of the chief officer of the local law  
29 enforcement agency, or may be used to fund victim-witness assistance programs or  
30 a state law enforcement museum. Such property shall not be used to supplant any  
31 other local, state, or federal funds appropriated for staff or operations.

32 (ii) The local governing authority shall expend any remaining proceeds for any law  
33 enforcement purpose; for drug treatment, rehabilitation, prevention, or education or  
34 any other program which responds to problems created by drug or substance abuse;  
35 for use as matching funds for grant programs related to drug treatment or prevention;  
36 to fund victim-witness assistance programs; or for any combination of the foregoing.

1 (iii) Any local law enforcement agency receiving property under this subsection shall  
 2 submit an annual report to the local governing authority. The report shall be submitted  
 3 with the agency's budget request and shall itemize the property received during the  
 4 fiscal year and the utilization made thereof.

5 (iv) Money distributed to the state pursuant to this subsection shall be paid into the  
 6 general fund of the state treasury, it being the intent of the General Assembly that the  
 7 same be used, subject to appropriation from the general fund in the manner provided  
 8 by law for funding of the Crime Victims Emergency Fund; for law enforcement and  
 9 prosecution agency programs and particularly for funding of advanced drug  
 10 investigation and prosecution training for law enforcement officers and prosecuting  
 11 attorneys; for drug treatment, rehabilitation, prevention, or education or any other  
 12 program which responds to problems created by drug or substance abuse; for use as  
 13 matching funds for grant programs related to drug treatment or prevention; or for  
 14 financing the judicial system of the state.

15 (h) The interest of an owner, lessee, security interest holder, or lienholder shall not be  
 16 subject to forfeiture unless the condemnor shows by a preponderance of evidence that such  
 17 person knew or reasonably should have known that such person would operate or was  
 18 operating the motor vehicle while engaging in conduct in violation of Code Section 16-6-1  
 19 with respect to the offense of rape; a violation of Code Section 16-6-2 with respect to the  
 20 offense of aggravated sodomy; a violation of Code Section 16-6-4 with respect to the  
 21 offenses of child molestation or aggravated child molestation; a violation of Code Section  
 22 16-6-5 with respect to the offense of enticing a child for indecent purposes; or a violation  
 23 of Code Section 16-6-22.2 with respect to the offense of aggravated sexual battery.

24 (i) In any case where a motor vehicle which is the only family motor vehicle is determined  
 25 to be subject to forfeiture, the court may, if it determines that the financial hardship to the  
 26 family as a result of the forfeiture and sale outweighs the benefit to the state from such  
 27 forfeiture, order the title to the motor vehicle transferred to another family member who  
 28 is a duly licensed operator and who requires the use of such motor vehicle for employment  
 29 or family transportation purposes. Such transfer shall be subject to any valid liens and shall  
 30 be granted only once."

## 31 SECTION 2.

32 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 33 without such approval and shall apply to all crimes committed on or after such date.

## 34 SECTION 3.

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