

SENATE SUBSTITUTE TO HB 1104

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 11 of Title 15, Title 16, and Code Section 17-10-11 of the Official Code
 2 of Georgia Annotated, relating to juvenile proceedings, crimes and offenses, and credit for
 3 time served in confinement, respectively, so as to change and create provisions relating to
 4 juvenile offenders; to add smash and grab burglary to the list of acts constituting a designated
 5 felony; to change provisions relating to dispositions for delinquent children; to clarify
 6 provisions relating to juveniles receiving credit for time served; to extend a sunset date for
 7 secure confinement; to provide for the new offense of smash and grab burglary; to provide
 8 for the elements of the offense; to provide for penalties; to provide for smash and grab
 9 burglaries in the context of contributing to the delinquency of a minor; to provide for smash
 10 and grab burglaries as racketeering activity; to remove the exception for juvenile court credit
 11 for time served in Title 17; to provide for related matters; to repeal conflicting laws; and for
 12 other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

14 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile
 15 proceedings, is amended by revising Code Section 15-11-30.3, relating to commission of
 16 designated felony act of burglary by a child 15 years of age or older, by adding a new
 17 subsection to read as follows:
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19 "(e) The provisions of this Code section shall not apply to a smash and grab burglary."

SECTION 2.

20 Said chapter is further amended by revising Code Section 15-11-63, relating to designated
 21 felony acts, by striking "or" at the end of division (a)(2)(B)(ix), by striking the semicolon and
 22 inserting in its place "; or" at the end of division (a)(2)(B)(x), and by adding a new division
 23 to read as follows:
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25 "(xi) Any violation of Code Section 16-7-2;"

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SECTION 3.

Said chapter is further amended by revising subparagraph (e)(1)(B) of Code Section 15-11-63, relating to designated felony acts, as follows:

"(B) The child shall initially be confined in a youth development center for a period set by the order, to be not less than 12 nor more than 60 months; provided, however, that time spent in secure detention ~~subsequent to the date of the order and~~ prior to placement in a youth development center shall be counted toward the period set by the order; and; provided, further, that; where the order of the court is made in compliance with subsection (f) of this Code section, the child shall initially be confined in a youth development center for 18 months;"

SECTION 4.

Said chapter is further amended by revising subsection (b) of Code Section 15-11-66, relating to disposition of delinquent children, as follows:

"(b)(1) At the conclusion of the dispositional hearing provided in subsection (a) of Code Section 15-11-65, if the child is found to have committed a delinquent act, the court may, in addition to any other treatment or rehabilitation, suspend the driver's license of such child for any period not to exceed the date on which the child becomes 18 years of age or, in the case of a child who does not have a driver's license, prohibit the issuance of a driver's license to such child for any period not to exceed the date on which the child becomes 18 years of age. The court shall retain the driver's license for a period of suspension and return it to the offender at the end of such period. The court shall notify the Department of Driver Services of any such actions taken pursuant to this subsection.

(2)(A) If the child is adjudicated for the commission of a delinquent act, the court may in its discretion in those cases involving: ~~(A)~~a

(i) A violation of probation involving another adjudicated delinquent act and upon the court making a finding of fact that the child has failed to respond to the graduated alternative sanctions set forth in paragraph (2) of this subsection; ~~(B)~~an

(ii) An offense that would be a felony if committed by an adult; or ~~(C)~~an

(iii) An offense that would be a misdemeanor of a high and aggravated nature if committed by an adult and involving bodily injury or harm or substantial likelihood of bodily injury or harm, in addition to any other treatment or rehabilitation, order the child to serve up to a maximum of 30 days in a youth development center, or after assessment and with the court's approval, in a treatment program provided by the Department of Juvenile Justice or the juvenile court.

(B) A child ordered to a youth development center under this paragraph and detained in a secured facility pending placement in the youth development center shall be given

62 credit for time served in the secured facility awaiting placement. On and after July 1,
 63 ~~2011~~ 2013, the maximum number of days that the court may order a child to serve in
 64 a youth development center under this paragraph shall be increased to 60 days.

65 (2) The Department of Juvenile Justice, in conjunction with the Council of Juvenile
 66 Court Judges of Georgia, shall establish and monitor a graduated alternative sanctions
 67 program for children on probation. The graduated alternative sanctions program shall be
 68 implemented in each judicial circuit in consultation with the judge of the juvenile court.
 69 The graduated alternative sanctions program may include, but shall not be limited to,
 70 community service, electronic monitoring, increased reporting or intensive supervision,
 71 home confinement, day or evening reporting centers, or treatment intervention."

72 SECTION 5.

73 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 74 amended by adding a new Code section to read as follows:

75 "16-7-2.

76 (a) As used in this Code section, the term 'retail establishment' means an establishment that
 77 sells goods or merchandise from a fixed location for direct consumption by a purchaser and
 78 includes establishments that prepare and sell meals or other edible products either for carry
 79 out or service within the establishment.

80 (b) A person commits the offense of smash and grab burglary when he or she intentionally
 81 and without authority enters a retail establishment with the intent to commit a theft and
 82 causes damage in excess of \$500.00 to such establishment without the owner's consent.

83 (c) A person convicted of smash and grab burglary shall be guilty of a felony and, upon
 84 conviction, shall be punished by imprisonment for not less than two nor more than 20
 85 years, by a fine of not more than \$100,000.00, or both; provided, however, that upon a
 86 second or subsequent conviction, he or she shall be punished by imprisonment for not less
 87 than five nor more than 20 years, by a fine of not more than \$100,000.00, or both."

88 SECTION 6.

89 Said title is further amended by revising subsections (b) and (e) of Code Section 16-12-1,
 90 relating to contributing to the delinquency, unruliness, or deprivation of a minor, as follows:

91 "(b) A person commits the offense of contributing to the delinquency, unruliness, or
 92 deprivation of a minor when such person:

93 (1) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in
 94 committing a delinquent act as such is defined in Code Section 15-11-2, relating to
 95 juvenile proceedings;

96 (2) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in
 97 committing an act which would cause such minor to be found to be an unruly child as
 98 such is defined in Code Section 15-11-2, relating to juvenile proceedings;

99 (3) Willfully commits an act or acts or willfully fails to act when such act or omission
 100 would cause a minor to be found to be a deprived child as such is defined in Code Section
 101 15-11-2, relating to juvenile proceedings;

102 (4) Knowingly and willfully hires, solicits, engages, contracts with, conspires with,
 103 encourages, abets, or directs any minor to commit any felony which encompasses force
 104 or violence as an element of the offense or delinquent act which would constitute a felony
 105 which encompasses force or violence as an element of the offense if committed by an
 106 adult; ~~or~~

107 (5) Knowingly and willfully provides to a minor any weapon as defined in paragraph (2)
 108 of subsection (a) of Code Section 16-11-127.1 or any weapon as defined in Code Section
 109 16-11-121 to commit any felony which encompasses force or violence as an element of
 110 the offense or delinquent act which would constitute a felony which encompasses force
 111 or violence as an element of the offense if committed by an adult; or

112 (6) Knowingly and willfully hires, solicits, engages, contracts with, conspires with,
 113 encourages, abets, or directs any minor to commit any smash and grab burglary which
 114 would constitute a felony if committed by an adult."

115 "(e) A person convicted pursuant to paragraph (4), ~~or~~ (5), or (6) of subsection (b) or
 116 paragraph (1) of subsection (d.1) of this Code section shall be guilty of a felony and
 117 punished as follows:

118 (1) Upon conviction of the first offense, the defendant shall be imprisoned for not less
 119 than one nor more than ~~five~~ ten years; and

120 (2) Upon conviction of the second or subsequent offense, the defendant shall be
 121 imprisoned for not less than three years nor more than 20 years."

122 SECTION 7.

123 Said title is further amended by revising division (9)(A)(vii) of Code Section 16-14-3,
 124 relating to definitions for the "Racketeer Influenced and Corrupt Organizations Act," as
 125 follows:

126 "(vii) Code Section 16-7-1, relating to burglary, or Code Section 16-7-2, relating to
 127 smash and grab burglary;"

128 SECTION 8.

129 Code Section 17-10-11 of the Official Code of Georgia Annotated, relating to credit for time
 130 served in confinement, is amended by revising subsection (b) as follows:

131 "(b) This Code section applies to sentences for all crimes, whether classified as violations,
132 misdemeanors, or felonies, and to all courts having criminal jurisdiction located within the
133 boundaries of this state, ~~except juvenile courts.~~"

134 **SECTION 9.**
135 All laws and parts of laws in conflict with this Act are repealed.