

House Bill 1104 (AS PASSED HOUSE AND SENATE)

By: Representatives Pruett of the 144<sup>th</sup>, Ramsey of the 72<sup>nd</sup>, Cole of the 125<sup>th</sup>, Glanton of the 76<sup>th</sup>, and Abrams of the 84<sup>th</sup>

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 provide for graduated sanctions and secure detention for children who  
5 violate the terms of their probation; to define terms; to provide for an administrative  
6 procedure for hearing alleged violations of probation; to correct cross-references and add  
7 smash and grab burglary to the list of acts constituting a designated felony; to change  
8 provisions relating to dispositions for delinquent children; to clarify provisions relating to  
9 juveniles receiving credit for time served; to extend a sunset date for secure confinement; to  
10 provide for the new offense of smash and grab burglary; to provide for the elements of the  
11 offense; to provide for penalties; to provide for smash and grab burglaries in the context of  
12 contributing to the delinquency of a minor; to provide for smash and grab burglaries as  
13 racketeering activity; to remove the exception for juvenile court credit for time served in  
14 Title 17; to provide for related matters; to provide for an effective date and applicability; to  
15 repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

18 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile  
19 proceedings, is amended by revising Code Section 15-11-30.3, relating to commission of  
20 designated felony act of burglary by a child 15 years of age or older, by adding a new  
21 subsection to read as follows:

22 "(e) The provisions of this Code section shall not apply to a smash and grab burglary."

23 style="text-align:center">**SECTION 2.**

24 Said chapter is further amended by adding a new Code section to read as follows:

25 "15-11-40.1.

26 (a) For purposes of this Code section, the term:

27 (1) 'Department' means the Department of Juvenile Justice.

28 (2) 'Graduated sanctions' means:

29 (A) Verbal and written warnings;

30 (B) Increased restrictions and reporting requirements;

31 (C) Community service;

32 (D) Referral to treatment and counseling programs in the community;

33 (E) Weekend programming;

34 (F) Electronic monitoring, as such term is defined in Code Section 42-8-151;

35 (G) Curfew;

36 (H) An intensive supervision program; or

37 (I) A home confinement program.

38 (3) 'Hearing officer' means a department employee or county juvenile probation office  
 39 employee, as applicable, who has been selected and appointed by the department or  
 40 county juvenile probation office, as applicable, to hear cases alleging violations of  
 41 probation for administrative sanctioning. A hearing officer shall not be a probation  
 42 officer who has direct supervision over the child who is the subject of the hearing.

43 (4) 'Probation management program' means a special condition of probation that includes  
 44 graduated sanctions.

45 (5) 'Secure probation sanctions program' means secure confinement of seven, 14, or 30  
 46 days.

47 (b) In addition to any other terms or conditions of probation provided for under this  
 48 chapter, the court may require that children who receive a disposition of probation:

49 (1) Be ordered to a probation management program; or

50 (2) Be ordered to a secure probation sanctions program by a probation officer or hearing  
 51 officer.

52 (c) Where a child has been ordered to a probation management program or secure  
 53 probation sanctions program, the court shall retain jurisdiction throughout the period of the  
 54 probated sentence and may modify or revoke any part of a probated sentence as provided  
 55 in Code Section 15-11-40.

56 (d)(1) The department in jurisdictions where the department is authorized to provide  
 57 probation supervision, or the county juvenile probation office in jurisdictions where  
 58 probation supervision is provided directly by the county, as applicable, shall be  
 59 authorized to establish rules and regulations for graduated sanctions as an alternative to  
 60 judicial modifications or revocations for probationers who violate the terms and  
 61 conditions of a probation management program.

62 (2) The department or county juvenile probation office, as applicable, shall not sanction  
63 probationers for violations of conditions of probation if the court has expressed an  
64 intention in a written order that such violations be heard by the court.

65 (e) The department or county juvenile probation office, as applicable, shall impose only  
66 those restrictions equal to or less restrictive than the maximum sanction established by the  
67 court.

68 (f) The secure probation sanctions program shall be established by the department.  
69 Exclusion of a child from a secure probation sanctions program otherwise authorized by  
70 this Code section to enter such program shall be mutually agreed upon by the Council of  
71 Juvenile Court Judges and the department. The secure probation sanctions program shall  
72 be available to the juvenile courts to the extent that each secure facility has capacity for  
73 such offenders within its facilities. Prior to reaching full capacity, the department shall  
74 inform the various juvenile courts of its capacity constraints.

75 (g)(1) When requesting the secure probation sanctions program, probation officers  
76 supervising a child under a probation management program shall provide an affidavit to  
77 the court specifying:

78 (A) The elements of the child's probation program;

79 (B) The child's failures to respond to graduated sanctions in the community; and

80 (C) The child's number of violations and the nature of each violation.

81 (2) If a probation officer fails to document the violations and specify how the child has  
82 failed to complete a probation management program, such child shall be ineligible to  
83 enter the secure probation sanctions program.

84 (3) A child may enter the secure probation sanctions program if ordered by the court and:

85 (A) The probation officer has complied with the provisions of paragraph (1) of this  
86 subsection and the criteria set by the department for entrance into such program and the  
87 child has had three or more violations of probation; or

88 (B) A child in a probation management program and his or her parent or guardian, or  
89 a child in such program and his or her attorney, admit to three or more violations of  
90 such program and sign a waiver accepting the sanction proposed by the probation  
91 officer.

92 (4) Each new violation of a condition of a probated sentence may result in a child being  
93 sentenced to the secure probation sanctions program; provided, however, that if a child  
94 is sentenced to the secure probation sanctions program and completes all program  
95 components in the seven, 14, and 30 day programs, such child shall be ineligible to attend  
96 the secure probation sanctions program for a future violation of a condition of the same  
97 probated sentence.

98 (h)(1) When a violation of a condition of probation occurs, a child may have an  
 99 administrative hearing conducted by a hearing officer. If the hearing officer determines  
 100 by a preponderance of the evidence that such child violated the conditions of probation,  
 101 the probation officer shall be authorized to impose graduated sanctions or a secure  
 102 probation sanctions program. A child's failure to comply with a sanction imposed under  
 103 this paragraph shall constitute another violation of probation.

104 (2) The hearing officer's decision shall be final unless such child files, within five days  
 105 of the service of such decision, a written demand with the hearing officer for review of  
 106 such decision. Such demand shall not stay the sanction decision. The hearing officer  
 107 shall issue a response to such demand within five days of receiving such demand.

108 (3) If the hearing officer insists on the sanction, such decision shall be final unless the  
 109 child files an appeal in the court that originally adjudicated the child. Such appeal shall  
 110 be filed within ten days of the date of the decision of the hearing officer.

111 (4) The appeal shall first be reviewed by the court upon the record. At the court's  
 112 discretion, a de novo hearing may be held on the decision. The filing of the appeal shall  
 113 not stay the sanction decision.

114 (5) Where the court does not act on the appeal within 15 days of the date of the filing of  
 115 the appeal, the sanction decision shall be affirmed by operation of law."

116 **SECTION 3.**

117 Said chapter is further amended by revising Code Section 15-11-63, relating to designated  
 118 felony acts, by striking "or" at the end of division (a)(2)(B)(ix), by striking the semicolon and  
 119 inserting in its place "; or" at the end of division (a)(2)(B)(x), and by adding a new division  
 120 to read as follows:

121 "(xi) Any violation of Code Section 16-7-2;"

122 **SECTION 4.**

123 Said chapter is further amended by revising subparagraph (e)(1)(B) of Code Section  
 124 15-11-63, relating to designated felony acts, as follows:

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

**SECTION 5.**

132  
133 Said chapter is further amended by revising subsection (b) of Code Section 15-11-66, relating  
134 to disposition of delinquent children, as follows:

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

144 (2)(A) If the child is adjudicated for the commission of a delinquent act, the court may  
145 in its discretion in those cases involving: ~~(A) a violation of probation involving another~~  
146 ~~adjudicated delinquent act and upon the court making a finding of fact that the child has~~  
147 ~~failed to respond to the graduated alternative sanctions set forth in paragraph (2) of this~~  
148 ~~subsection; (B) an~~

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

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

156 (B) A child ordered to a youth development center under this paragraph and detained  
157 in a secured facility pending placement in the youth development center shall be given  
158 credit for time served in the secured facility awaiting placement. On and after July 1,  
159 ~~2011~~ 2013, the maximum number of days that the court may order a child to serve in  
160 a youth development center under this paragraph shall be increased to 60 days.

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

168 **SECTION 6.**

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

171 "16-7-2.

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

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

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

184 **SECTION 7.**

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

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

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

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

195 (3) Willfully commits an act or acts or willfully fails to act when such act or omission  
196 would cause a minor to be found to be a deprived child as such is defined in Code Section  
197 15-11-2, relating to juvenile proceedings;

198 (4) Knowingly and willfully hires, solicits, engages, contracts with, conspires with,  
199 encourages, abets, or directs any minor to commit any felony which encompasses force  
200 or violence as an element of the offense or delinquent act which would constitute a felony  
201 which encompasses force or violence as an element of the offense if committed by an  
202 adult; or

203 (5) Knowingly and willfully provides to a minor any weapon as defined in paragraph (2)  
 204 of subsection (a) of Code Section 16-11-127.1 or any weapon as defined in Code Section  
 205 16-11-121 to commit any felony which encompasses force or violence as an element of  
 206 the offense or delinquent act which would constitute a felony which encompasses force  
 207 or violence as an element of the offense if committed by an adult; or

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

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

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

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

#### 218 **SECTION 8.**

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

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

#### 224 **SECTION 9.**

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

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

#### 230 **SECTION 10.**

231 This Act shall become effective on July 1, 2010, and Sections 2 and 5 of this Act shall apply  
 232 to any child sentenced to probation on and after July 1, 2010; the former provisions of Code  
 233 Section 15-11-66 shall continue to apply to any child sentenced to probation prior to July 1,  
 234 2010.

235

**SECTION 11.**

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