

Senate Bill 423

By: Senators Smith of the 52nd, Hamrick of the 30th, Butterworth of the 50th, Douglas of the 17th, Mullis of the 53rd and others

A BILL TO BE ENTITLED
AN ACT

1 To provide a short title; to amend Part 7 of Article 1 of Chapter 11 of Title 15 of the Official
2 Code of Georgia Annotated, relating to delinquent and unruly children, so as to add
3 additional offenses to the definition of "designated felony act"; to amend Title 16 of the
4 Official Code of Georgia Annotated, relating to crimes and offenses, so as to increase the
5 penalty for burglary when more than \$500.00 of damage is done to property in the
6 commission of the burglary of retail property or when a motor vehicle is used to damage
7 property in order to commit the burglary of retail property; to include within the definition
8 of criminal damage to property in the first degree violations involving more than \$500.00 of
9 damage to property for the purpose of burglary of retail property or involving a motor vehicle
10 to cause damage to property in excess of \$500.00; to increase the penalties for certain thefts;
11 to include within the definition of the crime of contributing to the delinquency, unruliness,
12 or deprivation of a minor knowingly and willfully hiring, soliciting, engaging, contracting
13 with, conspiring with, encouraging, abetting, or directing any minor to commit a burglary of
14 retail property or retail fencing; to provide for related matters; to provide an effective date
15 and applicability; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 This Act shall be known and may be cited as the "Smash and Grab Act."

19 **SECTION 2.**

20 Part 7 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
21 relating to delinquent and unruly children, is amended by revising paragraph (2) of
22 subsection (a) of Code Section 15-11-63, relating to designated felony acts, as follows:

23 "(2) 'Designated felony act' means an act which:

24 (A) Constitutes a second or subsequent offense under subsection (b) of Code Section
25 16-11-132 if committed by a child 13 to 17 years of age;

- 26 (B) If done by an adult, would be one or more of the following crimes:
- 27 (i) Kidnapping or arson in the first degree, if done by a child 13 or more years of age;
- 28 (ii) Aggravated assault, arson in the second degree, aggravated battery, robbery,
- 29 armed robbery not involving a firearm, or battery in violation of Code Section
- 30 16-5-23.1 if the victim is a teacher or other school personnel, if done by a child 13 or
- 31 more years of age;
- 32 (iii) Attempted murder or attempted kidnapping, if done by a child 13 or more years
- 33 of age;
- 34 (iv) The carrying or possession of a weapon in violation of subsection (b) of Code
- 35 Section 16-11-127.1;
- 36 (v) Hijacking a motor vehicle, if done by a child 13 or more years of age;
- 37 (vi) Any violation of Code Section 16-7-82, 16-7-84, or 16-7-86 if done by a child
- 38 13 or more years of age;
- 39 (vii) Any other act which, if done by an adult, would be a felony, if the child
- 40 committing the act has three times previously been adjudicated delinquent for acts
- 41 which, if done by an adult, would have been felonies;
- 42 (viii) Any violation of Code Section 16-13-31, relating to trafficking in cocaine,
- 43 illegal drugs, marijuana, or methamphetamine;
- 44 (ix) Any criminal violation of Code Section 16-14-4, relating to racketeering; or
- 45 (x) Any violation of Code Section 16-10-52, relating to escape, if the child involved
- 46 in the commission of such act has been previously adjudicated to have committed a
- 47 designated felony;
- 48 (C) Constitutes a second or subsequent adjudication of delinquency based upon a
- 49 violation of Code Section 16-7-85 or 16-7-87;
- 50 (C.1) Constitutes any violation of Code Section 16-15-4, relating to criminal street
- 51 gangs;
- 52 (D) Constitutes an offense within the exclusive jurisdiction of the superior court
- 53 pursuant to subparagraph (b)(2)(A) of Code Section 15-11-28 which is transferred by
- 54 the superior court to the juvenile court for adjudication pursuant to subparagraph
- 55 (b)(2)(B) of Code Section 15-11-28 or which is transferred by the district attorney to
- 56 the juvenile court for adjudication pursuant to subparagraph (b)(2)(C) of Code Section
- 57 15-11-28; ~~or~~
- 58 (E) Constitutes a second or subsequent violation of Code Sections 16-8-2 through
- 59 16-8-9, relating to theft, if the property which was the subject of the theft was a motor
- 60 vehicle;
- 61 (F) Constitutes any violation of subsection (c) or (d) of Code Section 16-7-1, relating
- 62 to burglary;

63 (G) Constitutes any violation of paragraph (3) or (4) of subsection (a) of Code
 64 Section 16-7-22, relating to criminal damage in the first degree; or
 65 (H) Constitutes any violation of Code Section 16-8-5.2, relating to retail property
 66 fencing."

67 **SECTION 3.**

68 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 69 amended by revising Code Section 16-7-1, relating to burglary, by adding new subsections
 70 to read as follows:

71 "(c) Any burglary in which a motor vehicle is used to damage property for the purpose of
 72 committing the burglary of retail property shall be punished by imprisonment for not less
 73 than five nor more than 20 years.

74 (d) Any burglary in which a person intentionally causes damage in excess of \$500.00 to
 75 property for the purpose of committing the offense of burglary of retail property shall be
 76 punished by imprisonment for not less than five nor more than 20 years."

77 **SECTION 4.**

78 Said title is further amended by revising subsection (a) of Code Section 16-7-22, relating to
 79 criminal damage to property in the first degree, as follows:

80 "(a) A person commits the offense of criminal damage to property in the first degree when
 81 he or she:

82 (1) Knowingly and without authority interferes with any property in a manner so as to
 83 endanger human life; ~~or~~

84 (2) Knowingly and without authority and by force or violence interferes with the
 85 operation of any system of public communication, public transportation, sewerage,
 86 drainage, water supply, gas, power, or other public utility service or with any constituent
 87 property thereof;

88 (3) Intentionally uses a motor vehicle to cause damage in excess of \$500.00 to the
 89 property of another without such other person's consent; or

90 (4) Intentionally causes damage in excess of \$500.00 to property for the purpose of
 91 committing the offense of burglary of retail property."

92 **SECTION 5.**

93 Said title is further amended by revising Code Section 16-8-5.2, relating to retail property
 94 fencing, as follows:

95 "16-8-5.2.

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

- 97 (1) 'Retail property' means any new article, product, commodity, item, or component
98 intended to be sold in retail commerce.
- 99 (2) 'Retail property fence' means a person or entity that buys, sells, transfers, or possesses
100 with the intent to sell or transfer retail property that such person knows or should have
101 known was stolen.
- 102 (3) 'Value' means the retail value of the item as stated or advertised by the affected retail
103 establishment, to include applicable taxes.
- 104 (b) A person commits the offense of retail property fencing when such persons receives,
105 disposes of, or retains retail property which was unlawfully taken or shoplifted over a
106 period not to exceed 180 days with the intent to:
- 107 (1) Transfer, sell, or distribute such retail property to a retail property fence; or
108 (2) Attempt or cause such retail property to be offered for sale, transfer, or distribution
109 for money or other things of value.
- 110 (c) Whoever knowingly receives, possesses, conceals, stores, barter, sells, or disposes of
111 retail property with the intent to distribute any retail property which is known or should be
112 known to have been taken or stolen in violation of this ~~subsection~~ Code section with the
113 intent to distribute the proceeds, or to otherwise promote, manage, carry on, or facilitate
114 an offense described in this ~~subsection~~ Code section, shall have committed the offense of
115 retail property fencing.
- 116 (d)(1) It shall not be necessary in any prosecution under this Code section for the state
117 to prove that any intended profit was actually realized. The trier of fact may infer that a
118 particular scheme or course of conduct was undertaken for profit from all of the attending
119 circumstances.
- 120 (2) It shall not be a defense to violating this Code section that the property was obtained
121 by means other than through the commission of a theft offense if the property was
122 explicitly represented to the accused as being obtained through the commission of a theft.
- 123 (e) Any property constituting proceeds derived from or realized through a violation of this
124 Code section shall be subject to forfeiture to the State of Georgia except that no property
125 of any owner shall be forfeited under this subsection, to the extent of the interest of such
126 owner, by reason of an act or omission established by such owner to have been committed
127 or omitted without knowledge or consent of such owner. The procedure for forfeiture and
128 disposition of forfeited property under this subsection shall be as provided for under Code
129 Section 16-13-49.
- 130 ~~(f) Each violation of this Code section shall constitute a separate offense."~~

131 **SECTION 6.**

132 Said title is further amended by revising subsection (a) of Code Section 16-8-12, relating to
133 penalties for violation of Code Sections 16-8-2 through 16-8-9, as follows:

134 "(a) A person convicted of a violation of Code Sections 16-8-2 through 16-8-9 shall be
135 punished as for a misdemeanor except:

136 (1) If the property which was the subject of the theft exceeded \$500.00 in value, by
137 imprisonment for not less than one nor more than ten years or, in the discretion of the trial
138 judge, as for a misdemeanor;

139 (2) If the property was any amount of anhydrous ammonia, as defined in Code Section
140 16-11-111, by imprisonment for not less than one nor more than ten years, a fine not to
141 exceed the amount provided by Code Section 17-10-8, or both;

142 (3) If the property was taken by a fiduciary in breach of a fiduciary obligation or by an
143 officer or employee of a government or a financial institution in breach of his or her
144 duties as such officer or employee, by imprisonment for not less than one nor more than
145 15 years, a fine not to exceed the amount provided by Code Section 17-10-8, or both;

146 (4) If the crime committed was a violation of Code Section 16-8-2 and if the property
147 which was the subject of the theft was a memorial to the dead or any ornamentation,
148 flower, tree, or shrub placed on, adjacent to, or within any enclosure of a memorial to the
149 dead, by imprisonment for not less than one nor more than three years. Nothing in this
150 paragraph shall be construed as to cause action taken by a cemetery, cemetery owner,
151 lessee, trustee, church, religious or fraternal organization, corporation, civic organization,
152 or club legitimately attempting to clean, maintain, care for, upgrade, or beautify a grave,
153 gravesite, tomb, monument, gravestone, or other structure or thing placed or designed for
154 a memorial of the dead to be a criminal act;

155 (5)(A) The provisions of paragraph (1) of this subsection notwithstanding, if the
156 property which was the subject of the theft was a motor vehicle or was a motor vehicle
157 part or component which exceeded \$100.00 in value or if the theft or unlawful activity
158 was committed in violation of subsection (b) of Code Section 10-1-393.5 or in violation
159 of subsection (b) of Code Section 10-1-393.6 or while engaged in telemarketing
160 conduct in violation of Chapter 5B of Title 10, by imprisonment for not less than one
161 nor more than ten years or, in the discretion of the trial judge, as for a misdemeanor;
162 provided, however, that any person who is convicted of a second or subsequent offense
163 under this paragraph shall be punished by imprisonment for not less than one year nor
164 more than 20 years.

165 (B) Subsequent offenses committed under this paragraph, including those which may
166 have been committed after prior felony convictions unrelated to this paragraph, shall
167 be punished as provided in Code Section 17-10-7;

168 (6)(A) As used in this paragraph, the term:

169 (i) 'Destructive device' means a destructive device as such term is defined by Code
170 Section 16-7-80.

171 (ii) 'Explosive' means an explosive as such term is defined by Code Section 16-7-80.

172 (iii) 'Firearm' means any rifle, shotgun, pistol, or similar device which propels a
173 projectile or projectiles through the energy of an explosive.

174 (B) If the property which was the subject of the theft offense was a destructive device,
175 explosive, or firearm, by imprisonment for not less than one nor more than ten years;

176 (7) If the property which was the subject of the theft is a grave marker, monument, or
177 memorial to one or more deceased persons who served in the military service of this state,
178 the United States of America or any of the states thereof, or the Confederate States of
179 America or any of the states thereof, or a monument, plaque, marker, or memorial which
180 is dedicated to, honors, or recounts the military service of any past or present military
181 personnel of this state, the United States of America or any of the states thereof, or the
182 Confederate States of America or any of the states thereof, and if such grave marker,
183 monument, memorial, plaque, or marker is privately owned or located on privately owned
184 land, by imprisonment for not less than one nor more than three years if the value of the
185 property which was the subject of the theft is \$300.00 or less, and by imprisonment for
186 not less than three years and not more than five years if the value of the property which
187 was the subject of the theft is more than \$300.00;

188 (8) If the property that was the subject of the theft was a vehicle engaged in commercial
189 transportation of cargo or any appurtenance thereto, including without limitation any such
190 trailer, semitrailer, container, or other associated equipment, or the cargo being
191 transported therein or thereon, by imprisonment for not less than three years nor more
192 than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if
193 applicable, the revocation of the defendant's commercial driver's license in accordance
194 with Code Section 40-5-151, or any combination of such penalties. For purposes of this
195 paragraph, the term 'vehicle' includes without limitation any railcar; or

196 (9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of
197 the theft was ferrous metals or regulated metal property, as such terms are defined in
198 Code Section 10-1-350, and the sum of the aggregate amount of such property, in its
199 original and undamaged condition, plus any reasonable costs which are or would be
200 incurred in the repair or the attempt to recover any property damaged in the theft or
201 removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less
202 than one nor more than five years, a fine of not more than \$5,000.00, or both;

203 (10) If a violation of Code Section 16-8-5.2, by imprisonment for not less than one year
204 nor more than ten years; or

205 (11) If the property that was the subject of the theft was a motor vehicle and the motor
 206 vehicle was used to assist in the burglary of retail property, by imprisonment for not less
 207 than one year nor more than 20 years."

208 **SECTION 7.**

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

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

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

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

219 (3) Willfully commits an act or acts or willfully fails to act when such act or omission
 220 would cause a minor to be found to be a deprived child as such is defined in Code Section
 221 15-11-2, relating to juvenile proceedings;

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

227 (5) Knowingly and willfully provides to a minor any weapon as defined in paragraph (2)
 228 of subsection (a) of Code Section 16-11-127.1 or any weapon as defined in Code Section
 229 16-11-121 to commit any felony which encompasses force or violence as an element of
 230 the offense or delinquent act which would constitute a felony which encompasses force
 231 or violence as an element of the offense if committed by an adult; or

232 (6) Knowingly and willfully hires, solicits, engages, contracts with, conspires with,
 233 encourages, abets, or directs any minor to commit any burglary of retail property,
 234 including retail property fencing, which would constitute a felony if committed by an
 235 adult."

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

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

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

243 **SECTION 8.**

244 This Act shall become effective on July 1, 2010, and shall apply to all violations committed
245 on and after such date.

246 **SECTION 9.**

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