

House Bill 14

By: Representative Franklin of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and 17 of the Official Code of Georgia Annotated, relating to criminal
2 law and criminal procedure, respectively, so as to change the term "victim" to the term
3 "accuser" in the context of a number of statutes making reference to circumstances where
4 there has not yet been a criminal conviction; to provide for related matters; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 16 of the Official Code of Georgia Annotated, relating to criminal law, is amended by
9 revising Code Section 16-5-93, relating to notice of release or escape of persons accused of
10 stalking, as follows:

11 "16-5-93.

12 (a) The ~~victim~~ person making an accusation of stalking or aggravated stalking shall be
13 entitled to notice of the release from custody of the person arrested for and charged with
14 the offense of stalking or aggravated stalking and to notice of any hearing on the issue of
15 bail for such person. No such notice shall be required unless the ~~victim~~ accuser provides
16 a landline telephone number other than a pocket pager or electronic communication device
17 number to which such notice can be directed.

18 (b) The law enforcement agency, prosecutor, or court directly involved with the ~~victim~~
19 accuser at the outset of a criminal prosecution for the offense of stalking or aggravated
20 stalking shall advise the ~~victim~~ accuser of his or her right to notice and of the requirement
21 of the ~~victim's~~ accuser's providing a landline telephone number other than a pocket pager
22 or electronic communication device number to which the notice of custodial release or bail
23 hearing can be directed. Such ~~victim~~ accuser shall transmit the telephone number described
24 in this subsection to the court and custodian of the person charged with stalking or
25 aggravated stalking.

26 (c) Upon receipt of the telephone number, the custodian of the person charged with
27 stalking or aggravated stalking shall take reasonable and necessary steps under the
28 circumstances to notify the victim accuser of the person's release from custody. Such notice
29 shall, at a minimum, include:

30 (1) Prior to the person's release, placing a telephone call to the number provided by the
31 victim accuser and giving notice to the victim accuser or any person answering the
32 telephone who appears to be sui juris or by leaving an appropriate message on a
33 telephone answering machine; and

34 (2) Following the person's release, if the custodian is unable to notify the victim accuser
35 by the method provided in paragraph (1) of this subsection, telephoning the number
36 provided by the victim accuser no less than two times in no less than 15 minute intervals
37 within one hour of custodial release and giving notice to the victim accuser or to any
38 person answering the telephone who appears to be sui juris or by leaving an appropriate
39 message on a telephone answering machine.

40 (d) Upon receipt of the telephone number, the court conducting a hearing on the issue of
41 bail shall take reasonable and necessary steps under the circumstances to notify the victim
42 accuser of any scheduled hearing on the issue of bail. Such notice shall, at a minimum,
43 include placing a telephone call to the number provided by the victim accuser prior to any
44 scheduled hearing on the issue of bail.

45 (e) Notwithstanding any other provision of this Code section, a scheduled bail hearing or
46 the release of the person charged with stalking or aggravated stalking shall not be delayed
47 solely for the purpose of effectuating notice pursuant to this Code section for a period of
48 more than 30 minutes.

49 (f) Upon the person's release or escape from custody after conviction and service of all or
50 a portion of a sentence, notification to the victim shall be provided by the State Board of
51 Pardons and Paroles as set forth in Code Sections 42-9-46 and 42-9-47.

52 (g) This Code section shall not apply to a custodian who is transferring a person charged
53 with stalking or aggravated stalking to another custodian in this state.

54 (h) As used in this Code section, the term 'custodian' means a warden, sheriff, jailer,
55 deputy sheriff, police officer, officer or employee of the Department of Juvenile Justice,
56 or any other law enforcement officer having actual custody of an inmate.

57 (i) A custodian or his or her employing agency shall not be liable in damages for a failure
58 to provide the notice required by this Code section, but the custodian shall be subject to
59 appropriate disciplinary action including termination for such failure."

60 **SECTION 2.**

61 Said Title 16 is further amended in Code Section 16-6-1, relating to the crime of rape, by
62 revising subsection (c) as follows:

63 "(c) When evidence relating to an allegation of rape is collected in the course of a medical
64 examination of the person who is the victim accuser of the alleged crime perpetrator, the
65 law enforcement agency investigating the alleged crime shall be responsible for the cost
66 of the medical examination to the extent that expense is incurred for the limited purpose
67 of collecting evidence."

68 **SECTION 3.**

69 Said Title 16 is further amended in Code Section 16-12-100.3, relating to the crime of
70 obscene telephone contact with a child, by revising subsection (b) as follows:

71 "(b) A person 17 years of age or over commits the offense of obscene telephone contact
72 with a child if that person has telephone contact with an individual whom that person
73 knows or should have known is a child, and that contact involves any aural matter
74 containing explicit verbal descriptions or narrative accounts of sexually explicit nudity,
75 sexual conduct, sexual excitement, or sadomasochistic abuse which is intended to arouse
76 or satisfy the sexual desire of either the child or the person, provided that no conviction
77 shall be had for this offense on the unsupported testimony of the victim accuser."

78 **SECTION 4.**

79 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
80 amended by revising Code Section 17-4-20.1, relating to investigation of incidents of alleged
81 family violence, as follows:

82 "17-4-20.1.

83 (a) Whenever a law enforcement officer responds to an incident in which an act of family
84 violence, as defined in Code Section 19-13-1, has been committed, the officer shall not
85 base the decision of whether to arrest and charge a person on the specific consent of the
86 victim accuser or on a request by the victim accuser solely or on consideration of the
87 relationship of the parties. No officer investigating an incident of family violence shall
88 threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of
89 discouraging requests for law enforcement intervention.

90 (b) Where complaints of family violence are received from two or more opposing parties,
91 the officer shall evaluate each complaint separately to attempt to determine who was the
92 primary aggressor. If the officer determines that one of the parties was the primary physical
93 aggressor, the officer shall not be required to arrest any other person believed to have

94 committed an act of family violence during the incident. In determining whether a person
95 is a primary physical aggressor, an officer shall consider:

- 96 (1) Prior family violence involving either party;
- 97 (2) The relative severity of the injuries inflicted on each person;
- 98 (3) The potential for future injury; and
- 99 (4) Whether one of the parties acted in self-defense.

100 (c) Whenever a law enforcement officer investigates an incident of family violence,
101 whether or not an arrest is made, the officer shall prepare and submit to the supervisor or
102 other designated person a written report of the incident entitled 'Family Violence Report.'
103 Forms for such reports shall be designed and provided by the Georgia Bureau of
104 Investigation. The report shall include the following:

- 105 (1) Name of the parties;
- 106 (2) Relationship of the parties;
- 107 (3) Sex of the parties;
- 108 (4) Date of birth of the parties;
- 109 (5) Time, place, and date of the incident;
- 110 (6) Whether children were involved or whether the act of family violence was committed
111 in the presence of children;
- 112 (7) Type and extent of the alleged abuse;
- 113 (8) Existence of substance abuse;
- 114 (9) Number and types of weapons involved;
- 115 (10) Existence of any prior court orders;
- 116 (11) Type of police action taken in disposition of case, the reasons for the officer's
117 determination that one party was the primary physical aggressor, and mitigating
118 circumstances for why an arrest was not made;
- 119 (12) Whether the victim accuser was apprised of available remedies and services; and
- 120 (13) Any other information that may be pertinent.

121 (d) The report provided for in subsection (c) of this Code section shall be considered as
122 being made for statistical purposes only and where no arrests are made shall not be subject
123 to the provisions of Article 4 of Chapter 18 of Title 50. However, upon request, a
124 defendant who has been arrested for an act of family violence or the victim accuser shall
125 be entitled to review and copy any report prepared in accordance with this Code section
126 relating to the defendant.

127 (e) Each police department, including local precincts and county sheriff departments, shall
128 report, according to rules and regulations of the Georgia Crime Information Center, all
129 family violence incidents, both arrests and nonarrests, to the Georgia Bureau of
130 Investigation, which shall compile and analyze statistics of family violence crimes and

131 cause them to be published annually in the Georgia Uniform Crime Reports. An offense
 132 shall be counted for each incident reported to the police. A zero shall be reported if no
 133 incidents have occurred during the reporting period."

134 **SECTION 5.**

135 Said Title 17 is further amended in Code Section 17-6-1, relating to forums and procedure
 136 for bail, by revising subsections (b) and (f) as follows:

137 "(b)(1) All offenses not included in subsection (a) of this Code section areailable by a
 138 court of inquiry. Except as provided in subsection (g) of this Code section, at no time,
 139 either before a court of inquiry, when indicted or accused, after a motion for new trial is
 140 made, or while an appeal is pending, shall any person charged with a misdemeanor be
 141 refused bail.

142 (2) Except as otherwise provided in this chapter:

143 (A) A person charged with violating Code Section 40-6-391 whose alcohol
 144 concentration at the time of arrest, as determined by any method authorized by law,
 145 violates that provided in paragraph (5) of subsection (a) of Code Section 40-6-391 may
 146 be detained for a period of time up to six hours after booking and prior to being released
 147 on bail or on recognizance; and

148 (B) When an arrest is made by a law enforcement officer without a warrant upon an
 149 act of family violence pursuant to Code Section 17-4-20, the person charged with the
 150 offense shall not be eligible for bail prior to the arresting officer or some other law
 151 enforcement officer taking the arrested person before a judicial officer pursuant to Code
 152 Section 17-4-21.

153 (3)(A) Notwithstanding any other provision of law, a judge of a court of inquiry may,
 154 as a condition of bail or other pretrial release of a person who is charged with violating
 155 Code Section 16-5-90 or 16-5-91, prohibit the defendant from entering or remaining
 156 present at the ~~victim's~~ accuser's school, place of employment, or other specified places
 157 at times when the ~~victim~~ accuser is present or intentionally following such person.

158 (B) If the evidence shows that the defendant has previously violated the conditions of
 159 pretrial release or probation or parole which arose out of a violation of Code Section
 160 16-5-90 or 16-5-91, the judge of a court of inquiry may impose such restrictions on the
 161 defendant which may be necessary to deter further stalking of the ~~victim~~ accuser,
 162 including but not limited to denying bail or pretrial release."

163 "(f)(1) Except as provided in subsection (a) of this Code section or as otherwise provided
 164 in this subsection, the judge of any court of inquiry may by written order establish a
 165 schedule of bails and unless otherwise ordered by the judge of any court, a person

166 charged with committing any offense shall be released from custody upon posting bail
167 as fixed in the schedule.

168 (2) For offenses involving an act of family violence, as defined in Code Section 19-13-1,
169 the schedule of bails provided for in paragraph (1) of this subsection shall require
170 increased bail and shall include a listing of specific conditions which shall include, but
171 not be limited to, having no contact of any kind or character with the victim accuser or
172 any member of the victim's accuser's family or household, not physically abusing or
173 threatening to physically abuse the victim accuser, the immediate enrollment in and
174 participation in domestic violence counseling, substance abuse therapy, or other
175 therapeutic requirements.

176 (3) For offenses involving an act of family violence, the judge shall determine whether
177 the schedule of bails and one or more of its specific conditions shall be used, except that
178 any offense involving an act of family violence and serious injury to the victim accuser
179 shall be bailable only before a judge when the judge or the arresting officer is of the
180 opinion that the danger of further violence to or harassment or intimidation of the victim
181 accuser is such as to make it desirable that the consideration of the imposition of
182 additional conditions as authorized in this Code section should be made. Upon setting
183 bail in any case involving family violence, the judge shall give particular consideration
184 to the exigencies of the case at hand and shall impose any specific conditions as he or she
185 may deem necessary. As used in this Code section, the term 'serious injury' means bodily
186 harm capable of being perceived by a person other than the victim accuser and may
187 include, but is not limited to, substantially blackened eyes, substantially swollen lips or
188 other facial or body parts, substantial bruises to body parts, fractured bones, or permanent
189 disfigurements and wounds inflicted by deadly weapons or any other objects which, when
190 used offensively against a person, are capable of causing serious bodily injury.

191 (4) For violations of Code Section 16-15-4, the court shall require increased bail and
192 shall include as a condition of bail or pretrial release that the defendant shall not have
193 contact of any kind or character with any other member or associate of a criminal street
194 gang and, in cases involving a victim an accuser, that the defendant shall not have contact
195 of any kind or character with any such victim accuser or any member of any such victim's
196 accuser's family or household.

197 (5) For offenses involving violations of Code Section 40-6-393, bail or other release
198 from custody shall be set by a judge on an individual basis and not a schedule of bails
199 pursuant to this Code section."

200

SECTION 6.

201 Said Title 17 is further amended in Code Section 17-6-1.1, relating to electronic pretrial
 202 release monitoring, by revising paragraph (3) of subsection (e) as follows:

203 "(3) Compliance with any court orders or special conditions of bond which may include
 204 an order directing that no contact, direct or indirect, be made with the ~~victim~~ accuser or
 205 forbidding entry upon, about, or near certain premises;"

206

SECTION 7.

207 Said Title 17 is further amended in Code Section 17-10-15, relating to human
 208 immunodeficiency virus testing of criminal defendants, by revising subsection (b) as follows:

209 "(b) ~~A victim~~ An accuser or the parent or legal guardian of a minor or incompetent ~~victim~~
 210 accuser of a sexual offense as defined in Code Section 31-22-9.1 or other crime which
 211 involves significant exposure as defined by subsection (g) of this Code section may request
 212 that the agency responsible for prosecuting the alleged offense request that the person
 213 arrested for such offense submit to a test for the human immunodeficiency virus and
 214 consent to the release of the test results to the ~~victim~~ accuser. If the person so arrested
 215 declines to submit to such a test, the judge of the superior court in which the criminal
 216 charge is pending, upon a showing of probable cause that the person arrested for the
 217 offense committed the alleged crime and that significant exposure occurred, may order the
 218 test to be performed in compliance with the rules adopted by the Department of
 219 Community Health. The cost of the test shall be borne by the ~~victim~~ accuser or by the
 220 arrested person, in the discretion of the court."

221

SECTION 8.

222 Said Title 17 is further amended in Code Section 17-16-4, relating to discovery disclosure
 223 in criminal cases, by revising paragraph (4) of subsection (a) as follows:

224 "(4) The prosecuting attorney shall, no later than ten days prior to trial, or as otherwise
 225 ordered by the court, permit the defendant at a time agreed to by the parties or ordered
 226 by the court to inspect and copy or photograph a report of any physical or mental
 227 examinations and of scientific tests or experiments, including a summary of the basis for
 228 the expert opinion rendered in the report, or copies thereof, if the state intends to
 229 introduce in evidence in its case-in-chief or in rebuttal the results of the physical or
 230 mental examination or scientific test or experiment. If the report is oral or partially oral,
 231 the prosecuting attorney shall reduce all relevant and material oral portions of such report
 232 to writing and shall serve opposing counsel with such portions no later than ten days prior
 233 to trial. Nothing in this Code section shall require the disclosure of any other material,

234 note, or memorandum relating to the psychiatric or psychological treatment or therapy
235 of any ~~victim~~ accuser or witness."

236 **SECTION 9.**

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