

House Bill 1052

By: Representatives Coomer of the 14th, Golick of the 40th, Jones of the 62nd, Hightower of the 68th, Pak of the 108th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to create the offense of murder in the second degree; to change provisions
3 relating to murder; to provide for penalties; to amend Titles 15, 16, and 31, Code Section
4 35-3-190, Title 42, and Code Section 49-2-14.1 of the Official Code of Georgia Annotated,
5 relating to courts, crimes and offenses, health, the state-wide alert system for unapprehended
6 murder or rape suspects determined to be serious public threats, penal institutions, and
7 records check requirements for the Department of Human Services, respectively, so as to
8 correct cross-references; to provide for related matters; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 PART I
12 SECTION 1-1.

13 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
14 amended by revising subsections (c) and (d) of and adding a new subsection to Code Section
15 16-5-1, relating to murder and felony murder, as follows:

16 "(c) A person also commits the offense of murder when, in the commission of a felony, he
17 or she causes the death of another human being irrespective of malice.

18 (d) A person commits the offense of murder in the second degree when, in the commission
19 of cruelty to children in the second degree, he or she causes the death of another human
20 being irrespective of malice.

21 ~~(d)~~(e)(1) A person convicted of the offense of murder shall be punished by death, by
22 imprisonment for life without parole, or by imprisonment for life.

23 (2) A person convicted of the offense of murder in the second degree shall be punished
24 by imprisonment for not less than ten nor more than 30 years."

PART II

SECTION 2-1.

27 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 28 paragraph (3) of subsection (b) of Code Section 15-1-16, relating to mental health court
 29 divisions, as follows:

30 "(3) Each mental health court division shall establish a planning group to develop a
 31 written work plan. The planning group shall include judges, prosecuting attorneys,
 32 sheriffs or their designees, public defenders, probation officers, and persons having
 33 expertise in the field of mental health. The work plan shall address the operational,
 34 coordination, resource, information management, and evaluation needs of the mental
 35 health court division. The work plan shall include mental health court division policies
 36 and practices related to implementing the standards and practices developed pursuant to
 37 paragraph (4) of this subsection. The work plan shall ensure a risk and needs assessment
 38 is used to identify the likelihood of recidivating and identify the needs that, when met,
 39 reduce recidivism. The work plan shall ensure that mental health court division eligibility
 40 shall be focused on moderate-risk and high-risk offenders as determined by a risk and
 41 needs assessment. The mental health court division shall combine judicial supervision,
 42 treatment of mental health court division participants, and drug and mental health testing.
 43 Defendants charged with murder, murder in the second degree, armed robbery, rape,
 44 aggravated sodomy, aggravated sexual battery, aggravated child molestation, or child
 45 molestation shall not be eligible for entry into the mental health court division, except in
 46 the case of a separate court supervised reentry program designed to more closely monitor
 47 mentally ill offenders returning to the community after having served a term of
 48 incarceration. Any such court supervised community reentry program for mentally ill
 49 offenders shall be subject to the work plan as provided for in this paragraph."

SECTION 2-2.

51 Said title is further amended by revising paragraphs (2) and (4) of subsection (a) of Code
 52 Section 15-11-203, relating to when reasonable efforts by DFCS are not required, as follows:

53 "(2) Has been convicted of the murder or murder in the second degree of another child
 54 of such parent;"

55 "(4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to
 56 commit murder, murder in the second degree, or voluntary manslaughter of another child
 57 of such parent;"

58 **SECTION 2-3.**

59 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section
60 15-11-233, relating to termination of parental rights, as follows:

61 "(3) The court has made a determination that the parent of a child adjudicated as a
62 dependent child has been convicted of:

63 (A) The murder of another child of such parent;

64 (B) Murder in the second degree of another child of such parent;

65 ~~(B)~~(C) Voluntary manslaughter of another child of such parent;

66 ~~(C)~~(D) Voluntary manslaughter of the other parent of such child;

67 ~~(D)~~(E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or
68 voluntary manslaughter of another child of such parent;

69 ~~(E)~~(F) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or
70 voluntary manslaughter of the other parent of such child; or

71 ~~(F)~~(G) Committing felony assault that has resulted in serious bodily injury to such
72 child or to another child of such parent."

73 **SECTION 2-4.**

74 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section
75 15-11-560, relating to concurrent and original jurisdiction of superior court, as follows:

76 "(b) The superior court shall have exclusive original jurisdiction over the trial of any child
77 13 to 17 years of age who is alleged to have committed any of the following offenses:

78 (1) Murder;

79 (2) Murder in the second degree;

80 ~~(2)~~(3) Voluntary manslaughter;

81 ~~(3)~~(4) Rape;

82 ~~(4)~~(5) Aggravated sodomy;

83 ~~(5)~~(6) Aggravated child molestation;

84 ~~(6)~~(7) Aggravated sexual battery; or

85 ~~(7)~~(8) Armed robbery if committed with a firearm."

86 **SECTION 2-5.**

87 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
88 amended by revising subsection (e) of Code Section 16-11-131, relating to possession of
89 firearms by convicted felons and first offender probationers, as follows:

90 "(e) As used in this Code section, the term 'forcible felony' means any felony which
91 involves the use or threat of physical force or violence against any person and further
92 includes, without limitation, murder; ~~felony~~ murder in the second degree; burglary in any

93 degree; robbery; armed robbery; kidnapping; hijacking of an aircraft or motor vehicle;
 94 aggravated stalking; rape; aggravated child molestation; aggravated sexual battery; arson
 95 in the first degree; the manufacturing, transporting, distribution, or possession of explosives
 96 with intent to kill, injure, or intimidate individuals or destroy a public building; terroristic
 97 threats; or acts of treason or insurrection."

98 **SECTION 2-6.**

99 Said title is further amended by revising subsection (b) of Code Section 16-11-133, relating
 100 to minimum periods of confinement for persons convicted who have prior convictions, as
 101 follows:

102 "(b) Any person who has previously been convicted of or who has previously entered a
 103 guilty plea to the offense of murder, murder in the second degree, armed robbery,
 104 kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual
 105 battery, or any felony involving the use or possession of a firearm and who shall have on
 106 or within arm's reach of his or her person a firearm during the commission of, or the
 107 attempt to commit:

108 (1) Any crime against or involving the person of another;

109 (2) The unlawful entry into a building or vehicle;

110 (3) A theft from a building or theft of a vehicle;

111 (4) Any crime involving the possession, manufacture, delivery, distribution, dispensing,
 112 administering, selling, or possession with intent to distribute any controlled substance as
 113 provided in Code Section 16-13-30; or

114 (5) Any crime involving the trafficking of cocaine, marijuana, or illegal drugs as
 115 provided in Code Section 16-13-31,

116 and which crime is a felony, commits a felony and, upon conviction thereof, shall be
 117 punished by confinement for a period of 15 years, such sentence to run consecutively to
 118 any other sentence which the person has received."

119 **SECTION 2-7.**

120 Said title is further amended by revising paragraph (5) of subsection (b) of Code Section
 121 16-12-1.1, relating to child, family, or group-care facility operators prohibited from
 122 employing or allowing to reside or be domiciled persons with certain past criminal violations,
 123 as follows:

124 "(5) A violation of Code Section 16-5-1, ~~relating to murder;~~"

125 **SECTION 2-8.**

126 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
127 subparagraph (a)(2)(A) of Code Section 31-2-9, relating to records check requirement for
128 certain facilities, as follows:

129 "(A) A violation of Code Section 16-5-1, ~~relating to murder and felony murder;~~"

130 **SECTION 2-9.**

131 Said title is further amended by revising subparagraph (H) of paragraph (2) of Code Section
132 31-7-250, relating to definitions for facility licensing and employee records checks, as
133 follows:

134 "(H) A violation of Code Section 16-5-1, ~~relating to murder and felony murder;~~"

135 **SECTION 2-10.**

136 Code Section 35-3-190 of the Official Code of Georgia Annotated, relating to the state-wide
137 alert system for unapprehended murder or rape suspects determined to be serious public
138 threats, is amended by revising subsection (c) as follows:

139 "(c) The director shall develop and implement a state-wide alert system to be activated
140 when a suspect for the crime of murder, felony murder, or murder in the second degree as
141 defined in Code Section 16-5-1 or rape as defined in Code Section 16-6-1 has not been
142 apprehended and law enforcement personnel have determined that the suspect may be a
143 serious threat to the public."

144 **SECTION 2-11.**

145 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
146 by revising Code Section 42-5-85, relating to leave privileges of inmates serving murder
147 sentences, as follows:

148 "42-5-85.

149 (a) As used in this Code section ~~only~~, the term:

150 (1) 'Aggravating ~~'aggravating~~ circumstance' means that:

151 ~~(1)(A)~~ (A) The murder was committed by a person with a prior record of conviction for a
152 capital felony;

153 ~~(2)(B)~~ (B) The murder was committed while the offender was engaged in the commission
154 of another capital felony, aggravated battery, burglary in any degree, or arson in the
155 first degree;

156 ~~(3)(C)~~ (C) The offender, by his or her act of murder, knowingly created a great risk of
157 death to more than one person in a public place by means of a weapon or device which
158 would normally be hazardous to the lives of more than one person;

- 159 (4)(D) The offender committed the murder for himself, herself, or another, for the
 160 purpose of receiving money or any other thing of monetary value;
- 161 (5)(E) The murder of a judicial officer, former judicial officer, district attorney or
 162 solicitor-general, or former district attorney, solicitor, or solicitor-general was
 163 committed during or because of the exercise of his or her official duties;
- 164 (6)(F) The offender caused or directed another to commit murder or committed murder
 165 as an agent or employee of another person;
- 166 (7)(G) The murder was outrageously or wantonly vile, horrible, or inhuman in that it
 167 involved torture, depravity of mind, or an aggravated battery to the victim;
- 168 (8)(H) The murder was committed against any peace officer, corrections employee, or
 169 firefighter while engaged in the performance of his or her official duties;
- 170 (9)(I) The murder was committed by a person in, or who has escaped from, the lawful
 171 custody of a peace officer or place of lawful confinement; or
- 172 (10)(J) The murder was committed for the purpose of avoiding, interfering with, or
 173 preventing a lawful arrest or custody in a place of lawful confinement of himself,
 174 herself, or another.

175 (2) 'Murder' means a violation of Code Section 16-5-1.

- 176 (b) No special leave, emergency leave, or limited leave privileges shall be granted to any
 177 inmate who is serving a murder sentence unless the commissioner has approved in writing
 178 a written finding by the department that the murder did not involve any aggravating
 179 circumstance.
- 180 (c) The department shall make a finding that a murder did not involve an aggravating
 181 circumstance only after an independent review of the record of the trial resulting in the
 182 conviction or of the facts upon which the conviction was based."

183 **SECTION 2-12.**

184 Said title is further amended by revising subsection (g) of Code Section 42-9-45, relating to
 185 general rule-making power, as follows:

186 "(g) No inmate serving a sentence for murder, murder in the second degree, armed robbery,
 187 kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual
 188 battery shall be released on parole for the purpose of regulating jail or prison populations."

189 **SECTION 2-13.**

190 Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to records check
 191 requirements for the Department of Human Services, is amended by revising subparagraph
 192 (a)(2)(A) as follows:

193 "(A) A violation of Code Section 16-5-1, ~~relating to murder and felony murder;~~"

194

PART 3

195

SECTION 3-1.

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