

House Bill 271 (AS PASSED HOUSE AND SENATE)

By: Representatives Neal of the 2nd, Lindsey of the 54th, Meadows of the 5th, Oliver of the 82nd, Abrams of the 89th, 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 amend Chapter 6 of Title 17 of the Official Code of Georgia
9 Annotated, relating to bonds and recognizances, so as to provide for forms of collateral
10 required for professional bonding companies; to change certain provisions relating to fees
11 for sureties; to provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART I**
14 **SECTION 1-1.**

15 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
16 amended by revising subsections (c) and (d) and adding a new subsection to Code Section
17 16-5-1, relating to murder and felony murder, as follows:

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

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

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

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

27 **PART II**

28 **SECTION 2-1.**

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

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

52 **SECTION 2-2.**

53 Said title is further amended by revising paragraph (2) of subsection (a) of Code Section
 54 15-11-203, relating to when reasonable efforts by DFCS are not required, as follows:

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

57 **SECTION 2-3.**

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

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

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

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

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

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

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

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

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

72 **SECTION 2-4.**

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

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

77 (1) Murder;

78 (2) Murder in the second degree;

79 ~~(2)~~(3) Voluntary manslaughter;

80 ~~(3)~~(4) Rape;

81 ~~(4)~~(5) Aggravated sodomy;

82 ~~(5)~~(6) Aggravated child molestation;

83 ~~(6)~~(7) Aggravated sexual battery; or

84 ~~(7)~~(8) Armed robbery if committed with a firearm."

85 **SECTION 2-5.**

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

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

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

97 **SECTION 2-6.**

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

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

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

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

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

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

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

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

118 **SECTION 2-7.**

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

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

124 **SECTION 2-8.**

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

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

129 **SECTION 2-9.**

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

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

134 **SECTION 2-10.**

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

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

143 **SECTION 2-11.**

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

147 "42-5-85.

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

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

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

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

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

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

194 **PART III**
195 **SECTION 3-1.**

196 Chapter 6 of Title 17 of the Official Code of Georgia Annotated, relating to bonds and
197 recognizances, is amended by revising subparagraph (b)(1)(E) of Code Section 17-6-15,
198 relating to the necessity for commitment where bail tendered and accepted, as follows:

199 "(E) Establishment of a cash escrow account or other form of collateral ~~in a sum and~~
200 ~~upon terms and conditions approved by the sheriff,~~ as follows:

201 (i) For any professional bonding company that is new to the county or that has
202 operated continuously in the county for less than 18 months, in an amount and upon
203 terms and conditions as determined and approved by the sheriff;

204 (ii) Once a professional bonding company has operated continuously for 18 months
205 or longer in the county, then any such cash escrow account or other form of collateral
206 shall not exceed 10 percent of the current outstanding bail bond liability of the
207 professional bonding company; and

208 (iii) No professional bonding company shall purchase an insurance policy in lieu of
209 establishing a cash escrow account or posting other collateral; provided, however,
210 that any professional bonding company which was using an insurance policy as
211 collateral as of December 31, 2013, may continue to do so at the discretion of the
212 sheriff."

213 **SECTION 3-2**

214 Said chapter is further amended by revising subsection (a) of Code Section 17-6-30, relating
215 to fees of sureties, as follows:

216 "(a) Sureties on criminal bonds in any court shall not charge or receive more than ~~12~~
217 ~~percent of the face amount of the bond set in the amount of \$10,000.00 or less, which~~
218 ~~amount includes the principal and all applicable surcharges, and shall not charge or~~
219 ~~receive more than 15 percent of the face amount of the bond set in an amount in excess~~
220 ~~of \$10,000.00, which amount includes the principal and all applicable surcharges, as~~
221 ~~compensation from defendants or from anyone acting for defendants; provided, however,~~
222 that a surety may charge and receive a minimum of \$50.00 per bonded charge or offense
223 as compensation, regardless of whether such compensation exceeds 15 percent of the face
224 amount of any bond set."

225

PART IV

226

SECTION 4-1.

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