

House Bill 874

By: Representatives Reeves of the 34th, Golick of the 40th, Efstration of the 104th, Strickland of the 111th, Ramsey of the 72nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 9 of Chapter 11 of Title 15, Title 16, Chapter 4 of Title 24, and Code
2 Section 42-5-18 of the Official Code of Georgia Annotated, relating to access to hearings and
3 records, crimes and offenses, relevant evidence and its limits, and items prohibited for
4 possession by inmates, respectively, so as to improve the ability to prosecute street gang
5 terrorism; to provide for the admissibility of juvenile adjudications under certain
6 circumstances; to change the elements of the offense of tampering with evidence; to clarify
7 provisions relating to terroristic threats and acts; to provide for misdemeanor punishment of
8 terroristic threats under certain circumstances; to correct a cross-reference; to revise a
9 definition; to change provisions relating to the prohibition on participating in criminal street
10 gang activity; to increase penalties for unlawful activities connected with criminal street gang
11 activity and provide for mandatory minimum terms of imprisonment; to change provisions
12 relating to the admissibility of evidence of the existence of criminal street gangs; to provide
13 for the admissibility of similar transaction evidence in prosecutions for criminal street gang
14 activity; to increase penalties for providing items prohibited for possession by inmates and
15 provide for mandatory minimum terms of imprisonment; to provide for related matters; to
16 repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

19 Article 9 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
20 access to hearings and records, is amended by revising Code Section 15-11-703, relating to
21 the use of disposition and evidence, as follows:

22 "15-11-703.

23 Except as provided in subsection (d) of Code Section 24-6-609, the disposition of a child
24 and evidence adduced in a hearing in the juvenile court ~~may~~ shall not be used against such
25 child in any proceeding in any court other than as provided in Code Section 16-15-9 or for
26 a proceeding for delinquency or a child in need of services, whether before or after

27 reaching 18 years of age, except in the establishment of conditions of bail, plea
 28 negotiations, and sentencing in criminal offenses; and, in such excepted cases, such records
 29 of dispositions and evidence shall be available to prosecuting attorneys, superior or state
 30 court judges, and the accused and may be used in the same manner as adult records."

31 **SECTION 2.**

32 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 33 amended by revising Code Section 16-10-94, relating to tampering with evidence, as follows:

34 "16-10-94.

35 (a) A person commits the offense of tampering with evidence when, with the intent to
 36 prevent the apprehension or cause the wrongful apprehension of any person or to obstruct
 37 the prosecution or defense of any person, he or she knowingly destroys, alters, conceals,
 38 or disguises physical evidence or makes, devises, prepares, or plants false evidence.

39 (b) Nothing in this Code section shall be deemed to abrogate or alter any privilege which
 40 any person is entitled to claim under existing laws.

41 (c) ~~Except as otherwise provided in this subsection, any~~ Any person who violates
 42 ~~subsection (a) of this Code section involving the prosecution or defense of a felony:~~

43 (1) Felony and involving himself, herself, or another person shall be guilty of a felony
 44 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
 45 more than three years; provided, however, that any person who violates subsection (a) of
 46 this Code section involving the prosecution or defense of a serious

47 (2) Serious violent felony as defined in subsection (a) of Code Section 17-10-6.1 and
 48 involving himself, herself, or another person shall be guilty of a felony and, upon
 49 conviction thereof, shall be punished by imprisonment for not less than one nor more than
 50 ten years. ~~Except as otherwise provided in this subsection, any person who violates~~
 51 ~~subsection (a) of this Code section involving the prosecution or defense of a~~
 52 ~~misdemeanor; and~~

53 (3) Misdemeanor and involving himself, herself, or another person shall be guilty of a
 54 misdemeanor."

55 **SECTION 3.**

56 Said title is further amended by revising Code Section 16-11-37, relating to terroristic threats
 57 and acts and penalties, as follows:

58 "16-11-37.

59 (a) As used in this Code section, the term 'hazardous substance' shall have the same
 60 meaning as set forth in Code Section 12-8-92.

61 (b)(1) A person commits the offense of a terroristic threat when he or she threatens to
 62 ~~commit:~~

63 (A) Commit any crime of violence, ~~to release;~~

64 (B) Release any hazardous substance, ~~as such term is defined in Code Section 12-8-92,~~
 65 ~~or to burn; or~~

66 (C) Burn or damage property ~~with.~~

67 (2) Such threat shall be made:

68 (A) With the purpose of terrorizing another ~~or;~~

69 (B) With the purpose of causing the evacuation of a building, place of assembly, or
 70 facility of public transportation ~~or;~~

71 (C) With the purpose of otherwise causing serious public inconvenience; ~~or in~~

72 (D) In reckless disregard of the risk of causing ~~such the~~ terror, evacuation, or
 73 inconvenience described in subparagraph (A), (B), or (C) of this paragraph.

74 (3) No person shall be convicted under this subsection on the uncorroborated testimony
 75 of the party to whom the threat is communicated.

76 ~~(b)(c)~~ (c) A person commits the offense of a terroristic act when:

77 (1) He or she uses a burning or flaming cross or other burning or flaming symbol or
 78 flambeau with the intent to terrorize another or another's household;

79 (2) While not in the commission of a lawful act, he or she shoots at or throws an object
 80 at a conveyance which is being operated or which is occupied by passengers; or

81 (3) He or she releases any hazardous substance or any simulated hazardous substance
 82 under the guise of a hazardous substance ~~for:~~

83 (A) For the purpose of terrorizing another ~~or;~~

84 (B) For the purpose of causing the evacuation of a building, place of assembly, or
 85 facility of public transportation ~~or;~~

86 (C) For the purpose of otherwise causing serious public inconvenience; ~~or in~~

87 (D) In reckless disregard of the risk of causing ~~such the~~ terror, evacuation, or
 88 inconvenience described in subparagraph (A), (B), or (C) of this paragraph.

89 ~~(e)(d)(1)~~ (d)(1) A person convicted of the offense of a terroristic threat shall be punished as for
 90 a misdemeanor; provided, however, that if the threat suggested the death of the threatened
 91 individual, the person convicted shall be guilty of a felony and shall be punished by a fine
 92 of not more than \$1,000.00, or by imprisonment for not less than one nor more than five
 93 years, or both.

94 (2) A person convicted of the offense of a terroristic act shall be punished by a fine of
 95 not more than \$5,000.00, ~~or by~~ imprisonment for not less than one nor more than ten
 96 years, or both; provided, however, that if any person suffers a serious physical injury as
 97 a direct result of an act giving rise to a conviction under subsection (b) of this Code

98 section, the person so convicted shall be punished by a fine of not more than
 99 \$250,000.00, ~~or~~ imprisonment for not less than five nor more than 40 years, or both.

100 ~~(d)~~(e) A person who commits or attempts to commit a ~~terroristic threat or act~~ violation of
 101 subsection (b) or (c) of this Code section shall, upon conviction thereof, be punished by a
 102 fine of not less than \$50,000.00, imprisonment for not less than ten nor more than 20 years,
 103 or both, when such act is done with the intent to retaliate against any person for or
 104 intimidate, threaten, or dissuade any person from:

105 (1) Attending a judicial or administrative proceeding as a witness, attorney, judge, clerk
 106 of court, deputy clerk of court, court reporter, community supervision officer, county or
 107 Department of Juvenile Justice juvenile probation officer, probation officer serving
 108 pursuant to Article 6 of Chapter 8 of Title 42, or party or producing any record,
 109 document, or other object in a judicial or official proceeding; or

110 (2) Providing to a law enforcement officer, community supervision officer, county or
 111 Department of Juvenile Justice juvenile probation officer, probation officer serving
 112 pursuant to Article 6 of Chapter 8 of Title 42, prosecuting attorney, or judge any
 113 information relating to the commission or possible commission of an offense under the
 114 laws of this state or of the United States or a violation of conditions of bail, pretrial
 115 release, probation, or parole.

116 ~~shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall~~
 117 ~~be punished, for a terroristic threat, by imprisonment for not less than five nor more than~~
 118 ~~ten years or by a fine of not less than \$50,000.00, or both, and, for a terroristic act, by~~
 119 ~~imprisonment for not less than five nor more than 20 years or by a fine of not less than~~
 120 ~~\$100,000.00, or both."~~

121 SECTION 4.

122 Said title is further amended by revising Code Section 16-11-37.1, relating to dissemination
 123 of information relating to terroristic acts, as follows:

124 "16-11-37.1.

125 It shall be unlawful for any person knowingly to furnish or disseminate through a computer
 126 or computer network any picture, photograph, drawing, or similar visual representation or
 127 verbal description of any information designed to encourage, solicit, or otherwise promote
 128 terroristic acts as defined in Code Section 16-11-37. Any person convicted for violation
 129 of this Code section shall be guilty of a misdemeanor of a high and aggravated nature;
 130 provided, however, that if such act is in violation of paragraph (1) of subsection ~~(d)~~ (e) of
 131 Code Section 16-11-37, the person convicted shall be guilty of a felony and shall be
 132 punished by imprisonment for not less than one nor more than ten years or by a fine not to
 133 exceed \$100,000.00 or both."

134 **SECTION 5.**

135 Said title is further amended by revising paragraph (2) of Code Section 16-15-3, relating to
 136 definitions, as follows:

137 "(2) 'Criminal street gang' means any organization, association, or group of three or more
 138 persons associated in fact, whether formal or informal, which engages in criminal gang
 139 activity ~~as defined in paragraph (1) of this Code section.~~ The existence of such
 140 organization, association, or group of individuals associated in fact may be established
 141 by evidence of a common name or common identifying signs, symbols, tattoos, graffiti,
 142 or attire or other distinguishing characteristics, including, but not limited to, common
 143 activities, customs, or behaviors. Such term shall not include three or more persons,
 144 associated in fact, whether formal or informal, who are not engaged in criminal gang
 145 activity."

146 **SECTION 6.**

147 Said title is further amended by revising Code Section 16-15-4, relating to the prohibition of
 148 participating in criminal gang activity, as follows:

149 "16-15-4.

150 (a) It shall be unlawful for any person employed by or associated with a criminal street
 151 gang to conduct or participate in criminal gang activity through the commission of any
 152 offense enumerated in paragraph (1) of Code Section 16-15-3.

153 (b) It shall be unlawful for any person to encourage another to become a member or
 154 associate of a criminal street gang, to participate in a criminal street gang, or to conduct or
 155 participate in criminal gang activity.

156 ~~(b)~~(c) It shall be unlawful for any person to commit any offense enumerated in paragraph
 157 (1) of Code Section 16-15-3 with the intent to obtain or earn membership or maintain or
 158 increase his or her status or position in a criminal street gang.

159 ~~(c)~~(d) It shall be unlawful for any person to acquire or maintain, directly or indirectly,
 160 through criminal gang activity or proceeds derived therefrom any interest in or control of
 161 any real or personal property of any nature, including money.

162 ~~(d)~~(e) It shall be unlawful for any person who occupies a position of organizer, supervisory
 163 position, or any other position of management or leadership with regard to a criminal street
 164 gang to engage in, directly or indirectly, or conspire to engage in criminal gang activity.

165 ~~(e)~~(f) It shall be unlawful for any person to cause, ~~encourage~~, solicit, recruit, or coerce
 166 another to become a member or associate of a criminal street gang, to participate in a
 167 criminal street gang, or to conduct or participate in criminal gang activity.

168 ~~(f)~~(g) It shall be unlawful for any person to communicate, directly or indirectly, with
 169 another any threat of injury or damage to the person or property of the other person or of

170 any associate or relative of the other person with the intent to deter such person from
 171 assisting a member or associate of a criminal street gang to withdraw from such criminal
 172 street gang.

173 ~~(g)~~(h) It shall be unlawful for any person to communicate, directly or indirectly, with
 174 another any threat of injury or damage to the person or property of the other person or of
 175 any associate or relative of the other person with the intent to punish or retaliate against
 176 such person for having withdrawn from a criminal street gang.

177 ~~(h)~~(i) It shall be unlawful for any person to communicate, directly or indirectly, with
 178 another any threat of injury or damage to the person or property of the other person or of
 179 any associate or relative of the other person with the intent to punish or retaliate against
 180 such person for refusing to or encouraging another to refuse to become or obtain the status
 181 of a member or associate of a criminal street gang.

182 ~~(i)~~(j) It shall be unlawful for any person to communicate, directly or indirectly, with
 183 another any threat of injury or damage to the person or property of the other person or of
 184 any associate or relative of the other person with the intent to punish or retaliate against
 185 such person for providing statements or testimony against criminal street gangs or any
 186 criminal street gang member or associate.

187 ~~(j)~~(k) In addition to the prohibitions set forth in Code Section 16-10-93, it shall be
 188 unlawful for any person to communicate, directly or indirectly, with another any threat of
 189 injury or damage to the person or property of the other person or of any associate or
 190 relative of the other person with the intent to intimidate, deter, or prevent such person from
 191 communicating to any law enforcement or corrections officer, prosecuting attorney, or
 192 judge information relating to criminal street gangs, criminal street gang members or
 193 associates, or criminal gang activity.

194 ~~(k)~~(l)(1) Any person who violates subsection (a), (b), ~~or~~ (c), or (d) of this Code section
 195 shall be guilty of a felony and, upon conviction thereof, in addition to any other penalty
 196 imposed ~~by law,~~ be punished by sentenced to imprisonment for not less than five nor
 197 more than ~~15~~ 20 years or by a fine of not less than \$10,000.00 nor more than \$15,000.00,
 198 or both.

199 (2) Any person who violates subsection (a) of this Code section through the commission
 200 of a violation of Code Section 42-5-18 shall be guilty of a felony and upon conviction
 201 thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory
 202 minimum term of imprisonment of five years but not more than 20 years which shall be
 203 served consecutively to any other sentence imposed, and no portion of the mandatory
 204 minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld
 205 by the sentencing court.

206 ~~(2)~~(3) Any person who violates subsection ~~(d)~~ (e) of this Code section ~~may~~ shall be
 207 guilty of a felony and upon conviction thereof, in addition to any other penalty ~~provided~~
 208 ~~by law, be punished by~~ imposed, shall be sentenced to a mandatory term of imprisonment
 209 ~~for an additional ten of five years but not more than 20~~ years which shall be served
 210 consecutively to any other sentence imposed, ~~on such person by law and no portion of the~~
 211 mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred,
 212 or withheld by the sentencing court.

213 ~~(3)~~(4) Any person who violates subsection ~~(e)~~, (f), (g), (h), (i), ~~or~~ (j), or (k) of this Code
 214 section shall be guilty of a felony and upon conviction thereof, in addition to any other
 215 penalty ~~provided by law, be punished by~~ imposed, shall be sentenced to a mandatory term
 216 of imprisonment for not less than three nor more than ten of five years but not more than
 217 20 years, and no portion of the mandatory minimum sentence imposed shall be
 218 suspended, stayed, probated, deferred, or withheld by the sentencing court.

219 ~~(f)~~(m) In addition to any other penalty provided by this Code section, all sentences
 220 imposed under this Code section shall require as a special condition of the sentence that the
 221 person sentenced shall not knowingly have contact of any kind or character with any other
 222 member or associate of a criminal street gang, shall not participate in any criminal gang
 223 activity, and, in cases involving a victim, shall not knowingly have contact of any kind or
 224 character with any such victim or any member of any such victim's family or household.

225 ~~(m)~~(n) Any crime committed in violation of this Code section shall be considered a
 226 separate offense."

227 SECTION 7.

228 Said title is further amended by revising Code Section 16-15-9, relating to commission of
 229 offense admissible as evidence of existence of criminal street gang and criminal gang
 230 activity, as follows:

231 "16-15-9.

232 The commission of any offense enumerated in paragraph (1) of Code Section 16-15-3 or
 233 an adjudication or conviction for criminal gang activity by any member or associate of a
 234 criminal street gang shall be admissible in any trial or proceeding for the purpose of
 235 proving the existence of ~~the~~ a criminal street gang and criminal gang activity. The court
 236 shall not exclude evidence of the commission of criminal gang activity or an adjudication
 237 or conviction for criminal gang activity as hearsay."

238 SECTION 8.

239 Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to relevant evidence
 240 and its limits, is amended by adding a new Code section to read as follows:

241 "24-4-418.

242 (a) In a criminal proceeding in which the accused is accused of conducting or participating
 243 in criminal gang activity in violation of Code Section 16-15-4, evidence of the accused's
 244 commission of criminal gang activity, as such term is defined in Code Section 16-15-3,
 245 shall be admissible and may be considered for its bearing on any matter to which it is
 246 relevant.

247 (b) In a proceeding in which the prosecution intends to offer evidence under this Code
 248 section, the prosecutor shall disclose such evidence to the accused, including statements
 249 of witnesses or a summary of the substance of any testimony that is expected to be offered,
 250 at least ten days in advance of trial, unless the time is shortened or lengthened or pretrial
 251 notice is excused by the judge upon good cause shown.

252 (c) This Code section shall not be the exclusive means to admit or consider evidence
 253 described in this Code section."

254 **SECTION 9.**

255 Code Section 42-5-18 of the Official Code of Georgia Annotated, relating to items prohibited
 256 for possession by inmates, is amended by revising subsection (d) as follows:

257 "(d)(1) An inmate ~~A person~~ who commits or attempts to commit a violation of subsection
 258 (c) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be
 259 imprisoned for not less than one nor more than five years; provided, however, if a ~~person~~
 260 an inmate violates this Code section while being held pursuant to an arrest or conviction
 261 for a misdemeanor offense, the possession of a telecommunications device in violation
 262 of this Code section shall be treated as a misdemeanor.

263 (2) A person who commits or attempts to commit a violation of subsection (b) of this
 264 Code section shall be guilty of a felony and, upon conviction thereof, shall be sentenced
 265 to a mandatory minimum term of imprisonment of two years but not more than five years,
 266 and no portion of the mandatory minimum sentence imposed shall be suspended, stayed,
 267 probated, deferred, or withheld by the sentencing court."

268 **SECTION 10.**

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