

House Bill 424

By: Representatives Silcox of the 52nd, Cooper of the 43rd, Kelley of the 16th, and Gravley of the 67th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-15-3 of the Official Code of Georgia Annotated, relating to
2 definitions regarding street gang terrorism and prevention, so as to include certain sex crimes
3 into the definition of criminal gang activity; to revise a definition; to amend Title 24 of the
4 Official Code of Georgia Annotated, relating to evidence, so as to revise rules pertaining to
5 the admissibility of a complainant's past sexual behavior in prosecutions for certain sexual
6 offenses; to provide for exceptions; to provide for related matters; to provide for
7 applicability; to provide for an effective date; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Code Section 16-15-3 of the Official Code of Georgia Annotated, relating to definitions
11 regarding street gang terrorism and prevention, is amended by revising paragraph (1) as
12 follows:
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14 "(1) 'Criminal gang activity' means the commission, attempted commission, conspiracy
15 to commit, or solicitation, coercion, or intimidation of another person to commit any of
16 the following offenses on or after July 1, 2006:

17 (A) Any offense defined as racketeering activity by Code Section 16-14-3;

18 (B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;

19 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,
20 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;

21 (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and
22 other offenses related to confinement;

23 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous
24 instrumentalities and practices;

25 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or
26 42-5-19, relating to the security of state or county correctional facilities;

- 27 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging
 28 a child to escape from custody;
- 29 (H) Any offense of criminal trespass or criminal damage to property resulting from any
 30 act of gang related painting on, tagging, marking on, writing on, or creating any form
 31 of graffiti on the property of another;
- 32 (I) Any criminal offense committed in violation of the laws of the United States or its
 33 territories, dominions, or possessions, any of the several states, or any foreign nation
 34 which, if committed in this state, would be considered criminal gang activity under this
 35 Code section; ~~and~~
- 36 (J) Any criminal offense in the State of Georgia, any other state, or the United States
 37 that involves violence, possession of a weapon, or use of a weapon, whether designated
 38 as a felony or not, and regardless of the maximum sentence that could be imposed or
 39 actually was imposed; and
- 40 (K) Any offense defined in Code Section 16-5-46 as trafficking persons for labor
 41 servitude or sexual servitude, 16-6-10 as keeping a place of prostitution, 16-6-11 as
 42 pimping, or 16-6-12 as pandering."

43 SECTION 2.

44 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
 45 revising Code Section 24-4-412, relating to complainant's past sexual behavior not
 46 admissible in prosecutions for certain sexual offenses and exceptions, as follows:

47 "24-4-412.

- 48 (a) In any prosecution for ~~rape in violation of Code Section 16-6-1; aggravated assault~~
 49 ~~with the intent to rape in violation of Code Section 16-5-21; aggravated sodomy or sodomy~~
 50 ~~in violation of Code Section 16-6-2; statutory rape in violation of Code Section 16-6-3;~~
 51 ~~aggravated child molestation or child molestation in violation of Code Section 16-6-4;~~
 52 ~~incest in violation of Code Section 16-6-22; sexual battery in violation of Code Section~~
 53 ~~16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2~~ alleged
 54 sexual misconduct, evidence relating to the past sexual behavior of the complaining witness
 55 shall not be admissible, either as direct evidence or on cross-examination of the
 56 complaining witness or other witnesses, except as provided in this Code section. For the
 57 purposes of this Code section, evidence of past sexual behavior includes, but is not limited
 58 to, evidence of the complaining witness's marital history, mode of dress, general reputation
 59 for promiscuity, nonchastity, or sexual mores contrary to the community standards.
- 60 (b) In any prosecution for ~~rape in violation of Code Section 16-6-1; aggravated assault~~
 61 ~~with the intent to rape in violation of Code Section 16-5-21; aggravated sodomy or sodomy~~
 62 ~~in violation of Code Section 16-6-2; statutory rape in violation of Code Section 16-6-3;~~

63 ~~aggravated child molestation or child molestation in violation of Code Section 16-6-4;~~
 64 ~~incest in violation of Code Section 16-6-22; sexual battery in violation of Code Section~~
 65 ~~16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2, evidence~~
 66 ~~relating to the past sexual behavior of the complaining witness may be introduced if alleged~~
 67 ~~sexual misconduct, the court may admit the following evidence relating to the past sexual~~
 68 ~~behavior of the complaining witness, following the procedure described in subsection (c)~~
 69 ~~of this Code section, finds that the past sexual behavior directly involved the participation~~
 70 ~~of the accused and finds that the evidence expected to be introduced supports an inference~~
 71 ~~that the accused could have reasonably believed that the complaining witness consented~~
 72 ~~to the conduct complained of in the prosecution:~~

73 (1) Evidence of specific instances of a victim's or complaining witness's sexual behavior,
 74 if offered to prove that someone other than the defendant was the source of semen, injury,
 75 or other physical evidence;

76 (2) Evidence of specific instances of a victim's or complaining witness's sexual behavior
 77 with respect to the defendant if offered by the defendant to prove consent;

78 (3) Evidence of specific instances of a victim's or complaining witness's sexual behavior
 79 with respect to the defendant or another person if offered by the prosecutor; and

80 (4) Evidence whose exclusion would violate the defendant's constitutional rights.

81 (c) The procedure for introducing evidence as described in subsection (b) of this Code
 82 section shall be as follows:

83 ~~(1) At the time the defense seeks to introduce evidence which would be covered by~~
 84 ~~subsection (b) of this Code section, the defense shall notify the court of such intent,~~
 85 ~~whereupon the court shall conduct an in-camera hearing to examine the accused's offer~~
 86 ~~of proof~~ If a party intends to offer evidence under subsection (b), the party must:

87 (A) File a motion that specifically describes the evidence and states the purpose for
 88 which it is to be offered;

89 (B) Do so at least 14 days before trial unless the court, for good cause, sets a different
 90 date;

91 (C) Serve the motion on all parties; and

92 (D) Notify the victim, or when appropriate, the victim's or complaining witness's
 93 guardian or representative; and

94 ~~(2) At the conclusion of the hearing, if the court finds that any of the evidence introduced~~
 95 ~~at the hearing is admissible under subsection (b) of this Code section or is so highly~~
 96 ~~material that it will substantially support a conclusion that the accused reasonably~~
 97 ~~believed that the complaining witness consented to the conduct complained of and that~~
 98 ~~justice mandates the admission of such evidence, the court shall by order state what~~

99 ~~evidence may be introduced by the defense at the trial of the case and in what manner the~~
 100 ~~evidence may be introduced; and~~
 101 (3)(2) Before admitting the evidence under this Code section, the court shall conduct an
 102 in camera hearing and give the victim or complaining witness and parties a right to attend
 103 and be heard. Unless the court orders otherwise, the motion, related materials, and the
 104 record of the hearing shall be and shall remain sealed ~~The defense may then introduce~~
 105 ~~evidence pursuant to the order of the court."~~

106 **SECTION 3.**

107 Said title is further amended by revising Code Section 24-8-820, relating to testimony as to
 108 child's description of sexual contact or physical abuse, as follows:

109 "24-8-820.

110 (a) A statement made by a child younger than 16 years of age describing any act of sexual
 111 contact or physical abuse performed with or on such child by another or with or on another
 112 in the presence of such child shall be admissible in evidence by the testimony of the person
 113 to whom made if the proponent of such statement provides notice to the adverse party prior
 114 to trial of the intention to use such out-of-court statement and such child testifies at the
 115 trial, unless the adverse party forfeits or waives such child's testimony as provided in this
 116 title, and, at the time of the testimony regarding the out-of-court statements, the person to
 117 whom the child made such statement is subject to cross-examination regarding the
 118 out-of-court statements.

119 (b) This Code section shall apply to any motion made or hearing or trial commenced on
 120 or after the effective date of this subsection."

121 **SECTION 4.**

122 Section 1 of this Act shall apply to offenses occurring on or after the effective date of this
 123 Act. Sections 2 and 3 of this Act shall apply to any motion made or hearing or trial
 124 commenced on or after the effective date of this Act.

125 **SECTION 5.**

126 This Act shall become effective upon its approval by the Governor or upon its becoming law
 127 without such approval.

128 **SECTION 6.**

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