

The Senate Committee on Judiciary offered the following substitute to SB 12:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 the Official Code of Georgia Annotated, relating to crimes and offenses,
2 so as to provide for sentencing to minimum terms of imprisonment for persons convicted of
3 possession of firearms by convicted felons and first offender probationers when the offense
4 for which such person is on probation or has been previously convicted is a forcible felony
5 or a domestic violence felony or an act of family violence; to provide that a plea of guilty or
6 nolo contendere to a criminal gang activity offense shall estop the defendant in any related
7 civil proceeding as to matters proved in the criminal proceeding; to remove certain
8 provisions regarding the application of the hearsay exception regarding a judgment of
9 previous conviction; to provide for venue in certain gang related activities; to provide for
10 legislative findings; to provide for definitions; to amend Title 17 of the Official Code of
11 Georgia Annotated, relating to criminal procedure, so as to provide for delegation of certain
12 authority by superior court judges; to provide for sentencing to minimum terms of
13 imprisonment for persons convicted of certain offenses involving the abuse of a minor, a
14 disabled adult, or an elder person; to prohibit the sentencing court from suspending, staying,
15 probating, deferring, or withholding certain portions of sentences for such offenses; to
16 provide for definitions; to amend Title 24 of the Official Code of Georgia Annotated, relating
17 to evidence, so as to provide for notice regarding the introduction of uncharged misconduct
18 evidence; to provide for the presumptive admission of unchanged misconduct evidence in

19 criminal prosecutions involving allegations of family violence, child abuse or cruelty to
20 children, certain offenses against an elder person or disabled adult, and in cases when
21 enhanced penalties are sought certain offenses involving the intentional targeting of a victim
22 or victims based on actual or perceived race, color, religion, national origin, sex, sexual
23 orientation, gender, mental disability, or physical disability; to provide for definitions; to
24 provide for construction; to provide for a short title; to provide for related matters; to provide
25 for effective dates and applicability; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **SECTION 1.**

28 This Act shall be known and may be cited as the "Protecting Victims and Dismantling
29 Georgia Street Gangs Act."

30 **SECTION 2.**

31 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
32 amended in Chapter 11, relating to offenses against public order and safety, by revising
33 subsections (a) and (b) of Code Section 16-11-131, relating to possession of firearms by
34 convicted felons and first offender probationers, as follows:

35 "(a) As used in this Code section, the term:

36 (1) 'Domestic violence felony' means an offense that:

37 (A) Is a felony under state law; and

38 (B) Has, as an element, the use or attempted use of physical force or the threatened use
39 of a deadly weapon, committed by a current or former spouse, parent, or guardian of
40 the victim; by a person with whom the victim shares a child in common; by a person
41 who is cohabitating with or has cohabitated with the victim as a spouse, parent, or
42 guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

43 (2) 'Family violence' shall have the same meaning as set forth in Code Section 19-13-1.

44 ~~(1)~~(3) 'Felony' means any offense punishable by imprisonment for a term of one year or
45 more and includes conviction by a court-martial under the Uniform Code of Military
46 Justice for an offense which would constitute a felony under the laws of the United
47 States.

48 ~~(2)~~(4) 'Firearm' includes any handgun, rifle, shotgun, or other weapon which will or can
49 be converted to expel a projectile by the action of an explosive or electrical charge.

50 (b)(1) Except as provided in paragraph (2) of this subsection, any Any person who is on
51 probation as a felony first offender pursuant to Article 3 of Chapter 8 of Title 42, who is
52 on probation and was sentenced for a felony under subsection (a) or (c) of Code
53 Section 16-13-2, or who has been convicted of a felony by a court of this state or any
54 other state; by a court of the United States including its territories, possessions, and
55 dominions; or by a court of any foreign nation and who receives, possesses, or transports
56 a firearm commits a felony and, upon conviction thereof, shall be imprisoned for not less
57 than one year nor more than ten years; provided, however, that upon a second or
58 subsequent conviction, such person shall be imprisoned for not less than five nor more
59 than ten years; provided, further, that if the felony for which the person is on probation
60 or has been previously convicted is a forcible felony, then upon conviction of receiving,
61 possessing, or transporting a firearm, such person shall be imprisoned for a period of five
62 years.

63 (2) A person convicted of possession of a firearm by a convicted felon or first offender
64 probationer as provided in paragraph (1) of this subsection shall be imprisoned for not
65 less than five years nor more than ten years, provided that:

66 (A) The felony for which the person is on probation or has been previously convicted
67 is a forcible felony; or

68 (B) The offense for which the person is on probation or has been previously convicted
69 was a domestic violence felony or involved the occurrence of an act of family violence."

70 **SECTION 3.**

71 Said title is further amended in Chapter 15, relating to street gang terrorism and prevention,
72 by redesignating subsection (d) as subsection (e) and adding a new subsection to Code
73 Section 16-15-2, relating to legislative findings and intent, to read as follows:

74 "(d) The General Assembly further finds that a criminal street gang is a type of ongoing
75 criminal enterprise which seeks to derive power, status, and property from the criminal
76 gang activity committed by its members and associates, and whose members and associates
77 in turn seek to derive power, status, and property from their participation in the criminal
78 street gang, and whose members and associates often commit acts of criminal gang activity
79 in multiple counties and jurisdictions within this state."

80 **SECTION 4.**

81 Said title is further amended in Chapter 15, relating to street gang terrorism and prevention,
82 by revising Code Section 16-15-8, relating to matters proved in criminal trial, as follows:

83 "16-15-8.

84 A conviction of or a plea of guilty or nolo contendere to an offense defined as criminal
85 gang activity shall estop the defendant in any subsequent related civil action or proceeding
86 as to matters proved in the criminal proceeding."

87 **SECTION 5.**

88 Said title is further amended in Chapter 15, relating to street gang terrorism and prevention,
89 by revising Code Section 16-15-9, relating to commission of offense admissible as evidence
90 of existence of criminal street gang, as follows:

91 "16-15-9.

92 For the purpose of proving the existence of a criminal street gang and criminal gang
93 activity, the commission, adjudication, or conviction of any offense enumerated in
94 paragraph (1) of Code Section 16-15-3 by any member or associate of a criminal street
95 gang shall be admissible in any trial or proceeding. ~~Evidence offered under this Code~~
96 ~~section shall not be subject to the restrictions in paragraph (22) of Code Section 24-8-803."~~

97

SECTION 6.

98 Said title is further amended in Chapter 15, relating to street gang terrorism and prevention,
99 by adding a new Code section to read as follows:

100 "16-15-12.

101 (a) In any criminal proceeding brought against a person charged with violating
102 subsection (a), (b), (d), or (e) of Code Section 16-15-4, the crime shall be considered to
103 have been committed in any county in which one or more members or associates of the
104 criminal street gang have conducted or participated in criminal gang activity through the
105 commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.

106 (b) In any criminal proceeding brought against a person charged with violating
107 subsection (c) of Code Section 16-15-4, the crime shall be considered to have been
108 committed in any county in which an interest in or control of any real or personal property
109 is acquired or maintained.

110 (c) In any criminal proceeding brought against a person charged with violating
111 subsection (f), (g), (h), (i), or (j) of Code Section 16-15-4, the crime shall be considered to
112 have been committed in any county from which the threat was communicated, in which the
113 threat was received, in which any person threatened resides, or in which the property of any
114 person threatened is located.

115 (d) The provisions of subsection (b) of Code Section 16-1-7 shall not apply to prosecutions
116 brought under this Code section."

117

SECTION 7.

118 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
119 amended in Article 1 of Chapter 6, relating to general provisions regarding bonds and
120 recognizances, by revising subsection (h) of Code Section 17-6-1, as follows:

121 "(h) Except in cases in which life imprisonment or the death penalty may be imposed, or
122 for any violation provided for in Chapter 15 of Title 16, a judge of the superior court by
123 written order may delegate the authority provided for in this Code section to any judge of
124 any court of inquiry within such superior court judge's circuit. However, such authority
125 may not be exercised outside the county in which ~~said~~ such judge of the court of inquiry
126 was appointed or elected. The written order delegating such authority shall be valid for a
127 period of one year, but may be revoked by the superior court judge issuing such order at
128 any time prior to the end of that one-year period."

129

SECTION 8.

130 Said title is further amended in Article 1 of Chapter 10, relating to procedure for sentencing
131 and imposition of punishment, by revising subsection (a) of and adding two new subsections
132 to Code Section 17-10-7, relating to punishment of repeat offenders and punishment and
133 eligibility for parole of persons convicted of fourth felony offense, to read as follows:

134 "(a) Except as otherwise provided in subsection (a.1), (a.2), (b)₂, or (b.1) of this Code
135 section, any person who, after having been convicted of a felony offense in this state or
136 having been convicted under the laws of any other state or of the United States of a crime
137 which if committed within this state would be a felony and sentenced to confinement in a
138 penal institution, commits a felony punishable by confinement in a penal institution shall
139 be sentenced to undergo the longest period of time prescribed for the punishment of the
140 subsequent offense of which he or she stands convicted; provided, however, that, unless
141 otherwise provided by law, the trial judge may, in his or her discretion, probate or suspend
142 the maximum sentence prescribed for the offense.

143 (a.1)(1) As used in this subsection, the term:

144 (A) 'Disabled adult' shall have the same meaning as such term is defined in Code
145 Section 16-5-100.

146 (B) 'Elder person' shall have the same meaning as such term is defined in Code Section
147 16-5-100.

148 (2) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any
149 person who has been convicted of a felony offense in this state or has been convicted
150 under the laws of any other state or of the United States of a crime which if committed
151 within this state would be a felony, where such felony offense involved the abuse of a
152 disabled adult or an elder person, and who after such first conviction subsequently
153 commits and is convicted of a felony involving the abuse of a disabled adult or an elder
154 person punishable by confinement in a penal institution shall be sentenced to undergo the
155 longest period of time prescribed for the punishment of the subsequent offense of which
156 he or she stands convicted; provided, however, that, unless otherwise provided by law,
157 the trial judge may, in his or her discretion, probate or suspend a portion of the maximum
158 sentence prescribed for the offense, provided that no portion of the minimum sentence
159 prescribed for the offense shall be stayed, deferred, probated, or suspended by the trial
160 judge.

161 (a.2) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any
162 person who has been convicted of a felony offense in this state or has been convicted
163 under the laws of any other state or of the United States of a crime which if committed
164 within this state would be a felony, where such felony offense involved the abuse of a
165 minor, and who after such first conviction subsequently commits and is convicted of a
166 felony involving the abuse of a minor punishable by confinement in a penal institution
167 shall be sentenced to undergo the longest period of time prescribed for the punishment
168 of the subsequent offense of which he or she stands convicted; provided, however, that,
169 unless otherwise provided by law, the trial judge may, in his or her discretion, probate or

170 suspend a portion of the maximum sentence prescribed for the offense, provided that no
 171 portion of the minimum sentence prescribed for the offense shall be stayed, deferred,
 172 probated, or suspended by the trial judge."

173 **SECTION 9.**

174 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended in
 175 Chapter 4, relating to relevant evidence and its limits, by revising subsection (b) of Code
 176 Section 24-4-404, relating to character evidence not admissible to prove conduct, exceptions,
 177 and other crimes, as follows:

178 "(b) Evidence of other crimes, wrongs, or acts shall not be admissible to prove the
 179 character of a person in order to show action in conformity therewith. It may, however, be
 180 admissible for other purposes, including, but not limited to, proof of motive, opportunity,
 181 intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ~~The~~
 182 ~~prosecution in a criminal proceeding~~ In criminal proceedings, the party seeking to
 183 introduce evidence pursuant to this subsection shall provide reasonable notice to ~~the~~
 184 ~~defense~~ all other parties in advance of trial, unless pretrial notice is excused by the court
 185 upon good cause shown, of the general nature of any such evidence it intends to introduce
 186 at trial. Notice shall not be required when the evidence of prior crimes, wrongs, or acts is
 187 offered to prove the circumstances immediately surrounding the charged crime, motive, or
 188 prior difficulties between the accused and the alleged victim."

189 **SECTION 10.**

190 Said title is further amended by adding a new Code section to read as follows:

191 "24-4-420.

192 (a) In a criminal proceeding in which the accused is accused of family violence, as defined
 193 in Code Section 19-13-1, evidence of the accused's commission of any other family
 194 violence or domestic abuse shall be admissible and may be considered for its bearing on

195 any matter to which it is relevant. As used in this subsection, the term 'domestic abuse'
196 means the intentional or reckless use, or threatened use, of physical force against a child,
197 stepchild, foster child, or ward of the accused; a cohabitating parent, stepparent, foster
198 parent, or guardian of the accused; a current or former spouse of the accused; a person with
199 whom the accused has or had a child in common or has a current pregnancy in common;
200 or a current or former cohabitating romantic partner of the accused.

201 (b) In a criminal proceeding in which the accused is accused of child abuse, as defined in
202 Code Section 19-7-5, or cruelty to children, as provided for in Code Section 16-5-70,
203 evidence of the accused's commission of any other child abuse or cruelty to children shall
204 be admissible and may be considered for its bearing on any matter to which it is relevant.

205 (c) In a criminal proceeding in which the accused is accused of one or more offenses
206 against an elder person, as provided for in subsection (d) of Code Section 16-5-21,
207 subsection (c) of Code Section 16-5-23, subsection (d) of Code Section 16-5-24,
208 subsection (c) of Code Section 16-8-40, and Article 8 of Chapter 5 of Title 16, evidence
209 of the accused's commission of any other such offense or offenses against an elder person
210 shall be admissible and may be considered for its bearing on any matter to which it is
211 relevant. As used in this subsection, the term 'elder person' means a person who is 65 years
212 of age or older.

213 (d) In a criminal proceeding in which the accused is accused of one or more offenses
214 against a disabled adult, as provided for in Article 8 of Chapter 5 of Title 16, evidence of
215 the accused's commission of any other such offense or offenses against a disabled adult
216 shall be admissible and may be considered for its bearing on any matter to which it is
217 relevant. As used in this subsection, the term 'disabled adult' means a person 18 years of
218 age or older who is mentally or physically incapacitated or has Alzheimer's disease or
219 dementia.

220 (e) In a criminal proceeding in which the accused is accused of one or more offenses
221 relating to which the state has provided notice of its intention to seek the enhanced penalty

222 or penalties authorized by Code Section 17-10-17, evidence of the accused's commission
223 of any other such offense or offenses in which the accused intentionally selected any
224 similar victim or group of victims or any property as the object of the offense because of
225 such similar victim's or group of victims' actual or perceived race, color, religion, national
226 origin, sex, sexual orientation, gender, mental disability, or physical disability, shall be
227 admissible and may be considered for its bearing on any matter to which it is relevant.
228 (f) In any proceeding in which the prosecution intends to offer evidence under this Code
229 section, the prosecutor shall disclose such evidence to the accused, including statements
230 of witnesses or a summary of the substance of any testimony that is expected to be offered,
231 at least ten days in advance of trial, unless the time is shortened or lengthened or pretrial
232 notice is excused by the judge upon good cause shown.
233 (g) This Code section shall not be construed to provide for the exclusive means to admit
234 or consider evidence described in this Code section."

235

SECTION 11.

236 Sections 2 and 8 of this Act shall become effective on July 1, 2023, and shall apply to all
237 offenses committed on or after such date. Sections 4 and 9 of this Act shall become effective
238 on July 1, 2023, and shall apply to any motions made or hearings or trials commenced on or
239 after such date. All other sections of this Act shall become effective upon the approval of
240 this Act by the Governor or upon its becoming law without such approval.

241

SECTION 12.

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