

Senate Bill 359

By: Senators Albers of the 56th, Robertson of the 29th, Miller of the 49th, Dugan of the 30th, Kirkpatrick of the 32nd and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to
2 general provisions concerning courts, so as to require a biennial report and recommendation
3 from the Council of Accountability Court Judges of Georgia to various officials of the
4 General Assembly; to provide for the requirements of such report and recommendation; to
5 require such council to provide guidance to various courts regarding the appropriate
6 allocation and utilization of resources; to amend Title 16 the Official Code of Georgia
7 Annotated, relating to crimes and offenses, so as to provide for sentencing to minimum terms
8 of imprisonment for persons convicted of possession of firearms by convicted felons and first
9 offender probationers when the offense for which such person is on probation or has been
10 previously convicted is a forcible felony or a domestic violence felony or involved family
11 violence; to prohibit the sentencing court from suspending, staying, probating, deferring, or
12 withholding a sentence for such offenses; to provide that a plea of guilty or nolo contendere
13 to a criminal gang activity offense shall estop the defendant in any related civil proceeding
14 as to matters proved in the criminal proceeding; to provide for venue in certain gang related
15 activities; to provide for definitions; to amend Article 1 of Chapter 10 of Title 17 of the
16 Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of
17 punishment, so as to provide for sentencing to minimum terms of imprisonment for persons
18 convicted of certain offenses involving the abuse of a minor, a disabled adult, or an elder

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SECTION 2.

Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to general provisions concerning courts, is amended by revising subsection (d) of Code Section 15-1-18, relating to the Council of Accountability Court Judges of Georgia, creation, membership, funding, and support, as follows:

"(d)(1) It shall be the purpose of the council to effectuate the constitutional and statutory responsibilities conferred upon it by law and to further the improvement of accountability courts, the quality and expertise of the judges thereof, and the administration of justice.

(2) No later than December 1 of each even-numbered year, the council shall submit to the Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the chairperson of the Judiciary Committee of the Senate, and the chairpersons of the Judiciary Committee and the Judiciary, Non-civil Committee of the House of Representatives a report which shall address the overall state of the accountability courts, the quality and expertise of the judges thereof, and the administration of justice in this state. Such report shall address in detail how the operation of accountability courts impacts the operation of superior, state, and juvenile courts and how judicial, administrative, and other resources are allocated and utilized among the accountability courts and the superior, state, and juvenile courts, respectively. Such report shall be accompanied by recommendations and proposals to further the improvement of accountability courts, the quality and expertise of the judges thereof, and the administration of justice in Georgia.

(3) The council shall provide guidance to the accountability courts and the superior, state, and juvenile courts regarding the appropriate allocation and utilization of judicial, administrative, and other resources based at a minimum upon prioritizing the constitutional and other legal prerogatives of the superior, state, and juvenile courts."

SECTION 3.

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

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

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

(A) Is a felony under state law; and

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

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

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

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

~~(b)~~(1) Except as provided in paragraph (2) of this subsection, any ~~Any~~ person who is on probation as a felony first offender pursuant to Article 3 of Chapter 8 of Title 42, who is on probation and was sentenced for a felony under subsection (a) or (c) of Code Section 16-13-2, or who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and who receives, possesses, or transports any firearm commits a felony and, upon conviction thereof, shall be imprisoned for not

less than one year nor more than ten years; provided, however, that upon a second or subsequent conviction, such person shall be imprisoned for not less than five nor more than ten years; ~~provided, further, that if the felony for which the person is on probation or has been previously convicted is a forcible felony, then upon conviction of receiving, possessing, or transporting a firearm, such person shall be imprisoned for a period of five years.~~

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

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

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

(B) No portion of a sentence imposed pursuant to this paragraph shall be suspended, stayed, probated, deferred, or withheld by the sentencing court."

SECTION 4.

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

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

SECTION 5.

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

118 "16-15-12.

119 In any criminal or civil proceeding brought pursuant to this chapter, the crime or other
120 offense shall be considered to have been committed in any county in which an incident of
121 criminal gang activity occurred or in which an interest or control of a criminal street gang
122 or real or personal property thereof is acquired or maintained."

123 **SECTION 6.**

124 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
125 procedure for sentencing and imposition of punishment, is amended by revising
126 subsection (a) of and adding two new subsections to Code Section 17-10-7, relating to
127 punishment of repeat offenders and punishment and eligibility for parole of persons
128 convicted of fourth felony offense, to read as follows:

129 "17-10-7.

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

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

140 (A) 'Disabled adult' shall have the same meaning as such term is defined in
141 paragraph (3) of Code Section 16-5-100.

142 (B) 'Elder person' shall have the same meaning as such term is defined in paragraph (4)
143 of Code Section 16-5-100.

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

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

SECTION 7.

169

170 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended in
171 Article 2 of Chapter 1, relating to general evidentiary matters, by revising Code
172 Section 24-1-103, relating to rulings on evidence, as follows:

173 "24-1-103.

174 (a)(1) Error shall not be predicated upon a ruling which admits or excludes evidence
175 unless a substantial right of the party is affected and:

176 (1)(A) In case the ruling is one admitting evidence, a timely objection or motion to
177 strike appears of record, stating the specific ground of objection, if the specific ground
178 was not apparent from the context; or

179 (2)(B) In case the ruling is one excluding evidence, the substance of the evidence was
180 made known to the court by an offer of proof or was apparent from the context within
181 which questions were asked.

182 (2) Once the court makes a definitive ruling on the record admitting or excluding any
183 evidence, either at or before trial, a party need not renew an objection or offer of proof
184 to preserve such claim of error for appeal.

185 (3) When no ruling has been made on the record concerning the admission or exclusion
186 of evidence, a contemporaneous objection or offer of proof must be made to preserve a
187 claim of error on appeal.

188 (b) The court shall accord the parties adequate opportunity to state grounds for objections
189 and present offers of proof. The court may add any other or further statement which shows
190 the character of the evidence, the form in which it was offered, the objection made, and the
191 ruling thereon. The court may direct the making of an offer of proof in question and
192 answer form. Upon request of any party, the court shall place its ruling on the record.

193 (c) Jury proceedings shall be conducted, to the extent practicable, so as to prevent
194 inadmissible evidence from being suggested to the jury by any means, including, but not

limited to, making statements or offers of proof or asking questions in the hearing of the jury.

(d) Nothing in this Code section shall preclude a court from taking notice of plain errors affecting substantial rights although such errors were not brought to the attention of the court.

(e) Where a party can reasonably anticipate an evidentiary issue to be previewed or decided in advance of trial, a motion in limine should be filed prior to trial. The court should address the admission or exclusion of evidence on such motions pretrial, prior to the jury being impaneled, and issue timely written orders ruling upon the admission or exclusion of such evidence. In determining whether to consider an evidentiary issue in advance of trial, the court may, but shall not be required to, consider:

(1) Whether the issue is the type of question of law that would be subject to de novo review on appeal;

(2) Whether a pretrial ruling on the issue may impact a party's decision to proceed to trial;

(3) Whether a pretrial ruling may have a significant impact on the trial;

(4) Whether a pretrial ruling may impact whether a witness or witnesses will testify at trial; and

(5) Whether a pretrial ruling may impact significant planning or decision-making of the parties prior to or during the trial.

(f) The court may allow a continuing objection to evidence of the same or similar nature or subject to the same or similar objection."

SECTION 8.

Said title is further amended in Chapter 4, relating to relevant evidence and its limits, by adding a new Code section to read as follows:

"24-4-420.

(a) In a criminal or civil proceeding in which the accused is accused of family violence, as defined in Code Section 19-13-1, evidence of the accused's commission of family violence or domestic abuse shall be admissible and may be considered for its bearing on any matter to which it is relevant. As used in this subsection, the term 'domestic abuse' means the intentional or reckless use, or threatened use, of physical force against a child, stepchild, foster child, or ward of the accused; a cohabitating parent, stepparent, foster parent, or guardian of the accused; a current or former spouse of the accused; a person with whom the accused has or had a child in common; or a current or former cohabitating romantic partner of the accused.

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

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

(d) In a criminal or civil proceeding in which the accused is accused of one or more offenses against a disabled adult, as provided for in Article 8 of Chapter 5 of Title 16, evidence of the accused's commission of such offense or offenses against a disabled adult shall be admissible and may be considered for its bearing on any matter to which it is relevant. As used in this subsection, the term 'disabled adult' means a person 18 years of

age or older who is mentally or physically incapacitated or has Alzheimer's disease or dementia.

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

SECTION 9.

Said title is further amended in Article 1 of Chapter 13, relating to general provisions regarding securing attendance of witnesses and production and preservation of evidence, by adding a new Code section to read as follows:

"24-13-8.

(a) A judge of any class of court of this state may conduct hearings by telephone or video conference to the extent and in the manner permitted by the applicable provisions of the uniform rules of the relevant class of court. Judges or hearing officers acting under the Office of State Administrative Hearings and judges or hearing officers acting under the Georgia Tax Tribunal may conduct hearings by telephone or video conference to the extent and in the manner permitted by the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' or to the extent and in the manner permitted by the provisions of the Uniform Rules of the Superior Courts that would apply if the hearing were to have been conducted by a judge of the superior court.

(b) Judges of all classes of court who are authorized or required to administer oaths may do so by video conference in accordance with the technical standards of the uniform rules of the relevant class of court.

(c)(1) Notwithstanding any other provision of law to the contrary, video conferencing shall not be authorized for use in any criminal trial where the accused's guilt or innocence is to be determined unless otherwise authorized by law.

(2) Notwithstanding the provisions of other subsections of this Code section to the contrary, no trial shall be conducted remotely, except by the consent of the parties.

(d) Nothing in this Code section shall limit or prevent Uniform Superior Court Rule 9.2 from being amended or modified as authorized by law.

(e) Where proceedings are conducted remotely pursuant to this Code section and in accordance with the applicable uniform rules of the relevant class of court, such proceedings shall not be invalidated merely because the judge was not physically present in the courtroom.

(f) For proceedings conducted pursuant to this Code section and in accordance with the applicable uniform rules of the relevant class of court, such proceedings shall be deemed to have been conducted in open court, provided that the judge, clerk of court, and members of the public are capable of nearly simultaneously observing the proceedings.

(g) Nothing in this Code section is intended to modify the practices of the courts of this state relating to remote proceedings. The proceedings set forth in this Code section are authorized under existing rule and laws and the inclusion of the procedures set forth in this Code section is merely intended to codify existing practices."

SECTION 10.

Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions concerning the Georgia Bureau of Investigation, is amended by revising Code Section 35-3-8.1, relating to power of bureau to assist other law enforcement agencies, as follows:

295 "35-3-8.1.

296 (a) Upon request of the governing authority or chief law enforcement officer of any
297 municipality, the sheriff of any county, the chief of the county police force of any county
298 having a population of more than 100,000 according to the United States decennial census
299 of 1970 or any future such census, ~~the~~ a judge of the superior court of any county of this
300 state, or the Governor, the director, in unusual circumstances, may, and in the case of a
301 request by the Governor, shall, direct the bureau to render assistance in any criminal case,
302 in the prevention or detection of violations of law, or in the detection or apprehension of
303 persons violating the criminal laws of this state, any other state, or the United States.

304 (b) The bureau shall be authorized to work with and seek the assistance of other law
305 enforcement agencies when, in the sole discretion of the director, such assistance would
306 not compromise the successful completion of cases involving the identification,
307 investigation, arrest, and prosecution of an individual or groups of individuals for violation
308 of state laws concerning child abuse and kidnapping, abuse of elder persons and disabled
309 adults, criminal gang activity, organized crime activity, elections, and domestic, cyber,
310 biological, chemical, and nuclear terrorism."

311 **SECTION 11.**

312 This Act shall become effective on July 1, 2022, and shall apply to all offenses committed
313 on or after such date.

314 **SECTION 12.**

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