

Senate Bill 171

By: Senators Robertson of the 29th, Albers of the 56th, Dugan of the 30th, Harper of the 7th,
Mullis of the 53rd and others

AS PASSED SENATE

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 provide for enhanced penalties for certain offenses committed during an
3 unlawful assembly; to revise the offense of unlawful assembly; to provide for and revise
4 definitions; to provide for a cause of action; to revise penalties for obstructing highways
5 under certain circumstances; to provide for an affirmative defense; to include unlawful
6 assembly as a racketeering activity; to amend Chapter 60 of Title 36 of the Official Code of
7 Georgia Annotated, relating to general provisions regarding provisions applicable to counties
8 and municipal corporations, so as to provide for requirements for assemblies on public
9 properties; to provide for liability of counties and municipalities under certain circumstances;
10 to provide for a waiver of sovereign immunity; to amend Title 50 of the Official Code of
11 Georgia Annotated, relating to state government, so as to provide for enhanced penalties for
12 the defacing or destruction of certain monuments during an assembly; to provide for liability;
13 to provide for a waiver of sovereign immunity; to provide for related matters; to provide for
14 a short title; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 171

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16

SECTION 1.

17 This Act shall be known and may be cited as the "Safe Communities Act of 2022."

18

SECTION 2.

19 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
20 amended by revising subsection (b) of, and adding a new subsection to, Code Section
21 16-5-23, relating to simple battery, as follows:

22 "(b) Except as otherwise provided in subsections (c) through ~~(i)~~ (j) of this Code section,
23 a person convicted of the offense of simple battery shall be punished as for a
24 misdemeanor."

25 "(j) If the offense of simple battery is committed while also violating Code
26 Section 16-11-33, other than as provided for under subsection (e) of this Code section, the
27 defendant shall be punished for a misdemeanor of a high and aggravated nature."

28

SECTION 3.

29 Said title is further is amended by revising Code Section 16-11-33, relating to unlawful
30 assembly, as follows:

31 "16-11-33.

32 (a) As used in this Code section, the term 'public convenience' means:

33 (1) An inn, hotel, motel, or other place of lodging, except for an establishment located
34 within a building that contains not more than five rooms for rent or hire and that is
35 actually occupied by the proprietor of such establishment as his or her residence;

36 (2) A restaurant, bar, or other establishment serving food or drink;

37 (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition
38 or entertainment;

39 (4) An auditorium, convention center, lecture hall, or other place of public gathering;

40 (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other
41 sales or rental establishment;

42 (6) A laundromat, dry cleaner, federally insured financial institution, barber shop, beauty
43 shop, travel service, shoe repair service, funeral parlor, gas station, office of an
44 accountant or lawyer, pharmacy, insurance office, professional office of a health care
45 provider, hospital, or other service establishment;

46 (7) A terminal, depot, or other station specified for public transportation;

47 (8) A museum, library, gallery, or other place of public display or collection;

48 (9) A park, zoo, amusement park, or other place of recreation;

49 (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school,
50 or other place of education;

51 (11) A day care center, senior citizen center, homeless shelter, food bank, adoption
52 agency, or other social service center establishment; and

53 (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or
54 recreation.

55 (b) Except as provided for under subsection (c) of this Code section, a ~~A~~ person who
56 knowingly participates in ~~either~~ any of the following acts or occurrences is guilty of a
57 misdemeanor:

58 (1) The assembly of two or more persons for the purpose of committing an unlawful act
59 and the failure to withdraw from the assembly on being lawfully commanded to do so by
60 a peace officer and before any member of the assembly has inflicted injury to the person
61 or property of another; ~~or~~

62 (2) The assembly of two or more persons, without authority of law, for the purpose of
63 ~~doing~~ committing violence ~~to~~ against the person or property of one supposed by the
64 accused to have been guilty of a violation of the law, or for the purpose of exercising
65 correctional or regulative powers over any person by violence; provided, however, that
66 it shall be an affirmative defense to a prosecution under this paragraph that the accused

67 ~~withdrew~~ did withdraw from the assembly on being lawfully commanded to do so by a
 68 peace officer or before any member of the assembly had inflicted injury to the person or
 69 property of another; or

70 (3) The assembly of two or more persons who convey any threat that is severe,
 71 pervasive, and objectively offensive, and specifically directed to inciting or producing
 72 imminent lawless action within a public convenience.

73 (c) A person who knowingly participates in the assembly of seven or more persons and
 74 commits violence against a person within such assembly shall be guilty of a felony and,
 75 upon conviction thereof, shall be punished by an imprisonment for not less than one nor
 76 more than five years or a fine of not less than \$1,000.00 nor more than \$5,000.00, or both.

77 (d) There shall be a cause of action for injuries and damages against the governing
 78 authority of any county or municipal corporation that is grossly negligent by allowing the
 79 commission of violence against persons and property during an assembly of two or more
 80 persons."

81 **SECTION 4.**

82 Said title is further amended by revising Code Section 16-11-43, relating to obstructing
 83 highways, streets, sidewalks, or other public passages, as follows:

84 "16-11-43.

85 (a) Except as provided for under subsection (b) of this Code section, a ~~A~~ person who,
 86 without authority of law, purposely or recklessly obstructs any highway, street, sidewalk,
 87 or other public passage in such a way as to render it impassable without unreasonable
 88 inconvenience or hazard and fails or refuses to remove the obstruction after ~~receiving~~ he
 89 or she receives a reasonable official request or the order of a peace officer ~~that he~~ to do so,
 90 is guilty of a misdemeanor.

91 (b)(1) A person who violates Code Section 16-11-33 while purposely or recklessly
 92 obstructing any highway or street in such a way as to render it impassable without

93 unreasonable inconvenience or hazard and fails or refuses to remove the obstruction after
94 he or she receives a reasonable official request or the order of a peace officer to do so,
95 shall be guilty of a felony and, upon conviction thereof, shall be punished by an
96 imprisonment for not less than one nor more than five years or a fine of not less than
97 \$1,000.00 nor more than \$5,000.00, or both.

98 (2) It shall be an affirmative defense to a prosecution that the accused caused injury or
99 death to a person while such person was acting in violation of paragraph (1) of this
100 subsection and the accused was attempting to flee such unlawful assembly under the
101 reasonable belief that fleeing was necessary to prevent or terminate an imminent attack
102 upon the accused's person."

103

SECTION 5.

104 Said title is further amended by adding a new subparagraph to paragraph (5) of Code Section
105 16-14-3, relating to definitions, as follows:

106 "(D) 'Racketeering activity' shall also mean to commit, to attempt to commit, or to
107 solicit, coerce, or intimidate another person to commit any crime which is chargeable
108 by indictment under the laws of this state involving unlawful assemblies in violation
109 of Code Section 16-11-33 or any other law."

110

SECTION 6.

111 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
112 provisions regarding provisions applicable to counties and municipal corporations, is
113 amended by adding two new Code sections to read as follows:

114 "36-60-30.

115 (a) Each governing authority of a county or municipal corporation shall establish and
116 maintain an application process for the granting of permits to hold assemblies, including,
117 but not limited to, protests and rallies, on public property, and no such assemblies shall be

118 allowed without the granting of such permit. Such applications shall be reviewed by an
119 attorney representing the governing authority and by all public safety and public works
120 department heads of such county or municipal corporation. All organizations, clubs,
121 nonprofits, and individuals who apply for a permit must provide the names, addresses, and
122 contact information for all individuals responsible for managing and maintaining order
123 during the event, along with an emergency action plan that addresses any first aid and
124 security resources provided by the applicant.

125 (b) The governing authority of any county or municipal corporation shall not require a fee
126 for processing any application seeking a permit to hold assemblies, including, but not
127 limited to, protests and rallies, on public property but may require liability insurance
128 purchased within the State of Georgia to cover any potential liabilities. All applications
129 shall be processed, approved, or denied within three business days from the date of
130 submission. Any denial of permitting shall be accompanied by a written explanation from
131 the governing authority of a county or municipal corporation as to the reason or reasons
132 why such application was denied.

133 36-60-31.

134 The governing authority of a county or municipality that intentionally obstructs or
135 interferes with the ability of a law enforcement agency of such county or municipality to
136 provide reasonable law enforcement protection during a riot or unlawful assembly shall be
137 civilly liable for any damages, including, but not limited to, damages arising from personal
138 injury, wrongful death, or property damage, proximately caused by the agency's failure to
139 provide reasonable law enforcement protection during such riot or unlawful assembly. The
140 sovereign immunity of such county or municipality is waived for liability under this Code
141 section."

142

SECTION 7.

143 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
144 by revising paragraph (2) of subsection (b) of Code Section 50-3-1, relating to description
145 of state flag, militia to carry flag, defacing public monuments, and obstruction and relocation
146 of monuments, as follows:

147 "(2)(A) Except as provided for under subparagraph (B) of this paragraph, it shall be
148 unlawful for any person, firm, corporation, or other entity to mutilate, deface, defile,
149 or abuse contemptuously any publicly owned structure, monument, or cemetery located,
150 erected, constructed, created, or maintained on real property owned by an agency or by
151 the State of Georgia. No officer or agency shall remove or conceal from display any
152 such monument for the purpose of preventing the visible display of the same. A
153 violation of this paragraph shall constitute a misdemeanor.

154 (B) Any person who violates Code Section 16-11-33 while mutilating, defacing,
155 defiling, or abusing contemptuously any publicly owned structure, monument, or
156 cemetery located, erected, constructed, created, or maintained on real property owned
157 by any agency or by the State of Georgia shall be guilty of a felony and, upon
158 conviction thereof, shall be punished by an imprisonment for not less than one nor more
159 than five years or a fine of not less than \$1,000.00 nor more than \$10,000.00, or both.
160 A court shall order any person convicted of violating this Code section to pay
161 restitution, which shall include the full cost of repair or replacement of such memorial."

162

SECTION 8.

163 Said title is further amended by revising paragraph (2) of Code Section 50-21-24, relating
164 to exceptions to state liability, as follows:

165 "(2) The exercise or performance of or the failure to exercise or perform a discretionary
166 function or duty on the part of a state officer or employee, whether or not the discretion
167 involved is abused, unless the exercise or performance of or the failure to exercise or

168 perform such discretionary function or duty is a violation of subsection (d) of Code
169 Section 16-11-33;"

170 **SECTION 9.**

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

172 "50-21-38.

173 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
174 or third-party claim brought in the courts of this state pursuant to subsection (d) of Code
175 Section 16-11-33 by an aggrieved person seeking relief, monetary damages, expenses of
176 litigation, or reasonable attorney fees. This Code section shall not be construed to alter or
177 amend any other waiver of sovereign immunity provided by law."

178 **SECTION 10.**

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