

Senate Bill 44

By: Senators Hatchett of the 50th, Kennedy of the 18th, Gooch of the 51st, Robertson of the 29th, Anderson of the 24th 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 mandatory minimum penalties for violations of the Street Gang
3 Terrorism and Prevention Act; to provide for an exception for imposing such mandatory
4 penalties in certain circumstances; to amend Code Section 5-7-1 of the Official Code of
5 Georgia Annotated, relating to orders, decisions, or judgments appealable and defendant's
6 right to cross appeal, so as to provide for the state's right to appeal the court's deviation from
7 mandatory minimum sentencing regarding certain offenses; to provide for related matters;
8 to provide for an effective date and applicability; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
13 amended by revising subsections (e) and (k) of Code Section 16-15-4, relating to
14 participation in criminal gang activity prohibited and prosecution, as follows:

15 "(e) It shall be unlawful for any person to directly, or through another acting upon such
16 person's direction, cause, encourage, solicit, recruit, or coerce another to become a member

17 or associate of a criminal street gang, to participate in a criminal street gang, or to conduct
18 or participate in criminal gang activity."

19 ~~"(k)(1) Any person who violates subsection (a), (b), or (c) of this Code section shall be~~
20 ~~guilty of a felony and upon conviction thereof, in addition to any other penalty imposed,~~
21 ~~shall be sentenced to imprisonment for five years but not more than 20 years or pay a fine~~
22 ~~of not less than \$10,000.00 nor more than \$15,000.00, or both.~~

23 ~~(2) Any person who violates subsection (a) of this Code section through the commission~~
24 ~~of a violation of Code Section 42-5-18 shall be guilty of a felony and upon conviction~~
25 ~~thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory~~
26 ~~minimum term of imprisonment of two years but not more than 20 years which shall be~~
27 ~~served consecutively to any other sentence imposed, and no portion of the mandatory~~
28 ~~minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld~~
29 ~~by the sentencing court.~~

30 ~~(3) Any person who violates subsection (d) of this Code section shall be guilty of a~~
31 ~~felony and upon conviction thereof, in addition to any other penalty imposed, shall be~~
32 ~~sentenced to imprisonment for five years but not more than 20 years which shall be~~
33 ~~served consecutively to any other sentence imposed. As used in this subsection, the term:~~

34 (A) 'Dangerous weapon' shall have the same meaning as provided for under Code
35 Section 16-11-121.

36 (B) 'Firearm' means any handgun, rifle, shotgun, or other weapon which will or can be
37 converted to expel a projectile by the action of an explosive or electrical charge and
38 which is not a dangerous weapon.

39 (C) 'Hazardous object' shall have the same meaning as set forth in Code Section
40 20-2-751.

41 (D) 'Leader' means a person who planned and organized others and acted as a guiding
42 force in order to achieve a common goal.

43 (2) Except as otherwise provided in this subsection, any person who violates this Code
44 section shall be guilty of a felony and upon conviction thereof, in addition to any other
45 penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of
46 five years but not more than 20 years which shall be served consecutively to any other
47 sentence imposed, and no portion of the mandatory minimum sentence imposed shall be
48 suspended, stayed, probated, deferred, or withheld by the sentencing court.

49 (4)(3)(A) Any person who violates subsection (e), (f), (g), (h), (i), or (j) of this Code
50 section and such violation involves another who is under 17 years of age at the time of
51 the violation, or who has a disability as defined in Code Section 34-6A-2, shall be
52 guilty of a felony and upon conviction thereof, in addition to any other penalty
53 imposed, shall be sentenced to imprisonment for five years but not more than 20 years
54 punished as follows:

55 (i) Upon the first conviction thereof, such person shall be sentenced to a mandatory
56 minimum term of imprisonment of ten years but not more than 20 years which shall
57 be served consecutively to any other sentence imposed, and no portion of the
58 mandatory minimum sentence imposed shall be suspended, stayed, probated,
59 deferred, or withheld by the sentencing court; and

60 (ii) Upon the second or subsequent conviction thereof, such person shall be sentenced
61 to a mandatory minimum term of imprisonment of 15 years but not more than 25
62 years which shall be served consecutively to any other sentence imposed, and no
63 portion of the mandatory minimum sentence imposed shall be suspended, stayed,
64 probated, deferred, or withheld by the sentencing court.

65 (B) A mandatory minimum sentence imposed pursuant to this paragraph shall not be
66 reduced, suspended, or otherwise departed from pursuant to paragraph (4) or (5) of this
67 subsection.

68 (4) The district attorney or the Attorney General may move the sentencing court to
69 impose a reduced or suspended sentence upon any person who is convicted of a violation

70 of this Code section who provides substantial assistance in the identification, arrest, or
 71 conviction of any of his or her accomplices, accessories, coconspirators, leaders, or
 72 principals. Upon good cause shown, the motion may be filed and heard in camera. The
 73 judge hearing the motion may impose a reduced or suspended sentence if he or she finds
 74 that the defendant has rendered such substantial assistance.

75 (5)(A) In the court's discretion, a judge may depart from the mandatory minimum
 76 sentence specified for a person who is convicted of a violation of this Code section as
 77 set forth in paragraph (2) of this subsection if the judge concludes that:

78 (i) The defendant was not a leader of the criminal conduct;

79 (ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous
 80 object during the crime;

81 (iii) The criminal conduct did not result in death or serious bodily injury to a person
 82 other than to a person who was a party to the crime;

83 (iv) The defendant has no prior felony conviction; and

84 (v) The interests of justice will not be served by the imposition of the prescribed
 85 mandatory minimum sentence.

86 (B) If a judge departs from the mandatory minimum sentence pursuant to this
 87 paragraph, the judge shall specify on the record the circumstances for the reduction and
 88 the interests served by such departure. Any such order shall be appealable by the State
 89 of Georgia pursuant to Code Section 5-7-1."

90 **SECTION 2.**

91 Code Section 5-7-1 of the Official Code of Georgia Annotated, relating to orders, decisions,
 92 or judgments appealable and defendant's right to cross appeal, is amended in subsection (a)
 93 by adding a new paragraph and by revising paragraphs (9) and (10) as follows:

94 "(9) From an order, decision, or judgment denying a motion by the state to recuse or
 95 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or

- 96 (10) From an order, decision, or judgment issued pursuant to subsection (c) of Code
97 Section 17-10-6.2; or
98 (11) From an order, decision, or judgment that reduces the mandatory minimum sentence
99 as provided in subsection (k) of Code Section 16-15-4."

100

SECTION 3.

101 This Act shall become effective on July 1, 2023, and shall apply to all offenses committed
102 on or after that date.

103

SECTION 4.

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