

The Senate Committee on Public Safety offered the following substitute to HB 301:

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



43 (A) Is a felony under state law; and  
44 (B) Has, as an element, the use or attempted use of physical force or the threatened use  
45 of a deadly weapon, committed by a current or former spouse, parent, or guardian of  
46 the victim; by a person with whom the victim shares a child in common; by a person  
47 who is cohabitating with or has cohabitated with the victim as a spouse, parent, or  
48 guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

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

50 ~~(1)~~(3) 'Felony' means any offense punishable by imprisonment for a term of one year or  
51 more and includes conviction by a court-martial under the Uniform Code of Military  
52 Justice for an offense which would constitute a felony under the laws of the United  
53 States.

54 ~~(2)~~(4) 'Firearm' includes any handgun, rifle, shotgun, or other weapon which will or can  
55 be converted to expel a projectile by the action of an explosive or electrical charge.

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

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

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

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

77 **SECTION 3.**

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

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

87 **SECTION 4.**

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

90 "16-15-8.

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

94

**SECTION 5.**

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

98 "16-15-9.

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

104

**SECTION 6.**

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

107 "16-15-12.

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

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

117 (c) In any criminal proceeding brought against a person charged with violating  
118 subsection (f), (g), (h), (i), or (j) of Code Section 16-15-4, the crime shall be considered to  
119 have been committed in any county from which the threat was communicated, in which the

120 threat was received, in which any person threatened resides, or in which the property of any  
121 person threatened is located.  
122 (d) The provisions of subsection (b) of Code Section 16-1-7 shall not apply to prosecutions  
123 under this Code section."

124 **SECTION 7.**

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

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

136 **SECTION 8.**

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

141 "(a) Except as otherwise provided in subsection (a.1), (a.2), (b), or (b.1) of this Code  
142 section, any person who, after having been convicted of a felony offense in this state or  
143 having been convicted under the laws of any other state or of the United States of a crime  
144 which if committed within this state would be a felony and sentenced to confinement in a

145 penal institution, commits a felony punishable by confinement in a penal institution shall  
146 be sentenced to undergo the longest period of time prescribed for the punishment of the  
147 subsequent offense of which he or she stands convicted; provided, however, that, unless  
148 otherwise provided by law, the trial judge may, in his or her discretion, probate or suspend  
149 the maximum sentence prescribed for the offense.

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

151 (A) 'Disabled adult' shall have the same meaning as set forth in Code Section 16-5-100.

152 (B) 'Elder person' shall have the same meaning as set forth in Code Section 16-5-100.

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

166 (a.2) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any  
167 person who has been convicted of a felony offense in this state or has been convicted  
168 under the laws of any other state or of the United States of a crime which if committed  
169 within this state would be a felony, where such felony offense involved the abuse of a  
170 minor, and who after such first conviction subsequently commits and is convicted of a  
171 felony involving the abuse of a minor punishable by confinement in a penal institution

172 shall be sentenced to undergo the longest period of time prescribed for the punishment  
173 of the subsequent offense of which he or she stands convicted; provided, however, that,  
174 unless otherwise provided by law, the trial judge may, in his or her discretion, probate or  
175 suspend a portion of the maximum sentence prescribed for the offense, provided that no  
176 portion of the minimum sentence prescribed for the offense shall be stayed, deferred,  
177 probated, or suspended by the trial judge."

178 **SECTION 9.**

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

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

194 **SECTION 10.**

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

196 "24-4-420.

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

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

210 (c) In a criminal proceeding in which the accused is accused of one or more offenses  
211 against an elder person, as provided for in subsection (d) of Code Section 16-5-21,  
212 subsection (c) of Code Section 16-5-23, subsection (d) of Code Section 16-5-24,  
213 subsection (c) of Code Section 16-8-40, and Article 8 of Chapter 5 of Title 16, evidence  
214 of the accused's commission of any other such offense or offenses against an elder person  
215 shall be admissible and may be considered for its bearing on any matter to which it is  
216 relevant. As used in this subsection, the term 'elder person' shall have the same meaning  
217 as set forth in Code Section 16-5-100.

218 (d) In a criminal proceeding in which the accused is accused of one or more offenses  
219 against a disabled adult, as provided for in Article 8 of Chapter 5 of Title 16, evidence of  
220 the accused's commission of any other such offense or offenses against a disabled adult  
221 shall be admissible and may be considered for its bearing on any matter to which it is

222 relevant. As used in this subsection, the term 'disabled adult' shall have the same meaning  
223 as set forth in Code Section 16-5-100.

224 (e) In a criminal proceeding in which the accused is accused of one or more offenses  
225 relating to which the state has provided notice of its intention to seek the enhanced penalty  
226 or penalties authorized by Code Section 17-10-17, evidence of the accused's commission  
227 of any other such offense or offenses in which the accused intentionally selected any  
228 similar victim or group of victims or any property as the object of the offense because of  
229 such similar victim's or group of victims' actual or perceived race, color, religion, national  
230 origin, sex, sexual orientation, gender, mental disability, or physical disability, shall be  
231 admissible and may be considered for its bearing on any matter to which it is relevant.

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

237 (g) This Code section shall not be construed to provide for the exclusive means to admit  
238 or consider evidence described in this Code section."

239

## **SECTION 11.**

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

244 "35-3-8.1.

245 (a) Upon request of the governing authority or chief law enforcement officer of any  
246 municipality, the sheriff of any county, the chief of the county police force of any county  
247 having a population of more than 100,000 according to the United States decennial census

248 of 1970 or any future such census, ~~the~~ a judge of the superior court of any county of this  
249 state, or the Governor, the director, in unusual circumstances, may, and in the case of a  
250 request by the Governor, shall, direct the bureau to render assistance in any criminal case,  
251 in the prevention or detection of violations of law, or in the detection or apprehension of  
252 persons violating the criminal laws of this state, any other state, or the United States.

253 (b) The bureau shall be authorized to work independently, work concurrently with other  
254 law enforcement agencies, and request the assistance of other law enforcement agencies  
255 when, in the sole discretion of the director, such independent work, concurrent work, or  
256 request for assistance would not compromise the successful completion of cases involving  
257 the identification, investigation, arrest, and prosecution of an individual or groups of  
258 individuals for violation of laws concerning domestic, cyber, biological, chemical, and  
259 nuclear terrorism."

260

**SECTION 12.**

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

266

**SECTION 13.**

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