

The House Committee on Judiciary Non-Civil offers the following substitute to SB 36:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 16 and Code Sections 17-10-21 and 35-5-37 of the Official Code of Georgia  
2 Annotated, relating to crimes and offenses, vacating of sentence for trafficking victim  
3 defendants, and review of individual's criminal history record information, definitions,  
4 privacy considerations, written application requesting review, and inspection, respectively,  
5 so as to provide for the offense of drive-by shooting; to modify the offense of aggravated  
6 assault; to provide for enhanced criminal penalties in certain circumstances; to provide for  
7 definitions; to provide for penalties; to provide for protections relative to victims of  
8 trafficking; to increase the penalty provisions relating to pimping and pandering; to provide  
9 for a definition; to provide for certain relief for trafficking victims who have been  
10 conditionally discharged or sentenced as a first offender for certain crimes; to provide for  
11 related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
15 amended in Code Section 16-5-21, relating to aggravated assault, by revising subsection (a)  
16 as follows:

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17 "(a) A person commits the offense of aggravated assault when he or she assaults:

18 (1) With intent to murder, to rape, or to rob;

19 (2) With a deadly weapon or with any object, device, or instrument which, when used  
20 offensively against a person, is likely to or actually does result in serious bodily injury;

21 (3) With any object, device, or instrument which, when used offensively against a  
22 person, is likely to or actually does result in strangulation; or

23 (4) ~~A person or persons without~~ Without legal justification by discharging a firearm from  
24 within a motor vehicle, or after immediately exiting a motor vehicle, toward a person, an  
25 occupied motor vehicle, or ~~persons~~ an occupied building."

## 26 SECTION 2.

27 Said title is further amended in Code Section 16-6-13, relating to penalties for violating Code  
28 Sections 16-6-9 through 16-6-12, is amended by revising subsections (a) and (b) as follows:

29 "(a) Except as otherwise provided in subsection (b) of this Code section, a person  
30 convicted of violating:

31 (1) Code Section 16-6-10 shall be punished as for a misdemeanor of a high and  
32 aggravated nature, and at the sole discretion of the judge, all but 24 hours of any term of  
33 imprisonment imposed may be suspended, stayed, or probated;

34 (2) Code Section 16-6-9 shall be punished as for a misdemeanor;

35 (3) Code Section 16-6-11 for a:

36 (A) First offense shall be ~~punished as for a misdemeanor of a high and aggravated~~  
37 ~~nature, and at the sole discretion of the judge, all but 72 hours of any term of~~  
38 ~~imprisonment imposed may be suspended, stayed, or probated~~ guilty of a felony and  
39 shall be punished by a term of imprisonment of not less than one nor more than ten  
40 years; and

41 (B) Second or subsequent offense shall be guilty of a felony and shall be punished by  
42 a term of imprisonment of not less than one year nor more than ten years and shall be

sentenced to a mandatory minimum term of imprisonment of one year and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, or probated by the sentencing court; provided, however, that in the court's discretion, the court may depart from such mandatory minimum sentence if the interest of justice will not be served by the imposition of the prescribed mandatory minimum, with such findings stated on the record by the court; or

(4) Code Section 16-6-12 for a:

(A) ~~First offense shall be punished as for a misdemeanor of a high and aggravated nature, and at the sole discretion of the judge, all but 72 hours of any term of imprisonment imposed may be suspended, stayed, or probated~~ guilty of a felony and shall be punished by a term of imprisonment of not less than one nor more than ten years; and

(B) Second or subsequent offense shall be guilty of a felony and shall be punished by a term of imprisonment of not less than one year nor more than ten years and shall be sentenced to a mandatory minimum term of imprisonment of one year and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, or probated by the sentencing court; provided, however, that in the court's discretion, the court may depart from such mandatory minimum sentence if the interest of justice will not be served by the imposition of the prescribed mandatory minimum, with such findings stated on the record by the court.

(b)(1) For purposes of this subsection, the term 'victim of sexual exploitation' means a person 18 years of age or younger who performs or offers or consents to perform a sexual act, including, but not limited to, sexual intercourse or sodomy, for money or other items of value. Reserved.

(2) A person convicted of any of the offenses enumerated in Code Sections 16-6-10 through 16-6-12 when such offense involves the conduct of a ~~person under the age of 18 years shall~~ victim of sexual exploitation for a:

(A) First offense shall be guilty of a felony and shall be punished by imprisonment for a period of not less than ten nor more than 30 years and a fine of not more than \$100,000.00; and

(B) Second or subsequent offense shall be guilty of a felony and shall be punished by imprisonment for a period of not less than ten nor more than 30 years and a fine of not more than \$100,000.00 and shall be sentenced to a mandatory minimum term of imprisonment of one year and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, or probated by the sentencing court; provided, however, that in the court's discretion, the court may depart from such mandatory minimum sentence if the interest of justice will not be served by the imposition of the prescribed mandatory minimum, with such findings stated on the record by the court; and provided, further, that the mandatory minimum sentence provided for in this subparagraph shall not apply to the offenses enumerated in Code Section 16-6-10."

### SECTION 3.

Said title is further amended by revising Code Section 16-7-22, relating to criminal damage to property in the first degree, as follows:

"16-7-22.

(a) A person commits the offense of criminal damage to property in the first degree when he or she:

(1) Knowingly and without authority interferes with any property in a manner so as to endanger human life; ~~or~~

(2) Knowingly and without authority and by force or violence interferes with the operation of any system of public communication, public transportation, sewerage, drainage, water supply, gas, power, or other public utility service or with any constituent property thereof; or

95 (3) Knowingly and without justification causes damage to a building by discharging a  
96 firearm while inside a motor vehicle or after immediately exiting a motor vehicle.

97 (b) A person convicted of the offense of criminal damage to property in the first degree  
98 shall be punished by imprisonment for not less than one nor more than ten years. A second  
99 and subsequent violation of paragraph (3) of subsection (a) of this Code section shall be  
100 punished by imprisonment for not less than five nor more than 20 years."

#### 101 **SECTION 4.**

102 Said title is further amended in Code Section 16-11-127, relating to carrying weapons or long  
103 guns in unauthorized locations, by revising paragraphs (6) and (7) of and adding a new  
104 paragraph to subsection (b) to read as follows:

105 "(6) On the premises of a nuclear power facility, except as provided in Code Section  
106 16-11-127.2, and the punishment provisions of Code Section 16-11-127.2 shall supersede  
107 the punishment provisions of this Code section; ~~or~~

108 (7) Within 150 feet of any polling place when elections are being conducted and such  
109 polling place is being used as a polling place as provided for in paragraph (27) of Code  
110 Section 21-2-2, except as provided in subsection (i) of Code Section 21-2-413; ~~or~~

111 (8) On property described in Code Section 10-9-14.1; or on property described in Code  
112 Section 36-64-2 when the property is being used by a private party to host a gated and  
113 ticketed event or events, where such alcohol is permitted to be sold, and which last no  
114 more than three consecutive days. This paragraph applies only when the private party has  
115 contractually agreed to indemnify the government for acts occurring on the property  
116 during the event or events, and this paragraph may not be implemented for events on the  
117 property more than two times in a calendar year."

#### 118 **SECTION 5.**

119 Said title is further amended in Code Section 16-15-3, relating to definitions regarding street

120 gang terrorism and prevention, by revising subparagraph (A) of paragraph (1) as follows:

121 "(A) Any offense defined as racketeering activity by Code Section 16-14-3, or any  
122 offense defined in Code Section 16-15-4.1;"

123 **SECTION 6.**

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

126 "16-15-4.1.

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

128 (1) 'Dwelling' shall have the same meaning as provided in Code Section 16-7-1.

129 (2) 'Firearm' means any handgun, rifle, shotgun, or similar device or weapon which will  
130 or can be converted to expel a projectile by the action of an explosive or electrical charge.

131 (b) A person commits the offense of drive-by shooting when he or she, while in a motor  
132 vehicle or close to the motor vehicle that was used to transport the shooter or the firearm,  
133 or both, with intent to injure another, or damage the property of another, discharges a  
134 firearm at or toward:

135 (1) An occupied or unoccupied dwelling, building, or motor vehicle; or

136 (2) A person.

137 (c) A person convicted of the offense of drive-by shooting shall be punished by  
138 imprisonment for not less than five nor more than 20 years.

139 (d) A person convicted of the offense of drive-by shooting that results in serious bodily  
140 injury to another shall be punished by imprisonment for not less than five nor more than  
141 20 years.

142 (e) A person who knowingly commits the offense of drive-by shooting against a person  
143 under the age of 16 years shall be punished by imprisonment for not less than five nor more  
144 than 20 years."

**SECTION 7.**

Code Section 17-10-21 of the Official Code of Georgia Annotated, relating to vacating of sentence for trafficking victim defendants, is amended by revising paragraphs (1) and (4) and subparagraph (A) of paragraph (5) of subsection (a) as follows:

"(a)(1) A defendant convicted of an offense and sentenced, or a defendant sentenced pursuant to Code Section 42-8-60 or 16-13-2, as a direct result of the defendant being the victim of an offense of trafficking under Code Section 16-5-46 may petition the court imposing the sentence to vacate such conviction and sentence or such sentence imposed pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the jurisdiction, power, and authority to vacate such conviction and sentence."

"(4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such conviction or fails to respond to such petition within 30 days of service, the court imposing the conviction and sentence or sentence imposed pursuant to Code Section 42-8-60 or 16-13-2 shall, without notice or hearing, issue an order vacating the conviction and sentence and shall also issue an order restricting access to criminal history record information for such offense.

(5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the court shall hold a hearing within 90 days of the filing of the petition. The court shall hear evidence and determine, by a preponderance of the evidence, whether the defendant committed such offense as a direct result of being the victim of an offense of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the evidence, that the defendant committed such offense as a direct result of being the victim of an offense of trafficking under Code Section 16-5-46, the court may issue an order vacating the conviction and sentence or sentence imposed pursuant to Code Section 42-8-60 or 16-13-2. The vacatur of a sentence under this chapter or a sentence imposed pursuant to Code Section 42-8-60 or 16-13-2 shall result in the discharge and dismissal of the action."

**SECTION 8.**

Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of individual's criminal history record information, definitions, privacy considerations, written application requesting review, and inspection, is amended by revising subparagraphs (j)(6)(A), (j)(6)(C), and (j)(6)(D) as follows:

"(6)(A) A defendant convicted of an offense and sentenced, or a defendant sentenced pursuant to Code Section 42-8-60 or 16-13-2, while such individual was a victim of an offense of trafficking under Code Section 16-5-46 may petition the court imposing the sentence to restrict such conviction and sentence or such sentence imposed pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the jurisdiction, power, and authority to restrict such conviction and sentence."

"(C) If the prosecuting attorney, to the court, consents in writing to the restriction of such conviction and sentence or fails to respond to such petition within 30 days of service, the court imposing the conviction and sentence or sentence imposed pursuant to Code Section 42-8-60 or 16-13-2 shall, without notice or hearing, issue an order restricting ~~the conviction and sentence~~ access to the criminal history record of such offense.

(D) If the prosecuting attorney, to the court, objects in writing to the petition, the court shall determine, by a preponderance of the evidence, whether the defendant committed such offense while such individual was a victim of an offense of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the evidence, that the defendant committed such offense while such individual was a victim of an offense of trafficking under Code Section 16-5-46, the court may issue an order restricting ~~the conviction and sentence~~ access to the criminal history record of such offense. The court shall hold a hearing within 90 days of the filing of the petition to hear evidence for purposes of making a determination under this subparagraph or make a determination upon the pleadings or record."

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**SECTION 9.**

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