

The Senate Committee on Judiciary offered the following substitute to HB 1022:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated,
2 relating to cruelty to children, so as to enact the "Colton-McNeill Act"; to provide for
3 sentencing of a person convicted of cruelty to children in the first or second degree against
4 a disabled minor; to provide a definition; to provide for deviation from certain minimum
5 sentences; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 5 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to
9 cruelty to children, is amended by revising Code Section 16-5-70, relating to cruelty to
10 children, as follows:

11 "16-5-70.

12 (a)(1) This Code section shall be known and may be cited as the 'Colton-McNeill Act.'

13 (2) As used in this Code section, the term 'disabled minor' means any person under the
14 age of 18 who has a physical or mental impairment, who has a record of such impairment,
15 and whose impairment substantially affects one or more of the following:

16 (A) Such person's ability to perform two or more activities of daily living at an
17 age-appropriate level;

18 (B) Such person's mobility to the extent that daily assistance from another person is
19 required and would otherwise not be required but for the impairment;

20 (C) Such person's cognitive ability or brain development to the extent that daily
21 assistance from another person is required and would otherwise not be required but for
22 the impairment; or

23 (D) Such person's physical or cognitive development to the extent that he or she is or
24 will be permanently and profoundly disabled.

25 (b) A parent, guardian, or other person supervising the welfare of or having immediate
26 charge or custody of a child under the age of 18 commits the offense of cruelty to children
27 in the first degree when such person willfully deprives the child of necessary sustenance
28 to the extent that the child's health or well-being is jeopardized.

29 ~~(b)~~(c) Any person commits the offense of cruelty to children in the first degree when such
30 person maliciously causes a child under the age of 18 cruel or excessive physical or mental
31 pain.

32 ~~(c)~~(d) Any person commits the offense of cruelty to children in the second degree when
33 such person with criminal negligence causes a child under the age of 18 cruel or excessive
34 physical or mental pain.

35 ~~(d)~~(e) Any person commits the offense of cruelty to children in the third degree when:

36 (1) Such person, who is the primary aggressor, intentionally allows a child under the age
37 of 18 to witness the commission of a forcible felony, battery, or family violence battery;
38 or

39 (2) Such person, who is the primary aggressor, having knowledge that a child under the
40 age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family
41 violence battery.

42 ~~(e)~~(f)(1) A person convicted of the offense of cruelty to children in the first degree as
43 provided in this Code section shall be punished by imprisonment for not less than five nor
44 more than 20 years.

45 (2) A person convicted of the offense of cruelty to children in the second degree shall be
46 punished by imprisonment for not less than one nor more than ten years.

47 (3) A person convicted of the offense of cruelty to children in the third degree shall be
48 punished as for a misdemeanor upon the first or second conviction. Upon conviction of
49 a third or subsequent offense of cruelty to children in the third degree, the defendant shall
50 be guilty of a felony and shall be sentenced to a fine not less than \$1,000.00 nor more
51 than \$5,000.00 or imprisonment for not less than one year nor more than three years or
52 shall be sentenced to both fine and imprisonment.

53 (4)(A) A person convicted of the offense of cruelty to children in the first degree
54 against a disabled minor shall be punished by imprisonment for not less than 15 nor
55 more than 30 years.

56 (B)(i) A person convicted of the offense of cruelty to children in the second degree
57 against a disabled minor shall be punished by imprisonment for not less than ten nor
58 more than 20 years.

59 (ii) In the court's discretion, a judge may depart from the mandatory minimum
60 sentence specified in division (i) of this subparagraph if the judge concludes that the
61 interests of justice will not be served by the imposition of the prescribed mandatory
62 minimum sentence. If a judge departs from the mandatory minimum sentence
63 pursuant to this division, the judge shall specify on the record the reasons for the
64 reduction and the interests served by such departure."

65 **SECTION 2.**

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