

The Senate Committee on Public Safety offered the following substitute to HB 1161:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and
2 traffic, so as to provide for proper operation of a motor vehicle upon approach by an
3 authorized emergency vehicle or by a law enforcement vehicle for purposes of a traffic stop;
4 to create an offense for fleeing or attempting to elude a pursuing vehicle or law enforcement
5 officer performing duties on behalf of the Capitol Police Division, Commercial Vehicle
6 Enforcement Division, or Uniform Division of the Department of Public Safety; to provide
7 for penalties based on the distance a person fled or otherwise attempted to elude a pursuing
8 vehicle or law enforcement officer performing duties on behalf of the Department of Public
9 Safety; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
13 amended by revising Code Section 40-6-74, relating to operation of vehicles on approach of
14 authorized emergency vehicles, as follows:

15 "40-6-74.

16 (a) Upon the immediate approach of an authorized emergency vehicle ~~or a vehicle~~
17 ~~belonging to a federal, state, or local law enforcement agency~~ making use of an audible
18 signal and visual signals meeting the requirements of Code Section 40-6-6, the ~~driver~~
19 operator of every other vehicle in proximity to such approaching vehicle shall yield the
20 right of way to the authorized emergency vehicle and shall immediately ~~drive~~ move the
21 vehicle to a position parallel to, and as close as possible to, the right-hand edge or curb of
22 the roadway clear of any intersection and ~~shall~~ stop and remain in such position until the
23 authorized emergency vehicle ~~or law enforcement vehicle~~ has passed, except when
24 otherwise directed by a ~~police~~ law enforcement officer.

25 (b) When an operator of a motor vehicle upon a highway is directed to stop by a law
26 enforcement officer in a law enforcement vehicle marked pursuant to Code Section 40-8-91
27 and through the use of an audible signal and visual signals meeting the requirements of
28 Code Section 40-6-6, the operator shall immediately move the motor vehicle in a manner
29 so as not to impede the flow of traffic to a position parallel to, and as close as possible to,
30 the right-hand edge or curb of the roadway clear of any intersection and stop and remain
31 in such position until otherwise directed by the law enforcement officer; provided,
32 however, that, when such requirement would result in stopping and remaining in an unsafe
33 location, such operator may display the vehicle's flashing lights or turn signal, observe the
34 maximum posted speed limit, and continue to a reasonably safe location to stop and remain
35 in such position until otherwise directed by the law enforcement officer.

36 (b)(c) This Code section shall not operate to relieve the ~~driver~~ operator of any authorized
37 emergency vehicle from the duty to drive with due regard for the safety of all persons using
38 the highway."

39

SECTION 2.

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

41 "40-6-395.1.

42 (a) It shall be unlawful for any driver of a vehicle to willfully fail or refuse to bring his or
43 her vehicle to a stop or to flee or otherwise attempt to elude a pursuing law enforcement
44 vehicle or officer performing official duties on behalf of the Capitol Police Division,
45 Commercial Vehicle Enforcement Division, or Uniform Division of the Department of
46 Public Safety when given a visual or an audible signal to bring the vehicle to a stop. The
47 signal given by such officer may be by hand, voice, emergency light, or siren. The officer
48 giving such signal shall be in uniform prominently displaying his or her badge of office,
49 and his or her vehicle shall be appropriately marked showing it to be an official vehicle of
50 the Department of Public Safety, including, but not limited to, vehicles specifically marked
51 as Capitol Police Division, Commercial Vehicle Enforcement Division, and Georgia State
52 Patrol.

53 (b) The trier of fact shall determine beyond a reasonable doubt the distance the person
54 actually traveled while fleeing or otherwise attempting to elude a pursuing Department of
55 Public Safety vehicle or officer after such officer notified the Department of Public Safety
56 dispatcher that such person was fleeing or otherwise eluding the officer. The determination
57 of the distance traveled shall not be an essential element of such offense. If the distance
58 traveled cannot be determined, such distance shall be presumed to be zero miles.

59 (c)(1) Any person convicted of violating the provisions of subsection (a) of this Code
60 section, upon a first conviction thereof, shall be guilty of a high and aggravated
61 misdemeanor and, upon a second or subsequent conviction thereof, shall be guilty of a
62 felony and shall be punished as follows:

63 (A) Upon the first conviction, a fine not subject to suspension, stay, or probation of not
64 less than \$1,000.00 nor more than \$5,000.00 and confinement for 30 days for each mile
65 the person actually traveled while fleeing or otherwise attempting to elude a pursuing

66 Department of Public Safety vehicle or officer but in no case for a period of less than
67 30 days or more than 12 months. Any period of such imprisonment in excess of 30
68 days may, in the sole discretion of the judge, be suspended, stayed, or probated;

69 (B) Upon the second conviction within a ten-year period of time, as measured from the
70 date of previous arrest for which a conviction was obtained to the date of the current
71 arrest for which a conviction is obtained, a fine not subject to suspension, stay, or
72 probation of not less than \$2,500.00 nor more than \$7,500.00 and imprisonment for the
73 greater of 30 days for each mile the person actually traveled while fleeing or otherwise
74 attempting to elude a pursuing Department of Public Safety vehicle or officer or 90
75 days but in no case for a period of more than 2 years; and

76 (C) Upon the third or subsequent conviction within a ten-year period of time, as
77 measured from the dates of previous arrests for which convictions were obtained to the
78 date of the current arrest for which a conviction is obtained, a fine not subject to
79 suspension, stay, or probation of not less than \$5,000.00 nor more than \$10,000.00 and
80 imprisonment for the greater of 30 days for each mile the person actually traveled while
81 fleeing or otherwise attempting to elude a pursuing Department of Public Safety vehicle
82 or officer or two years but in no case for a period of more than ten years.

83 (2) For the purpose of imposing a sentence under this subsection, a plea of nolo
84 contendere shall constitute a conviction.

85 (3) Upon a finding by the sentencing judge that payment of the fine required under
86 subparagraphs (A) through (C) of paragraph (1) of this subsection would impose an
87 economic hardship on the defendant, such judge may order the defendant to pay such fine
88 in installments which may be enforced through a contempt proceeding or a revocation of
89 any probation otherwise authorized by this subsection.

90 (4) Notwithstanding the limits set forth in any municipal charter, any municipal court of
91 any municipality shall be authorized to impose the punishments provided for in
92 subparagraph (A) of paragraph (1) of this subsection upon a conviction of violating such

93 subparagraph or upon conviction of violating any ordinance adopting the provisions of
94 such subparagraph.

95 (d) Any person violating the provisions of subsection (a) of this Code section who, while
96 fleeing or otherwise attempting to elude a pursuing Department of Public Safety vehicle
97 or officer:

98 (1) Operates his or her vehicle in excess of 20 miles an hour above the posted speed
99 limit;

100 (2) Strikes or collides with another vehicle or a pedestrian;

101 (3) Is the proximate cause of an accident;

102 (4) Flees in traffic conditions which place the general public at risk of receiving serious
103 injuries;

104 (5) Commits a violation of:

105 (A) Code Section 40-6-144;

106 (B) Subsection (a) of Code Section 40-6-163;

107 (C) Subsection (a) of Code Section 40-6-251;

108 (D) Subsection (a) of Code Section 40-6-390;

109 (E) Subsection (a) of Code Section 40-6-390.1; or

110 (F) Subsection (a) of Code Section 40-6-391; or

111 (6) Leaves this state

112 shall be guilty of a felony punishable by a fine of not less than \$5,000.00 nor more
113 than \$10,000.00 and imprisonment for the greater of 30 days for each mile the person
114 actually traveled while fleeing or otherwise attempting to elude a pursuing Department of
115 Public Safety vehicle or officer or one year but in no case for a period of more than ten
116 years.

117 (e) Following adjudication of guilt or imposition of sentence for a violation of
118 subparagraph (c)(1)(B) or (c)(1)(C) or subsection (d) of this Code section, the sentence
119 shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced

120 to a lesser offense, merged with any other offense, or served concurrently with any other
121 offense."

122 **SECTION 3.**

123 Said title is further amended in Code Section 40-8-91, relating to marking and equipment of
124 law enforcement vehicles and motorist allowed to continue to safe location before stopping
125 for law enforcement officer vehicles, by revising subsections (e) and (f) as follows:

126 ~~"(e) Whenever a motorist driving on the roadways of this state is directed to stop by a law~~
127 ~~enforcement officer in a law enforcement vehicle marked as required under this Code~~
128 ~~section, the motorist may continue to drive until a reasonably safe location for stopping is~~
129 ~~reached. Such motorist shall indicate to the officer his or her intent to proceed to a safe~~
130 ~~location by displaying the vehicle's flashing lights or turn signal. In proceeding to a safe~~
131 ~~location, the motorist shall observe the posted maximum speed limit.~~

132 ~~(f) An otherwise lawful arrest shall not be invalidated or in any manner affected by failure~~
133 ~~to comply with this Code section."~~

134 **SECTION 4.**

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