

House Bill 770 (AS PASSED HOUSE AND SENATE)

By: Representatives Efstoration of the 104th, Pak of the 108th, Ballinger of the 23rd, Lindsey of the 54th, and Cooper of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 15-11-2 of the Official Code of Georgia Annotated, relating to
2 definitions of the juvenile code, so as to provide for the crime of home invasion in the first
3 degree to be a class A designated felony act and the crime of home invasion in the second
4 degree to be a class B designated felony act; to amend Title 16 of the Official Code of
5 Georgia Annotated, relating to crimes and offenses, so as to create the crimes of home
6 invasion in the first degree and home invasion in the second degree; to provide for penalties;
7 to provide that the crime of home invasion in any degree shall be a forcible felony in relation
8 to the possession of firearms by convicted felons and first offender probationers; to provide
9 for a minimum period of confinement for persons who have a prior conviction for the crime
10 of home invasion in any degree; to provide that it is unlawful for any person to possess or to
11 use a machine gun, sawed-off rifle, sawed-off shotgun, or firearm equipped with a silencer
12 during the commission or the attempted commission of the crime of home invasion in any
13 degree; to provide that a motor vehicle, tool, or weapon used or intended for use in any
14 manner in the commission of or to facilitate the commission of a home invasion shall be
15 subject to forfeiture; to amend Title 17 of the Official Code of Georgia Annotated, relating
16 to criminal procedure, so as to provide that the offense of home invasion in the first degree
17 shall be bailable only before a judge of the superior court; to provide that a defendant who
18 pleads nolo contendere or guilty or is convicted of the crime of home invasion shall not be
19 allowed to surrender voluntarily to the county jail or correctional institution; to amend Title
20 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to provide
21 that a victim of a crime relating to the offense of home invasion in any degree shall be
22 notified of impending release of the offender from imprisonment as provided in Code Section
23 42-1-11 of the Official Code of Georgia Annotated; to provide for definitions; to repeal
24 conflicting laws; and for other purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

26 **SECTION 1.**

27 Code Section 15-11-2 of the Official Code of Georgia Annotated, relating to definitions of
 28 the juvenile code, is amended by adding a new subparagraph to paragraph (12) to read as
 29 follows:

30 "(G.1) Home invasion in the first degree;"

31 **SECTION 2.**

32 Said Code section is further amended by adding a new subparagraph to paragraph (13) to
 33 read as follows:

34 "(F.1) Home invasion in the second degree;"

35 **SECTION 3.**

36 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 37 amended in Chapter 7, relating to damage and intrusion upon property, by adding a new
 38 article to read as follows:

39 "ARTICLE 1A

40 16-7-5.

41 (a) As used in this Code section, the term 'dwelling' shall have the same meaning as
 42 provided in Code Section 16-7-1.

43 (b) A person commits the offense of home invasion in the first degree when, without
 44 authority and with intent to commit a forcible felony therein and while in possession of a
 45 deadly weapon or instrument which, when used offensively against a person, is likely to
 46 or actually does result in serious bodily injury, he or she enters the dwelling house of
 47 another while such dwelling house is occupied by any person with authority to be present
 48 therein.

49 (c) A person commits the offense of home invasion in the second degree when, without
 50 authority and with intent to commit a forcible misdemeanor therein and while in possession
 51 of a deadly weapon or instrument which, when used offensively against a person, is likely
 52 to or actually does result in serious bodily injury, he or she enters the dwelling house of
 53 another while such dwelling house is occupied by any person with authority to be present
 54 therein.

55 (d) A person convicted of the offense of home invasion in the first degree shall be guilty
 56 of a felony and, upon conviction thereof, shall be punished by imprisonment for life or
 57 imprisonment for not less than ten nor more than 20 years and by a fine of not more than
 58 \$100,000.00. A person convicted of the offense of home invasion in the second degree

59 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment
 60 for not less than five nor more than 20 years and by a fine of not more than \$100,000.00.
 61 (e) Adjudication of guilt or imposition of sentence for home invasion in any degree may
 62 be probated at the discretion of the judge; provided, however, that such sentence shall not
 63 be suspended, deferred, or withheld.
 64 (f) A sentence imposed under this Code section may be imposed separately from and
 65 consecutive to a sentence for any other offense related to the act or acts establishing the
 66 offense under this Code section."

67 **SECTION 4.**

68 Said title is further amended in Code Section 16-11-131, relating to possession of firearms
 69 by convicted felons and first offender probationers, by revising subsection (e) as follows:

70 "(e) As used in this Code section, the term 'forcible felony' means any felony which
 71 involves the use or threat of physical force or violence against any person and further
 72 includes, without limitation, murder; felony murder; burglary in any degree; robbery;
 73 armed robbery; home invasion in any degree; kidnapping; hijacking of an aircraft or motor
 74 vehicle; aggravated stalking; rape; aggravated child molestation; aggravated sexual battery;
 75 arson in the first degree; the manufacturing, transporting, distribution, or possession of
 76 explosives with intent to kill, injure, or intimidate individuals or destroy a public building;
 77 terroristic threats; or acts of treason or insurrection."

78 **SECTION 5.**

79 Said title is further amended in Code Section 16-11-133, relating to minimum periods of
 80 confinement for persons convicted who have prior convictions, by revising subsection (b)
 81 as follows:

82 "(b) Any person who has previously been convicted of or who has previously entered a
 83 guilty plea to the offense of murder, armed robbery, home invasion in any degree,
 84 kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual
 85 battery, or any felony involving the use or possession of a firearm and who shall have on
 86 or within arm's reach of his or her person a firearm during the commission of, or the
 87 attempt to commit:

- 88 (1) Any crime against or involving the person of another;
 89 (2) The unlawful entry into a building or vehicle;
 90 (3) A theft from a building or theft of a vehicle;
 91 (4) Any crime involving the possession, manufacture, delivery, distribution, dispensing,
 92 administering, selling, or possession with intent to distribute any controlled substance as
 93 provided in Code Section 16-13-30; or

94 (5) Any crime involving the trafficking of cocaine, marijuana, or illegal drugs as
 95 provided in Code Section 16-13-31,
 96 and which crime is a felony, commits a felony and, upon conviction thereof, shall be
 97 punished by confinement for a period of 15 years, such sentence to run consecutively to
 98 any other sentence which the person has received."

99 **SECTION 6.**

100 Said title is further amended in Code Section 16-11-160, relating to the use of machine guns,
 101 sawed-off rifles, sawed-off shotguns, or firearms with silencers during the commission of
 102 certain offenses, by adding a new subparagraph to paragraph (1) of subsection (a) to read as
 103 follows:

104 "(D.1) Home invasion in any degree as defined in Code Section 16-7-5;"

105 **SECTION 7.**

106 Said title is further amended by revising Code Section 16-16-1, relating to definitions for
 107 forfeiture, as follows:

108 "16-16-1.

109 As used in this chapter, the term:

110 (1) 'Armed robbery' means the offense defined in subsection (a) of Code Section
 111 16-8-41.

112 (2) 'Burglary' means the offense defined in Code Section 16-7-1 in any degree.

113 (3) 'Home invasion' means the offense defined in Code Section 16-7-5 in any degree.'

114 **SECTION 8.**

115 Said title is further amended in Code Section 16-16-2, relating to forfeiture, by revising
 116 subsections (a) and (c) and paragraph (1) of subsection (e) as follows:

117 "(a) All motor vehicles, tools, and weapons which are used or intended for use in any
 118 manner in the commission of or to facilitate the commission of a burglary, home invasion,
 119 or armed robbery shall be subject to forfeiture under this chapter, but:

120 (1) No motor vehicle used by any person as a common carrier in the transaction of
 121 business as a common carrier shall be subject to forfeiture under this Code section unless
 122 it appears that the owner or other person in charge of the motor vehicle is a consenting
 123 party or privy to the commission of a burglary, home invasion, or armed robbery;

124 (2) No motor vehicle shall be subject to forfeiture under this Code section by reason of
 125 any act or omission established by the owner thereof to have been committed or omitted
 126 without his or her knowledge or consent, and any co-owner of a motor vehicle without

127 knowledge of or consent to the act or omission shall be protected to the extent of the
128 interest of such co-owner; and

129 (3) A forfeiture of a motor vehicle encumbered by a bona fide security interest shall be
130 subject to the interest of the secured party if he or she neither had knowledge of nor
131 consented to the act or omission.

132 Notwithstanding any provisions of this Code section to the contrary, any firearm forfeited
133 under this chapter shall be disposed of in accordance with the provisions of Code Section
134 17-5-52."

135 "(c) Property taken or detained under this Code section shall not be subject to replevin but
136 is deemed to be in the custody of the superior court wherein the seizure was made or in
137 custody of the superior court where it can be proven that the burglary, home invasion, or
138 armed robbery was committed, subject only to the orders and decrees of the court having
139 jurisdiction over the forfeiture proceedings. When property is seized under this chapter,
140 law enforcement officers seizing such property shall:

141 (1) Place the property under seal;

142 (2) Remove the property to a place designated by the judge of the superior court having
143 jurisdiction over the forfeiture as set out in this subsection; or

144 (3) Deliver such property to the sheriff or police chief of the county in which the seizure
145 occurred, and the sheriff or police chief shall take custody of the property and remove it
146 to an appropriate location for disposition in accordance with law."

147 "(e)(1) When property is forfeited under this chapter, the judge of the superior court in
148 the county where the seizure was made or in the county in which it can be proven that the
149 burglary, home invasion, or armed robbery was committed may dispose of the property
150 by issuing an order to:

151 (A) Retain it for official use by any agency of this state or any political subdivision
152 thereof;

153 (B) Sell that which is not required to be destroyed by law and which is not harmful to
154 the public. The proceeds shall be used for payment of all proper expenses of the
155 proceedings for forfeiture and sale, including but not limited to the expenses of seizure,
156 maintenance of custody, advertising, and court costs; or

157 (C) Require the sheriff or police chief of the county in which the seizure occurred to
158 take custody of the property and remove it for disposition in accordance with law."

159 **SECTION 9.**

160 Title 17 of the Official Code of Georgia Annotated, relating criminal procedure, is amended
161 in Code Section 17-6-1, relating to offenses which are bailable only before a judge of the
162 superior court, by revising subsections (a) and (g) as follows:

163 "(a) The following offenses are bailable only before a judge of the superior court:
164 (1) Treason;
165 (2) Murder;
166 (3) Rape;
167 (4) Aggravated sodomy;
168 (5) Armed robbery;
169 (5.1) Home invasion in the first degree;
170 (6) Aircraft hijacking and hijacking a motor vehicle;
171 (7) Aggravated child molestation;
172 (8) Aggravated sexual battery;
173 (9) Manufacturing, distributing, delivering, dispensing, administering, or selling any
174 controlled substance classified under Code Section 16-13-25 as Schedule I or under Code
175 Section 16-13-26 as Schedule II;
176 (10) Violating Code Section 16-13-31 or Code Section 16-13-31.1;
177 (11) Kidnapping, arson, aggravated assault, or burglary in any degree if the person, at
178 the time of the alleged kidnapping, arson, aggravated assault, or burglary in any degree,
179 had previously been convicted of, was on probation or parole with respect to, or was on
180 bail for kidnapping, arson, aggravated assault, burglary in any degree, or one or more of
181 the offenses listed in paragraphs (1) through (10) of this subsection;
182 (12) Aggravated stalking; and
183 (13) Violations of Chapter 15 of Title 16."
184 "(g) No appeal bond shall be granted to any person who has been convicted of murder,
185 rape, aggravated sodomy, armed robbery, home invasion in any degree, aggravated child
186 molestation, child molestation, kidnapping, trafficking in cocaine or marijuana, aggravated
187 stalking, or aircraft hijacking and who has been sentenced to serve a period of incarceration
188 of five years or more. The granting of an appeal bond to a person who has been convicted
189 of any other felony offense or of any misdemeanor offense involving an act of family
190 violence as defined in Code Section 19-13-1, or of any offense delineated as a high and
191 aggravated misdemeanor or of any offense set forth in Code Section 40-6-391, shall be in
192 the discretion of the convicting court. Appeal bonds shall terminate when the right of
193 appeal terminates, and such bonds shall not be effective as to any petition or application
194 for writ of certiorari unless the court in which the petition or application is filed so
195 specifies."

196 **SECTION 10.**

197 Said title is further amended in Code Section 17-10-9.1, relating to voluntary surrender to
198 county jail or correctional institution, by adding a new paragraph to subsection (a) to read as
199 follows:

200 "(5.1) Home invasion in any degree:"

201 **SECTION 11.**

202 Title 42 of the Official Code of Georgia Annotated, relating penal institutions, is amended
203 in Code Section 42-1-11, relating to notification of crime victims of impending release of
204 offender from imprisonment, by revising paragraph (1) of subsection (a) as follows:

205 "(1) 'Crime' means an act committed in this state which constitutes any violation of
206 Chapter 5 of Title 16, relating to crimes against persons; Chapter 6 of Title 16, relating
207 to sexual offenses; Article 1, Article 1A, or Article 3 of Chapter 7 of Title 16, relating to
208 burglary, home invasion, and arson; or Article 1 or Article 2 of Chapter 8 of Title 16,
209 relating to offenses involving theft and armed robbery."

210 **SECTION 12.**

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