

Senate Bill 44

By: Senators Hatchett of the 50th, Kennedy of the 18th, Gooch of the 51st, Robertson of the 29th, Anderson of the 24th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 5-7-1 of the Official Code of Georgia Annotated, relating to orders,
2 decisions, or judgments appealable and defendant's right to cross appeal, so as to provide for
3 the state's right to appeal the court's deviation from mandatory minimum sentencing
4 regarding certain offenses; to amend Title 16 of the Official Code of Georgia Annotated,
5 relating to crimes and offenses, so as to provide for mandatory minimum penalties for
6 violations of the Street Gang Terrorism and Prevention Act; to provide for an exception for
7 imposing such mandatory penalties in certain circumstances; to amend Code Section 17-6-12
8 of the Official Code of Georgia Annotated, relating to unsecured judicial release,
9 requirement, and effect of failure of person charged to appear for trial, so as to provide for
10 the limitation of unsecured judicial release in certain circumstances where the accused has
11 a prior conviction for the offense of bail jumping or failure to appear; to provide for the
12 requirement that an accused's criminal history be considered prior to issuing an unsecured
13 judicial release; to provide for reconsideration of eligibility; to amend Code Section 52-7-26
14 of the Official Code of Georgia Annotated, relating to penalty regarding general provisions
15 for registration, operation, and sale of watercraft, so as to provide for a conforming cross
16 reference; to provide for related matters; to provide for an effective date and applicability;
17 to repeal conflicting laws; and for other purposes.

S. B. 44

- 1 -

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 **SECTION 1.**

20 Code Section 5-7-1 of the Official Code of Georgia Annotated, relating to orders, decisions,
21 or judgments appealable and defendant's right to cross appeal, is amended in subsection (a)
22 by adding a new paragraph and by revising paragraphs (9) and (10) as follows:

23 "(9) From an order, decision, or judgment denying a motion by the state to recuse or
24 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; ~~or~~

25 (10) From an order, decision, or judgment issued pursuant to subsection (c) of Code
26 Section 17-10-6.2; or

27 (11) From an order, decision, or judgment that reduces the mandatory minimum sentence
28 as provided in subsection (k) of Code Section 16-15-4."

29 **SECTION 2.**

30 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
31 amended by revising subsections (e) and (k) of Code Section 16-15-4, relating to
32 participation in criminal gang activity prohibited and prosecution, as follows:

33 "(e) It shall be unlawful for any person to directly, or through another acting upon such
34 person's direction, cause, encourage, solicit, recruit, or coerce another to become a member
35 or associate of a criminal street gang, to participate in a criminal street gang, or to conduct
36 or participate in criminal gang activity."

37 ~~"(k)(1) Any person who violates subsection (a), (b), or (c) of this Code section shall be~~
38 ~~guilty of a felony and upon conviction thereof, in addition to any other penalty imposed,~~
39 ~~shall be sentenced to imprisonment for five years but not more than 20 years or pay a fine~~
40 ~~of not less than \$10,000.00 nor more than \$15,000.00, or both.~~

41 ~~(2) Any person who violates subsection (a) of this Code section through the commission~~
42 ~~of a violation of Code Section 42-5-18 shall be guilty of a felony and upon conviction~~

43 ~~thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory~~
44 ~~minimum term of imprisonment of two years but not more than 20 years which shall be~~
45 ~~served consecutively to any other sentence imposed, and no portion of the mandatory~~
46 ~~minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld~~
47 ~~by the sentencing court.~~

48 ~~(3) Any person who violates subsection (d) of this Code section shall be guilty of a~~
49 ~~felony and upon conviction thereof, in addition to any other penalty imposed, shall be~~
50 ~~sentenced to imprisonment for five years but not more than 20 years which shall be~~
51 ~~served consecutively to any other sentence imposed. As used in this subsection, the term:~~

52 (A) 'Dangerous weapon' shall have the same meaning as provided for under Code
53 Section 16-11-121.

54 (B) 'Firearm' means any handgun, rifle, shotgun, or other weapon which will or can be
55 converted to expel a projectile by the action of an explosive or electrical charge and
56 which is not a dangerous weapon.

57 (C) 'Hazardous object' shall have the same meaning as set forth in Code Section
58 20-2-751.

59 (D) 'Leader' means a person who planned and organized others and acted as a guiding
60 force in order to achieve a common goal.

61 (2) Except as otherwise provided in this subsection, any person who violates this Code
62 section shall be guilty of a felony and upon conviction thereof, in addition to any other
63 penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of
64 five years but not more than 20 years which shall be served consecutively to any other
65 sentence imposed, and no portion of the mandatory minimum sentence imposed shall be
66 suspended, stayed, probated, deferred, or withheld by the sentencing court.

67 ~~(4)(3)(A)~~ Any person who violates subsection (e), (f), (g), (h), (i), or (j) of this Code
68 section and such violation involves another who is under 17 years of age at the time of
69 the violation, or who has a disability as defined in Code Section 34-6A-2, shall be

70 guilty of a felony and upon conviction thereof, in addition to any other penalty
71 imposed, shall be sentenced to imprisonment for five years but not more than 20 years
72 punished as follows:

73 (i) Upon the first conviction thereof, such person shall be sentenced to a mandatory
74 minimum term of imprisonment of ten years but not more than 20 years which shall
75 be served consecutively to any other sentence imposed, and no portion of the
76 mandatory minimum sentence imposed shall be suspended, stayed, probated,
77 deferred, or withheld by the sentencing court; and

78 (ii) Upon the second or subsequent conviction thereof, such person shall be sentenced
79 to a mandatory minimum term of imprisonment of 15 years but not more than 25
80 years which shall be served consecutively to any other sentence imposed, and no
81 portion of the mandatory minimum sentence imposed shall be suspended, stayed,
82 probated, deferred, or withheld by the sentencing court.

83 (B) A mandatory minimum sentence imposed pursuant to this paragraph shall not be
84 reduced, suspended, or otherwise departed from pursuant to paragraph (4) or (5) of this
85 subsection.

86 (4) The district attorney or the Attorney General may move the sentencing court to
87 impose a reduced or suspended sentence upon any person who is convicted of a violation
88 of this Code section who provides substantial assistance in the identification, arrest, or
89 conviction of any of his or her accomplices, accessories, coconspirators, leaders, or
90 principals. Upon good cause shown, the motion may be filed and heard in camera. The
91 judge hearing the motion may impose a reduced or suspended sentence if he or she finds
92 that the defendant has rendered such substantial assistance.

93 (5)(A) In the court's discretion, a judge may depart from the mandatory minimum
94 sentence specified for a person who is convicted of a violation of this Code section as
95 set forth in paragraph (2) of this subsection if the judge concludes that:

96 (i) The defendant was not a leader of the criminal conduct;

- 97 (ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous
 98 object during the crime;
 99 (iii) The criminal conduct did not result in death or serious bodily injury to a person
 100 other than to a person who was a party to the crime;
 101 (iv) The defendant has no prior felony conviction; and
 102 (v) The interests of justice will not be served by the imposition of the prescribed
 103 mandatory minimum sentence.
 104 (B) If a judge departs from the mandatory minimum sentence pursuant to this
 105 paragraph, the judge shall specify on the record the circumstances for the reduction and
 106 the interests served by such departure. Any such order shall be appealable by the State
 107 of Georgia pursuant to Code Section 5-7-1."

108

SECTION 3.

109 Code Section 17-6-12 of the Official Code of Georgia Annotated, relating to unsecured
 110 judicial release, requirement, and effect of failure of person charged to appear for trial, is
 111 amended as follows:

112 "17-6-12.

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

114 (1) 'Bail restricted offense' means the person is charged with:

115 (A) An offense of:

116 (i) Murder or felony murder, as defined in Code Section 16-5-1;

117 (ii) Armed robbery, as defined in Code Section 16-8-41;

118 (iii) Kidnapping, as defined in Code Section 16-5-40;

119 (iv) Rape, as defined in Code Section 16-6-1;

120 (v) Aggravated child molestation, as defined in subsection (c) of Code Section
 121 16-6-4, unless subject to the provisions of paragraph (2) of subsection (d) of Code
 122 Section 16-6-4;

- 123 (vi) Aggravated sodomy, as defined in Code Section 16-6-2; or
124 (vii) Aggravated sexual battery, as defined in Code Section 16-6-22.2;
125 (B) A felony offense of:
126 (i) Aggravated assault;
127 (ii) Aggravated battery;
128 (iii) Hijacking a motor vehicle in the first degree;
129 (iv) Aggravated stalking;
130 (v) Child molestation;
131 (vi) Enticing a child for indecent purposes;
132 (vii) Pimping;
133 (viii) Robbery;
134 (viii.1) Burglary;
135 (ix) Bail jumping;
136 (x) Escape;
137 (xi) Possession of a firearm or knife during the commission of or attempt to commit
138 certain crimes;
139 (xii) Possession of firearms by convicted felons and first offender probationers;
140 (xiii) Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine;
141 (xiv) Participating in criminal ~~street~~ gang activity as defined in Code Section
142 16-15-3;
143 (xv) Habitual violator;
144 (xvi) Driving under the influence of alcohol, drugs, or other intoxicating substances;
145 (xvii) Entering an automobile or other mobile vehicle with intent to commit theft or
146 felony, as defined in Code Section 16-8-18; or
147 (xviii) Stalking; or
148 (C) A misdemeanor offense of:
149 (i) Crimes involving family violence, as defined in Code Section 19-13-1; or

150 (ii) Stalking.

151 (2) 'Unsecured judicial release' means any release that does not purport a dollar amount
 152 through secured means as provided for in Code Section 17-6-4 or 17-6-50 or property as
 153 approved by the sheriff in the county where the offense was committed and that is:

154 (A) On a person's own recognizance; or

155 (B) For the purpose of entering a pretrial release program, a pretrial release and
 156 diversion program as provided for in Article 4 of Chapter 3 of Title 42, or a pretrial
 157 intervention and diversion program as provided for in Article 4 of Chapter 18 of
 158 Title 15, or pursuant to Uniform Superior Court Rule 27.

159 (b)(1) An elected judge, an appointed judge filling the vacancy of an elected judge, or
 160 a judge sitting by designation may issue an unsecured judicial release under subparagraph
 161 (a)(2)(A) of this Code Section if:

162 ~~(1)(A)~~ Such unsecured judicial release is noted on the release order; ~~and~~

163 ~~(2)(B)~~ The person is not charged with a bail restricted offense;

164 (C) The person has not been convicted of bail jumping as provided in Code Section
 165 16-10-51 within the past five years; and

166 (D) No bench warrant has been issued for the person's arrest based on such person's
 167 failure to appear in court within the past five years; provided, however, that this
 168 subparagraph shall not apply if such warrant was recalled or issued on the basis of such
 169 person's failure to appear for a nonserious traffic offense, as such term is defined in
 170 Code Section 35-3-37.

171 (2) A person who is ineligible for unsecured judicial release pursuant to subparagraph
 172 (C) or (D) of paragraph (1) of this subsection may contest his or her ineligibility on the
 173 basis that his or her criminal history record information is inaccurate, incomplete, or
 174 misleading. In such instance, the prosecuting attorney shall bear the burden of
 175 establishing such person's ineligibility.

176 (c) An elected judge, an appointed judge filling the vacancy of an elected judge, or a judge
177 sitting by designation may issue an unsecured judicial release under subparagraph (a)(2)(B)
178 of this Code Section if:

179 (1) Such unsecured judicial release is noted on the release order; and

180 (2) The person is not charged with a bail restricted offense.

181 ~~(c)~~(d) Except as provided in subsection (b) and subsection (c) of this Code section and in
182 addition to other laws regarding the release of an accused person, the judge of any court
183 having jurisdiction over a person charged with committing an offense against the criminal
184 laws of this state shall have authority, in his or her sound discretion and in appropriate
185 cases, to authorize the release of the person on an unsecured judicial release only.

186 ~~(d)~~(e) Upon the failure of a person released on an unsecured judicial release to appear for
187 trial, if the release is not otherwise conditioned by the court, absent a finding of sufficient
188 excuse to appear, the court shall summarily issue an order for his or her arrest which shall
189 be enforced as in cases of forfeited bonds.

190 (f) Prior to issuing an unsecured judicial release, a judge shall, in addition to the
191 considerations provided for in Code Section 17-6-1, consider the accused person's criminal
192 history record information that is available at such time."

193 **SECTION 4.**

194 Code Section 52-7-26 of the Official Code of Georgia Annotated, relating to penalty
195 regarding general provisions for registration, operation, and sale of watercraft, is amended
196 in subsection (b) as follows:

197 "(b) Notwithstanding subsection ~~(c)~~ (d) of Code Section 17-6-12, the release of a person
198 on an unsecured judicial release as provided for in Code Section 17-6-12 for violations
199 under Code Sections 52-7-12, 52-7-12.2, 52-7-12.3, and 52-7-12.4 shall be prohibited."

200

SECTION 5.

201 This Act shall become effective on July 1, 2023, and shall apply to all offenses committed
202 on or after that date.

203

SECTION 6.

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