

House Bill 582 (AS PASSED HOUSE AND SENATE)

By: Representatives Gunter of the 8th, Reeves of the 99th, New of the 40th, Hong of the 103rd,
Smith of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 17, 24, and 45 of the Official Code of Georgia Annotated, relating to
2 crimes and offenses, criminal procedure, evidence, and public officers and employees,
3 respectively, so as to provide for defendants to support a justification defense by offering
4 evidence of family violence, dating violence, or child abuse committed by the alleged victim;
5 to provide for petitions for the opportunity to present such evidence; to revise provisions for
6 the defense of coercion and to provide for the application of such defense in all criminal
7 cases; to provide a privilege for participation in victim centered programs and
8 victim-offender dialogues; to provide for definitions; to provide for limitations; to provide
9 for civil immunity for facilitators in certain circumstances; to provide for a short title; to
10 provide for uniform oaths to be sworn by all peace officers; to provide for aspirational
11 language in such oaths; to limit the legal effect of any such aspirational language; to limit the
12 crime of violation of oath of a public officer to codified oaths; to limit the violation of oath
13 by a public officer to violations predicated on certain offenses; to provide for related matters;
14 to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Survivor Justice Act."

SECTION 2.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended in Article 2 of Chapter 3, relating to justification and excuse under defenses to criminal prosecutions, by revising subsection (d) of Code Section 16-3-21, relating to use of force in defense of self or others and evidence of belief that force was necessary in murder or manslaughter prosecution, as follows:

"(d)(1) In a prosecution for ~~murder or manslaughter~~ any offense prohibited under Chapter 5 of this title, if a defendant raises as a defense a justification provided by subsection (a) of this Code section, the defendant may offer relevant evidence that the defendant had been subjected to acts of family violence, dating violence, or child abuse committed by the alleged victim, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, in order to establish the defendant's reasonable belief that the threat or use of force or deadly force was immediately necessary, ~~may be permitted to offer:~~

~~(1) Relevant evidence that the defendant had been the victim of acts of family violence or child abuse committed by the deceased, as such acts are described in Code Sections 19-13-1 and 19-15-1, respectively; and~~

~~(2) Relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence or child abuse that are the bases of the expert's opinion.~~

(2) Relevant evidence includes, but is not limited to:

(A) Evidence pertaining to the alleged victim's prior acts, including, but not limited to:

(i) Evidence indicating the defendant sought law enforcement assistance;

(ii) Evidence indicating the defendant sought services from a counselor, social worker, domestic violence program, or other relevant agency or service provider;

(iii) Evidence indicating the defendant sought medical attention;

(iv) Evidence of the effects of battering and post-traumatic stress disorder on the defendant; and

(v) Temporary protective order petitions, ex parte orders, and final orders in which the alleged victim is the respondent;

(B) Expert testimony, including, but not limited to, testimony as to relevant facts and circumstances relating to the family violence, dating violence, or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, that are the bases of such expert's opinion; and

(C) Any other evidence the court determines is of sufficient credibility or probative value.

(3) Evidence introduced under this subsection shall be subject to Code Sections 24-4-401, 24-4-402, and 24-4-403."

SECTION 3.

Said title is further amended in said article by revising Code Section 16-3-26, relating to coercion, as follows:

"16-3-26.

A person is not guilty of a crime, except ~~murder~~ for the offense of murder provided for in subsection (a) of Code Section 16-5-1, if the act upon which the supposed criminal liability is based is performed under such coercion that ~~the person~~ he or she reasonably believes that performing the act is ~~the only way necessary~~ to prevent his imminent death or great bodily injury to himself or herself or a third person."

SECTION 4.

Said title is further amended by revising Code Section 16-10-1, relating to violation of oath by public officer, as follows:

"16-10-1.

(a) Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

(b) Any peace officer, as such term is defined in Code Section 35-8-2, who has sworn the oath or oaths prescribed in Code Sections 15-16-4 and 45-3-7 shall be subject to prosecution under this Code section only for violations of such oath or oaths as prescribed.

(c) No individual shall be subject to prosecution for violation of his or her oath of office under this Code section, except where such violation is predicated upon the commission of a felony or a misdemeanor of a high and aggravated nature."

SECTION 5.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended in Article 1 of Chapter 10, relating to procedure for sentencing and imposition of punishment, by revising subsection (f) of Code Section 17-10-1, relating to fixing of sentence, suspension or probation of sentence, change in sentence, eligibility for parole, prohibited modifications, and exceptions, as follows:

"(f)(1) Within one year of the date upon which the sentence is imposed, or within 120 days after receipt by the sentencing court of the remittitur upon affirmance of the judgment after direct appeal, whichever is later, the court imposing the sentence has the jurisdiction, power, and authority to correct or reduce the sentence and to suspend or probate all or any part of the sentence imposed. The time periods prescribed in this subsection require the defendant to file a motion within such time periods; however, the court shall not be constrained to issue its order or hear the matter within such time periods. Prior to entering any order correcting, reducing, or modifying any sentence, the court shall afford notice and an opportunity for a hearing to the prosecuting attorney. Any order modifying a sentence which is entered without notice and an opportunity for

a hearing as provided in this subsection shall be void. This subsection shall not limit any other jurisdiction granted to the court in this Code section or as provided for in subsection (g) of Code Section 42-8-34.

(2)(A) A person who is serving a sentence may submit a petition to the court requesting to be sentenced under Code Section 17-10-22 if:

(i) The offense was committed before July 1, 2025; or

(ii) The petition includes evidence that was not part of the record of the case at any sentencing hearing.

(B) Such petition shall be served upon the district attorney. The state shall file its response, if any, within 60 days of being served with such petition. The superior court shall, upon motion for an extension of time and after a hearing and good cause shown, grant one extension to the original 60 day period, not to exceed 180 additional days.

(C) There shall be a presumption in favor of granting a hearing on a petition filed pursuant to this paragraph unless the court determines that there is a lack of circumstantial guarantees of trustworthiness, an inherent unreliability of the facts asserted, or a deficiency in the factual allegations in the petition. If the court decides that the petitioner is not entitled to a hearing, the court shall enter an order denying relief and shall include written findings of fact outlining the reasons for such order.

(D) A hearing on a petition filed pursuant to this paragraph, if granted, shall be scheduled within 90 days of the filing of such petition or within 60 days of the deadline for the state's response, whichever is later. The state shall be given notice and the opportunity to respond at any such hearing.

(E)(i) If, based upon evidence presented at the hearing, the court determines that the petitioner has met the criteria provided in subsection (b) of Code Section 17-10-22, the court shall enter an order reducing the defendant's sentence pursuant to subsection (c) of Code Section 17-10-22.

(ii) If, based upon the petition or evidence presented at the hearing, the court determines that the petitioner has not met the criteria provided in subsection (b) of Code Section 17-10-22, the court shall notify the petitioner, dismiss his or her petition without prejudice, and enter an order to such effect. Such an order shall include written findings of fact outlining the reasons for such order.

(F) Any order issued by a court pursuant to this paragraph shall include written findings of fact and the reasons for such order.

(G) Any judgments pursuant to this paragraph shall be final judgments and subject to direct appeal by the petitioner and the state under Code Sections 5-6-34 and 5-7-1."

SECTION 6.

Said title is further amended in said article by adding a new Code section to read as follows:
"17-10-22.

(a) At the time of sentencing, the defendant may present evidence that he or she was subjected to acts of family violence, dating violence, or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, and that such acts were a significant contributing factor for the offense for which the defendant is being sentenced. The rules of evidence shall apply to such presentation of evidence except that the following evidence shall be admissible:

(1) Hearsay;

(2) Character evidence;

(3) Evidence indicating the defendant sought law enforcement assistance;

(4) Evidence indicating the defendant sought services from a counselor, social worker, domestic violence program, or other relevant agency or service provider;

(5) Evidence indicating the defendant sought medical attention;

(6) Evidence of prior statements regarding the acts of family violence, dating violence, or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively;

(7) Evidence of the effects of battering and post-traumatic stress disorder on the defendant;

(8) Evidence pertaining to the alleged perpetrator's history of other acts of family violence, dating violence or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, including, but not limited to, temporary protective order petitions, ex parte orders, and final orders in which the alleged perpetrator is the respondent;

(9) Expert testimony, including facts and circumstances relating to the family violence, dating violence, or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, that are the bases of such expert's opinion; and

(10) Any other evidence that the court determines is of sufficient credibility or probative value.

(b) The court shall impose a sentence as provided in subsection (c) of this Code section if the court finds that:

(1) By a preponderance of the evidence, the defendant was subjected to acts of family violence, dating violence, or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, and such acts were a significant contributing factor to the offense; or

(2) The best interest of justice and welfare of society would be served; provided, however, that such finding shall only be entered with the consent of the state.

(c) Upon a finding provided for in subsection (b) of this Code section:

(1) A person convicted of a crime punishable by death or by life imprisonment shall be punished by imprisonment for not less than ten years nor more than 30 years. In the court's discretion, the judge may depart from such mandatory minimum sentence when

the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum. Notwithstanding any other provision of law to the contrary, such sentence may be reduced by any form of parole or early release administered by the State Board of Pardons and Paroles or by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections.

(2) A person convicted of a felony other than a felony punishable by death or life imprisonment shall be punished by imprisonment for not less than one year nor more than one-half the maximum period of time for which he or she could have been sentenced, by one-half the maximum fine to which he or she could have been subjected, or both."

SECTION 7.

Title 24 of the Official Code of Georgia Annotated, relating evidence, is amended in Chapter 5, relating to privileges relative to evidence, by revising paragraphs (8) and (9) of and adding a new paragraph to subsection (a) of Code Section 24-5-501, relating to certain communications privileged, to read as follows:

"(8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this subsection; and

(9) Communications between accountant and client as provided by Code Section 43-3-29; and

(10) Communications made in the context of victim centered practices or victim-offender dialogues as provided for in Code Section 24-5-511."

SECTION 8.

Said title is further amended in said chapter by adding a new Code section to read as follows:
"24-5-511.

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

(1) 'Facilitator' means a person who is trained to facilitate a victim centered practice or victim-offender dialogue.

(2) 'Party' means a person, including a facilitator, a victim, an offender, a community member, and any other participant, who voluntarily consents to participate with others in a victim centered practice or victim-offender dialogue.

(3) 'Proceeding' means any legal action subject to the laws of this state, including, but not limited to, civil, criminal, juvenile, or administrative hearings.

(4) 'Victim centered practice' or 'practice' means a gathering in which parties gather to identify and respond to wrongdoing, repair harm, reduce the likelihood of further harm, and strengthen community ties by focusing on the needs and obligations of all parties involved through a participatory process.

(5) 'Victim-offender dialogue' or 'dialogue' means a process in which the victim of a crime, or his or her surviving family members, and the offender who committed the crime meet in a secure setting to engage in a dialogue facilitated by a facilitator with the goal of repairing harm and addressing trauma.

(b)(1) Any communication or action made at any time while preparing for or participating in a victim centered practice or a victim-offender dialogue or as a follow up to such practice or dialogue, or the fact that such practice or dialogue has been planned or convened, shall be privileged and shall not be referred to, used, or admitted in any proceeding unless such privilege is waived. Such waiver may be made during the proceeding or in writing by the party or parties protected by the privilege. Privileged information shall not be subject to discovery or disclosure in any judicial or extrajudicial proceeding and shall not be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(2) Parties of a victim centered practice or victim-offender dialogue may refuse to disclose communications relating to a victim centered practice or victim-offender dialogue and prevent others from disclosing such communications.

(3) Any waiver of privilege shall be limited to the participation and communications of the waiving party only, and the participation or communications of any other party shall remain privileged unless waived by such other party.

(c) Evidence that is created or discovered outside of the victim centered practice or victim-offender dialogue shall not become inadmissible or protected from discovery solely because it was discussed or used in a victim centered practice or victim-offender dialogue.

(d)(1) The privilege afforded by this Code section shall not extend to a situation in which:

(A) There are threats of imminent violence to self or others; or

(B) The facilitator believes that a child is being abused or that the safety of any party or other person is in danger.

(2) A court, tribunal, or administrative body may require a report on a victim centered practice or victim-offender dialogue, but such report shall be limited to the fact that a practice or dialogue has taken place and whether further practices or dialogues are expected.

(e) The privilege created by this Code section shall not be grounds to fail to comply with mandatory reporting requirements as set forth in Code Section 19-7-5 or Chapter 5 of Title 30, the 'Disabled Adults and Elder Persons Protection Act.'

(f) No facilitator shall be held liable for civil damages for any statement, action, omission, or decision made in the course of a victim centered practice or victim-offender dialogue unless that statement, action, omission, or decision is:

(1) Grossly negligent and made with malice; or

(2) Made with willful disregard for the safety or property of any party to the victim centered practice or victim-offender dialogue."

SECTION 9.

Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended by revising Code Section 45-3-7, relating to oaths of deputies, as follows:

"45-3-7.

(a) Before proceeding to act, all deputies shall take the same oaths as their principals take and the oaths shall be filed and entered on the minutes of the same office with the same endorsement thereon; but this Code section shall not apply to any deputy who may be employed in particular cases only. A deputy sheriff may take his or her oaths before the sheriff and the oaths may be filed in and entered in the records of the sheriff's office.

(b) All peace officers, as such term is defined in Code Section 35-8-2, taking their oath of office on or after July 1, 2025, shall be administered the following oath:

'I, (name of person taking oath), hereby swear or affirm that I will faithfully, fairly, and without malice or partiality uphold the laws of the State of Georgia, as well as any ordinances which I am authorized to enforce, to the best of my ability and support and defend the Constitution of the United States and the Constitution of Georgia. So help me God.'

(c) A peace officer may take his or her oath before the chief executive officer of the agency or any authorized judicial official, and such oath may be filed in and entered in the records of that agency.

(d) An agency may administer additional oaths that contain provisions not specifically prescribed and enumerated in this Code section; provided, however, that such oaths, and any language in addition to the language set forth in this Code section, shall be deemed aspirational only and of no legal effect in any civil or criminal proceeding.

(e) Sheriffs and their sworn deputies taking their oath of office on or after July 1, 2025, shall take the oath set forth in Code Section 15-16-4; provided, however, that any language in such oath in addition to the language set forth in such Code section shall be deemed aspirational only and of no legal effect in any civil or criminal proceeding."

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SECTION 10.

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