

The Senate Committee on Public Safety offered the following substitute to HB 289:

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to provide for enhanced penalties for certain offenses committed during an
3 unlawful assembly; to revise the offense of unlawful assembly; to provide for and revise
4 definitions; to provide for a cause of action; to revise penalties for obstructing highways
5 under certain circumstances; to provide for an affirmative defense; to include unlawful
6 assembly as a racketeering activity; to amend Chapter 60 of Title 36 of the Official Code of
7 Georgia Annotated, relating to general provisions regarding provisions applicable to counties
8 and municipal corporations, so as to provide for a penalty for certain budget reductions for
9 any law enforcement agency; to provide requirements for assemblies on public properties;
10 to provide for liability of counties and municipalities under certain circumstances; to provide
11 for a waiver of sovereign immunity; to amend Chapter 1 of Title 45 of the Official Code of
12 Georgia Annotated, relating to general provisions regarding public officers and employees,
13 so as to require electronic payroll deposit to public safety employees for certain purposes and
14 under certain circumstances; to amend Title 50 of the Official Code of Georgia Annotated,
15 relating to state government, so as to prohibit employment and benefits from governments
16 under certain circumstances; to provide for enhanced penalties for the defacing or destruction
17 of certain monuments during an assembly; to revise the state waiver of sovereign immunity;

18 to provide for related matters; to provide for a short title; to repeal conflicting laws; and for
19 other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 This Act shall be known and may be cited as the "Safe Communities Act of 2021."

23 **SECTION 2.**

24 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
25 amended by revising subsection (b) of, and adding a new subsection to, Code Section
26 16-5-23, relating to simple battery, as follows:

27 "(b) Except as otherwise provided in subsections (c) through ~~(i)~~ (j) of this Code section,
28 a person convicted of the offense of simple battery shall be punished as for a
29 misdemeanor."

30 "(j) If the offense of simple battery is committed while also violating Code
31 Section 16-11-33, other than as provided for under subsection (e) of this Code section, the
32 defendant shall be punished for a misdemeanor of a high and aggravated nature."

33 **SECTION 3.**

34 Said title is further is amended by revising Code Section 16-11-33, relating to unlawful
35 assembly, as follows:

36 "16-11-33.

37 (a) As used in this Code section, the term 'public accommodation' means:

38 (1) An inn, hotel, motel, or other place of lodging, except for an establishment located
39 within a building that contains not more than five rooms for rent or hire and that is
40 actually occupied by the proprietor of such establishment as his or her residence;

- 41 (2) A restaurant, bar, or other establishment serving food or drink;
42 (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition
43 or entertainment;
44 (4) An auditorium, convention center, lecture hall, or other place of public gathering;
45 (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other
46 sales or rental establishment;
47 (6) A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair
48 service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy,
49 insurance office, professional office of a health care provider, hospital, or other service
50 establishment;
51 (7) A terminal, depot, or other station specified for public transportation;
52 (8) A museum, library, gallery, or other place of public display or collection;
53 (9) A park, zoo, amusement park, or other place of recreation;
54 (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school,
55 or other place of education;
56 (11) A day care center, senior citizen center, homeless shelter, food bank, adoption
57 agency, or other social service center establishment; and
58 (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or
59 recreation.

60 (b) Except as provided for under subsection (c) of this Code section, a person who
61 knowingly participates in either any of the following acts or occurrences is guilty of a
62 misdemeanor:

- 63 (1) The assembly of two or more persons for the purpose of committing an unlawful act
64 and the failure to withdraw from the assembly on being lawfully commanded to do so by
65 a peace officer and before any member of the assembly has inflicted injury to the person
66 or property of another; ~~or~~

67 (2) The assembly of two or more persons, without authority of law, for the purpose of
68 ~~doing committing~~ violence ~~to~~ against the person or property of one supposed by the
69 accused to have been guilty of a violation of the law, or for the purpose of exercising
70 correctional or regulative powers over any person by violence; provided, however, that
71 it shall be an affirmative defense to a prosecution under this paragraph that the accused
72 ~~withdrew~~ did withdraw from the assembly on being lawfully commanded to do so by a
73 peace officer or before any member of the assembly had inflicted injury to the person or
74 property of another; or

75 (3) The assembly of two or more persons who harass or intimidate another person within
76 any public accommodation.

77 (c) A person who knowingly participates in the assembly of seven or more persons and
78 commits violence against the person or property of another within such assembly shall be
79 guilty of a felony and, upon conviction thereof, shall be punished by an imprisonment for
80 not less than one nor more than five years or a fine of not less than \$1,000.00 nor more than
81 \$5,000.00, or both.

82 (d) There shall be a cause of action for injuries and damages against the governing
83 authority of any county or municipal corporation that is grossly negligent by allowing the
84 commission of violence against persons and property during an assembly of two or more
85 persons.

86 (e) No person convicted of a violation under this Code section shall be eligible for
87 employment by the State of Georgia or any political subdivision or municipal corporation
88 of this state."

89 **SECTION 4.**

90 Said title is further amended by revising Code Section 16-11-43, relating to obstructing
91 highways, streets, sidewalks, or other public passages, as follows:

92 "16-11-43.

93 (a) Except as provided for under subsection (b) of this Code section, a person who,
94 without authority of law, purposely or recklessly obstructs any highway, street, sidewalk,
95 or other public passage in such a way as to render it impassable without unreasonable
96 inconvenience or hazard and fails or refuses to remove the obstruction after receiving he
97 or she receives a reasonable official request or the order of a peace officer that he to do so,
98 is guilty of a misdemeanor.

99 (b)(1) A person who violates Code Section 16-11-33 while purposely or recklessly
100 obstructing any highway or street in such a way as to render it impassable without
101 unreasonable inconvenience or hazard and fails or refuses to remove the obstruction after
102 he or she receives a reasonable official request or the order of a peace officer to do so,
103 shall be guilty of a felony and, upon conviction thereof, shall be punished by an
104 imprisonment for not less than one nor more than five years or a fine of not less than
105 \$1,000.00 nor more than \$5,000.00, or both.

106 (2) It shall be an affirmative defense to a prosecution that the accused caused injury or
107 death to a person while such person was acting in violation of paragraph (1) of
108 subsection (b) of this Code section and the accused was attempting to flee such unlawful
109 assembly under the reasonable belief that fleeing was necessary to prevent or terminate
110 an attack upon the accused's property or person."

111 **SECTION 5.**

112 Said title is further amended by adding a new subparagraph to paragraph (5) of Code Section
113 16-14-3, relating to definitions, as follows:

114 "(D) 'Racketeering activity' shall also mean to commit, to attempt to commit, or to
115 solicit, coerce, or intimidate another person to commit any crime which is chargeable
116 by indictment under the laws of this state involving unlawful assemblies in violation
117 of Code Section 16-11-33 or any other law."

118

SECTION 6.

119 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
120 provisions regarding provisions applicable to counties and municipal corporations, is
121 amended by adding three new Code sections to read as follows:

122 "36-60-28.

123 No governing authority of a county or municipal corporation that within any one budget
124 year reduces the budget for any law enforcement agency by 30 percent or more shall be
125 subject to the withholding of any state funding or state administered federal funding.

126 36-60-29.

127 Each governing authority of a county or municipal corporation shall establish and maintain
128 an application process for the granting of permits to hold assemblies, including, but not
129 limited to, protests and rallies, on public property, and no such assemblies shall be allowed
130 without the granting of such permit. Such applications shall be reviewed by an attorney
131 representing the governing authority and by all heads of law enforcement agencies of such
132 county or municipal corporation. All organizations, clubs, nonprofits, and individuals who
133 apply for a permit must provide the names, addresses, and contact information for all
134 individuals responsible for managing and maintaining order during the event, along with
135 an emergency action plan that addresses any first aid and security resources provided by
136 the applicant.

137 36-60-30.

138 The governing authority of a county or municipality that intentionally obstructs or
139 interferes with the ability of a law enforcement agency of such county or municipality to
140 provide reasonable law enforcement protection during a riot or unlawful assembly shall be
141 civilly liable for any damages, including, but not limited to, damages arising from personal
142 injury, wrongful death, or property damage, proximately caused by the agency's failure to

143 provide reasonable law enforcement protection during such riot or unlawful assembly. The
144 sovereign immunity of such county or municipality is waived for liability under this Code
145 section."

146 **SECTION 7.**

147 Chapter 1 of Title 45 of the Official Code of Georgia Annotated, relating to general
148 provisions regarding public officers and employees, is amended by adding a new Code
149 section to read as follows:

150 "45-1-8.

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

152 (1) 'Correctional officer' means any person who is authorized to exercise the power of
153 arrest and who is employed or appointed by the Department of Corrections or the State
154 Board of Pardons and Paroles.

155 (2) 'Emergency health worker' means hospital emergency department personnel and
156 emergency medical services personnel.

157 (3) 'Firefighter' shall have the same meaning as set forth in Code Section 25-4-2.

158 (4) 'Highway emergency response operator' means an individual employed by the
159 Department of Transportation who operates a towing or recovery vehicle or highway
160 maintenance vehicle.

161 (5) 'Jail officer' means any person who is employed or appointed by a county or a
162 municipality and who has the responsibility of supervising inmates who are confined in
163 a municipal or county detention facility.

164 (6) 'Juvenile correctional officer' means any person employed or appointed by the
165 Department of Juvenile Justice who has the primary responsibility for the supervision and
166 control of youth confined in its programs and facilities.

167 (7) 'Probation officer' means a community supervision officer, county or Department of
168 Juvenile Justice juvenile probation officer, or probation officer serving pursuant to Article
169 6 of Chapter 8 of Title 42.

170 (8) 'Public safety employee' means peace officer, correctional officer, emergency health
171 worker, firefighter, highway emergency response operator, jail officer, juvenile
172 correctional officer, or probation officer.

173 (b) The State of Georgia and the governing authority of every county and municipality that
174 currently provide electronic payroll deposit to employees shall also provide payroll
175 deduction to any full-time or part-time public safety employee who requests such a
176 deduction for the purpose of purchasing insurance that provides such public safety
177 employee with legal representation during all civil, administrative, or criminal actions
178 caused as a result of his or her role or responsibilities as a public safety employee. Such
179 electronic deduction may only be used to pay the premiums on insurance plans that are
180 compliant with current ERISA standards and any dues or fees required by any professional
181 organization that owns and provides such ERISA compliant product as a benefit of
182 membership."

183 **SECTION 8.**

184 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
185 by adding a new Code section in Chapter 1, relating to general provisions, to read as follows:

186 "50-1-10.

187 Any person who violates Code Section 16-11-33 shall be ineligible for employment
188 benefits extended by the State of Georgia and any governing authority of a county or
189 municipal corporation."

190

SECTION 9.

191 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section
192 50-3-1, relating to description of state flag, militia to carry flag, defacing public monuments,
193 and obstruction and relocation of monuments, as follows:

194 "(2)(A) Except as provided for under subparagraph (B) of this paragraph, it shall be
195 unlawful for any person, firm, corporation, or other entity to mutilate, deface, defile,
196 or abuse contemptuously any publicly owned monument located, erected, constructed,
197 created, or maintained on real property owned by an agency or by the State of Georgia.
198 No officer or agency shall remove or conceal from display any such monument for the
199 purpose of preventing the visible display of the same. A violation of this paragraph
200 shall constitute a misdemeanor.

201 (B) Any person who violates Code Section 16-11-33 while mutilating, defacing,
202 defiling, or abusing contemptuously any publicly owned monument, cemetery, or
203 structure located, erected, constructed, created, or maintained on real property owned
204 by any agency or by the State of Georgia shall be guilty of a felony and, upon
205 conviction thereof, shall be punished by an imprisonment for not less than one nor more
206 than 15 years or a fine of not less than \$1,000.00 nor more than \$10,000.00, or both.
207 A court shall order any person convicted of violating this section to pay restitution,
208 which shall include the full cost of repair or replacement of such memorial."

209

SECTION 10.

210 Said title is further amended by revising paragraph (2) of Code Section 50-21-24, relating
211 to exceptions to state liability, as follows:

212 "(2) The exercise or performance of or the failure to exercise or perform a discretionary
213 function or duty on the part of a state officer or employee, whether or not the discretion
214 involved is abused, unless the exercise or performance of or the failure to exercise or

215 perform such discretionary function or duty is a violation of subsection (d) of Code
216 Section 16-11-33;"

217 **SECTION 11.**

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

219 "50-21-38.

220 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
221 or third-party claim brought in the courts of this state pursuant to subsection (d) of Code
222 Section 16-11-33 by an aggrieved person seeking relief, monetary damages, expenses of
223 litigation, or reasonable attorney fees. This Code section shall not be construed to alter or
224 amend any other waiver of sovereign immunity provided by law."

225 **SECTION 12.**

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