

The Senate Committee on Judiciary Non-Civil offered the following substitute to HB 874:

A BILL TO BE ENTITLED

AN ACT

To amend Article 9 of Chapter 11 of Title 15, Title 16, Chapter 4 of Title 24, and Code Section 42-5-18 of the Official Code of Georgia Annotated, relating to access to hearings and records, crimes and offenses, relevant evidence and its limits, and items prohibited for possession by inmates, respectively, so as to improve the ability to prosecute street gang terrorism; to provide for the admissibility of juvenile adjudications under certain circumstances; to clarify provisions relating to terroristic threats and acts; to provide for misdemeanor punishment of terroristic threats under certain circumstances; to correct a cross-reference; to increase penalties for unlawful activities connected with criminal street gang activity and provide for certain mandatory minimum terms of imprisonment; to change provisions relating to the admissibility of evidence of the existence of criminal street gangs; to provide for the admissibility of similar transaction evidence in prosecutions for criminal street gang activity; to increase penalties for providing items prohibited for possession by inmates and provide for mandatory minimum terms of imprisonment; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 9 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to access to hearings and records, is amended by revising Code Section 15-11-703, relating to the use of disposition and evidence, as follows:

"15-11-703.

Except as provided in subsection (d) of Code Section 24-6-609, the disposition of a child and evidence adduced in a hearing in the juvenile court ~~may~~ shall not be used against such child in any proceeding in any court other than as provided in Code Section 16-15-9 or 24-4-418 or for a proceeding for delinquency or a child in need of services, whether before or after reaching 18 years of age, except in the establishment of conditions of bail, plea negotiations, and sentencing in criminal offenses; and, in such excepted cases, such records of dispositions and evidence shall be available to prosecuting attorneys, superior or state

court judges, and the accused and may be used in the same manner as adult records.
Whenever such record of disposition is filed in a superior or state court or admitted into evidence in a superior or state court proceeding, it shall be filed under seal."

SECTION 2.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising Code Section 16-11-37, relating to terroristic threats and acts and penalties, as follows:

"16-11-37.

(a) As used in this Code section, the term 'hazardous substance' shall have the same meaning as set forth in Code Section 12-8-92.

~~(b)(1)~~ A person commits the offense of a terroristic threat when he or she threatens to commit:

~~(A) Commit any crime of violence, to release;~~

~~(B) Release any hazardous substance, as such term is defined in Code Section 12-8-92, or to burn; or~~

~~(C) Burn or damage property with.~~

(2) Such terroristic threat shall be made:

~~(A) With the purpose of terrorizing another or;~~

~~(B) With the purpose of causing the evacuation of a building, place of assembly, or facility of public transportation or;~~

~~(C) With the purpose of otherwise causing serious public inconvenience; or in~~

~~(D) In reckless disregard of the risk of causing such the terror, evacuation, or inconvenience described in subparagraph (A), (B), or (C) of this paragraph.~~

(3) No person shall be convicted under this subsection on the uncorroborated testimony of the party to whom the threat is communicated.

~~(b)(c)~~ A person commits the offense of a terroristic act when:

(1) He or she uses a burning or flaming cross or other burning or flaming symbol or flambeau with the intent to terrorize another or another's household;

(2) While not in the commission of a lawful act, he or she shoots at or throws an object at a conveyance which is being operated or which is occupied by passengers; or

(3) He or she releases any hazardous substance or any simulated hazardous substance under the guise of a hazardous substance for;

~~(A) For the purpose of terrorizing another or;~~

~~(B) For the purpose of causing the evacuation of a building, place of assembly, or facility of public transportation or;~~

~~(C) For the purpose of otherwise causing serious public inconvenience; or in~~

(D) In reckless disregard of the risk of causing such the terror, evacuation, or inconvenience described in subparagraph (A), (B), or (C) of this paragraph.

~~(c)(d)~~(1) A person convicted of the offense of a terroristic threat shall be punished as a misdemeanor; provided, however, that if the threat suggested the death of the threatened individual, the person convicted shall be guilty of a felony and shall be punished by a fine of not more than \$1,000.00, or by imprisonment for not less than one nor more than five years, or both.

(2) A person convicted of the offense of a terroristic act shall be punished by a fine of not more than \$5,000.00, or by imprisonment for not less than one nor more than ten years, or both; provided, however, that if any person suffers a serious physical injury as a direct result of an act giving rise to a conviction under subsection (b) of this Code section, the person so convicted shall be punished by a fine of not more than \$250,000.00, or imprisonment for not less than five nor more than 40 years, or both.

~~(d)~~(e) A person who commits or attempts to commit a terroristic threat or act violation of subsection (b) or (c) of this Code section shall, upon conviction thereof, be punished by a fine of not less than \$50,000.00, imprisonment for not less than five nor more than 20 years, or both, when such act is done with the intent to retaliate against any person for or intimidate or threaten any person from:

(1) Attending a judicial or administrative proceeding as a witness, attorney, judge, clerk of court, deputy clerk of court, court reporter, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or party or producing any record, document, or other object in a judicial or official proceeding; or

(2) Providing to a law enforcement officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state or of the United States or a violation of conditions of bail, pretrial release, probation, or parole.

~~shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall be punished, for a terroristic threat, by imprisonment for not less than five nor more than ten years or by a fine of not less than \$50,000.00, or both, and, for a terroristic act, by imprisonment for not less than five nor more than 20 years or by a fine of not less than \$100,000.00, or both."~~

SECTION 3.

Said title is further amended by revising Code Section 16-11-37.1, relating to dissemination of information relating to terroristic acts, as follows:

"16-11-37.1.

It shall be unlawful for any person knowingly to furnish or disseminate through a computer or computer network any picture, photograph, drawing, or similar visual representation or verbal description of any information designed to encourage, solicit, or otherwise promote terroristic acts as defined in Code Section 16-11-37. Any person convicted for violation of this Code section shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that if such act is in violation of paragraph (1) of subsection ~~(d)~~ (e) of Code Section 16-11-37, the person convicted shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years or by a fine not to exceed \$100,000.00 or both."

SECTION 4.

Said title is further amended by revising subsection (k) of Code Section 16-15-4, relating to the prohibition of participating in criminal gang activity, as follows:

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

(2) Any person who violates subsection (a) of this Code section through the commission of a violation of Code Section 42-5-18 shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of two years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.

~~(2)(3)~~ (3) Any person who violates subsection (d) of this Code section ~~may~~ shall be guilty of a felony and upon conviction thereof, in addition to any other penalty ~~provided by law, be punished by~~ imposed, shall be sentenced to imprisonment ~~for an additional ten for five years but not more than 20 years~~ which shall be served consecutively to any other sentence imposed ~~on such person by law~~.

~~(3)(4)~~ (4) Any person who violates subsection (e), (f), (g), (h), (i), or (j) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty

provided by law, be punished by imposed, shall be sentenced to imprisonment for not less than three nor more than ten for five years but not more than 20 years."

SECTION 5.

Said title is further amended by revising Code Section 16-15-9, relating to commission of offense admissible as evidence of existence of criminal street gang and criminal gang activity, as follows:

"16-15-9.

~~The commission~~ For the purpose of proving the existence of a criminal street gang and criminal gang activity, the commission, adjudication, or conviction of any offense enumerated in paragraph (1) of Code Section 16-15-3 by any member or associate of a criminal street gang shall be admissible in any trial or proceeding for the purpose of proving the existence of the criminal street gang and criminal gang activity. Evidence offered under this Code section shall not be subject to the restrictions in paragraph (22) of Code Section 24-8-803."

SECTION 6.

Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to relevant evidence and its limits, is amended by adding a new Code section to read as follows:

"24-4-418.

(a) In a criminal proceeding in which the accused is accused of conducting or participating in criminal gang activity in violation of Code Section 16-15-4, evidence of the accused's commission of criminal gang activity, as such term is defined in Code Section 16-15-3, shall be admissible and may be considered for its bearing on any matter to which it is relevant.

(b) In a proceeding in which the prosecution intends to offer evidence under this Code section, the prosecutor shall disclose such evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least ten days in advance of trial, unless the time is shortened or lengthened or pretrial notice is excused by the judge upon good cause shown.

(c) This Code section shall not be the exclusive means to admit or consider evidence described in this Code section."

SECTION 7.

Code Section 42-5-18 of the Official Code of Georgia Annotated, relating to items prohibited for possession by inmates, is amended by revising subsection (d) as follows:

166 ~~"(d)(1) An inmate~~ A person who commits or attempts to commit a violation of subsection
167 (c) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be
168 imprisoned for not less than one nor more than five years; provided, however, if ~~a person~~
169 an inmate violates this Code section while being held pursuant to an arrest or conviction
170 for a misdemeanor offense, the possession of a telecommunications device in violation
171 of this Code section shall be treated as a misdemeanor.

172 (2) A person who commits or attempts to commit a violation of subsection (b) of this
173 Code section shall be guilty of a felony and, upon conviction thereof, shall be sentenced
174 to a mandatory minimum term of imprisonment of two years but not more than ten years,
175 and no portion of the mandatory minimum sentence imposed shall be suspended, stayed,
176 probated, deferred, or withheld by the sentencing court."

177 **SECTION 8.**

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