

House Bill 874 (AS PASSED HOUSE AND SENATE)

By: Representatives Reeves of the 34<sup>th</sup>, Golick of the 40<sup>th</sup>, Efstration of the 104<sup>th</sup>, Strickland of the 111<sup>th</sup>, Ramsey of the 72<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

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

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

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

20 "15-11-703.

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

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

31 **SECTION 2.**

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

35 "16-11-37.

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

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

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

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

43 (C) Burn or damage property with.

44 (2) Such terroristic threat shall be made:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (2) A person convicted of the offense of a terroristic act shall be punished by a fine of  
 72 not more than \$5,000.00, or by imprisonment for not less than one nor more than ten  
 73 years, or both; provided, however, that if any person suffers a serious physical injury as  
 74 a direct result of an act giving rise to a conviction under subsection (b) of this Code  
 75 section, the person so convicted shall be punished by a fine of not more than  
 76 \$250,000.00, or imprisonment for not less than five nor more than 40 years, or both.

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

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

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

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

96 ~~imprisonment for not less than five nor more than 20 years or by a fine of not less than~~  
 97 ~~\$100,000.00, or both."~~

98 **SECTION 3.**

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

101 "16-11-37.1.

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

111 **SECTION 4.**

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

114 "(k)(1) Any person who violates subsection (a), (b), or (c) of this Code section shall be  
 115 guilty of a felony and upon conviction thereof, in addition to any other penalty imposed,  
 116 by law, be punished by shall be sentenced to imprisonment for not less than five nor years  
 117 but not more than 15 20 years or by pay a fine of not less than \$10,000.00 nor more than  
 118 \$15,000.00, or both.

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

126 ~~(2)(3)~~ (3) Any person who violates subsection (d) of this Code section ~~may~~ shall be guilty  
 127 of a felony and upon conviction thereof, in addition to any other penalty ~~provided by law,~~  
 128 ~~be punished by imposed, shall be sentenced to imprisonment for an additional ten for five~~

129 years but not more than 20 years which shall be served consecutively to any other  
 130 sentence imposed ~~on such person by law.~~

131 ~~(3)~~(4) Any person who violates subsection (e), (f), (g), (h), (i), or (j) of this Code section  
 132 shall be guilty of a felony and upon conviction thereof, in addition to any other penalty  
 133 provided by law, be punished by imposed, shall be sentenced to imprisonment for not less  
 134 than three nor more than ten for five years but not more than 20 years."

135 **SECTION 5.**

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

139 "16-15-9.

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

147 **SECTION 6.**

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

150 "24-4-418.

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

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

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

163 **SECTION 7.**

164 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is  
165 amended by revising subsection (c) of Code Section 42-2-8, relating to additional duties  
166 of the commissioner of corrections, as follows:

167 "(c) The commissioner and any person designated and serving in the position of his or her  
168 chief of staff shall be authorized to issue a warrant for the arrest of an offender who has  
169 escaped from the custody of the department upon probable cause to believe the offender  
170 has violated Code Section 16-10-52, relating to escape from lawful confinement."

171 **SECTION 8.**

172 Said title is further amended by revising subsection (d) of Code Section 42-5-18, relating to  
173 items prohibited for possession by inmates, as follows:

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

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

185 **SECTION 9.**

186 Section 7 of this Act shall become effective on July 1, 2016, and shall apply to offenses  
187 committed on or after such date. All other sections of this Act shall become effective upon  
188 approval by the Governor or upon becoming law without such approval.

189 **SECTION 10.**

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