

The House Committee on Judiciary offers the following substitute to SB 359:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 6 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated,  
2 relating to constables, clerk, and other court personnel, so as to provide for the qualification  
3 of constables; to amend Title 16 the Official Code of Georgia Annotated, relating to crimes  
4 and offenses, so as to provide for sentencing to minimum terms of imprisonment for persons  
5 convicted of possession of firearms by convicted felons and first offender probationers when  
6 the offense for which such person is on probation or has been previously convicted is a  
7 forcible felony or a domestic violence felony or involved family violence; to provide that a  
8 plea of guilty or nolo contendere to a criminal gang activity offense shall estop the defendant  
9 in any related civil proceeding as to matters proved in the criminal proceeding; to provide  
10 for venue in certain gang related activities; to provide for legislative findings; to provide for  
11 definitions; to amend Title 17 of the Official Code of Georgia Annotated, relating to criminal  
12 procedure, so as to extend sunset dates; to provide for sentencing to minimum terms of  
13 imprisonment for persons convicted of certain offenses involving the abuse of a minor, a  
14 disabled adult, or an elder person; to prohibit the sentencing court from suspending, staying,  
15 probating, deferring, or withholding certain portions of sentences for such offenses; to  
16 provide for definitions; to amend Title 24 of the Official Code of Georgia Annotated, relating  
17 to evidence, so as to provide for the presentation and addressing of issues concerning the  
18 admission or exclusion of evidence; to provide for court rulings on such issues; to provide

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19 for continuing objections; to provide for the presumptive admission of unchanged  
20 misconduct evidence in criminal prosecutions and civil actions involving allegations of  
21 family violence, child abuse or cruelty to children, and certain offenses against an elder  
22 person or disabled adult; to provide for definitions; to provide for disclosure of evidence; to  
23 provide for statutory construction; to amend Article 1 of Chapter 3 of Title 35 of the Official  
24 Code of Georgia Annotated, relating to general provisions concerning the Georgia Bureau  
25 of Investigation, so as to provide for concurrent jurisdiction by the Georgia Bureau of  
26 Investigation in cases involving the identification, investigation, arrest, and prosecution of  
27 an individual or groups of individuals for violation of state laws concerning elections and  
28 domestic, cyber, biological, chemical, and nuclear terrorism; to provide for a short title; to  
29 provide for related matters; to provide for effective dates and applicability; to repeal  
30 conflicting laws; and for other purposes.

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

32 **SECTION 1.**

33 This Act shall be known and may be cited as the "Safe and Secure Georgia Act."

34 **SECTION 2.**

35 Article 6 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to  
36 constables, clerk, and other court personnel, is amended by revising Code Section 15-10-101,  
37 relating to eligibility of constables, as follows:

38 "15-10-101.

39 (a) ~~Except as provided in subsection (b) of this Code section, the eligibility for constable~~  
40 ~~is the same as for magistrate.~~ Each constable taking office on or after July 1, 2022, shall:

41 (1) Be at least 21 years of age;

42 (2) Be a citizen of the United States;

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43 (3) Be a registered voter; and

44 (4) Have obtained a state accredited high school diploma or general educational  
 45 development (GED) diploma.

46 ~~(b) Each constable shall have attained the age of at least 21 years prior to the date of his~~  
 47 ~~assuming the duties of constable.~~ Additional qualifications for the office of chief constable  
 48 or constable or both may be imposed by local law."

49 **SECTION 3.**

50 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 51 amended in Chapter 11, relating to offenses against public order and safety, by revising  
 52 subsections (a) and (b) of Code Section 16-11-131, relating to possession of firearms by  
 53 convicted felons and first offender probationers, as follows:

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

55 (1) 'Domestic violence felony' means an offense that:

56 (A) Is a felony under state law; and

57 (B) Has, as an element, the use or attempted use of physical force or the threatened use  
 58 of a deadly weapon, committed by a current or former spouse, parent, or guardian of  
 59 the victim; by a person with whom the victim shares a child in common; by a person  
 60 who is cohabitating with or has cohabitated with the victim as a spouse, parent, or  
 61 guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

62 (2) 'Family violence' shall have the same meaning as set forth in Code Section 19-13-1.

63 ~~(1)~~(3) 'Felony' means any offense punishable by imprisonment for a term of one year or  
 64 more and includes conviction by a court-martial under the Uniform Code of Military  
 65 Justice for an offense which would constitute a felony under the laws of the United  
 66 States.

67 ~~(2)~~(4) 'Firearm' includes any handgun, rifle, shotgun, or other weapon which will or can  
 68 be converted to expel a projectile by the action of an explosive or electrical charge.

69 ~~(b)(1) Except as provided in paragraph (2) of this subsection, any~~ Any person who is on  
70 probation as a felony first offender pursuant to Article 3 of Chapter 8 of Title 42, who is  
71 on probation and was sentenced for a felony under subsection (a) or (c) of Code  
72 Section 16-13-2, or who has been convicted of a felony by a court of this state or any  
73 other state; by a court of the United States including its territories, possessions, and  
74 dominions; or by a court of any foreign nation and who receives, possesses, or transports  
75 ~~any~~ a firearm commits a felony and, upon conviction thereof, shall be imprisoned for not  
76 less than one year nor more than ten years; provided, however, that upon a second or  
77 subsequent conviction, such person shall be imprisoned for not less than five nor more  
78 than ten years; ~~provided, further, that if the felony for which the person is on probation~~  
79 ~~or has been previously convicted is a forcible felony, then upon conviction of receiving,~~  
80 ~~possessing, or transporting a firearm, such person shall be imprisoned for a period of five~~  
81 ~~years.~~

82 (2) A person convicted of possession of a firearm by a convicted felon or first offender  
83 probationer as provided in paragraph (1) of this subsection shall be imprisoned for not  
84 less than five years nor more than ten years, provided that:

85 (A) The felony for which the person is on probation or has been previously convicted  
86 is a forcible felony; or

87 (B) The offense for which the person is on probation or has been previously convicted  
88 was a domestic violence felony or involved the occurrence of an act of family  
89 violence."

90 **SECTION 4.**

91 Said title is further amended in Chapter 15, relating to street gang terrorism and prevention,  
92 by redesignating subsection (d) as subsection (e) and adding a new subsection to Code  
93 Section 16-15-2, relating to legislative findings and intent, to read as follows:

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94 "(d) The General Assembly further finds that a criminal street gang is a type of ongoing  
95 criminal enterprise which seeks to derive power, status, and property from the criminal  
96 gang activity committed by its members and associates, and whose members and associates  
97 in turn seek to derive power, status, and property from their participation in the criminal  
98 street gang, and whose members and associates often commit acts of criminal gang activity  
99 in multiple counties and jurisdictions within this state."

100 **SECTION 5.**

101 Said title is further amended in Chapter 15, relating to street gang terrorism and prevention,  
102 by revising Code Section 16-15-8, relating to matters proved in criminal trial, as follows:

103 "16-15-8.

104 A conviction of or a plea of guilty or nolo contendere to an offense defined as criminal  
105 gang activity shall estop the defendant in any subsequent related civil action or proceeding  
106 as to matters proved in the criminal proceeding."

107 **SECTION 6.**

108 Said title is further amended in Chapter 15, relating to street gang terrorism and prevention,  
109 by adding a new Code section to read as follows:

110 "16-15-12.

111 (a) In any criminal proceeding brought against a person charged with violating  
112 subsection (a), (b), (d), or (e) of Code Section 16-15-4, the crime shall be considered to  
113 have been committed in any county in which one or more members or associates of the  
114 criminal street gang have conducted or participated in criminal gang activity through the  
115 commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.

116 (b) In any criminal proceeding brought against a person charged with violating  
117 subsection (c) of Code Section 16-15-4, the crime shall be considered to have been

118 committed in any county in which an interest in or control of any real or personal property  
119 is acquired or maintained.

120 (c) In any criminal proceeding brought against a person charged with violating subsection  
121 (f), (g), (h), (i), or (j) of Code Section 16-15-4, the crime shall be considered to have been  
122 committed in any county from which the threat was communicated, in which the threat was  
123 received, in which any person threatened resides, or in which the property of any person  
124 threatened is located."

125 **SECTION 7.**

126 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
127 amended in Article 1 of Chapter 7, relating to general provisions for pretrial proceedings, by  
128 revising subsection (e) of Code Section 17-7-4, relating to trial without a jury, court  
129 requirements, court ordering trial with jury, and repealing provision, as follows:

130 "(e) This Code section shall stand repealed in its entirety on ~~June 30, 2022~~  
131 December 31, 2023."

132 **SECTION 8.**

133 Said title is further amended in Article 4 of Chapter 7, relating to accusations, by revising  
134 subsection (a.1) of Code Section 17-7-70.1, relating to trial upon accusations in certain  
135 felony and misdemeanor cases and trial upon plea of guilty or nolo contendere, as follows:

136 "(a.1)(1) As used in this subsection, the term 'serious violent felony' shall have the same  
137 meaning as provided for under Code Section 17-10-6.1.

138 (2) Notwithstanding any other law to the contrary, the district attorney shall have  
139 authority to prefer accusations, and the accused shall be tried on such accusations  
140 according to the same rules of substantive and procedural laws relating to defendants who

141 have been indicted by a grand jury for any felony, other than a serious violent felony, in  
 142 which an accused has:

143 (A) Been bound over to the superior court based on a finding of probable cause  
 144 pursuant to a commitment hearing under Article 2 of this chapter;

145 (B) Expressly or by operation of law waived a commitment hearing;

146 (C) Been released on bond pending a commitment hearing; or

147 (D) Been confined in jail for at least 45 days since his or her arrest, unless such time  
 148 frame has been waived in writing by the accused.

149 (3) Paragraphs (2) and (3) of subsection (a) of this Code section shall apply to  
 150 accusations provided for under this subsection.

151 (4) This subsection shall be repealed in its entirety on ~~June 30, 2022~~  
 152 December 31, 2023."

153 **SECTION 9.**

154 Said title is further amended in Article 1 of Chapter 10, relating to procedure for sentencing  
 155 and imposition of punishment, by revising subsection (a) of and adding two new subsections  
 156 to Code Section 17-10-7, relating to punishment of repeat offenders and punishment and  
 157 eligibility for parole of persons convicted of fourth felony offense, to read as follows:

158 "17-10-7.

159 (a) Except as otherwise provided in subsection (a.1), (a.2), (b), or (b.1) of this Code  
 160 section, any person who, after having been convicted of a felony offense in this state or  
 161 having been convicted under the laws of any other state or of the United States of a crime  
 162 which if committed within this state would be a felony and sentenced to confinement in a  
 163 penal institution, commits a felony punishable by confinement in a penal institution shall  
 164 be sentenced to undergo the longest period of time prescribed for the punishment of the  
 165 subsequent offense of which he or she stands convicted; ~~;~~ provided, however, that, unless

166 otherwise provided by law, the trial judge may, in his or her discretion, probate or suspend  
167 the maximum sentence prescribed for the offense.

168 (a.1)(1) As used in this subsection, the term:

169 (A) 'Disabled adult' shall have the same meaning as such term is defined in  
170 paragraph (3) of Code Section 16-5-100.

171 (B) 'Elder person' shall have the same meaning as such term is defined in paragraph (4)  
172 of Code Section 16-5-100.

173 (2) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any  
174 person who has been convicted of a felony offense in this state or has been convicted  
175 under the laws of any other state or of the United States of a crime which if committed  
176 within this state would be a felony, where such felony offense involved the abuse of a  
177 disabled adult or an elder person, and who after such first conviction subsequently  
178 commits and is convicted of a felony involving the abuse of a disabled adult or an elder  
179 person punishable by confinement in a penal institution shall be sentenced to undergo the  
180 longest period of time prescribed for the punishment of the subsequent offense of which  
181 he or she stands convicted; provided, however, that, unless otherwise provided by law,  
182 the trial judge may, in his or her discretion, probate or suspend a portion of the maximum  
183 sentence prescribed for the offense, provided that no portion of the minimum sentence  
184 prescribed for the offense shall be stayed, deferred, probated, or suspended by the trial  
185 judge.

186 (a.2) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any  
187 person who has been convicted of a felony offense in this state or has been convicted under  
188 the laws of any other state or of the United States of a crime which if committed within this  
189 state would be a felony, where such felony offense involved the abuse of a minor, and who  
190 after such first conviction subsequently commits and is convicted of a felony involving the  
191 abuse of a minor punishable by confinement in a penal institution shall be sentenced to  
192 undergo the longest period of time prescribed for the punishment of the subsequent offense



193 of which he or she stands convicted; provided, however, that, unless otherwise provided  
194 by law, the trial judge may, in his or her discretion, probate or suspend a portion of the  
195 maximum sentence prescribed for the offense, provided that no portion of the minimum  
196 sentence prescribed for the offense shall be stayed, deferred, probated, or suspended by the  
197 trial judge."

198 **SECTION 10.**

199 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended in  
200 Article 2 of Chapter 1, relating to general evidentiary matters, by revising Code  
201 Section 24-1-103, relating to rulings on evidence, as follows:

202 "24-1-103.

203 (a)(1) Error shall not be predicated upon a ruling which admits or excludes evidence  
204 unless a substantial right of the party is affected and:

205 ~~(1)~~(A) In case the ruling is one admitting evidence, a timely objection or motion to  
206 strike appears of record, stating the specific ground of objection, if the specific ground  
207 was not apparent from the context; or

208 ~~(2)~~(B) In case the ruling is one excluding evidence, the substance of the evidence was  
209 made known to the court by an offer of proof or was apparent from the context within  
210 which questions were asked.

211 (2) Once the court makes a definitive ruling on the record admitting or excluding any  
212 evidence, either at or before trial, a party need not renew an objection or offer of proof  
213 to preserve such claim of error for appeal.

214 (b) The court shall accord the parties adequate opportunity to state grounds for objections  
215 and present offers of proof. The court may add any other or further statement which shows  
216 the character of the evidence, the form in which it was offered, the objection made, and the  
217 ruling thereon. The court may direct the making of an offer of proof in question and  
218 answer form. Upon the request of any party, the court shall place its ruling on the record.

219 (c) Jury proceedings shall be conducted, to the extent practicable, so as to prevent  
220 inadmissible evidence from being suggested to the jury by any means, including, but not  
221 limited to, making statements or offers of proof or asking questions in the hearing of the  
222 jury.

223 (d) Nothing in this Code section shall preclude a court from taking notice of plain errors  
224 affecting substantial rights although such errors were not brought to the attention of the  
225 court.

226 (e) Where a party can reasonably anticipate an evidentiary issue to be previewed or  
227 decided in advance of trial, a motion in limine may be filed prior to trial. The court may  
228 address the admission or exclusion of evidence on such motions pretrial, prior to the jury  
229 being impaneled, and issue timely written orders ruling upon the admission or exclusion  
230 of such evidence. In determining whether to consider an evidentiary issue in advance of  
231 trial, the court may, but shall not be required to, consider:

232 (1) Whether the issue is the type of question of law that would be subject to de novo  
233 review on appeal;

234 (2) Whether a pretrial ruling on the issue may impact a party's decision to proceed to  
235 trial;

236 (3) Whether a pretrial ruling may have a significant impact on the trial;

237 (4) Whether a pretrial ruling may impact whether a witness or witnesses will testify at  
238 trial; and

239 (5) Whether a pretrial ruling may impact significant planning or decision-making of the  
240 parties prior to or during the trial.

241 (f) The court may allow a continuing objection to evidence of the same or similar nature  
242 or subject to the same or similar objection."

243 **SECTION 11.**

244 Said title is further amended in Chapter 4, relating to relevant evidence and its limits, by  
245 adding a new Code section to read as follows:

246 "24-4-420.

247 (a) In a criminal or civil proceeding in which the accused is accused of family violence,  
248 as defined in Code Section 19-13-1, evidence of the accused's commission of any other  
249 family violence or domestic abuse shall be admissible and may be considered for its  
250 bearing on any matter to which it is relevant. As used in this subsection, the term 'domestic  
251 abuse' means the intentional or reckless use, or threatened use, of physical force against a  
252 child, stepchild, foster child, or ward of the accused; a cohabitating parent, stepparent,  
253 foster parent, or guardian of the accused; a current or former spouse of the accused; a  
254 person with whom the accused has or had a child in common or has a current pregnancy  
255 in common; or a current or former cohabitating romantic partner of the accused.

256 (b) In a criminal or civil proceeding in which the accused is accused of child abuse, as  
257 defined in Code Section 19-7-5, or cruelty to children, as defined in Code Section 16-5-70,  
258 evidence of the accused's commission of any other child abuse or cruelty to children shall  
259 be admissible and may be considered for its bearing on any matter to which it is relevant.

260 (c) In a criminal or civil proceeding in which the accused is accused of one or more  
261 offenses against an elder person, as provided for in subsection (d) of Code Section 16-5-21,  
262 subsection (c) of Code Section 16-5-23, subsection (d) of Code Section 16-5-24,  
263 subsection (c) of Code Section 16-8-40, and Article 8 of Chapter 5 of Title 16, evidence  
264 of the accused's commission of any other such offense or offenses against an elder person  
265 shall be admissible and may be considered for its bearing on any matter to which it is  
266 relevant. As used in this subsection, the term 'elder person' means a person who is 65 years  
267 of age or older.

268 (d) In a criminal or civil proceeding in which the accused is accused of one or more  
269 offenses against a disabled adult, as provided for in Article 8 of Chapter 5 of Title 16,

270 evidence of the accused's commission of any other such offense or offenses against a  
271 disabled adult shall be admissible and may be considered for its bearing on any matter to  
272 which it is relevant. As used in this subsection, the term 'disabled adult' means a person  
273 18 years of age or older who is mentally or physically incapacitated or has Alzheimer's  
274 disease or dementia.

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

280 (f) This Code section shall not be construed to provide for the exclusive means to admit  
281 or consider evidence described in this Code section."

282

## SECTION 12.

283 Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to  
284 general provisions concerning the Georgia Bureau of Investigation, is amended by revising  
285 Code Section 35-3-8.1, relating to power of bureau to assist other law enforcement agencies,  
286 as follows:

287 "35-3-8.1.

288 (a) Upon request of the governing authority or chief law enforcement officer of any  
289 municipality, the sheriff of any county, the chief of the county police force of any county  
290 having a population of more than 100,000 according to the United States decennial census  
291 of 1970 or any future such census, ~~the~~ a judge of the superior court of any county of this  
292 state, or the Governor, the director, in unusual circumstances, may, and in the case of a  
293 request by the Governor, shall, direct the bureau to render assistance in any criminal case,  
294 in the prevention or detection of violations of law, or in the detection or apprehension of  
295 persons violating the criminal laws of this state, any other state, or the United States.

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296 (b) The bureau shall be authorized to work with and seek the assistance of other law  
297 enforcement agencies when, in the sole discretion of the director, such assistance would  
298 not compromise the successful completion of cases involving the identification,  
299 investigation, arrest, and prosecution of an individual or groups of individuals for violation  
300 of state laws concerning elections and domestic, cyber, biological, chemical, and nuclear  
301 terrorism."

302 **SECTION 13.**

303 Sections 3 and 9 of this Act shall become effective on July 1, 2022, and shall apply to all  
304 offenses committed on or after such date. Sections 5 and 11 of this Act shall become  
305 effective on July 1, 2022, and shall apply to any motions made or hearings or trials  
306 commenced on or after such date. All other sections of this Act shall become effective upon  
307 the approval of this Act by the Governor or upon its becoming law without such approval.

308 **SECTION 14.**

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