

The House Committee on Judiciary Non-Civil offers the following substitute to HB 424:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 15 of Title 16 of the Official Code of Georgia Annotated, relating to street  
2 gang terrorism and prevention, so as to include certain sex crimes into the definition of  
3 criminal gang activity; to revise and provide for a definition; to amend Title 24 of the Official  
4 Code of Georgia Annotated, relating to evidence, so as to revise rules pertaining to the  
5 admissibility of a complainant's past sexual behavior in prosecutions for certain sexual  
6 offenses; to provide for exceptions; to provide for related matters; to provide for  
7 applicability; to provide for an effective date; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Chapter 15 of Title 16 of the Official Code of Georgia Annotated, relating to street gang  
12 terrorism and prevention, is amended by revising Code Section 16-15-3, relating to  
13 definitions, as follows:

14 "16-15-3.

15 As used in this chapter, the term:

16 (1) 'Criminal gang activity' means the commission, attempted commission, conspiracy  
17 to commit, or solicitation, coercion, or intimidation of another person to commit any of  
18 the following offenses ~~on or after~~ between July 1, 2006, and until the effective date of this  
19 Code section:

20 (A) Any offense defined as racketeering activity by Code Section 16-14-3;

21 (B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;

22 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,  
23 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;

24 (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and  
25 other offenses related to confinement;

- 26 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous  
 27 instrumentalities and practices;
- 28 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or  
 29 42-5-19, relating to the security of state or county correctional facilities;
- 30 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging  
 31 a child to escape from custody;
- 32 (H) Any offense of criminal trespass or criminal damage to property resulting from any  
 33 act of gang related painting on, tagging, marking on, writing on, or creating any form  
 34 of graffiti on the property of another;
- 35 (I) Any criminal offense committed in violation of the laws of the United States or its  
 36 territories, dominions, or possessions, any of the several states, or any foreign nation  
 37 which, if committed in this state, would be considered criminal gang activity under this  
 38 Code section; and
- 39 (J) Any criminal offense in the State of Georgia, any other state, or the United States  
 40 that involves violence, possession of a weapon, or use of a weapon, whether designated  
 41 as a felony or not, and regardless of the maximum sentence that could be imposed or  
 42 actually was imposed.
- 43 (2) 'Criminal gang activity' means the commission, attempted commission, conspiracy  
 44 to commit, or solicitation, coercion, or intimidation of another person to commit any of  
 45 the following offenses on and after the effective date of this Code section:
- 46 (A) Any offense defined as racketeering activity by Code Section 16-14-3;  
 47 (B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;  
 48 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,  
 49 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;  
 50 (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and  
 51 other offenses related to confinement;  
 52 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous  
 53 instrumentalities and practices;  
 54 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or  
 55 42-5-19, relating to the security of state or county correctional facilities;  
 56 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging  
 57 a child to escape from custody;  
 58 (H) Any offense of criminal trespass or criminal damage to property resulting from any  
 59 act of gang related painting on, tagging, marking on, writing on, or creating any form  
 60 of graffiti on the property of another;  
 61 (I) Any criminal offense committed in violation of the laws of the United States or its  
 62 territories, dominions, or possessions, any of the several states, or any foreign nation

63 which, if committed in this state, would be considered criminal gang activity under this  
 64 Code section;

65 (J) Any criminal offense in the State of Georgia, any other state, or the United States  
 66 that involves violence, possession of a weapon, or use of a weapon, whether designated  
 67 as a felony or not, and regardless of the maximum sentence that could be imposed or  
 68 actually was imposed; and

69 (K) Any offense defined in Code Section 16-5-46 as trafficking persons for labor  
 70 servitude or sexual servitude, 16-6-10 as keeping a place of prostitution, 16-6-11 as  
 71 pimping, or 16-6-12 as pandering.

72 (3) 'Criminal street gang' means any organization, association, or group of three or  
 73 more persons associated in fact, whether formal or informal, which engages in criminal  
 74 gang activity as defined in paragraph (1) of this Code section. The existence of such  
 75 organization, association, or group of individuals associated in fact may be established  
 76 by evidence of a common name or common identifying signs, symbols, tattoos, graffiti,  
 77 or attire or other distinguishing characteristics, including, but not limited to, common  
 78 activities, customs, or behaviors. Such term shall not include three or more persons,  
 79 associated in fact, whether formal or informal, who are not engaged in criminal gang  
 80 activity."

81 **SECTION 2.**

82 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by  
 83 revising Code Section 24-4-412, relating to complainant's past sexual behavior not  
 84 admissible in prosecutions for certain sexual offenses and exceptions, as follows:

85 "24-4-412.

86 (a) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault  
 87 with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor  
 88 servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or  
 89 sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code Section  
 90 16-6-3; aggravated child molestation or child molestation in violation of Code Section  
 91 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10; pimping in  
 92 violation of Code Section 16-6-11; pandering in violation of Code Section 16-6-12; incest  
 93 in violation of Code Section 16-6-22; sexual battery in violation of Code Section  
 94 16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2, evidence  
 95 relating to the past sexual behavior of the complaining witness shall not be admissible,  
 96 either as direct evidence or on cross-examination of the complaining witness or other  
 97 witnesses, except as provided in this Code section. For the purposes of this Code section,  
 98 evidence of past sexual behavior includes, but is not limited to, evidence of the

99 complaining witness's marital history, mode of dress, general reputation for promiscuity,  
100 nonchastity, or sexual mores contrary to the community standards.

101 (b) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault  
102 with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor  
103 servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or  
104 sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code Section  
105 16-6-3; aggravated child molestation or child molestation in violation of Code Section  
106 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10; pimping in  
107 violation of Code Section 16-6-11; pandering in violation of Code Section 16-6-12; incest  
108 in violation of Code Section 16-6-22; sexual battery in violation of Code Section  
109 16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2, ~~evidence~~  
110 ~~relating to the past sexual behavior of the complaining witness may be introduced if the~~  
111 ~~court may admit the following evidence relating to the past sexual behavior of the~~  
112 ~~complaining witness, following the procedure described in subsection (c) of this Code~~  
113 ~~section, finds that the past sexual behavior directly involved the participation of the~~  
114 ~~accused and finds that the evidence expected to be introduced supports an inference that~~  
115 ~~the accused could have reasonably believed that the complaining witness consented to the~~  
116 ~~conduct complained of in the prosecution:~~

117 (1) Evidence of specific instances of a victim's or complaining witness's sexual behavior,  
118 if offered to prove that someone other than the defendant was the source of semen, injury,  
119 or other physical evidence;

120 (2) Evidence of specific instances of a victim's or complaining witness's sexual behavior  
121 with respect to the defendant if it supports an inference that the accused could have  
122 reasonably believed that the complaining witness consented to the conduct complained  
123 of in the prosecution;

124 (3) Evidence of specific instances of a victim's or complaining witness's sexual behavior  
125 with respect to the defendant or another person if offered by the prosecutor; and

126 (4) Evidence whose exclusion would violate the defendant's constitutional rights.

127 (c) The procedure for introducing evidence as described in subsection (b) of this Code  
128 section shall be as follows:

129 ~~(1) At the time the defense seeks to introduce evidence which would be covered by~~  
130 ~~subsection (b) of this Code section, the defense shall notify the court of such intent,~~  
131 ~~whereupon the court shall conduct an in-camera hearing to examine the accused's offer~~  
132 ~~of proof; If a party intends to offer evidence under subsection (b), the party must:~~

133 (A) File a motion that specifically describes the evidence and states the purpose for  
134 which it is to be offered; and

135 (B) Do so at least three days before trial unless the court, for good cause, sets a  
 136 different date; and

137 ~~(2) At the conclusion of the hearing, if the court finds that any of the evidence introduced~~  
 138 ~~at the hearing is admissible under subsection (b) of this Code section or is so highly~~  
 139 ~~material that it will substantially support a conclusion that the accused reasonably~~  
 140 ~~believed that the complaining witness consented to the conduct complained of and that~~  
 141 ~~justice mandates the admission of such evidence, the court shall by order state what~~  
 142 ~~evidence may be introduced by the defense at the trial of the case and in what manner the~~  
 143 ~~evidence may be introduced; and~~

144 ~~(3)(2) Before admitting the evidence under this Code section, the court shall conduct an~~  
 145 ~~in camera hearing to examine the merits of the motion. The defense may then introduce~~  
 146 ~~evidence pursuant to the order of the court."~~

147 **SECTION 3.**

148 Said title is further amended by revising Code Section 24-8-820, relating to testimony as to  
 149 child's description of sexual contact or physical abuse, as follows:

150 "24-8-820.

151 (a) A statement made by a child younger than 16 years of age describing any act of sexual  
 152 contact or physical abuse performed with or on such child by another or with or on another  
 153 in the presence of such child shall be admissible in evidence by the testimony of the person  
 154 to whom made if the proponent of such statement provides notice to the adverse party prior  
 155 to trial of the intention to use such out-of-court statement and such child testifies at the  
 156 trial, unless the adverse party forfeits or waives such child's testimony as provided in this  
 157 title, and, at the time of the testimony regarding the out-of-court statements, the person to  
 158 whom the child made such statement is subject to cross-examination regarding the  
 159 out-of-court statements.

160 (b) This Code section shall apply to any motion made or hearing or trial commenced on  
 161 or after the effective date of this subsection."

162 **SECTION 4.**

163 Section 1 of this Act shall apply to offenses occurring on or after the effective date of this  
 164 Act. Sections 2 and 3 of this Act shall apply to any motion made or hearing or trial  
 165 commenced on or after the effective date of this Act.

166 **SECTION 5.**

167 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 168 without such approval.

169

**SECTION 6.**

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