

The House Committee on Judiciary Non-civil offers the following substitute to HB 1052:

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 create the offense of murder in the second degree; to change provisions  
3 relating to murder; to provide for penalties; to amend Titles 15, 16, and 31, Code Section  
4 35-3-190, Title 42, and Code Section 49-2-14.1 of the Official Code of Georgia Annotated,  
5 relating to courts, crimes and offenses, health, the state-wide alert system for unapprehended  
6 murder or rape suspects determined to be serious public threats, penal institutions, and  
7 records check requirements for the Department of Human Services, respectively, so as to  
8 correct cross-references; to provide for related matters; to repeal conflicting laws; and for  
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

**SECTION 1-1.**

13 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
14 amended by revising subsections (c) and (d) of and adding a new subsection to Code Section  
15 16-5-1, relating to murder and felony murder, as follows:

16 "~~(c)~~ (c) A person ~~also~~ commits the offense of murder when, in the commission of a felony, he  
17 or she causes the death of another human being irrespective of malice.

18 (d) A person commits the offense of murder in the second degree when, in the commission  
19 of cruelty to children in the second degree, he or she causes the death of another human  
20 being irrespective of malice.

21 ~~(d)~~(e)(1) A person convicted of the offense of murder shall be punished by death, by  
22 imprisonment for life without parole, or by imprisonment for life.

23 (2) A person convicted of the offense of murder in the second degree shall be punished  
24 by imprisonment for not less than ten nor more than 30 years."

## PART II

## SECTION 2-1.

27 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
 28 paragraph (3) of subsection (b) of Code Section 15-1-16, relating to mental health court  
 29 divisions, as follows:

30 "(3) Each mental health court division shall establish a planning group to develop a  
 31 written work plan. The planning group shall include judges, prosecuting attorneys,  
 32 sheriffs or their designees, public defenders, probation officers, and persons having  
 33 expertise in the field of mental health. The work plan shall address the operational,  
 34 coordination, resource, information management, and evaluation needs of the mental  
 35 health court division. The work plan shall include mental health court division policies  
 36 and practices related to implementing the standards and practices developed pursuant to  
 37 paragraph (4) of this subsection. The work plan shall ensure a risk and needs assessment  
 38 is used to identify the likelihood of recidivating and identify the needs that, when met,  
 39 reduce recidivism. The work plan shall ensure that mental health court division eligibility  
 40 shall be focused on moderate-risk and high-risk offenders as determined by a risk and  
 41 needs assessment. The mental health court division shall combine judicial supervision,  
 42 treatment of mental health court division participants, and drug and mental health testing.  
 43 Defendants charged with murder, murder in the second degree, armed robbery, rape,  
 44 aggravated sodomy, aggravated sexual battery, aggravated child molestation, or child  
 45 molestation shall not be eligible for entry into the mental health court division, except in  
 46 the case of a separate court supervised reentry program designed to more closely monitor  
 47 mentally ill offenders returning to the community after having served a term of  
 48 incarceration. Any such court supervised community reentry program for mentally ill  
 49 offenders shall be subject to the work plan as provided for in this paragraph."

## SECTION 2-2.

51 Said title is further amended by revising paragraph (2) of subsection (a) of Code Section  
 52 15-11-203, relating to when reasonable efforts by DFCS are not required, as follows:

53 "(2) Has been convicted of the murder or murder in the second degree of another child  
 54 of such parent;"

## SECTION 2-3.

56 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section  
 57 15-11-233, relating to termination of parental rights, as follows:

58 "(3) The court has made a determination that the parent of a child adjudicated as a  
59 dependent child has been convicted of:

60 (A) The murder of another child of such parent;

61 (B) Murder in the second degree of another child of such parent;

62 ~~(B)~~(C) Voluntary manslaughter of another child of such parent;

63 ~~(C)~~(D) Voluntary manslaughter of the other parent of such child;

64 ~~(D)~~(E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or  
65 voluntary manslaughter of another child of such parent;

66 ~~(E)~~(F) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or  
67 voluntary manslaughter of the other parent of such child; or

68 ~~(F)~~(G) Committing felony assault that has resulted in serious bodily injury to such  
69 child or to another child of such parent."

70

#### SECTION 2-4.

71 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section  
72 15-11-560, relating to concurrent and original jurisdiction of superior court, as follows:

73 "(b) The superior court shall have exclusive original jurisdiction over the trial of any child  
74 13 to 17 years of age who is alleged to have committed any of the following offenses:

75 (1) Murder;

76 (2) Murder in the second degree;

77 ~~(2)~~(3) Voluntary manslaughter;

78 ~~(3)~~(4) Rape;

79 ~~(4)~~(5) Aggravated sodomy;

80 ~~(5)~~(6) Aggravated child molestation;

81 ~~(6)~~(7) Aggravated sexual battery; or

82 ~~(7)~~(8) Armed robbery if committed with a firearm."

83

#### SECTION 2-5.

84 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
85 amended by revising subsection (e) of Code Section 16-11-131, relating to possession of  
86 firearms by convicted felons and first offender probationers, as follows:

87 "(e) As used in this Code section, the term 'forcible felony' means any felony which  
88 involves the use or threat of physical force or violence against any person and further  
89 includes, without limitation, murder; ~~felony~~ murder in the second degree; burglary in any  
90 degree; robbery; armed robbery; kidnapping; hijacking of an aircraft or motor vehicle;  
91 aggravated stalking; rape; aggravated child molestation; aggravated sexual battery; arson  
92 in the first degree; the manufacturing, transporting, distribution, or possession of explosives

93 with intent to kill, injure, or intimidate individuals or destroy a public building; terroristic  
 94 threats; or acts of treason or insurrection."

95 **SECTION 2-6.**

96 Said title is further amended by revising subsection (b) of Code Section 16-11-133, relating  
 97 to minimum periods of confinement for persons convicted who have prior convictions, as  
 98 follows:

99 "(b) Any person who has previously been convicted of or who has previously entered a  
 100 guilty plea to the offense of murder, murder in the second degree, armed robbery,  
 101 kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual  
 102 battery, or any felony involving the use or possession of a firearm and who shall have on  
 103 or within arm's reach of his or her person a firearm during the commission of, or the  
 104 attempt to commit:

105 (1) Any crime against or involving the person of another;

106 (2) The unlawful entry into a building or vehicle;

107 (3) A theft from a building or theft of a vehicle;

108 (4) Any crime involving the possession, manufacture, delivery, distribution, dispensing,  
 109 administering, selling, or possession with intent to distribute any controlled substance as  
 110 provided in Code Section 16-13-30; or

111 (5) Any crime involving the trafficking of cocaine, marijuana, or illegal drugs as  
 112 provided in Code Section 16-13-31,

113 and which crime is a felony, commits a felony and, upon conviction thereof, shall be  
 114 punished by confinement for a period of 15 years, such sentence to run consecutively to  
 115 any other sentence which the person has received."

116 **SECTION 2-7.**

117 Said title is further amended by revising paragraph (5) of subsection (b) of Code Section  
 118 16-12-1.1, relating to child, family, or group-care facility operators prohibited from  
 119 employing or allowing to reside or be domiciled persons with certain past criminal violations,  
 120 as follows:

121 "(5) A violation of Code Section 16-5-1, ~~relating to murder;~~"

122 **SECTION 2-8.**

123 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
 124 subparagraph (a)(2)(A) of Code Section 31-2-9, relating to records check requirement for  
 125 certain facilities, as follows:

126 "(A) A violation of Code Section 16-5-1, ~~relating to murder and felony murder;~~"

127 **SECTION 2-9.**

128 Said title is further amended by revising subparagraph (H) of paragraph (2) of Code Section  
 129 31-7-250, relating to definitions for facility licensing and employee records checks, as  
 130 follows:

131 "(H) A violation of Code Section 16-5-1, ~~relating to murder and felony murder,~~"

132 **SECTION 2-10.**

133 Code Section 35-3-190 of the Official Code of Georgia Annotated, relating to the state-wide  
 134 alert system for unapprehended murder or rape suspects determined to be serious public  
 135 threats, is amended by revising subsection (c) as follows:

136 "(c) The director shall develop and implement a state-wide alert system to be activated  
 137 when a suspect for the crime of murder, felony murder, or murder in the second degree as  
 138 defined in Code Section 16-5-1 or rape as defined in Code Section 16-6-1 has not been  
 139 apprehended and law enforcement personnel have determined that the suspect may be a  
 140 serious threat to the public."

141 **SECTION 2-11.**

142 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
 143 by revising Code Section 42-5-85, relating to leave privileges of inmates serving murder  
 144 sentences, as follows:

145 "42-5-85.

146 (a) As used in this Code section ~~only~~, the term:

147 (1) 'Aggravating ~~'aggravating~~ circumstance' means that:

148 ~~(1)~~(A) The murder was committed by a person with a prior record of conviction for a  
 149 capital felony;

150 ~~(2)~~(B) The murder was committed while the offender was engaged in the commission  
 151 of another capital felony, aggravated battery, burglary in any degree, or arson in the  
 152 first degree;

153 ~~(3)~~(C) The offender, by his or her act of murder, knowingly created a great risk of  
 154 death to more than one person in a public place by means of a weapon or device which  
 155 would normally be hazardous to the lives of more than one person;

156 ~~(4)~~(D) The offender committed the murder for himself, herself, or another, for the  
 157 purpose of receiving money or any other thing of monetary value;

158 ~~(5)~~(E) The murder of a judicial officer, former judicial officer, district attorney or  
 159 solicitor-general, or former district attorney, solicitor, or solicitor-general was  
 160 committed during or because of the exercise of his or her official duties;

161 ~~(6)(F)~~ The offender caused or directed another to commit murder or committed murder  
 162 as an agent or employee of another person;

163 ~~(7)(G)~~ The murder was outrageously or wantonly vile, horrible, or inhuman in that it  
 164 involved torture, depravity of mind, or an aggravated battery to the victim;

165 ~~(8)(H)~~ The murder was committed against any peace officer, corrections employee, or  
 166 firefighter while engaged in the performance of his or her official duties;

167 ~~(9)(I)~~ The murder was committed by a person in, or who has escaped from, the lawful  
 168 custody of a peace officer or place of lawful confinement; or

169 ~~(10)(J)~~ The murder was committed for the purpose of avoiding, interfering with, or  
 170 preventing a lawful arrest or custody in a place of lawful confinement of himself,  
 171 herself, or another.

172 (2) 'Murder' means a violation of Code Section 16-5-1.

173 (b) No special leave, emergency leave, or limited leave privileges shall be granted to any  
 174 inmate who is serving a murder sentence unless the commissioner has approved in writing  
 175 a written finding by the department that the murder did not involve any aggravating  
 176 circumstance.

177 (c) The department shall make a finding that a murder did not involve an aggravating  
 178 circumstance only after an independent review of the record of the trial resulting in the  
 179 conviction or of the facts upon which the conviction was based."

180 **SECTION 2-12.**

181 Said title is further amended by revising subsection (g) of Code Section 42-9-45, relating to  
 182 general rule-making power, as follows:

183 "(g) No inmate serving a sentence for murder, murder in the second degree, armed robbery,  
 184 kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual  
 185 battery shall be released on parole for the purpose of regulating jail or prison populations."

186 **SECTION 2-13.**

187 Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to records check  
 188 requirements for the Department of Human Services, is amended by revising subparagraph  
 189 (a)(2)(A) as follows:

190 "(A) A violation of Code Section 16-5-1, ~~relating to murder and felony murder;~~"

191 **PART III**

192 **SECTION 3-1.**

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