

HOUSE BILL 534<sup>1</sup>: CRIMES AND OFFENSES; PROMOTING ILLEGAL DRAG  
RACING AND LAYING DRAGS; PROVIDE FOR OFFENSE

*Amending Article 2 of Chapter 11 of O.C.G.A and Title 40 of the O.C.G.A.,  
and Repealing All Laws in Conflict*

**First signature:** Representative Josh Bonner (72<sup>nd</sup>)

**Co-Sponsors:** Representative Bill Hitchens (161<sup>st</sup>), Representative Martin Momtahan (17<sup>th</sup>), Representative John Corbett (174<sup>th</sup>), and Representative Matt Barton (5<sup>th</sup>).

**Summary:** “[t]o amend Article 2 of Chapter 11 of Title 16 of the O.C.G.A., relating to offenses against public order, so as to provide for the offense of promoting illegal drag racing and laying drags; to provide for punishment; to amend Title 40 of the O.C.G.A., relating to motor vehicles and traffic, so as to provide for the offense of reckless stunt driving; to provide for report of conviction of such offenses by courts to the Department of Driver Services; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** Bill effective May 3, 2021.<sup>3</sup>

TEXT OF HOUSE BILL 534<sup>4</sup> (COMMITTEE SUBSTITUTE LC 39 2986-  
ECS/AP)

**SECTION 1.**

Article 2 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public order, is amended by adding a new Code section to read as follows:

“16-11-43.1.

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<sup>1</sup> H.B. 534, 156th Gen. Assem., 1st Reg. Sess. (Ga. 2021), available at <https://www.legis.ga.gov/api/legislation/document/20212022/202046> (last visited Dec. 27, 2021).

<sup>2</sup> 2021-2022 Regular Session-HB 534, *Crimes and Offenses; Promoting Illegal Drag Racing and Laying Drags; Provide for Offense*, GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/59834> (last visited April 9, 2022) [hereinafter H.B. 534 Status Sheet].

<sup>3</sup> *Id.*

<sup>4</sup> H.B. 534, *supra* note 1.

Any person who knowingly promotes or organizes an exhibition of illegal drag racing, in violation of Code Section 40-6-186, or of laying drags, in violation of Code Section 40-6-251, shall be guilty of a misdemeanor of a high and aggravated nature.”

## SECTION 2.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended in Code Section 40-5-53, relating to when courts to send licenses and reports of convictions to department, destruction of license by department, and issuance of new license upon satisfaction of certain requirements, by revising paragraph (3) of subsection (b) as follows:

“(3) A report of any conviction for an offense covered under Code Section 40-5-54, or Code Sections ~~40-6-391~~ 40-6-390.1 through 40-6-395, or violating a federal law or regulation or the law of any state or a valid municipal or county ordinance substantially conforming to any offense covered under Code Section 40-5-54 or Code Sections ~~40-6-391~~ 40-6-390.1 through 40-6-395, regardless of the date such report of conviction is received by the department, shall be considered for purposes of revoking a driver's license in accordance with Code Section 40-5-58.”

## SECTION 3.

Said title is further amended by revising Code Section 40-5-57.2, which is reserved, as follows: “40-5-57.2.

(a) The driver's license of any person convicted of reckless stunt driving in violation of Code Section 40-6-390.1 shall by operation of law be suspended, and such suspension shall be subject to the following terms and conditions:

(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be up to 12 months, provided that such person may apply to the department for early reinstatement of his or her driver's license at the end of 120 days. Such license shall be reinstated upon payment of a restoration fee of \$210.00, or \$200.00 when such reinstatement is processed by mail;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for three years, provided that such person may apply to the department for early reinstatement of his or her driver's license after 18 months from the date of the conviction. Such license shall be reinstated upon payment of a restoration fee of \$310.00, or \$300.00 when such reinstatement is processed by mail; and

(3) Upon the third or subsequent conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person shall be considered a habitual violator, and such person's license shall be revoked as provided for in Code Section 40-5-58. A person whose license has been suspended pursuant to this subsection may, if eligible under Code Section 40-5-58, apply for a probationary license pursuant to such Code section. A driver's license suspension imposed under this paragraph shall run concurrently with and shall be counted toward the fulfillment of any period of revocation imposed directly under Code Sections 40-5-58 and 40-5-62, provided that such revocation arose from the same act for which the suspension was imposed.

(b) Whenever a person is convicted of reckless stunt driving in violation of Code Section 40-6-390.1, the court in which such conviction is entered shall require the surrender of any driver's license then held by the person so convicted, and the court shall thereupon forward such license and a copy of its order to the department within ten days after the conviction. The method of calculating the periods of suspension provided for in this Code section shall be governed by subsection (e) of Code Section 40-5-61.

(c) Application for reinstatement of a driver's license under paragraph (1) or (2) of subsection (a) of this Code section shall be made on such forms as the commissioner may prescribe and shall be accompanied by the applicable restoration fee.

(d) Except as provided in subsection (a) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person's license has been suspended pursuant to this Code section if such person has not thereafter obtained a valid license or limited permit. Any person who is convicted of operating a motor vehicle before the department has reinstated such person's license or before obtaining a limited driving permit or probationary license shall be punished by a fine of not less than \$750.00 nor more than \$5,000.00 or by imprisonment in the penitentiary for not more than 12 months, or both. ~~Reserved.~~"

**SECTION 4.**

Said title is further amended by revising Code Section 40-5-58, relating to habitual violators and probationary licenses, as follows:

“40-5-58.

(a) As used in this Code section, ‘habitual violator’ means any person who has been arrested and convicted within the United States three or more times within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, of:

(1) Committing any offense covered under Code Section 40-5-54 or Code Sections ~~40-6-391~~ 40-6-390.1 through 40-6-395 or violating a federal law or regulation or the law of any state or a valid municipal or county ordinance substantially conforming to any offense covered under Code Section 40-5-54 or Code Sections ~~40-6-391~~ 40-6-390.1 through 40-6-395;

or

(2) Singularly or in combination, any of the offenses described in paragraph (1) of this subsection.

(b) When the records of the department disclose that any person is a habitual violator as defined in subsection (a) of this Code section, the department shall forthwith notify such person that his or her driver's license has been revoked by operation of law and that it shall be unlawful for such habitual violator to operate a motor vehicle in this state unless otherwise provided in this Code section. Notice shall be given by certified mail or statutory overnight delivery, with return receipt requested; or, in lieu thereof, notice may be given by personal service upon such person.

(c)(1) Except as provided in paragraph (2) of this subsection or in subsection ~~(e)~~ (d) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person has received notice that his or her driver's license has been revoked as provided in subsection (b) of this Code section, if such person has not thereafter obtained a valid driver's license. Any person declared to be a habitual violator and whose driver's license has been revoked under this Code section and who is thereafter convicted of operating a motor vehicle before the department has issued such person a driver's license or before the expiration of five years from such revocation, whichever occurs first, shall be punished by a fine of not less than \$750.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both. Any person declared to be a habitual violator and whose driver's license has been revoked and who is convicted of operating a motor vehicle after the

expiration of five years from such revocation but before the department has issued such person a driver's license shall be guilty of a misdemeanor.

(2) Any person declared to be a habitual violator as a result of three or more convictions of violations of Code Section 40-6-391 within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, and who is thereafter convicted of operating a motor vehicle during such period of revocation, prior to the issuance of a probationary license under subsection ~~(e)~~ (d) of this Code section or before the expiration of five years, shall be guilty of the felony of habitual impaired driving and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

~~(d) Notwithstanding any contrary provisions of Code Section 17-7-95 or 24-4-410, for the purposes of this Code section, any plea of nolo contendere entered and accepted after January 1, 1976, shall be considered a conviction.~~

~~(e)~~(d)(1) Notwithstanding any contrary provisions of this Code section or any other Code section of this chapter, any person who has been declared a habitual violator and who has had his or her driver's license revoked under subsection (b) of this Code section for a period of five years and two years have expired since the date on which such person's license was surrendered or an affidavit was accepted as provided in subsection (e) of Code Section 40-5-61 may be issued a probationary driver's license for a period of time not to exceed three years upon compliance with the following conditions:

(A) Such person has not been convicted, or pleaded nolo contendere to a charge, of violating any provision of this chapter, Chapter 6 of this title, or any local ordinance relating to the movement of vehicles for a period of two years immediately preceding the application for a probationary driver's license;

(B) Such person has not been convicted, or pleaded nolo contendere to a charge, of a violation of any provision of this chapter or Chapter 6 of this title which resulted in the death or injury of any individual;

(C) Such person has successfully completed, prior to the issuance of the probationary driver's license, a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 or a DUI Alcohol or Drug Use Risk Reduction Program as designated by the department;

(D)Reserved;

(E) Such person shall submit a sworn affidavit that such person does not excessively use alcoholic beverages and does not illegally use controlled substances or marijuana when a person has been declared a habitual violator based upon a violation of a state law or local ordinance involving Code Section 40-6-391. It shall be a

misdeemeanor to falsely swear on such affidavit and, upon conviction, the probationary license shall be revoked. No probationary license shall be issued during the remainder of the revocation period, and no driver's license shall be issued for the remainder of the original revocation period or for a period of two years from the date of conviction under this subparagraph;

(F) Such person submits proof of financial responsibility as provided in Chapter 9 of this title; and

(G) Refusal to issue a probationary driver's license would cause extreme hardship to the applicant. For the purposes of this subsection, the term 'extreme hardship' means that the applicant cannot reasonably obtain other transportation, and, therefore, the applicant would be prohibited from:

- (i) Going to his or her place of employment or performing the normal duties of his or her occupation;
- (ii) Receiving scheduled medical care or obtaining prescription drugs;
- (iii) Attending a college or school at which he or she is regularly enrolled as a student;
- (iv) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; or
- (v) Attending under court order any driver education or improvement school or alcohol or drug treatment program or course approved by the court which entered the judgment of conviction resulting in revocation of his or her driver's license or by the commissioner.

(2) Application for a probationary driver's license shall be made upon such forms as the commissioner may prescribe. Such forms shall require such information as is necessary for the department to determine the need for such license. All applications shall be signed by the applicant before a person authorized to administer oaths.

(3) Upon compliance with the above conditions and the payment of a fee of \$210.00, or \$200.00 when processed by mail, such person may be issued a probationary driver's license by the department. Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed probationary driver's license issued to him or her.

(4) A probationary driver's license shall be endorsed with such conditions as the commissioner deems necessary to ensure that such license will be

used by the licensee only to avoid the conditions of extreme hardship. Such conditions may include the following restrictions:

- (A) Specific places between which the licensee may be allowed to operate a motor vehicle;
- (B) Routes to be followed by the licensee;
- (C) Times of travel;
- (D) The specific vehicles which the licensee may operate; and
- (E) Such other restrictions as the department may require.

(5) A probationary driver's license issued pursuant to this Code section shall become invalid upon the expiration of the period of the suspension or revocation of the driver's license of such person.

(6)(A)(i) Any probationary licensee violating the provisions of paragraph (4) of this subsection or operating a vehicle in violation of any conditions specified in this subsection shall be guilty of a misdemeanor.

(ii) Except as provided in division (iii) of this subparagraph, any probationary licensee violating any state law or local ordinance involving an offense listed in Code Section 40-5-54, 40-6-390.1, or ~~Code Section~~ 40-6-391 shall be guilty of a felony and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(iii) Any probationary licensee violating any state law or local ordinance involving a felony offense listed in Code Section 40-5-54 shall be guilty of a felony and shall be punished as is provided for conviction of such felony.

(B) Any probationary licensee who is convicted of violating, or who pleads nolo contendere to a charge of violating, any state law or local ordinance involving an offense listed in Code Section 40-5-54, 40-6-390.1, or ~~Code Section~~ 40-6-391 or any probationary licensee who is convicted of violating, or who pleads nolo contendere to a charge of violating, the conditions endorsed on ~~his~~ such license, shall have his or her license revoked by the department. Any court in which such conviction is had or in which said nolo contendere plea is accepted shall require the licensee to surrender the license to the court. The court shall forward the license to the department within ten days after the conviction or acceptance of the plea, with a copy of the conviction. Any person whose probationary license is revoked for committing an offense listed in Code Section 40-5-54, 40-6-390.1, or ~~Code Section~~ 40-6-391 shall not be eligible to apply for a regular driver's license until the expiration of the original five-year revocation period during which the probationary license was originally issued or for a period

of two years following the conviction, whichever is greater.  
 (C) If the commissioner has reason to believe or makes a preliminary finding that the requirements of the public safety or welfare outweigh the individual needs of a person for a probationary license, the commissioner, in his or her discretion, after affording the person notice and an opportunity to be heard, may refuse to issue the license under this subsection.

(D) Any person whose probationary driver's license has been revoked shall not be eligible to apply for a subsequent probationary license under this Code section for a period of five years.

(7) Any person whose probationary license has been revoked or who has been refused a probationary license by the department may make a request in writing for a hearing to be provided by the department. Such hearing shall be provided by the department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Appeal from such hearing shall be in accordance with Chapter 13 of Title 50.

~~(f)~~(e) If a person's license was revoked for a violation of Code Section 40-6-391 resulting from a motor vehicle collision in which any person lost his or her life, the person whose license was revoked shall not be entitled to a probationary license as set forth in this Code section."

## SECTION 5.

Said title is further amended in Code Section 40-5-64, relating to limited driving permits for certain offenders, by revising subsections (a) and (e) as follows:

**“(a) To whom issued.**

(1) Notwithstanding any contrary provision of this Code section or Code Section 40-5-57, ~~40-5-57.2~~, 40-5-63, 40-5-75, 40-5-121, or 42-8-111, any person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest, may apply for a limited driving permit when ~~that~~:

~~(A) That person's driver's license had a suspension imposed prior to July 1, 2015, under Code Section 40-5-22 or that person's driver's license has been suspended in accordance with subsection;~~



- ~~(i) Subsection (d) of Code Section 40-5-57, paragraph;~~
- ~~(ii) Paragraph (1) of subsection (a) of Code Section 40-5-57.2;~~
- ~~(iii) Paragraph (1) of subsection (a) of Code Section 40-5-63, paragraph;~~
- ~~(iv) Paragraph (1) of subsection (a) of Code Section 40-5-67.2, or subsection; or~~
- ~~(v) Subsection (a) of Code Section 40-5-57.1, when the person is 18 years of age or older and his or her license was suspended for exceeding the speed limit by 24 miles per hour or more but less than 34 miles per hour; and the; and~~
- (B) The** sentencing judge, in his or her discretion, decides it is reasonable to issue a limited driving permit.

(2) No person who has been granted an exemption from the ignition interlock device requirements of Article 7 of Chapter 8 of Title 42 due to undue financial hardship under Code Section 42-8-111 shall be eligible for a limited driving permit, an ignition interlock device limited driving permit, or any other driving privilege for a period of one year.

(3) To the extent a person is subject to more than one suspension for which a limited driving permit may be issued, the department shall not issue such permit unless the suspensions are for a conviction for driving under the influence in violation of Code Section 40-6-391 imposed pursuant to Code Section 40-5-63 and an administrative suspension imposed pursuant to paragraph (1) of subsection (a) of Code Section 40-5-67.2 arising from the same incident.”

**“(e) Fees, duration, renewal, and replacement of limited driving permit.**

(1) A limited driving permit issued pursuant to this Code section shall be \$25.00 and shall become invalid upon ~~the driver's eighteenth birthday in the case of a suspension under paragraph (2) of subsection (a.1) of Code of Section 40-5-22, upon the;~~

**(A) The** expiration of one year following issuance thereof in the case of a suspension ~~for;~~

- ~~(i) For~~ an offense listed in Code Section 40-5-54 ~~or a suspension under;~~
- ~~(ii) Under~~ Code Section 40-5-57 ~~or a suspension in;~~
- ~~(iii) Under~~ Code Section 40-5-57.2; or
- ~~(iv) In~~ accordance with paragraph (1) of subsection (a) of Code Section 40-5-63 for a violation of Code Section 40-6-391, ~~or upon the;~~

(B) The expiration of 30 days in the case of an administrative license suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-67.2; ~~except that such limited driving permit shall expire upon any or~~

(C) Any earlier reinstatement of the driver's license.

(2) A person may apply to the department for a limited driving permit immediately following such conviction if he or she has surrendered his or her driver's license to the court in which the conviction was adjudged or to the department if the department has processed the administrative driver's license suspension form or conviction. Upon the applicant's execution of an affidavit attesting to such facts and to the fact that the court had not imposed a suspension or revocation of his or her driver's license or driving privileges inconsistent with the driving privileges to be conferred by the limited driving permit applied for, the department may issue such person a limited driving permit.

(3) Limited driving permits issued pursuant to this Code section are renewable upon payment of a renewal fee of \$5.00. Such permits may be renewed one time after the person is eligible to reinstate his or her driver's license for the violation that was the basis of the issuance of the permit.

(4) Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed limited driving permit issued to him or her."

## SECTION 6

Said title is further amended by adding a new Code section to read as follows:

"40-6-390.1.

(a) Any person who operates any vehicle while drag racing, in violation of Code Section 40-6-186, or laying drags, in violation of Code Section 40-6-251, in reckless disregard for the safety of persons on a highway or upon private property without express authorization from the owner of such property commits the offense of reckless stunt driving and, upon conviction thereof, shall be guilty of:

(1) For the first conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, a misdemeanor of a high and aggravated nature to be punished by:

(A) A fine of not less than \$300.00 but no more than \$750.00; and

- (B) A period of imprisonment of not fewer than ten days nor more than six months;
- (2) For the second conviction in a ten-year period of time, a misdemeanor of a high and aggravated nature to be punished by:
- (A) A fine of not less than \$600.00 and not more than \$1,000.00;  
and
- (B) A period of imprisonment of not fewer than 90 days and not more than 12 months;
- (3) For the third conviction in a ten-year period of time, a misdemeanor of a high and aggravated nature to be punished by:
- (A) A fine of not less than \$1,000.00 and not more than \$5,000.00;  
and
- (B) A period of imprisonment of not fewer than 120 days and not more than 12 months; and
- (4) For a fourth or subsequent conviction in a ten-year period of time, a felony to be punished by:
- (A) A fine of not less than \$1,000.00 and not more than \$5,000.00;  
and
- (B) A period of imprisonment of not fewer than one year and not more than five years.
- (b)(1) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section.
- (2) Notwithstanding any provision of this Code section to the contrary, any court authorized to hear misdemeanor or high and aggravated misdemeanor cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed.
- (c)(1) Any motor vehicle operated by a person who has been declared a habitual violator for three violations of this Code section, whose license has been revoked, and who is arrested and charged with a violation of this Code section is declared to be contraband and subject to forfeiture in accordance with the procedures set forth in Chapter 16 of Title 9.
- (2) In any case where a vehicle which is the only family vehicle is determined to be subject to forfeiture, the court may, if it determines that the financial hardship to the family as a result of the forfeiture and sale outweighs the benefit to the state from such forfeiture, order

the title to the vehicle transferred to such other family member who is a duly licensed operator and who requires the use of such vehicle for employment or family transportation purposes. Such transfer shall be subject to any valid liens and shall be granted only once. (d) For purposes of this Code section, the occurrence of a previous conviction shall be measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted.”

### SECTION 7.

Said title is further amended in Code Section 40-6-393, relating to homicide by vehicle, by revising subsections (a) and (c) as follows:

“(a) Any person who, without malice aforethought, causes the death of another person through the violation of subsection (a) of Code Section 40-6-163, Code ~~Section~~ Sections 40-6-390 ~~or~~ through 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.”

“(c) Any person who causes the death of another person, without an intention to do so, by violating any provision of this title other than subsection (a) of Code Section 40-6-163, subsection (b) of Code Section 40-6-270, Code ~~Section~~ Sections 40-6-390 ~~or~~ through 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the second degree when such violation is the cause of said death and, upon conviction thereof, shall be punished as provided in Code Section 17-10-3.”

### SECTION 8.

Said title is further amended in Code Section 40-6-393.1, relating to feticide by vehicle and penalties, by revising subsection (c) as follows:

“(c)(1) A person commits the offense of feticide by vehicle in the second degree if he or she causes the death of an unborn child by any injury to the mother of such child by violating any provision of this title other than Code ~~Section~~ Sections 40-6-390 ~~or~~ through 40-6-391, which would be homicide by vehicle in the second degree as provided in subsection (c) of Code Section 40-6-393 if it resulted

in the death of such mother.  
(2) A person convicted of the offense of feticide by vehicle in the second degree shall be punished as provided in Code Section 17-10-3.”

#### **SECTION 9.**

Said title is further amended in Code Section 40-6-394, relating to serious injury by vehicle and penalty, by revising subsection (b) as follows:

“(b) Any person who, without malice aforethought, causes an accident that results in bodily harm while violating Code ~~Section~~ Sections 40-6-390 ~~or through~~ 40-6-391 commits the crime of serious injury by vehicle. A person convicted of violating this subsection shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than 15 years.”

#### **SECTION 10.**

Said title is further amended by revising Code Section 40-6-397, relating to aggressive driving and penalty, as follows:

“40-6-397.

(a) A person commits the offense of aggressive driving when he or she operates any motor vehicle with the intent to annoy, harass, molest, intimidate, injure, or obstruct another person, including without limitation violating Code Section 40-6-42, 40-6-48, 40-6-49, 40-6-123, 40-6-184, 40-6-312, ~~or~~ 40-6-390, or 40-6-390.1 with such intent.

(b) Any person convicted of aggressive driving shall be guilty of a misdemeanor of a high and aggravated nature.”

#### **SECTION 11.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all offenses committed on and after such date.

#### **SECTION 12.**

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

#### **SPONSOR’S RATIONALE**

Representative Josh Bonner (“Representative Bonner”) sponsored House Bill 534 (“H.B. 534”) as part of Governor Kemp’s legislative agenda

on crime related matters.<sup>5</sup> H.B. 534 implements penalties on all persons in Georgia involved in laying drag (“drag racing”) as well as those who promote and organize the exhibition of illegal drag racing.<sup>6</sup>

Representative Bonner serves as Governor Kemp’s floor leader, working directly with the Governor to introduce legislation.<sup>7</sup> Representative Bonner presented H.B. 534 to the Georgia House of Representatives in March 2021, as an amendment to Title 16 of the O.C.G.A, offenses against public order by expanding the penalty to those who promote the exhibition.<sup>8</sup> Although Georgia has already deemed drag racing as illegal, the state previously provided no penalty for those who organized and promoted illegal drag racing.<sup>9</sup> Local law enforcement, including sheriffs and police chiefs, sought assistance from the Governor in penalizing all those involved, with special emphasis on the organizers.<sup>10</sup> By providing penalties for the promoters, law enforcement, as well as Governor Kemp, are hoping that H.B. 534 leads to a decrease in the occurrence of illegal drag racing in metropolitan Atlanta.<sup>11</sup>

Prior to the passage of H.B. 534, promoting and/or organizing drag racing events was not a crime in Georgia.<sup>12</sup> Now, participants and organizers will be subject to criminal liability under O.C.G.A §16-11-43.1 (titled Organization or promotion of illegal drag racing).<sup>13</sup> The relevant

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<sup>5</sup> Telephone Interview with Josh Bonner, Rep. 72<sup>nd</sup> District, Fayetteville, Ga. (Oct. 1, 2021) [hereinafter Bonner Interview].

<sup>6</sup> GPB Lawmakers, *Georgia House 2021 – Day 28, Afternoon Part Three*, YOUTUBE (Mar. 8, 2021), <https://www.youtube.com/watch?v=kiznzynQWx0> (beginning at 12:25).

<sup>7</sup> Bonner Interview, *supra* note 5.

<sup>8</sup> H.B. 534, *supra* note 1.

<sup>9</sup> Bonner Interview, *supra* note 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> W. Scott Smith, *Georgia’s New Street Racing Law*, PEACHSTATE LAWYER BLOG, (July 7, 2021), <https://www.peachstatelawyer.com/Georgias-New-Street-Racing-Law/#:~:text=The%20law%20includes%20drag%20racing,a%20high%20and%20aggravated%20nature.>

<sup>13</sup> O.C.G.A. § 16-11-43.1 (West) (the act, which is specifically in violation of O.C.G.A. § 40-6-186); *see* O.C.G.A. §40-6-186 (West 2006) (defining drag racing as “the operation of two or more vehicles from a point side by side at accelerated speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.” *Id.* The statute further defines “racing” as “the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.” *Id.*).

sections of the statute state that “[a]ny person who knowingly promotes or organizes an exhibition of illegal drag racing,... shall be guilty of a misdemeanor of a high and aggravated nature.”<sup>14</sup> The law includes drag racing both on public roads, as well as on private property.<sup>15</sup>

Prior the passage of H.B. 534, the law in Georgia defined drag racing as:

[T]he operation of two or more vehicles from a point side by side at accelerated speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.<sup>16</sup>

Drag racing, also termed “Reckless Stunt Driving” includes a mandatory ten days in jail, up to six months for this charge alone, along with a minimum fine of \$300.00.<sup>17</sup> A second conviction within ten years increases the jail time, ranging from ninety days to twelve months; a third conviction has a mandatory range of 120 days to twelve months in jail; and the base fines can go up to \$5,000.00.<sup>18</sup> A fourth conviction of Reckless Stunt Driving within a ten year period becomes a felony, with a mandatory one year prison sentence.<sup>19</sup> In addition to jail time and the several fines assessed to violators, those found guilty of Reckless Stunt Driving will also have their driver’s licenses suspended for a period of up to twelve months.<sup>20</sup> Perhaps the most drastic consequence under the new law is forfeiture of the violator’s car, forever, if they are declared to be habitual violators.<sup>21</sup>

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<sup>14</sup> O.C.G.A § 16-11-43.1 (2021).

<sup>15</sup> O.C.G.A § 40-6-251 (West).

<sup>16</sup> O.C.G.A § 40-6-186 (West 2006).

<sup>17</sup> O.C.G.A § 40-6-390.1 (2021); *see also* O.C.G.A. § 40-6-390.1(a) (2021) (operating a vehicle “in reckless disregard for the safety of persons on a highway or upon private property without express authorization from the owner of such property commits the offense of reckless stunt driving.” *Id.* Examples of reckless stunt driving include, swerving between lanes, zig-zags, circles or “donuts.” *Id.*).

<sup>18</sup> O.C.G.A § 40-6-390.1 (2021).

<sup>19</sup> *Id.*

<sup>20</sup> O.C.G.A. § 40-6-390.1 (2021); *see also* O.C.G.A. § 40-6-390.1(a) (2021) (“where a vehicle which is the only family vehicle is determined to be subject to forfeiture, the court may, if it determines that the financial hardship to the family as a result of the forfeiture and sale outweighs the benefit to the state from such forfeiture, order the title to the vehicle transferred to such other family member who is a duly licensed operator and who requires the use of such vehicle for employment or family transportation purposes. Such transfer shall be subject to any valid liens and shall be granted only once.” *Id.*).

<sup>21</sup> O.C.G.A. § 40-6-390.1(c)(1) (2021).

Prior to H.B. 534, organizers of drag racing were not included in the punishment for violation.<sup>22</sup> Organizers of street racing are now included in the definition of drag racing: both organizers/promoters as well as participants/motor vehicle operators.<sup>23</sup>

However, “street racing” is more of an umbrella term.<sup>24</sup> While it includes “two cars speeding side-by-side,” it is also known as “‘laying drag,’ which includes drivers zig-zagging or doing 360-degree doughnut spins.”<sup>25</sup> “Drivers will stage what’s called a ‘takeover,’ blocking off a junction to cars coming the other way, and do ‘sideshows’ for onlookers.”<sup>26</sup> Popular tricks include burnouts - spinning their wheels while stationary to make dramatic plumes of smoke.”<sup>27</sup>

While there has been minimal opposition to H.B. 534, law enforcement has urged its necessity in order to effectively regulate the occurrence of the activity.<sup>28</sup> “You have to attack the source of the activity,” says Representative Bonner.<sup>29</sup> “One of the main reasons the activity takes place is because people want to watch it, they want to advertise and they want to promote it,” he continued.<sup>30</sup> With the imposition of penalties on those who advertise, law enforcement is confident there will be a major decline in the occurrence.<sup>31</sup> Georgia is faced with several wrongful death cases every year as a result of illegal drag racing, and law enforcement has little to no help in remedying its fatal effects.<sup>32</sup> In *Preston v. Sabetazm*, the Court heard testimony from two parents suing defendant Sabetazm for the wrongful death of their son after engaging in a drag race.<sup>33</sup> The court, while sympathetic to the plaintiff-parents, ultimately held that the decedent assumed the risks involved with illegal drag racing and could therefore not hold defendant

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<sup>22</sup> O.C.G.A. § 40-6-390.1 (2021).

<sup>23</sup> O.C.G.A. § 16-11-43.1 (2021).

<sup>24</sup> Rebecca Seales, *Street Racing: They're Fast, Atlanta's Furious*, BBC NEWS (Apr. 3, 2021), <https://www.bbc.com/news/world-us-canada-56154795>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Bonner Interview, *supra* note 5.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *See Preston v. Sabetazm*, 604 S.E.2d 224 (Ga. App. 2004).



liable for the decedent's unfortunate demise.<sup>34</sup> Cases Like *Preston* are not uncommon in Georgia relating to drag racing, Representative Bonner stated the high number of injuries and deaths caused by drag racing only fueled the Governor's efforts to implement and pass H.B. 534.<sup>35</sup>

In addition to the dangers that illegal drag racing poses on individual's safety, Representative Bonner also emphasized the effect drag racing places on the state and its taxpayers.<sup>36</sup> Drag racing causes significant damage to the roads, which then have to be repaired by the department of transportation – using taxpayer dollars.<sup>37</sup> Just recently, the beloved rainbow crosswalk (a symbol of inclusion and support to the LGBTQ+ community) in Midtown, Atlanta was defaced by skid marks caused by drag racing vehicles that occurred at the intersection of 10<sup>th</sup> street and Piedmont Avenue.<sup>38</sup> As a result, the Midtown neighbors Association has already reached out to the Department of Transportation and City Council to have the crosswalk repaired – which will undoubtedly require taxpayer funds.<sup>39</sup>

Governor Kemp has continuously emphasized the dangers of drag racing and its direct relation to the increase of crime related activities in the metropolitan area of Atlanta.<sup>40</sup> Buckhead and East Atlanta are the most affected areas of north Atlanta.<sup>41</sup> A motivation for the increased penalties and expanded category of persons that will be held liable for drag racing is due to

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<sup>34</sup> See *Preston*, 604 S.E.2d 224 (decedent (in a motorcycle) and defendant motorist were engaged in a drag race against each other, driving approximately 80 mph when they came upon a curve in a road approaching an intersection, defendant motorist crossed the intersection at the curve and looked back to see that decedent had collided with the median. *Id.* Testimony at trial revealed that defendant's car had crossed into decedent's lane as it approached the intersection causing decedent to swerve and ultimately collide with the median. *Id.* While decedent's parents attempted to hold defendant liable for their son's death, the court reasoned that although defendant admitted to engaging in the illegal drag race, decedent ultimately assumed all the risks associated with drag racing, including death. *Id.* Using the statutorily provided definition for "drag" and "racing" (see Note 13) the court held the parties were engaged in drag racing and decedent assumed the risk. *Id.*)

<sup>35</sup> Bonner Interview, *supra* note 5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Caroline Silva, *Rainbow Crosswalk in Midtown Atlanta Damaged by Drag Racing*, THE ATLANTA JOURNAL CONSTITUTION (Feb. 21, 2022), <https://www.ajc.com/neighborhoods/atlanta-intown/Rainbow-crosswalks-in-Midtown-Atlanta-damaged-by-alleged-street-racing/WUOAOXZKYNDUZBDAFDFN7EZGE/>.

<sup>39</sup> *Id.*

<sup>40</sup> Beau Evans, *You Might Want to Think Twice Before Drag Racing in Georgia*, THE GEORGIA SUN (May 3, 2021), <https://thegeorgiasun.com/2021/05/03/You-might-want-to-think-twice-before-drag-racing-in-Georgia/>.

<sup>41</sup> Seales, *supra* note 24.

the growth in crime and a way for the city to show support to law enforcement agencies seeking a crack downs on street racing.<sup>42</sup> “This illegal activity is very dangerous.... [m]any people have been injured and some tragically have lost their lives. Our goal is simple: To protect every family in every community.”<sup>43</sup>

#### OPPOSITION’S RATIONALE

Devin Barrington-Ward, founder of Black Futurists Group, opposes H.B. 534 as unnecessarily targeting African Americans.<sup>44</sup> Street racing is an activity comprised of those who are black and brown, Barrington-Ward says.<sup>45</sup> He further argues the harsher penalties will not deter people from the activity, but will rather, “lead to more young auto enthusiasts having criminal records.”<sup>46</sup> While Barrington-Ward acknowledges that “laying drag” or racing on public streets can be dangerous, a majority of the “events” involve car enthusiasts meeting in a designated location to show off their rides; reckless, unsafe driving is a rare occurrence.<sup>47</sup>

Further, Marissa Dodson, Public Policy Director at the Southern Center for Human Rights, has urged lawmakers to work with car enthusiasts rather than turning to law enforcement to heighten penalties.<sup>48</sup> “The police can cite offenders all day long,...but until guilt is proven and punishment is applied to the crime, there is no deterrent.”<sup>49</sup> The idea of forming designated racing areas in Georgia has been floating around in several communities and has been suggested to lawmakers as an alternative to regulating street racing, although it has not been met with much support.<sup>50</sup>

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<sup>42</sup> *Id.*; Evans, *supra* note 40.

<sup>43</sup> Seales, *supra* note 24.

<sup>44</sup> J.D. Capelouto, *Georgia Could Have a New Street Racing Law. Will It Make a Difference?* ATLANTA JOURNAL CONSTITUTION (Apr. 15, 2021), <https://www.ajc.com/news/atlanta-news/Georgia-could-have-a-new-street-racing-law-Will-it-make-a-difference/3KNTBRBUYFBCNG2AAICRWNL3PA/>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Capelouto, *supra* note 44.

“Being as punitive and harsh as you can doesn’t actually help the situation, Dodson said, because the issues are much deeper than that.”<sup>51</sup> The Southern Center for Human Rights further argues the H.B. 534 is an “irresponsible effort[] that unnecessarily increases penalties for street racing events which will disproportionately cause harm to Black and Brown communities.”<sup>52</sup> The Center further states, the increase of incarceration is especially harmful given the present pandemic.<sup>53</sup>

#### IMPLICATIONS IN GEORGIA

Since the passing of H.B. 534, there has been an uptick in arrests and citations to drag racers and organizers.<sup>54</sup> The Georgia Bureau of Investigation and various police departments have worked together to apprehend and arrest street racing organizers.<sup>55</sup> The DeKalb County Police Department has arrested a top organizer of street racing through an organization known as ATLTuners on social media platforms.<sup>56</sup> Police departments have been utilizing social media accounts, including Facebook and Instagram, to follow and track the movements of suspected drag racing organizers in order to uncover planned events and preemptively stop them.<sup>57</sup> Lieutenant Timothy Donahue, Intelligence Unit Commander for the DeKalb County police said, “[p]rior to the law [H.B. 534] going into effect, it was very difficult, if not impossible, for us to bring charges against the organizers[.]”<sup>58</sup>

The penalties for organizers and promoters of the illegal drag racing are very similar to the penalties imposed on those for DUIs.<sup>59</sup> H.B. 534 adds

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<sup>51</sup> *Id.*

<sup>52</sup> *Crossover Day 2021*, SOUTHERN CENTER FOR HUMAN RIGHTS (Mar. 8, 2021), <https://www.schr.org/Crossover-Day-2021/>.

<sup>53</sup> *Id.*

<sup>54</sup> News Staff, *Alleged Top Organizer of Metro Street Racing Events Arrested at Atlanta Airport*, WSBTV (June 10, 2021, 7:22 PM), <https://www.wsbtv.com/news/local/atlanta/exclusive-Alleged-top-organizer-metro-street-racing-events-arrested-Atlanta-airport/ZHHSNXILFFATVMQZAGXFOPCGGM/>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Associated Press, *New Georgia Street Racing Law: Alleged Organizer Charged*, U.S. NEWS & WORLD REPORT (June 13, 2021, 11:31 A.M.), <https://www.usnews.com/news/best-states/georgia/articles/2021-06-13/man-among-1st-charged-under-georgia-law-against-street-racing>

<sup>58</sup> *Id.*

<sup>59</sup> GPB Lawmakers, *Georgia House 2021 – Day 28, Afternoon Part Three*, YOUTUBE (Mar. 8, 2021), <https://www.youtube.com/watch?v=kiznzynQWx0> (beginning at 13:17).

a new section titled “Reckless Stunt Driving.”<sup>60</sup> Under Georgia law, it is now specifically illegal to drag race in reckless disregard for safety of persons.<sup>61</sup> The punishment for Reckless Stunt Driving includes a mandatory ten days in jail, up to six months for this charge alone, along with a minimum fine of \$300.00.<sup>62</sup> A second conviction within ten years increases the jail time to ninety days to twelve months, and a third conviction has a mandatory 120 days to twelve months in jail, and the base fines can go up to \$5,000.00.<sup>63</sup> A fourth conviction of Reckless Stunt Driving in a ten year period becomes a felony and a mandatory one year in prison.<sup>64</sup> In addition to jail time and the several fines assessed to violators, those found guilty of Reckless Stunt Driving will also have their driver’s licenses suspended for a period of up to twelve months.<sup>65</sup> Perhaps the most drastic consequence under the new law is forfeiture of the violator’s car, forever, if they are declared to be habitual violators.<sup>66</sup>

#### LEGISLATIVE GENEALOGY

H.B. 534 was entered into the House Hopper on February 18, 2021.<sup>67</sup> The House first readers were on January 22, 2021.<sup>68</sup> The House second readers occurred on January 23, 2021.<sup>69</sup> The House committee favorably reported by substitute on March 5, 2021.<sup>70</sup> The House had its third readers on March 8, 2021.<sup>71</sup> The House passed/adopted H.B. 534 by substitute on March 8, 2021.<sup>72</sup> The Senate read and referred on March 9, 2021.<sup>73</sup> The Senate committee then favorably reported on March 18, 2021.<sup>74</sup> The Senate read H.B. 534 for a second time on March 22, 2022.<sup>75</sup> The Senate tabled the vote on March 29, 2021.<sup>76</sup> The Bill was taken from table on March 29, 2021.<sup>77</sup> The

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<sup>60</sup> O.C.G.A. § 40-6-390.1 (2021).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*; see *supra* notes 17-20.

<sup>64</sup> O.C.G.A. § 40-6-390.1 (2021).

<sup>65</sup> *Id.*

<sup>66</sup> H.B. 534 Status Sheet, *supra* note 2.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> H.B. 534 Status Sheet, *supra* note 2.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> H.B. 534 Status Sheet, *supra* note 2.

<sup>77</sup> *Id.*

Senate conducted its third read on March 29, 2021.<sup>78</sup> The Senate then passed/adopted on March 29, 2021.<sup>79</sup> The House sent H.B. 534 to the Governor on April 6, 2021.<sup>80</sup> The House date signed by Governor on May 3, 2021.<sup>81</sup> Act 152 on May 3, 2021.<sup>82</sup> H.B. 534 became effective on May 3, 2021.<sup>83</sup>

**Prepared by:** *Monique Cherry*

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> H.B. 534 Status Sheet, *supra* note 2.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*