

SENATE BILL 44¹: STREET GANG AND TERRORISM PREVENTION ACT

Amending O.C.G.A. § 5-7-1; Amending O.C.G.A. § 17-6-12; Amending O.C.G.A. § 52-7-26; Amending O.C.G.A. § 16-15-4; and Repealing All Laws in Conflict with the Same

First signature: Senator Bo Hatchett (50th)

Co-Sponsors: Senator John Kennedy (18th), Senator Steve Gooch (51st), Senator Randy Robertson (29th), Senator Lee Anderson (24th)

Summary: “To amend Code Section 5-7-1 of the Official Code of Georgia Annotated, relating to orders, decisions, or judgments appealable and defendant’s right to cross appeal, so as to provide for the state’s right to appeal the court’s deviation from mandatory minimum sentencing regarding certain offenses; to amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to provide for mandatory minimum penalties for violations of the Street Gang Terrorism and Prevention Act; to provide for an exception for imposing such mandatory penalties in certain circumstances; to amend Code Section 17-6-12 of the Official Code of Georgia Annotated, relating to unsecured judicial release, requirement, and effect of failure of person charged to appear for trial, so as to provide for the limitation of unsecured judicial release in certain circumstances where the accused has a prior conviction for the offense of bail jumping or failure to appear; to provide for the requirement that an accused’s criminal history be considered prior to issuing an unsecured judicial release; to provide for reconsideration of eligibility; to amend Code Section 52-7-26 of the Official Code of Georgia Annotated, relating to penalty regarding general provisions for registration, operation, and sale of watercraft, so as to provide for a conforming cross reference; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.”²

¹ S.B. 114, 157th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), *available at* <https://legiscan.com/GA/text/SB44/id/2773888/Georgia-2023-SB44-Enrolled.pdf> (last visited Apr. 20, 2024).

² 2023-2024 Regular Session-S.B. 44, *Street Gang Terrorism and Prevention Act; mandatory minimum penalties for violations; provide*, GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/63781> (last visited Apr. 20, 2024)) [hereinafter S.B. 44 Status Sheet].

Status: This Bill became effective on July 1, 2023.³

TEXT OF SENATE BILL 44⁴

SECTION 1.

Code Section 5-7-1 of the Official Code of Georgia Annotated, relating to orders, decisions, or judgments appealable and defendant's right to cross appeal, is amended in subsection (a) by adding a new paragraph and by revising paragraphs (9) and (10) as follows:

“(9) From an order, decision, or judgment denying a motion by the state to recuse or disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; ~~or~~

(10) From an order, decision, or judgment issued pursuant to subsection (c) of Code Section 17-10-6.2; or

(11) From an order, decision, or judgment that reduces the mandatory minimum sentence as provided in subsection (k) of Code Section 16-15-4.”

SECTION 2.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising subsections (e) and (k) of Code Section 16-15-4, relating to participation in criminal gang activity prohibited and prosecution, as follows:

“(e) It shall be unlawful for any person to directly, or through another acting upon such person's direction, cause, encourage, solicit, recruit, or coerce another to become a member or associate of a criminal street gang, to participate in a criminal street gang, or to conduct or participate in criminal gang activity.”

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

~~(2) Any person who violates subsection (a) of this Code section~~

³ *Id.*

⁴ S.B. 44, *supra* note 1.

~~through the commission of a violation of Code Section 42-5-18 shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of two years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.~~

~~(3) Any person who violates subsection (d) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to imprisonment for five years but not more than 20 years which shall be served consecutively to any other sentence imposed. As used in this subsection, the term:~~

~~(A) 'Dangerous weapon' shall have the same meaning as provided for under Code Section 16-11-121.~~

~~(B) 'Firearm' means any handgun, rifle, shotgun, or other weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge and which is not a dangerous weapon.~~

~~(C) 'Hazardous object' shall have the same meaning as set forth in Code Section 58-20-2-751.~~

~~(D) 'Leader' means a person who planned and organized others and acted as a guiding force in order to achieve a common goal.~~

~~(2) Except as otherwise provided in this subsection, any person who violates this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of five years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.~~

~~(4)(3)(A) Any person who violates subsection (e), (f), (g), (h), (i), or (j) of this Code section and such violation involves another who is under 17 years of age at the time of the violation, or who has a disability as defined in Code Section 34-6A-2, shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to~~

imprisonment for five years but not more than 20 years punished as follows:

(i) Upon the first conviction thereof, such person shall be sentenced to a mandatory minimum term of imprisonment of ten years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court; and

(ii) Upon the second or subsequent conviction thereof, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years but not more than 25 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.

(B) A mandatory minimum sentence imposed pursuant to this paragraph shall not be reduced, suspended, or otherwise departed from pursuant to paragraph (4) or (5) of this subsection.

(4) The district attorney or the Attorney General may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, leaders, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he or she finds that the defendant has rendered such substantial assistance.

(5)(A) In the court's discretion, a judge may depart from the mandatory minimum sentence specified for a person who is convicted of a violation of this Code section as set forth in paragraph (2) of this subsection if the judge concludes that:

(i) The defendant was not a leader of the criminal conduct;

(ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous object during the crime;

(iii) The criminal conduct did not result in death or serious bodily injury to a person other than to a person who was a party to the crime;

(iv) The defendant has no prior felony conviction; and

(v) The interests of justice will not be served by the imposition of the prescribed mandatory minimum sentence.

(B) If a judge departs from the mandatory minimum sentence pursuant to this paragraph, the judge shall specify on the record the circumstances for the reduction and the interests served by such departure. Any such order shall be appealable by the State of Georgia pursuant to Code Section 5-7-1.”

SECTION 3.

Code Section 17-6-12 of the Official Code of Georgia Annotated, relating to unsecured judicial release, requirement, and effect of failure of person charged to appear for trial, is amended as follows:

“17-6-12.

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

(1) ‘Bail restricted offense’ means the person is charged with:

(A) An offense of:

(i) Murder or felony murder, as defined in Code Section 16-5-1;

(ii) Armed robbery, as defined in Code Section 16-8-41;

(iii) Kidnapping, as defined in Code Section 16-5-40;

(iv) Rape, as defined in Code Section 16-6-1;

(v) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4, unless subject to the provisions of paragraph (2) of subsection (d) of Code Section 16-6-4;

(vi) Aggravated sodomy, as defined in Code Section 16-6-2; or

(vii) Aggravated sexual battery, as defined in Code Section 16-6-22.2;

(B) A felony offense of:

(i) Aggravated assault;

(ii) Aggravated battery;

(iii) Hijacking a motor vehicle in the first degree;

(iv) Aggravated stalking;

(v) Child molestation;

- (vi) Enticing a child for indecent purposes;
- (vii) Pimping;
- (viii) Robbery;
- (viii.1) Burglary;
- (ix) Bail jumping;
- (x) Escape;
- (xi) Possession of a firearm or knife during the commission of or attempt to commit certain crimes;
- (xii) Possession of firearms by convicted felons and first offender probationers;
- (xiii) Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine;
- (xiv) Participating in criminal ~~street~~ gang activity as defined in Code Section 16-15-3;
- (xv) Habitual violator;
- (xvi) Driving under the influence of alcohol, drugs, or other intoxicating substances;
- (xvii) Entering an automobile or other mobile vehicle with intent to commit theft or felony, as defined in Code Section 16-8-18; or
- (xviii) Stalking; or
- (C) A misdemeanor offense of:
 - (i) Crimes involving family violence, as defined in Code Section 19-13-1; or
 - (ii) Stalking.
- (2) 'Unsecured judicial release' means any release that does not purport a dollar amount through secured means as provided for in Code Section 17-6-4 or 17-6-50 or property as approved by the sheriff in the county where the offense was committed and that is:
 - (A) On a person's own recognizance; or
 - (B) For the purpose of entering a pretrial release program, a pretrial release and diversion program as provided for in Article 4 of Chapter 3 of Title 42, or a pretrial intervention and diversion program as provided for in Article 4 of Chapter 18 of Title 15, or pursuant to Uniform Superior Court Rule 27.
- (b)(1) An elected judge, an appointed judge filling the vacancy of an elected judge, or a judge sitting by designation may issue an unsecured judicial release under subparagraph (a)(2)(A) of this Code Section if:

- ~~(1)(A)~~ Such unsecured judicial release is noted on the release order;
and
~~(2)(B)~~ The person is not charged with a bail restricted offense;
(C) The person has not been convicted of bail jumping as provided in Code Section 16-10-51 within the past five years; and
(D) No bench warrant has been issued for the person's arrest based on such person's failure to appear in court within the past five years; provided, however, that this subparagraph shall not apply if such warrant was recalled or issued on the basis of such person's failure to appear for a nonserious traffic offense, as such term is defined in Code Section 35-3-37.
- (2) A person who is ineligible for unsecured judicial release pursuant to subparagraph (C) or (D) of paragraph (1) of this subsection may contest his or her ineligibility on the basis that his or her criminal history record information is inaccurate, incomplete, or misleading. In such instance, the prosecuting attorney shall bear the burden of establishing such person's ineligibility.
- (c) An elected judge, an appointed judge filling the vacancy of an elected judge, or a judge sitting by designation may issue an unsecured judicial release under subparagraph (a)(2)(B) of this Code Section if:
- (1) Such unsecured judicial release is noted on the release order; and
(2) The person is not charged with a bail restricted offense.
- ~~(e)(d)~~ Except as provided in subsection (b) and subsection (c) of this Code section and in addition to other laws regarding the release of an accused person, the judge of any court having jurisdiction over a person charged with committing an offense against the criminal laws of this state shall have authority, in his or her sound discretion and in appropriate cases, to authorize the release of the person on an unsecured judicial release only.
- ~~(d)(e)~~ Upon the failure of a person released on an unsecured judicial release to appear for trial, if the release is not otherwise conditioned by the court, absent a finding of sufficient excuse to appear, the court shall summarily issue an order for his or her arrest which shall be enforced as in cases of forfeited bonds.
- (f) Prior to issuing an unsecured judicial release, a judge shall, in addition to the considerations provided for in Code Section 17-6-1, consider the accused person's criminal history record information that is available at such time."

SECTION 4.

Code Section 52-7-26 of the Official Code of Georgia Annotated, relating to penalty regarding general provisions for registration, operation, and sale of watercraft, is amended in subsection (b) as follows:

“(b) Notwithstanding subsection ~~(e)~~ (d) of Code Section 17-6-12, the release of a person on an unsecured judicial release as provided for in Code Section 17-6-12 for violations under Code Sections 52-7-12, 52-7-12.2, 52-7-12.3, and 52-7-12.4 shall be prohibited.”

SECTION 5.

This Act shall become effective on July 1, 2023, and shall apply to all offenses committed on or after that date.

I SECTION 6.

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

SPONSOR’S RATIONALE

Senator Bo Hatchett sponsored Senate Bill 44 on behalf of Georgia’s Governor, Brian Kemp.⁵ Governor Kemp championed Senate Bill 44 to address the gang violence issues in the state and deter gang members from recruiting minors.⁶ Senate Bill 44 was a significant part of his legislative agenda to crack down on gang activity and protect Georgia’s children from being lured into a life of violent crime.⁷ According to the Georgia Gang Investigators Association (GGIA), there are approximately “71,000 validated gang affiliates and over 1,500 suspected gang networks throughout Georgia.”⁸ “In a 2018 survey conducted by GGIA, 157 counties reported a rise in gang activity, and 155 school districts reported suspected gang

⁵ Senate Committee on Judiciary, VIMEO, (Feb. 6, 2023), <https://vimeo.com/796392139>.

⁶ *Gov. Kemp Signs Public Safety and Anti-Gang Legislation*, (Apr. 26, 2023), <https://gov.georgia.gov/press-releases/2023-04-26/gov-kemp-signs-public-safety-and-anti-gang-legislation>.

⁷ *Id.*

⁸ *Gang Activity*, <https://law.georgia.gov/key-issues/gang-activity> (last visited Oct. 19, 2024).

activity.”⁹ To address the gang violence issues, Governor Kemp supported the creation of the Atlanta-based Georgia Prosecutor Unit in 2022.¹⁰ The unit has secured at least “50 convictions and indicted nearly 140 individuals in Athens-Clarke, Barrow, Bryan, Clayton, Cobb, DeKalb, Dougherty, Fulton, Gwinnett, Laurens, Muscogee, Richmond and Thomas counties.”¹¹

Cara Convery endorsed Senate Bill 44, emphasizing its role as a prosecutorial tool when appropriate.¹² Convery is the former Deputy District Attorney of the Fulton County Gang Unit.¹³ Convery began as Assistant General Attorney on June 16, 2022.¹⁴ Convery clarified that prosecutors must establish the existence of a criminal street gang, demonstrate the defendant’s meaningful affiliation, and establish a connection between a predicate act and these elements.¹⁵ Even under the current legislation, prosecutors must validate these aspects with evidence before presenting any case under this or other sections.¹⁶ Additionally, Convery noted that the sentencing structure outlined in Senate Bill 44 does not extend to juveniles, and potential deviation from mandatory minimum applies when there is no recruiting of a minor or mentally ill.¹⁷

A Cobb County District Attorney, Flynn Broady, said that children as young as ten years old, in elementary and middle school, are recruited by gangs.¹⁸ The gangs were targeting specific schools that he refused to mention to protect juveniles going through the system.¹⁹ However, he shared that a ten-year-old and eleven-year-old gang member were charged in Cobb County

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² House Judiciary Committee, YOUTUBE, (Mar. 14, 2023) <https://www.youtube.com/watch?v=Z5xnXwkk8DU&t=1420s>.

¹³ Carr: Statewide Gang Prosecution Unit Takes Effect, Provides Additional Resource to Keep Georgians Safe, (Jul. 1, 2022), <https://law.georgia.gov/press-releases/2022-07-01/carr-statewide-gang-prosecution-unit-takes-effect-provides-additional>.

¹⁴ *Id.*

¹⁵ House Judiciary Committee, *supra* note 12.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ DA Says Gangs Recruiting Children as young as 10 from Elementary Schools to Commit Crimes, WSBTV, (Aug. 10, 2022), <https://www.wsbradio.com/news/local/cobb-county/da-says-gangs-recruiting-children-young-10-elementary-schools-commit-crimes/VQQ75KUNDFASLBJXFJEQLYAJLI/>.

¹⁹ *Id.*

Juvenile court in separate terroristic threat cases, and a fourteen-year-old was charged with shooting someone.²⁰ In 2017, the average age of youth in Georgia Department of Juvenile Justice (DJJ) detention centers who admitted gang affiliation was approximately sixteen years old.²¹ At the close of 2022, DJJ had routinely detained individuals as young as eleven years old who professed gang affiliation and were accused of participating in criminal gang activity.²²

Senator Hatchett highlighted Governor Kemp's commitment to addressing street gangs by consulting law enforcement and prosecutors.²³ Hatchett stated that the rationale lies in the financial motives of criminal organizations and the perpetuation of organizations' operations through youth recruitment.²⁴ He emphasized the fact that gangs target youth who may not be obvious law enforcement targets and that minors may potentially escape severe penalties.²⁵ Despite reservations about mandatory minimums, he argued that the gravity of the situation—criminal organizations exploiting children—should warrant a ten-year mandatory minimum.²⁶

Senator Hatchett further stated that Senate Bill 44 aimed to address street gang issues by providing prosecutors with enhanced tools for dismantling criminal organizations and bringing their members to justice.²⁷ Additionally, the Bill seeks to streamline language by replacing “criminal street gang activity” with “criminal gang activity.”²⁸ The legislation also aims to formalize current judicial practices, specifically regarding unsecured releases.²⁹ Judges would now be prohibited from granting unsecured releases, like “own recognizance” (OR) or signature bonds, to individuals with recent bail jumping or failure to appear within the last five years.³⁰ Furthermore, Senate Bill 44 establishes “bail-jumping” as a criminal offense, ensuring

²⁰ *Id.*

²¹ Anti-Recruitment Efforts, <https://law.georgia.gov/key-issues/gang-activity/anti-recruitment-efforts> (last visited Oct. 19, 2024).

²² *Id.*

²³ House Judiciary Committee, *supra* note 5.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ House Judiciary Committee, *supra* note 12.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

forfeiture of bond and issuing a bench warrant for those who fail to appear in court.³¹ Lastly, Hatchett stated that the legislation mandates judges to thoroughly review prior criminal history information before issuing unsecured judicial releases.³² The objective, he said, is to prevent individuals with a history of court “no-shows” from obtaining OR bonds.³³

John Melvin, the Executive Director of the Georgia Bureau of Investigation, expressed his strong endorsement for Senate Bill 44, citing his firsthand experience with the escalating gang activities in Georgia.³⁴ In 2022, the GBI, under his leadership, made three hundred and sixty-three gang arrests and identified three hundred and ninety-six gang nexuses, indicating a consistent rise in gang cases across the state.³⁵ Melvin believes the proposed legislation will effectively address gang-related crimes and provide a pivotal solution to rectify the issue.³⁶ Specifically, he pointed to subsection four, noting that individuals seeking to distance themselves from gang involvement should engage with the District Attorney privately to assist in dismantling the remainder of the gang.³⁷ Melvin is confident that Senate Bill 44 aligns with Governor Kemp’s objective of punishing gang members and disrupting the influx of gang activity in the community.³⁸

OPPOSITION’S RATIONALE

The Southern Center for Human Rights urged residents to encourage their senators to vote against SB 44.³⁹ The organization opposes Senate Bill 44, contending that it establishes mandatory minimum sentences for all offenses under Georgia’s Criminal Street Gang statute, which is already applying excessively.⁴⁰ While proponents argue that Senate Bill 44 aims to protect young people from gang violence, the Southern Center for Human Rights asserts that it will disproportionately incarcerate Black and Brown

³¹ *Id.*

³² House Judiciary Committee, *supra* note 12.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ House Judiciary Committee, *supra* note 12.

³⁹ Southern Center for Human Rights, *Action Alert: Urge Your Senator to Vote No on SB 44* <https://schr.salsalabs.org/actionalertopposesb44/index.html>.

⁴⁰ *Id.*

youth.⁴¹ The organization advocates against a return to outdated and ineffective sentencing schemes like mandatory minimums, emphasizing the need for the state to allocate resources to implement proven methods for preventing and disrupting gang violence within communities.⁴²

In an interview with James Woodall from the Southern Center for Human Rights, he elaborated on their position, stating that the purpose of Senate Bill 44 will not be met because, firstly, “[the] majority of gangs are operated from prisons, [therefore] the greatest public safety risk is not people on the street.”⁴³ James was born and raised in Riverdale, Georgia, and is a former Policy Associate and State Lobbyist at the Southern Center for Human Rights and a former State President of the Georgia NAACP.⁴⁴ He graduated from Georgia Southern and attained his Master’s from the Interdenominational Theological Center.⁴⁵ Secondly, Woodall believes there are already enough laws on the books to address punitive behaviors and that the persons who lobbied to pass Senate Bill 44 were “going off the hopes and prayers of ancestors” rather than conducting research.⁴⁶

Furthermore, he asserted that not only does Senate Bill 44 disproportionately target black and brown people, but it also targets the youth that is said to be protected by the bill because, a lot of the time, there are minors recruiting minors.⁴⁷ Youth gang involvement is a product of several risk factors, including but not limited to child abuse, neglect, poverty, and mental health problems.⁴⁸ Therefore, Senate Bill 44 will not deter youth gang involvement without first addressing the risk factors.⁴⁹ The recommendation

⁴¹ *Id.*

⁴² *Id.*

⁴³ Telephone interview with James Woodall, policy associate and state lobbyist, Southern Center for Human Rights (Oct. 25, 2023) [hereinafter Woodall interview].

⁴⁴ *Id.* Woodall is currently a student at Atlanta’s John Marshall Law School.

⁴⁵ *Id.*

⁴⁶ *Id.* He believed that, in reality, the current law is criminalizing actions and gatherings associated with recruitment, which were previously legal, potentially raising concerns about violating the First Amendment.

⁴⁷ *Id.*; *Gang and Youth Violence Prevention*, <https://www.afterschoolga.org/wp-content/uploads/2020/03/Gangs-and-Youth-Violence-2020.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.*; Woodall interview, “Nothing points to the fact that harsher sentencing will deter gang involvement.”

is for policymakers to consider evidence-based prevention and intervention solutions beyond the scope of the criminal legal system.⁵⁰

Representative Tonya Miller also opposed Senate Bill 44, raising questions about its fairness and effectiveness in addressing the complex issues surrounding youth involvement in criminal activities.⁵¹ She opposed Senate Bill 44 because it is “inflexible, too broad, and does not do what we actually need to be doing to keep our community safer.”⁵² Miller is a former federal and state prosecutor with over twenty years of experience and a current defense and civil rights attorney.⁵³ Miller argued that addressing the root social problems is crucial, stating that robust statutes alone are insufficient to cure gang violence.⁵⁴ She proposed focusing on the certainty of apprehension and allocating resources to target the few individuals engaged in gang activities.⁵⁵ Miller recognized that the Georgia Gang Act is a strict measure targeting criminal street gangs.⁵⁶ However, she argued that it is flawed—imposing harsh mandatory sentences, lacking evidence-based anti-gang strategies, and undermining judicial flexibility.⁵⁷ Miller said, “No one has the discretion to reduce [sentencing], not the prosecutor and not the judge.”⁵⁸ Miller emphasized the importance of preventing youth gang involvement instead of merely punishing.⁵⁹ She claimed that the bill is a step backward in pursuing public safety.⁶⁰

In addition to opposing the mandatory minimum, “Judges would also be required to consider the accused’s criminal history before allowing release

⁵⁰ *Gang and Youth Violence Prevention*, *supra* note 36.

⁵¹ Georgia House of Representatives, Senate Session 36, YOUTUBE, (Mar. 20, 2023), https://www.youtube.com/live/8ykBCLBeuXc?si=6rYyKY_KMKhjs2vG.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ House Judiciary Committee, *supra* note 12.

⁵⁶ Georgia House of Representatives, *supra* note 40.

⁵⁷ *Id.*

⁵⁸ *Id.* Miller refers to a hypothetical ten-year minimum imposed on a seventeen-year-old who recruited someone to participate in street gang activity.

⁵⁹ *Id.* Shae Roberts, the Minority Caucus treasurer, raised concerns that the bill seems designed to capture the very individuals it aims to protect—specifically, those under the age of twenty-four who are not fully developed and may be coerced or persuaded into joining gangs. Session Day 36, Georgia House of representatives, (Mar. 20, 2023).

⁶⁰ *Id.* Session Day 36, Georgia House of representatives, (Mar. 20, 2023).

without bail.”⁶¹ Senator Josh McLaurin expressed disagreement with Senate Bill 44’s amendment related to cash bail.⁶² The Democrat highlighted that these cash bail provisions extend beyond gang activity, citing scenarios where missing court due to various human reasons, such as charges for improper lane change or speeding, would now eliminate the judge’s discretion to release individuals on their own recognizance.⁶³ Instead, a cash bail with a specified dollar value would be mandatory.⁶⁴

IMPLICATIONS IN GEORGIA

Georgia introduced the Street Gang Terrorism and Prevention Act in 1992.⁶⁵ House Bill 1391 was introduced six years later, on January 26, 1998, which established penalties for causing, encouraging, soliciting, or coercing others into street gang activity.⁶⁶ Since then, these penalties have gradually increased to as high as twenty years for involvement in gang activities and five to twenty years for recruiting members, a felony conviction, with the amendment in 2016.⁶⁷ Even so, there has not been a mandatory minimum sentence for recruiting members. Ultimately, Senate Bill 44 removed the judge’s discretion to decrease the sentencing for recruiting minors and implemented a 5-prong test to determine if a person is entitled to relief if charged with violating the act through participation in gang-related activities that do not involve recruiting a minor.⁶⁸

Georgia has earned a reputation for its stringent stance on criminal justice matters.⁶⁹ Last year, with the support of Governor Brian Kemp and

⁶¹ Rebecca Grapevine, *Bill Requiring Harsher Penalties for Gang Recruitment Clears General Assembly*, (Mar. 29, 2023), <https://capitol-beat.org/2023/03/bill-requiring-harsher-penalties-for-gang-recruitment-clears-general-assembly/>.

⁶² Georgia House of Representatives, *supra* note 40.

⁶³ *Id.*

⁶⁴ Rebecca Grapevine, *Bill Requiring Harsher Penalties for Gang Recruitment Clears General Assembly*, (Mar. 29, 2023), <https://capitol-beat.org/2023/03/bill-requiring-harsher-penalties-for-gang-recruitment-clears-general-assembly/>.

⁶⁵ 1992 Ga. ALS 1424, 1992 Ga. Act 1424, 1992 Ga. SB 735.

⁶⁶ 1997 Bill Tracking GA H.B. 1391.

⁶⁷ 2016 Ga. ALS 606, 2016 Ga. Laws 606, 2016 Ga. Act 606, 2015 Ga. HB 874.

⁶⁸ *Id.*

⁶⁹ Press Release, OFFICE OF THE ATTORNEY GENERAL, *Carr: Three Members of Inglewood Family Gangster Bloods Convicted, Sentenced to Prison in Dougherty County* (Aug. 3, 2023), <https://law.georgia.gov/press-releases/2023-08-07/carr-three-members-inglewood-family-gangster-bloods-convicted-sentenced#:~:text=The%20Gang%20Prosecution%20Unit%20officially%20began%20its%20>

members of the General Assembly, Attorney General Chris Carr created Georgia's first statewide Gang Prosecution Unit.⁷⁰ Since its inception in 2022, the Gang Prosecution Unit has indicted eighty-five alleged gang members across the state.⁷¹ On February 16, 2024, based on evidence presented by the Gang Prosecution Unit, a jury found three defendants guilty of violating the Street Gang Terrorism and Prevention Act, among other charges.⁷² One defendant was convicted on fifteen counts, another on eleven counts, and the third on nine counts.⁷³ Each received a sentence of life without the possibility of parole.⁷⁴ These defendants were affiliated with a well-known gang out of California and were convicted of shooting and killing a person on October 9, 2018.⁷⁵ However, it is essential to note that the severity of these sentences was possible before the statute's enactment.⁷⁶

The Georgia Street Gang Act has also been criticized for being constitutionally vague and overbroad and infringing on a person's First Amendment right to freedom of assembly. As a result, we can anticipate constitutional challenges to Senate Bill 44. Representative Miller has already referred to Senate Bill 44 as "inflexible" and "too broad."⁷⁷ However, a constitutional challenge to a street gang statute proves difficult to overcome because of the *Rodriguez* precedent.

In 2009, the Georgia Supreme Court in *Rodriguez* determined that the Georgia Street Gang Terrorism Act was neither vague nor overbroad and did not infringe on the appellants' First Amendment right to freedom of assembly.⁷⁸ The appellants were indicted for alleged violations of the Georgia Street Gang and Terrorism Act for committing a crime of violence while associated with a criminal street gang.⁷⁹ The Court noted that challenges to

20historic,Bryan%2C%20Cobb%2C%20Dougherty%2C%20Gwinnett%2C%20Musco.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Press Release, *supra* note 70.

⁷⁶ See *Ruthenberg v. State*, 317 Ga. 227, 227 n.1 (2023). On November 20, 2017, "the trial court sentenced Appellant to serve life in prison without the possibility of parole for malice murder, a total of 25 years consecutive for robbery by force and the firearm-possession offense, and concurrent terms of 20 years for armed robbery and 15 years each for the two counts of street gang terrorism," where the appellant was found to be a member of the crip gang and convicted of homicide.

⁷⁷ Georgia House of Representatives, *supra* note 52.

⁷⁸ *Rodriguez v. State*, 284 Ga. 803, 807-11 (2009).

⁷⁹ *Id.* at 803.

anti-gang statutes, based on vagueness and overbreadth, have repeatedly failed when the law, when correctly interpreted, requires active participation in the gang with knowledge of its criminal behavior, imposes a specific intent requirement, or specifically defines critical items.⁸⁰ Overbreadth challenges are also addressed by the legislative exclusion of constitutionally protected activities and the precise definitions of key terminology.⁸¹ Ultimately, the Court concluded that associating with “compatriots in crime is not a protected associational right” and does not violate the First Amendment.⁸²

The Court began its analysis by interpreting the Georgia Street Gang statute.⁸³ It looked closely at the legislative intent when drafting the act; the statute states that “[i]t is not the intent of this [Act] to interfere with the exercise of the constitutionally protected rights of freedom of expression and association...”⁸⁴ The act recognizes that citizens have a right to assemble lawfully.⁸⁵ However, it emphasizes that the criminal activities of street gang members do not receive constitutional protection.⁸⁶ Furthermore, the act specifies that the intent of the General Assembly in drafting the chapter is to eradicate street gangs by focusing on their organized nature and gang activity patterns.⁸⁷

The appellants contended that the statute, as it stands, does not mandate specific requirements that they believe should be included.⁸⁸ They argued that it should specify that the “defendant actively participated in the group, had any knowledge of its illegal activities, or had any specific intent to further those activities.”⁸⁹ Under their interpretation, the statute states that it is “unlawful for *any* person employed or associated with a’ group of three or more persons who engage in the commission of *any* enumerated offense ‘to conduct or participate in’ the commission of *any* enumerated offenses...”⁹⁰ However, the court countered that argument by explaining that “enumerated offenses” in § 16-15-4 are linked to the definition of a street gang found in § 16-15-3 (2).⁹¹ This implies that the group, consisting of three

⁸⁰ *Id.* at 808.

⁸¹ *Id.* at 809.

⁸² *Id.* at 810 quoting (*Helton v. State*, 624 N.E.2d 499, 506 (Ind. Ct. App. 1993)).

⁸³ *Rodriguez*, *supra* note 78, at 804.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Rodriguez*, *supra* note 78, at 804.

⁸⁹ *Id.*

⁹⁰ *Id.* at 805. (emphasis added) (quoting O.C.G.A. § 16-15-4 (a)).

⁹¹ *Id.*

or more individuals, must engage in criminal gang activity, which includes unlawful procurement of the offense.⁹² The statute refers to the collective actions of a group acting through the conduct of its members.⁹³ Therefore, the statute emphasizes the group's commission of an enumerated offense rather than focusing on a single person's involvement.⁹⁴

Additionally, the words "participate" and "conduct" support the conclusion that the regulated activity is that of the group and not an individual person.⁹⁵ The "participation and management in street gang activity necessarily implies knowledge of the gang's criminal activities and specific intent to further its purpose."⁹⁶ The statute's interpretation requires the defendant to participate in the gang activities.⁹⁷ Thus, unlike the appellants' interpretation, the Court found that their interpretation aligned with the legislative purpose to eradicate street gang criminal activity by focusing on criminal gang activity patterns and the organizational nature of gangs.⁹⁸

The Court rejected the Appellants' challenge that the statute was vague and overbroad. The court explained that the statutory scheme of the act suggests that the commission of an enumerated act alone is insufficient to prove the existence of a criminal street gang.⁹⁹ This holds even for common names, common identifying signs, symbols, tattoos, etc.¹⁰⁰ The Court highlighted that if this were the case, "the nonsensical result would be that a member of any legitimate group of three or more persons could violate the act by merely committing the enumerated acts."¹⁰¹

Next, the court clarified that the term "engages" in the act meant starting and continuing an enterprise.¹⁰² Thus, despite the gang's short existence, its criminal gang activity or plan to continue that activity must be ongoing at the time of the commission.¹⁰³ Finally, the court held that the defendant's participation in the gang must be active and "consist of the

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 806.

⁹⁵ *Id.*

⁹⁶ *Id.* at 807.

⁹⁷ Rodriguez, *supra* note 78, at 807.

⁹⁸ *Id.*

⁹⁹ *Id.* at 808.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Rodriguez, *supra* note 78, at 808-09.

¹⁰³ *Id.* at 809.

commission of an enumerated offense.”¹⁰⁴ Consequently, the Court reasoned that the act was not vague because it required active participation in the gang with knowledge of its criminal behavior, specific intent requirements, and precisely defined critical items.¹⁰⁵ Additionally, each factor is present alongside the legislative exclusion of constitutionally protected activities and definitions of key terminology under the construction of the act.¹⁰⁶ Therefore, the Court held that the act does not infringe upon a substantial amount of constitutionally protected conduct and, thus, is not constitutionally overbroad.¹⁰⁷

Lastly, the court found that the statute does not infringe on the defendants’ freedom to associate because the act does not punish association alone but also requires participation in criminal activity.¹⁰⁸

In *Rodriguez*, the Court expressed a concern that if the act were construed incorrectly, “the nonsensical result would be that a member of any legitimate group of three or more persons could violate the act by merely committing the enumerated acts” if *only* the enumerated act or *only* identifying signs and symbols are considered.¹⁰⁹ This concern mirrors the opposition to Senate Bill 44. We will likely see more minors charged under the bill for merely being in the company of two other people while committing an enumerated offense or showcasing signs or symbols that the prosecutor labels as gang signs. Since the Court would likely uphold the statute as constitutional, the defendant’s best course of action would be to challenge the evidence using the *Rodriguez* precedent.

Ironically, the group that is supposed to be protected by Senate Bill 44 is often charged under the Act for merely being in the company of others who are known to be gang members or suspected to be gang members. In 2018, in *In the Interest of T. W.*, the court found insufficient evidence to charge the minor under the Criminal Street Gang Act.¹¹⁰ The only evidence introduced to prove that he was involved with a criminal street gang was that

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Rodriguez*, *supra* note 78, at 810.

¹⁰⁹ *Rodriguez*, *supra* note 99, at 808.

¹¹⁰ *In the Interest of T. W.*, 344 Ga. App. 338, 338-342 (2018).

he was in the presence of two people who had previously been adjudicated as gang members and that he performed an act that might be expected of a junior gang member.¹¹¹ The State presented no evidence that the minor was wearing any colors or attire uniquely associated with the named gang, that he had ever displayed signs or symbols affiliated with the named gang membership, or that he had previously spent time with members of the named gang.¹¹²

Additionally, earlier in 2012, in *In the Interest of A. G.*, the court reversed convictions because the evidence was insufficient to establish that the juvenile defendants were members of a criminal street gang.¹¹³ Although the evidence showed that the juveniles possessed purple bandanas and a notebook that appeared to refer to a gang, there was no evidence beyond the items to link the juveniles to membership in a gang or involvement in criminal activities.¹¹⁴ On the other hand, in *Parks*, the court found that there was sufficient evidence to prove that the defendant was a gang member where the defendant had a Facebook folder with pictures wearing gang-identifying paraphernalia (colors and symbols) and where an expert identified the symbols and signs as about a specific gang.¹¹⁵ The same expert established the existence of the gang.¹¹⁶ Therefore, although colors and symbols alone are insufficient to establish gang involvement, a testimony from a gang expert may overcome that burden.

In conclusion, while the Gang Prosecution Unit has been successful in charging gang members under this statute, there is a lack of case law or statistics to indicate that Senate Bill 44 has a deterrent effect on gangs. Nonetheless, it provides the opportunity to continuously arrest groups of individuals who appear to be gang members based on criteria such as wearing similar colors, posing together on social media, or using similar hand gestures. The distinction between associating with friends while engaging in illegal activities and being involved with gang members while committing

¹¹¹ *Id.* at 340.

¹¹² *Id.* at 341.

¹¹³ *In the Interest of A. G.*, 317 Ga. App. 165, 167 (2012).

¹¹⁴ *Id.*

¹¹⁵ *Parks v. State*, 304 Ga. 313, 318 n.7 (2018).

¹¹⁶ *Id.*

crimes is often unclear. However, one of these situations carries a mandatory minimum of five years incarcerated.

LEGISLATIVE GENEALOGY

Senate Bill 44 first appeared in the Senate on January 30, 2023.¹¹⁷ Following its initial reading on January 31, 2023, the Senate Committee favorably reported a substitute on February 7, 2023.¹¹⁸ The second reading occurred on February 8, 2023, while the third was on February 13, 2023.¹¹⁹ The Senate passed and adopted the substitute by the House Committee on Rules on the same day, February 13, 2023.¹²⁰ Two proposed floor amendments also lost on the same day, one changing “and” to “or” on line 83 and the other codifying that the law would not apply to anyone under eighteen.¹²¹ Subsequently, the bill went to the House, where the House first read it on February 14, 2023.¹²² House second readers took their turn on February 15, 2023. Progressing through the House, the committee favorably reported a substitute on March 14, 2023.¹²³ The third reading in the House occurred on March 20, 2023, leading to the House passing and adopting the substitute on the same day, March 20, 2023.¹²⁴ Returning to the Senate, they agreed on House amendments or substitutes on March 29, 2023, with a vote of 30-20.¹²⁵ The amendment modified the conditions for unsecured judicial release, decisions, and appealable judgments, including the defendant’s right to cross-appeal and the consequences of non-appearance for trial.¹²⁶ Senate

¹¹⁷ S.B. 44, 157th Gen. Assemb., Reg. Sess. (Ga. 2023), <https://legiscan.com/GA/bill/SB44/2023>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ S.B. 44, 157th Gen. Assemb., Reg. Sess. (Ga. 2023), <https://legiscan.com/GA/text/SB44/id/2696608/Georgia-2023-SB44-Engrossed.pdf> (last visited Apr. 20, 2023).

¹²¹ S.B. 44, 157th Gen. Assemb., Reg. Sess. (Ga. 2023), S.B. 44 Floor Amend 2, https://legiscan.com/GA/amendment/SB44/id/155994/Georgia-2023-SB44-House_Floor_Amendment.pdf (last visited Apr. 20, 2023); S.B. 44, 157th Gen. Assemb., Reg. Sess. (Ga. 2023), S.B. 44 Floor Amend 1, https://legiscan.com/GA/amendment/SB44/id/155993/Georgia-2023-SB44-House_Floor_Amendment.pdf (last visited Apr. 20, 2023).

¹²² S.B. 44, 157th Gen. Assemb., Reg. Sess. (Ga. 2023), https://legiscan.com/GA/text/SB44/id/2746757/Georgia-2023-SB44-Comm_Sub.pdf.

¹²³ S.B. 44, *supra* note 65.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

Bill 44 was enrolled on April 7, 2023.¹²⁷ The Senate sent the bill to Governor Kemp on April 26, 2023.¹²⁸ The Governor signed the bill on the same day, marking it into law on April 26, 2023.¹²⁹ This new legislation, now identified as Act 29, officially took effect on July 1, 2023.¹³⁰

Prepared by: Jodi-Ann Salters¹³¹

¹²⁷ S.B. 44, *supra* note 1.

¹²⁸ S.B. 44, *supra* note 65.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Jodi-Ann Salters is a 3L at Atlanta's John Marshall Law School.