

House Bill 582

By: Representatives Gunter of the 8th, Reeves of the 99th, New of the 40th, Hong of the 103rd,
Smith of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 17, and 24 of the Official Code of Georgia Annotated, relating to crimes
2 and offenses, criminal procedure, and evidence, respectively, so as to provide for defendants
3 to support a justification defense by offering evidence of family violence, dating violence,
4 or child abuse committed by the alleged victim; to provide for petitions for the opportunity
5 to present such evidence; to revise provisions for the defense of coercion and to provide for
6 the application of such defense in all criminal cases; to provide for resentencing for certain
7 murder convictions; to provide a privilege for participation in victim centered programs and
8 victim-offender dialogues; to provide for definitions; to provide for limitations; to provide
9 for civil immunity for facilitators in certain circumstances; to provide for a short title; to
10 provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 SECTION 1.

13 This Act shall be known and may be cited as the "Georgia Survivor Justice Act."

14 **SECTION 2.**

15 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 16 amended in Article 2 of Chapter 3, relating to justification and excuse under defenses to
 17 criminal prosecutions, by revising subsection (d) of Code Section 16-3-21, relating to use of
 18 force in defense of self or others and evidence of belief that force was necessary in murder
 19 or manslaughter prosecution, as follows:

20 "(d) In a prosecution for ~~murder or manslaughter~~ any offense prohibited under Chapter 5
 21 of this title, if a defendant raises as a defense a justification provided by subsection (a) of
 22 this Code section, the defendant shall be permitted to offer relevant evidence that the
 23 defendant had been subjected to acts of family violence, dating violence, or child abuse
 24 committed by the alleged victim, as such acts are described in Code Sections 19-13-1,
 25 19-13A-1, and 19-15-1, respectively, in order to establish the defendant's reasonable belief
 26 that the ~~threat or~~ use of force or deadly force was immediately necessary, ~~may be permitted~~
 27 to offer:

28 ~~(1) Relevant evidence that the defendant had been the victim of acts of family violence~~
 29 ~~or child abuse committed by the deceased, as such acts are described in Code Sections~~
 30 ~~19-13-1 and 19-15-1, respectively; and~~

31 ~~(2) Relevant expert testimony regarding the condition of the mind of the defendant at the~~
 32 ~~time of the offense, including those relevant facts and circumstances relating to the family~~
 33 ~~violence or child abuse that are the bases of the expert's opinion. Relevant evidence~~
 34 includes, but is not limited to:

35 (1) Evidence pertaining to the alleged victim's prior acts, including, but not limited to:

36 (A) Evidence indicating the defendant sought law enforcement assistance;

37 (B) Evidence indicating the defendant sought services from a counselor, social worker,
 38 domestic violence program, or other relevant agency or service provider;

39 (C) Evidence indicating the defendant sought medical attention;

40 (D) Evidence of the effects of battering and post-traumatic stress disorder on the
 41 defendant; and

42 (E) Temporary protective order petitions, ex parte orders, and final orders in which the
 43 alleged victim is the respondent;

44 (2) Expert testimony, including, but not limited to, testimony as to relevant facts and
 45 circumstances relating to the family violence, dating violence, or child abuse, as such acts
 46 are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, that are the
 47 bases of such expert's opinion; and

48 (3) Any other evidence the court determines is of sufficient credibility or probative
 49 value."

50

SECTION 3.

51 Said title is further amended in said article by revising Code Section 16-3-26, relating to
 52 coercion, as follows:

53 "16-3-26.

54 A person is not guilty of a crime, ~~except murder~~, if the act upon which the supposed
 55 criminal liability is based is performed under such coercion that ~~the person~~ he or she
 56 reasonably believes that performing the act is ~~the only way~~ necessary to prevent his
 57 imminent death or great bodily injury to himself or herself or a third person."

58

SECTION 4.

59 Said title is further amended in Article 1 of Chapter 5, relating to homicide, by revising
 60 subsection (e) of Code Section 16-5-1, relating to murder, malice murder, felony murder, and
 61 murder in the second degree, as follows:

62 "(e)(1) A person convicted of the offense of murder shall be punished by death, by
 63 imprisonment for life without parole, or by imprisonment for life.

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

66 (3) A person convicted of the offense of murder under subsection (c) of this Code section
67 and sentenced under paragraph (1) of this subsection shall be resentenced under
68 paragraph (2) of this subsection if the felony offense that was the predicate for such
69 conviction was cruelty to children in the second degree occurring prior to July 1, 2004."

70 **SECTION 5.**

71 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
72 amended in Article 1 of Chapter 10, relating to procedure for sentencing and imposition of
73 punishment, by revising subsection (f) of Code Section 17-10-1, relating to fixing of
74 sentence, suspension or probation of sentence, change in sentence, eligibility for parole,
75 prohibited modifications, and exceptions, as follows:

76 "(f)(1) Within one year of the date upon which the sentence is imposed, or within 120
77 days after receipt by the sentencing court of the remittitur upon affirmance of the
78 judgment after direct appeal, whichever is later, the court imposing the sentence has the
79 jurisdiction, power, and authority to correct or reduce the sentence and to suspend or
80 probate all or any part of the sentence imposed. The time periods prescribed in this
81 subsection require the defendant to file a motion within such time periods; however, the
82 court shall not be constrained to issue its order or hear the matter within such time
83 periods. Prior to entering any order correcting, reducing, or modifying any sentence, the
84 court shall afford notice and an opportunity for a hearing to the prosecuting attorney.
85 Any order modifying a sentence which is entered without notice and an opportunity for
86 a hearing as provided in this subsection shall be void. This subsection shall not limit any
87 other jurisdiction granted to the court in this Code section or as provided for in subsection
88 (g) of Code Section 42-8-34.

89 (2)(A) A person who is serving a sentence may submit a petition to the court
90 requesting to be sentenced under Code Section 17-10-22. Such petition shall be served
91 upon the district attorney. The state shall file its response, if any, within 60 days of
92 being served with such petition.

93 (B) There shall be a presumption in favor of granting a hearing on a petition filed
94 pursuant to this paragraph unless the court determines that there is a lack of
95 circumstantial guarantees of trustworthiness, an inherent unreliability of the facts
96 asserted, or a deficiency in the factual allegations in the petition. If the court decides
97 that the petitioner is not entitled to a hearing, the court shall enter an order denying
98 relief and shall include written findings of fact outlining the reasons for such order.

99 (C) A hearing on a petition filed pursuant to this paragraph, if granted, shall be
100 scheduled not more than 90 days from the date such petition is filed. The state shall be
101 given notice and the opportunity to respond at any such hearing.

102 (D)(i) If, based upon evidence presented at the hearing, the court determines that the
103 petitioner has met the criteria provided in subsection (b) of Code Section 17-10-22,
104 the court shall enter an order reducing the defendant's sentence pursuant to
105 subsection (c) of Code Section 17-10-22.

106 (ii) If, based upon the petition or evidence presented at the hearing, the court
107 determines that the petitioner has not met the criteria provided in subsection (b) of
108 Code Section 17-10-22, the court shall notify the petitioner, dismiss his or her petition
109 without prejudice, and enter an order to such effect. Such an order shall include
110 written findings of fact outlining the reasons for such order.

111 (E) Any order issued by a court pursuant to this paragraph shall include written
112 findings of fact and the reasons for such order.

113 (F) Any judgments pursuant to this paragraph shall be final judgments and appealable
114 under Code Section 5-6-34."

SECTION 6.

115
116 Said title is further amended in said article by adding a new Code section to read as follows:

117 "17-10-22.

118 (a) At the time of sentencing, the defendant may present evidence that he or she was
119 subjected to acts of family violence, dating violence, or child abuse, as such acts are
120 described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, and that such
121 acts were a significant contributing factor to the offense for which the defendant is being
122 sentenced. The rules of evidence shall apply to such presentation of evidence except that
123 the following evidence shall be admissible:

124 (1) Hearsay;

125 (2) Character evidence;

126 (3) Evidence indicating the defendant sought law enforcement assistance;

127 (4) Evidence indicating the defendant sought services from a counselor, social worker,
128 domestic violence program, or other relevant agency or service provider;

129 (5) Evidence indicating the defendant sought medical attention;

130 (6) Evidence of prior statements regarding the acts of family violence, dating violence,
131 or child abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and
132 19-15-1, respectively;

133 (7) Evidence of the effects of battering and post-traumatic stress disorder on the
134 defendant;

135 (8) Evidence pertaining to the alleged perpetrator's history of other acts of family
136 violence, dating violence or child abuse, as such acts are described in Code Sections
137 19-13-1, 19-13A-1, and 19-15-1, respectively, including, but not limited to, temporary
138 protective order petitions, ex parte orders, and final orders in which the alleged
139 perpetrator is the respondent;

- 140 (9) Expert testimony, including facts and circumstances relating to the family violence,
 141 dating violence, or child abuse, as such acts are described in Code Sections 19-13-1,
 142 19-13A-1, and 19-15-1, respectively, that are the bases of such expert's opinion; and
 143 (10) Any other evidence that the court determines is of sufficient credibility or probative
 144 value.
- 145 (b) The court shall impose a sentence as provided in subsection (c) of this Code section
 146 if the court finds that:
- 147 (1) The defendant was subjected to acts of family violence, dating violence, or child
 148 abuse, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1,
 149 respectively, and such acts were a significant contributing factor to the offense; or
 150 (2) The best interest of justice and welfare of society would be served.
- 151 (c) Upon a finding provided for in subsection (b) of this Code section:
- 152 (1) A person convicted of a crime punishable by death or by life imprisonment shall be
 153 punished by imprisonment for not less than one year nor more than 30 years.
 154 (2) A person convicted of a felony other than a felony punishable by death or life
 155 imprisonment shall be punished by imprisonment for not less than one year nor more than
 156 one-half the maximum period of time for which he or she could have been sentenced, by
 157 one-half the maximum fine to which he or she could have been subjected, or both."

158 **SECTION 7.**

159 Title 24 of the Official Code of Georgia Annotated, relating evidence, is amended in Chapter
 160 5, relating to privileges relative to evidence, by revising paragraphs (8) and (9) of and adding
 161 a new paragraph to subsection (a) of Code Section 24-5-501, relating to certain
 162 communications privileged, to read as follows:

163 "(8) Communications between or among any psychiatrist, psychologist, licensed clinical
 164 social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and
 165 family therapist, and licensed professional counselor who are rendering psychotherapy

166 or have rendered psychotherapy to a patient, regarding that patient's communications
167 which are otherwise privileged by paragraph (5), (6), or (7) of this subsection; ~~and~~
168 (9) Communications between accountant and client as provided by Code Section
169 43-3-29; and
170 (10) Communications made in the context of victim centered practices or victim-offender
171 dialogues as provided for in Code Section 24-5-511."

172 **SECTION 8.**

173 Said title is further amended in said chapter by adding a new Code section to read as follows:
174 "24-5-511.

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

176 (1) 'Facilitator' means a person who is trained to facilitate a victim centered practice or
177 victim-offender dialogue.

178 (2) 'Party' means a person, including a facilitator, a victim, an offender, a community
179 member, and any other participant, who voluntarily consents to participate with others
180 in a victim centered practice or victim-offender dialogue.

181 (3) 'Proceeding' means any legal action subject to the laws of this state, including, but
182 not limited to, civil, criminal, juvenile, or administrative hearings.

183 (4) 'Victim centered practice' or 'practice' means a gathering in which parties gather to
184 identify and respond to wrongdoing, repair harm, reduce the likelihood of further harm,
185 and strengthen community ties by focusing on the needs and obligations of all parties
186 involved through a participatory process.

187 (5) 'Victim-offender dialogue' or 'dialogue' means a process in which the victim of a
188 crime, or his or her surviving family members, and the offender who committed the crime
189 meet in a secure setting to engage in a dialogue facilitated by a facilitator with the goal
190 of repairing harm and addressing trauma.

191 (b)(1) Any communication or action made at any time while preparing for or
192 participating in a victim centered practice or a victim-offender dialogue or as a follow up
193 to such practice or dialogue, or the fact that such practice or dialogue has been planned
194 or convened, shall be privileged and shall not be referred to, used, or admitted in any
195 proceeding unless such privilege is waived. Such waiver may be made during the
196 proceeding or in writing by the party or parties protected by the privilege. Privileged
197 information shall not be subject to discovery or disclosure in any judicial or extrajudicial
198 proceeding and shall not be subject to public inspection as provided by Article 4 of
199 Chapter 18 of Title 50.

200 (2) Parties of a victim centered practice or victim-offender dialogue may refuse to
201 disclose communications relating to a victim centered practice or victim-offender
202 dialogue and prevent others from disclosing such communications.

203 (3) Any waiver of privilege shall be limited to the participation and communications of
204 the waiving party only, and the participation or communications of any other party shall
205 remain privileged unless waived by such other party.

206 (c) Evidence that is created or discovered outside of the victim centered practice or
207 victim-offender dialogue shall not become inadmissible or protected from discovery solely
208 because it was discussed or used in a victim centered practice or victim-offender dialogue.

209 (d)(1) The privilege afforded by this Code section shall not extend to a situation in
210 which:

211 (A) There are threats of imminent violence to self or others; or

212 (B) The facilitator believes that a child is being abused or that the safety of any party
213 or other person is in danger.

214 (2) A court, tribunal, or administrative body may require a report on a victim centered
215 practice or victim-offender dialogue, but such report shall be limited to the fact that a
216 practice or dialogue has taken place and whether further practices or dialogues are
217 expected.

218 (e) The privilege created by this Code section shall not be grounds to fail to comply with
219 mandatory reporting requirements as set forth in Code Section 19-7-5 or Chapter 5 of
220 Title 30, the 'Disabled Adults and Elder Persons Protection Act.'

221 (f) No facilitator shall be held liable for civil damages for any statement, action, omission,
222 or decision made in the course of a victim centered practice or victim-offender dialogue
223 unless that statement, action, omission, or decision is:

224 (1) Grossly negligent and made with malice; or

225 (2) Made with willful disregard for the safety or property of any party to the victim
226 centered practice or victim-offender dialogue."

227 **SECTION 9.**

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