

The House Committee on Judiciary Non-Civil offers the following substitute to SB 36:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to enact the "Colton-McNeill Act"; to provide for sentencing of a person
3 convicted of cruelty to children in the first or second degree against a disabled minor; to
4 provide a definition; to provide for deviation from certain minimum sentences; to increase
5 the penalty provisions relating to pimping and pandering; to include step-grandparent and
6 step-grandchild relationship relative to the offense of incest; to prohibit distribution of
7 computer generated obscene material depicting a child; to amend Article 2 of Chapter 4 of
8 Title 17 of the Official Code of Georgia Annotated, relating to arrest by law enforcement
9 officers generally, so as to authorize federal law enforcement officers to detain persons under
10 certain circumstances; to provide for revocation of such authority; to provide for a definition;
11 to provide for related matters; to provide for applicability; to repeal conflicting laws; and for
12 other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

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16 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
17 amended by revising Code Section 16-5-70, relating to cruelty to children, as follows:

18 "16-5-70.

19 (a)(1) This Code section shall be known and may be cited as the 'Colton-McNeill Act.'

20 (2) As used in this Code section, the term 'disabled minor' means any person under the
21 age of 18 who has a physical or mental impairment, who has a record of such impairment,
22 and whose impairment substantially affects one or more of the following:

23 (A) Such person's ability to perform two or more activities of daily living at an
24 age-appropriate level;

25 (B) Such person's mobility to the extent that daily assistance from another person is
26 required and would otherwise not be required but for the impairment;

27 (C) Such person's cognitive ability or brain development to the extent that daily
28 assistance from another person is required and would otherwise not be required but for
29 the impairment; or

30 (D) Such person's physical or cognitive development to the extent that he or she is or
31 will be permanently and profoundly disabled.

32 (b) A parent, guardian, or other person supervising the welfare of or having immediate
33 charge or custody of a child under the age of 18 commits the offense of cruelty to children
34 in the first degree when such person willfully deprives the child of necessary sustenance
35 to the extent that the child's health or well-being is jeopardized.

36 (b)(c) Any person commits the offense of cruelty to children in the first degree when such
37 person maliciously causes a child under the age of 18 cruel or excessive physical or mental
38 pain.

39 ~~(e)~~(d) Any person commits the offense of cruelty to children in the second degree when
40 such person with criminal negligence causes a child under the age of 18 cruel or excessive
41 physical or mental pain.

42 ~~(d)~~(e) Any person commits the offense of cruelty to children in the third degree when:

43 (1) Such person, who is the primary aggressor, intentionally allows a child under the age
44 of 18 to witness the commission of a forcible felony, battery, or family violence battery;
45 or

46 (2) Such person, who is the primary aggressor, having knowledge that a child under the
47 age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family
48 violence battery.

49 ~~(e)~~(f)(1) A person convicted of the offense of cruelty to children in the first degree as
50 provided in this Code section shall be punished by imprisonment for not less than five nor
51 more than 20 years.

52 (2) A person convicted of the offense of cruelty to children in the second degree shall be
53 punished by imprisonment for not less than one nor more than ten years.

54 (3) A person convicted of the offense of cruelty to children in the third degree shall be
55 punished as for a misdemeanor upon the first or second conviction. Upon conviction of
56 a third or subsequent offense of cruelty to children in the third degree, the defendant shall
57 be guilty of a felony and shall be sentenced to a fine not less than \$1,000.00 nor more
58 than \$5,000.00 or imprisonment for not less than one year nor more than three years or
59 shall be sentenced to both fine and imprisonment.

60 (4)(A) A person convicted of the offense of cruelty to children in the first degree
61 against a disabled minor shall be punished by imprisonment for not less than 15 nor
62 more than 30 years.

63 (B)(i) A person convicted of the offense of cruelty to children in the second degree
64 against a disabled minor shall be punished by imprisonment for not less than ten nor
65 more than 20 years.

66 (ii) In the court's discretion, a judge may depart from the mandatory minimum
67 sentence specified in division (i) of this subparagraph if the judge concludes that the
68 interests of justice will not be served by the imposition of the prescribed mandatory
69 minimum sentence. If a judge departs from the mandatory minimum sentence
70 pursuant to this division, the judge shall specify on the record the reasons for the
71 reduction and the interests served by such departure."

72 **PART II**
73 **SECTION 2-1.**

74 Said title is further amended in Code Section 16-6-13, relating to penalties for violating Code
75 Sections 16-6-9 through 16-6-12, by revising subsection (a) as follows:

76 "(a) Except as otherwise provided in subsection (b) of this Code section, a person
77 convicted of violating:

78 (1) Code Section 16-6-10 shall be punished as for a misdemeanor of a high and
79 aggravated nature, and at the sole discretion of the judge, all but 24 hours of any term of
80 imprisonment imposed may be suspended, stayed, or probated;

81 (2) Code Section 16-6-9 shall be punished as for a misdemeanor;

82 (3) Code Section 16-6-11 for a:

83 (A) ~~First offense shall be punished as for a misdemeanor of a high and aggravated~~
84 ~~nature, and at the sole discretion of the judge, all but 72 hours of any term of~~
85 ~~imprisonment imposed may be suspended, stayed, or probated~~ guilty of a felony and
86 shall be punished by a term of imprisonment of not less than one nor more than ten
87 years; and

88 (B) Second or subsequent offense shall be guilty of a felony and shall be punished by
89 a term of imprisonment of not less than one year nor more than ten years and shall be
90 sentenced to a mandatory minimum term of imprisonment of three years and no portion

91 of the mandatory minimum sentence imposed shall be suspended, stayed, or probated
 92 by the sentencing court; provided, however, that in the court's discretion, the court may
 93 depart from such mandatory minimum sentence if the interest of justice will not be
 94 served by the imposition of the prescribed mandatory minimum, with such findings
 95 stated on the record by the court; or

96 (4) Code Section 16-6-12 for a:

97 (A) First offense shall be ~~punished as for a misdemeanor of a high and aggravated~~
 98 ~~nature, and at the sole discretion of the judge, all but 72 hours of any term of~~
 99 ~~imprisonment imposed may be suspended, stayed, or probated~~ guilty of a felony and
 100 shall be punished by a term of imprisonment of not less than one nor more than ten
 101 years; and

102 (B) Second or subsequent offense shall be guilty of a felony and shall be punished by
 103 a term of imprisonment of not less than one year nor more than ten years and shall be
 104 sentenced to a mandatory minimum term of imprisonment of two years and no portion
 105 of the mandatory minimum sentence imposed shall be suspended, stayed, or probated
 106 by the sentencing court; provided, however, that in the court's discretion, the court may
 107 depart from such mandatory minimum sentence if the interest of justice will not be
 108 served by the imposition of the prescribed mandatory minimum, with such findings
 109 stated on the record by the court."

110 **SECTION 2-2.**

111 Said title is further amended in Code Section 16-6-22, relating to incest, is amended by
 112 revising paragraph (4) of subsection (a) as follows:

113 "(4) Grandparent and grandchild of the whole blood or of the half blood or
 114 step-grandchild;"

SECTION 2-3.

115
116 Said title is further amended in amended by repealing Code Section 16-12-80, relating to
117 distributing obscene material, obscene material defined, and penalty, and enacting a new
118 Code Section 16-12-80 to read as follows:

119 "16-12-80.

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

121 (1) 'Artificial intelligence system' means an engineered or machine based system that
122 emulates the capability of a person to receive audio, visual, text, or any other form of
123 information and uses the information received to emulate a human cognitive process,
124 including, but not limited to, learning, generalizing, reasoning, planning, predicting,
125 acting, or communicating; provided, however, that artificial intelligence systems may
126 vary in the forms of information they can receive and in the human cognitive processes
127 they can emulate.

128 (2) 'Child' means any person under the age of 16 years.

129 (3) 'Sexually explicit conduct' shall have the same meaning as provided in Code
130 Section 16-12-100.

131 (b) Any person commits the crime of distribution of computer generated obscene material
132 depicting a child when he or she knowingly distributes, solicits, or possesses with intent
133 to distribute a visual depiction of any kind, including an electronic image, electronic video,
134 drawing, sculpture, or painting, that:

135 (1) Depicts an image that appears to be of a child, and that would appear realistic to an
136 average observer, engaging in sexually explicit conduct, whether between persons of the
137 same or opposite sex;

138 (2) Is obscene; and

139 (3) Was created through the use of an artificial intelligence system.

140 (c) A person who commits the crime proscribed in subsection (b) of this Code section shall
141 be guilty of a felony and punished by imprisonment for not less than one year nor more
142 than 15 years.

143 (d) It is not a required element of an offense under this Code section that the child depicted
144 actually exists.

145 (e) Material is obscene if:

146 (1) To an average person, applying contemporary community standards, taken as a
147 whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid
148 interest in nudity, sex, or excretion;

149 (2) The material taken as a whole lacks serious literary, artistic, political, or scientific
150 value; and

151 (3) The material depicts or describes, in a patently offensive way, sexual conduct.

152 (f) If the court orders a sentence to be probated in whole or in part, as a condition the court
153 may impose any or all of the requirements set forth in subsection (b) of Code
154 Section 42-8-35."

155 **PART III**

156 **SECTION 3-1.**

157 Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia Annotated, relating to
158 arrest by law enforcement officers generally, is amended by revising Code Section 17-4-20,
159 relating to authorization of arrests with and without warrants generally, use of deadly force,
160 adoption or promulgation of conflicting regulations, policies, ordinances, and resolutions,
161 and authority of nuclear power facility security officer, as follows:

162 "17-4-20.

163 (a)(1) An arrest for a crime may be made by a law enforcement officer:

164 (A) Under a warrant; or

- 165 (B) Without a warrant if:
- 166 (i) The offense is committed in such officer's presence or within such officer's
167 immediate knowledge;
- 168 (ii) The offender is endeavoring to escape;
- 169 (iii) The officer has probable cause to believe that an act of family violence, as
170 defined in Code Section 19-13-1, has been committed;
- 171 (iv) The officer has probable cause to believe that the offender has violated a criminal
172 family violence order, as defined in Code Section 16-5-95; provided, however, that
173 such officer shall not have any prior or current familial relationship with the alleged
174 victim or the offender;
- 175 (v) The officer has probable cause to believe that an offense involving physical abuse
176 has been committed against a vulnerable adult, who shall be for the purposes of this
177 subsection a person 18 years old or older who is unable to protect himself or herself
178 from physical or mental abuse because of a physical or mental impairment; or
- 179 (vi) For other cause there is likely to be failure of justice for want of a judicial officer
180 to issue a warrant.
- 181 (2) Except where otherwise provided by law with respect to a law enforcement officer's
182 jurisdictional duties and limitations, a law enforcement officer may make an arrest for an
183 offense outside of the jurisdiction of the law enforcement agency by which he or she is
184 employed without a warrant:
- 185 (A) If the offense is committed in such officer's presence or within such officer's
186 immediate knowledge;
- 187 (B) When in immediate pursuit of an offender for an offense committed within the
188 jurisdiction of the law enforcement agency that employs such law enforcement officer;
189 or
- 190 (C) While aiding or assisting another law enforcement officer in the jurisdiction of the
191 law enforcement agency employing such other law enforcement officer.

192 (3) Nothing in paragraph (2) of this subsection shall be construed as limiting sheriffs or
193 deputy sheriffs in the performance of the duties and responsibilities imposed on them by
194 the Constitution and laws of this state.

195 (b)(1) For purposes of this subsection, the term 'federal law enforcement officer' means
196 a person:

197 (A) Employed by the United States government as a full-time sworn criminal law
198 enforcement officer or agent;

199 (B) In good standing with his or her employing federal agency;

200 (C) Authorized to carry a firearm in the performance of his or her official duties; and

201 (D) Empowered to arrest persons for criminal violations of the United States Code.

202 (2) A federal law enforcement officer may detain a person upon request of a law
203 enforcement officer of this state or of any county, municipality, or other political
204 subdivision of this state for purposes of aiding or assisting such law enforcement officer
205 for an offense alleged to have been committed within the jurisdiction of such officer
206 under a warrant or without a warrant. Such request may be retracted by the requesting
207 law enforcement officer at any time and the authority to detain provided by this paragraph
208 shall cease upon such retraction.

209 ~~(b)~~(c) Sheriffs and peace officers who are appointed or employed in conformity with
210 Chapter 8 of Title 35 may use deadly force to apprehend a suspected felon only when the
211 officer reasonably believes that the suspect possesses a deadly weapon or any object,
212 device, or instrument which, when used offensively against a person, is likely to or actually
213 does result in serious bodily injury; when the officer reasonably believes that the suspect
214 poses an immediate threat of physical violence to the officer or others; or when there is
215 probable cause to believe that the suspect has committed a crime involving the infliction
216 or threatened infliction of serious physical harm. Nothing in this ~~Code section~~ subsection
217 shall be construed so as to restrict such sheriffs or peace officers from the use of such

218 reasonable nondeadly force as may be necessary to apprehend and arrest a suspected felon
219 or misdemeanor.

220 ~~(c)~~(d) Nothing in this Code section shall be construed so as to restrict the use of deadly
221 force by employees of state and county correctional institutions, jails, and other places of
222 lawful confinement or by peace officers of any agency in the State of Georgia when
223 reasonably necessary to prevent escapes or apprehend escapees from such institutions.

224 ~~(d)~~(e) No law enforcement agency of this state or of any political subdivision of this state
225 shall adopt or promulgate any rule, regulation, or policy which prohibits a peace officer
226 from using that degree of force to apprehend a suspected felon which is allowed by the
227 statutory and case law of this state.

228 ~~(e)~~(f) Each peace officer shall be provided with a copy of this Code section. Training
229 regarding elder abuse, abuse of vulnerable adults, and the requirements of this Code section
230 should be offered as part of at least one in-service training program each year conducted
231 by or on behalf of each law enforcement department and agency in this state.

232 ~~(f)~~(g) A nuclear power facility security officer, including a contract security officer,
233 employed by a federally licensed nuclear power facility or licensee thereof for the purpose
234 of securing that facility shall have the authority to:

235 (1) Threaten or use force against another in defense of a federally licensed nuclear power
236 facility and the persons therein as provided for under Code Sections 16-3-21 and 16-3-23;

237 (2) Search any person on the premises of the nuclear power facility or the properties
238 adjacent to the facility if the facility is under imminent threat or danger pursuant to a
239 written agreement entered into with the local enforcement agency having jurisdiction
240 over the facility for the purpose of determining if such person possesses unauthorized
241 weapons, explosives, or other similarly prohibited material; provided, however, that if
242 such person objects to any search, he or she shall be detained as provided in paragraph (3)
243 of this subsection or shall be required to immediately vacate the premises. Any person
244 refusing to submit to a search and refusing to vacate the premises of a facility upon the

245 request of a security officer as provided for in this Code section shall be guilty of a
246 misdemeanor; and

247 (3) In accordance with a nuclear security plan approved by the United States Nuclear
248 Regulatory Commission or other federal agency authorized to regulate nuclear facility
249 security, detain any person located on the premises of a nuclear power facility or on the
250 properties adjacent thereto if the facility is under imminent threat or danger pursuant to
251 a written agreement entered into with the local law enforcement agency having
252 jurisdiction over the facility, where there is reasonable suspicion to believe that such
253 person poses a threat to the security of the nuclear power facility, regardless of whether
254 such prohibited act occurred in the officer's presence. In the event of such detention, the
255 law enforcement agency having jurisdiction over the facility shall be immediately
256 contacted. The detention shall not exceed the amount of time reasonably necessary to
257 allow for law enforcement officers to arrive at the facility."

258

PART IV

259

SECTION 4-1.

260 Section 2-3 of this Act shall apply to all offenses committed on or after July 1, 2024.

261

SECTION 4-2.

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