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CRIMINAL PROCEDURE Sentence and Punishment: Enhance Sentences for Crimes in Which the Trier of Fact Determines by a reasonable Doubt That the Defendant Intentionally Selected Any Victim or Property as the Object of the Offense Because of Bias or Prejudice; Provide Procedures Under Which Enhanced Sentences May Be Sought

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CRIMINAL PROCEDURE

Sentence and Punishment: Enhance Sentences for Crimes in Which the Trier of Fact Determines by a Reasonable Doubt That the Defendant Intentionally Selected Any Victim or Property as the Object of the Offense Because of Bias or Prejudice; Provide Procedures Under Which Enhanced Sentences May Be Sought

CODE SECTIONS:	O.C.G.A. §§ 17-10-17 to -19 (new)
BILL NUMBER:	SB 390
ACT NUMBER:	486
GEORGIA LAWS:	2000 Ga. Laws 224
SUMMARY:	The Act provides enhanced sentences in cases in which the trier of fact determines that the defendant intentionally selected a victim or property as the object of an offense because of bias or prejudice. The Act requires the state to provide the defendant written notice of its intention to seek enhanced penalties, alleging the specific factors that justify an enhanced sentence. Such notice must be provided after indictment, but no later than arraignment.
EFFECTIVE DATE:	July 1, 2000

History

SB 153, introduced in 1999, was the precursor to SB 390.¹ Due to perceived problems with the bill, SB 153 was withdrawn, and SB 390 was introduced in its place on February 1, 2000.² Senator Vincent Fort of the 39th Senate District crafted SB 390 to

1. *See* Sen. Vincent Fort, Remarks at Panel Discussion on Hate Crimes at Georgia State University (Apr. 4, 2000) (transcript on file with the *Georgia State University Law Review*) [hereinafter Fort at Panel Discussion].

2. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000. The bill was complicated, and prosecutors advised that it would be difficult to implement. *See* Fort at Panel Discussion, *supra* note 1.

address the number of hate crimes taking place in Georgia, particularly church burnings, synagogue desecrations, and gay bashing.³ Governor Roy Barnes signed the bill at a Jewish synagogue recently vandalized with swastikas and slurs.⁴ Governor Barnes stated, "We're sending a clear message to would-be criminals: Georgia does not tolerate crime. But even more importantly, Georgia does not tolerate hatred and bigotry as reasons for crime."⁵ Governor Barnes observed that the vandalism had terrorized both the congregation and the entire Jewish community.⁶ "Because crimes like these affect whole communities, they deserve stricter punishment . . .," remarked Governor Barnes.⁷ Georgia is the 41st state to pass a law addressing crimes motivated by hate.⁸

The passage of the bill was the collaborative effort of Senator Fort, the Georgia Equality Project, the Anti-defamation League, Representative Kasim Reed of the 52nd House District, and Representative Jim Martin of the 47th House District.⁹ Senator Fort initially spearheaded the legislation in the Georgia General Assembly.¹⁰ The Georgia Equality Project and the Anti-defamation League provided funding for the effort and hired Sue Saleska-Hamilton to organize the effort.¹¹

Representative Jim Martin, Chairman of the House Judiciary Committee, was instrumental in reaching a compromise that addressed the constitutional concerns that plagued the bill in

3. See Telephone Interview with Sen. Vincent Fort, Senate District No. 39 (Apr. 18, 2000) [hereinafter Fort Interview]. Senator Fort voiced concerns that crimes motivated by hate against a particular group were not just crimes against an individual but against a community. See Fort at Panel Discussion, *supra* note 1.

4. See Barnes: *Hate Crimes Bill Sends Message: Governor Signs New Legislation, Set To Take Effect in July, Against Acts Spawned by Prejudice*, AUGUSTA CHRON., Mar. 31, 2000, at B2.

5. *Id.*

6. See *id.*

7. *Id.*

8. See Kathy Pruitt, *Governor Signs Hate Crimes Bill: Fines and Sentences for Offenses Would Increase Under Rules To Go into Effect July 1*, ATLANTA J. & CONST., Mar. 31, 2000, at C4.

9. See Telephone Interview with Harry Knox, Executive Director of the Georgia Equality Project (July 5, 2000) [hereinafter Knox Interview].

10. See Fort Interview, *supra* note 3. Senator Fort dropped the bill in the summer of 1998, and he announced the content of the proposed legislation at a luncheon at the Outwrite Bookstore and Coffeehouse in Atlanta. See *id.*

11. See Knox Interview, *supra* note 9.

the Senate.¹² Representative Reed was the bill's proponent in the House.¹³

SB 390

Consideration by the Senate

When introduced in the Senate, SB 390 was assigned to the Senate Judiciary Committee, which favorably reported the bill without changes on February 3, 2000.¹⁴ On February 1, 2000, the Senate voted to engross the bill so that no amendments would be allowed.¹⁵ The Senate passed the bill in its original form on February 9, 2000.¹⁶

From the Senate Floor to the House Judiciary Committee

On March 6, 2000, the House Judiciary Committee favorably reported the bill, as substituted.¹⁷ The Committee substitute made the trier of fact responsible for determining whether the defendant had intentionally selected a victim or property in violation of the bill, in contrast to the original version of the bill which left that determination to the discretion of the sentencing judge.¹⁸ While retaining enhanced sentencing for crimes against property, the Committee substitute eliminated language regarding intention towards anyone associated with the property.¹⁹ The Committee substitute also eliminated language

12. See Interview with Rep. Kasim Reed, House District No. 52 (June 30, 2000) [hereinafter Reed Interview].

13. See Knox Interview, *supra* note 9.

14. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

15. See Georgia Senate Voting Record, SB 390 (Feb. 1, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000; Audio Recording of Senate Proceedings, Feb. 1, 2000 (vote) <<http://www.ganet.org/services/leg/audio/2000archive.html>>.

16. See Georgia Senate Voting Record, SB 390 (Feb. 9, 2000). The vote was 30 to 23, and the bill received just one more vote than was needed to pass. See Peter Mantius, *State Senate OKs Hate Crimes Bill Narrow Win: House May Be Less Open to Toughening Penalties for Bias-Related Acts*, ATLANTA J. & CONST., Feb. 10, 2000, at A1.

17. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

18. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

19. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem. This change addressed concerns that the original language could be too difficult to prosecute. See Reed Interview *supra* note 12.

in the bill providing a short title identifying the bill as the "Anti-domestic Terrorism Act."²⁰

The Committee substitute divided the bill into three Code sections: 17-10-17, -18, and -19.²¹ Code section 17-10-17 would prescribe the penalties.²² Code section 17-10-18 would prescribe notice requirements, and Code section 17-10-19 would prescribe the proper procedure.²³ These divisions became part of the Act.²⁴

In the Committee substitute, the portion of the bill that became part of Code section 17-10-17 required the trier of fact, as opposed to the sentencing judge as provided in the bill as introduced, to determine whether the defendant had acted intentionally in violation of the Act such that the defendant's sentence should be enhanced.²⁵ Members of the General Assembly were concerned that the bill as passed in the Senate was unconstitutional.²⁶ The House Judiciary Committee found it necessary to have the jury determine the motivation for the crime.²⁷

In addition, the Committee substitute added the words "of the victim" to describe property that was the object of offense.²⁸

20. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem. Legislators outside of the Atlanta metropolitan area did not like the short title "Anti-domestic Terrorism Act." See Reed Interview, *supra* note 12. They criticized the language as heavy-handed. See *id.*

21. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

22. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

23. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

24. See O.C.G.A. §§ 17-10-17 to -19 (Supp. 2000). Compare SB 390 (HCS), 2000 Ga. Gen. Assem., with SB 390, as passed, 2000 Ga. Gen. Assem.

25. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

26. See Audio Recording of Senate Proceedings, Feb. 9, 2000 (remarks by Sen. Clay Land) <<http://www.ganet.org/services/leg/audio/2000archive.html>>.

27. See Telephone Interview with Rep. Jim Martin, House District No. 47 (July 5, 2000) [hereinafter Martin Interview]. Concerns about the constitutionality of the bill were validated when the United States Supreme Court held on June 26, 2000, that a factor that increases the penalty of a crime beyond the statutory maximum must be proven beyond a reasonable doubt and presented to a jury. See *Apprendi v. New Jersey*, 120 S.Ct. 2348, 2362-63 (2000). The Court further held that a state hate crime statute that allowed the judge to determine motivation and increase the penalty beyond the maximum deprived the accused of due process. See *id.*

28. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

Further, the Committee substitute eliminated the words “or with the property which is the object of the offense.”²⁹

In addressing sentencing, the Committee replaced “may” with “shall” to make the bill read, “the judge imposing sentence shall:”³⁰ This mandatory language made the bill stronger by taking discretion from the judge and requiring action.³¹ The Committee substitute also changed the sentencing guidelines in the bill.³² For misdemeanors, the Committee substitute changed the maximum fine and enhanced jail sentencing.³³ While the original version of the bill would have provided for a maximum fine of \$5000 for each offense “in addition to the fine otherwise prescribed by law,” the Committee substitute required fines and sentences to be increased by fifty percent up to the maximum penalty.³⁴ Similarly, for aggravated misdemeanors, the original version of the bill would have provided for maximum fines of \$10,000 in addition to the otherwise prescribed fines, but the Committee substitute required that the sentence and fine be enhanced by fifty percent up to the maximum allowed by law.³⁵ For felonies, while the original version of the bill would have authorized a maximum fine of \$15,000 and up to an additional five year sentence, the Committee substitute required the sentence be enhanced up to an additional five years, which cannot exceed the maximum allowed by law.³⁶

The changes in penalties were a result of the compromise coordinated by Representative Martin in the Judiciary

29. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem. Changes in the language of the bill regarding property addressed concerns about the difficulty to prosecute using the statute’s earlier broader language. See Reed Interview, *supra* note 12.

30. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

31. See Reed Interview, *supra* note 12.

32. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

33. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

34. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

35. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

36. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

Committee.³⁷ The changes were inspired by concerns that the Senate version of SB 390 was unconstitutional because it created an additional crime simply because the crime was motivated by hate.³⁸ However, the state could enhance the penalty without violating an accused constitutional rights.³⁹ Instead of having an additional penalty based on the motivation for the crime, the bill provided for an enhanced penalty within the existing statutory limits.⁴⁰

Additionally, the Committee substitute added a requirement that the judge identify the amount by which he increases a sentence based on this law.⁴¹ This requirement was added to address any constitutional concerns and to advise people about the sentence increase for crimes motivated by prejudice or bias.⁴²

In the Committee substitute, Code section 17-10-18 addressed notice requirements.⁴³ The Committee substitute referred to the penalties as “enhanced,” as opposed to “additional” in the original draft of the bill.⁴⁴ Further, the Committee substitute required the notice be in writing and address the specific factor or factors that justify the enhanced sentence.⁴⁵

In the Committee substitute, Code section 17-10-19 addressed procedural issues.⁴⁶ The Committee substitute changed the bill by providing that after finding a defendant guilty of a charged crime, the trier of fact will determine if the evidence is sufficient to find the defendant acted in violation of Code section 17-10-17 beyond a reasonable doubt.⁴⁷ The bill, as introduced, had

37. See Reed Interview, *supra* note 12.

38. See *id.*; Martin Interview, *supra* note 27.

39. See Martin Interview, *supra* note 27.

40. See *id.* Again, the concerns of the House Judiciary Committee were justified. See *supra* note 27 and accompanying text.

41. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

42. See Reed Interview, *supra* note 12.

43. See SB 390 (HCS), 2000 Ga. Gen. Assem.

44. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

45. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem. This requirement was introduced to address the constitutional requirement of notice. See Reed Interview, *supra* note 12.

46. See SB 390 (HCS), 2000 Ga. Gen. Assem.

47. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

provided that the judge would hold a hearing according to Code section 17-10-2.⁴⁸

Finally, the Committee substitute destroyed the bill's severability.⁴⁹ The Committee substitute eliminated the bill's language providing that if "any one or more provisions, subsections, sentences, clauses, phrases, or words" was held invalid under any circumstance or to any person, the other provisions would not be affected because the "provisions, words, phrases, and clauses" are severable.⁵⁰

Consideration by the House

With a vote of 83 to 82, the House voted to table SB 390.⁵¹ Shortly thereafter, the House reconsidered and voted 92 to 72 to continue with the bill.⁵²

Failed Floor Amendment

A failed floor amendment would have further amended the Committee substitute on the House floor.⁵³ The floor amendment first proposed to remove "sexual orientation" from the list of protected classes under the bill.⁵⁴ The failure of this amendment was important to the bill's passage because if the amendment were successful in removing sexual orientation, proponents of the bill would have removed it from consideration.⁵⁵ The floor amendment also proposed to change

48. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem. The change allows the fact finder to make the determination about motivation and was made to assure the Act's constitutionality. See Martin Interview, *supra* note 27.

49. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

50. Compare SB 390, as introduced, 2000 Ga. Gen. Assem., with SB 390 (HCS), 2000 Ga. Gen. Assem.

51. See Georgia House of Representatives Voting Record, SB 390 (Mar. 16, 2000).

52. See *id.*; *Georgia House Passes Hate Crime Bill*, AUGUSTA CHRON., Mar. 17, 2000, at B3. The morning of the vote, the bill had the support of only 45 or 50 Democrats. See Reed Interview, *supra* note 12. Ninety-one votes were needed to pass. See *id.* The bill was the next to last bill taken up that day. See *id.*

53. See Failed House Floor Amendment to SB 390, introduced by Rep. Robert Ray, Mar. 16, 2000.

54. Compare SB 390 (HCS), 2000 Ga. Gen. Assem., with Failed House Floor Amendment to SB 390, introduced by Sen. Robert Ray, Mar. 16, 2000.

55. See Reed Interview, *supra* note 12. If the sexual orientation language had been

the language regarding sentencing from “the judge imposing sentencing shall . . .” to “the judge may impanel the jury to decide whether to . . .”⁵⁶

Additionally, the failed floor amendment proposed to change the language of Code section 17-10-17(b) as presented in the Committee substitute by replacing the words “[t]he judge shall state when the judge imposes the . . .” to “[t]he judge may state when the jury imposes the . . .” regarding the amount of the sentence added by Code section 17-10-17(a).⁵⁷ The floor amendment proposed to change the language of the Committee substitute by replacing “shall” with a discretionary “may” in regard to the trier of fact recommencing the trial to determine whether the defendant had violated Code section 17-10-17(a).⁵⁸ Finally, the floor amendment proposed that the words “judge shall” be changed to “jury may,” thus giving the jury the discretion to enhance the sentence rather than requiring the judge to act.⁵⁹

Adopted Floor Amendment

Although one House floor amendment failed, the House adopted a different floor amendment.⁶⁰ The adopted floor amendment removed the language specifically listing the classes of people to be protected, specifically the language “because of the actual or perceived race, color, religion, national origin, ancestry, ethnicity, gender, disability, or sexual orientation of the victim or any person associated with the victim,” and replaced it with the more generic “because of bias or prejudice.”⁶¹ Additionally, the House floor amendment added

removed, it would have been a defeat because it would not have been what the proponents intended. *See id.* The Georgia Equality Project, which promotes the rights of gays and lesbians, was instrumental in the passage of the bill. *See Knox Interview, supra* note 9.

56. *Compare* SB 390 (HCS), 2000 Ga. Gen. Assem., *with* Failed House Floor Amendment to SB 390, introduced by Sen. Robert Ray, Mar. 16, 2000.

57. *Compare* SB 390 (HCS), 2000 Ga. Gen. Assem., *with* Failed House Floor Amendment to SB 390, introduced by Sen. Robert Ray, Mar. 16, 2000.

58. *Compare* SB 390 (HCS), 2000 Ga. Gen. Assem., *with* Failed House Floor Amendment to SB 390, introduced by Sen. Robert Ray, Mar. 16, 2000.

59. *Compare* SB 390 (HCS), 2000 Ga. Gen. Assem., *with* Failed House Floor Amendment to SB 390, introduced by Sen. Robert Ray, Mar. 16, 2000.

60. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

61. *Compare* SB 390 (HCS), 2000 Ga. Gen. Assem., *with* SB 390 (HCSFA), 2000 Ga.

a provision, Code section 17-10-17(c), which denies eligibility for parole or early release until at least ninety percent of the sentence is served.⁶² The House adopted this floor amendment to the Committee substitute and passed the bill on March 16, 2000.⁶³

Senate Acceptance

Proponents of the bill in the Senate reacted positively to the House changes, and the Senate agreed to the House version of SB 390 on March 20, 2000.⁶⁴ Although Senator Fort expressed the preference that the categories be explicitly named to avoid ambiguity or confusion, he accepted the changes because he felt they made the bill even stronger.⁶⁵ Now categories that might have been left out of the list will receive protection as well.⁶⁶ Governor Roy Barnes signed SB 390 into law on March 30, 2000.⁶⁷

Gen. Assem. The categories were being used to kill the bill. *See* Reed Interview, *supra* note 12. There were not enough votes in the House to pass the language with the enumerated categories. *See* Knox Interview, *supra* note 9. The House passed an amendment, known as the Walker Amendment, with a vote of 159 to 10 to replace the categories with "bias or prejudice." *See* Martin Interview, *supra* note 27. The new language allows the Georgia Supreme Court to codify categories for which the General Assembly intended to provide protection. *See* Reed Interview, *supra* note 12. Representative Reed is confident that the Supreme Court of Georgia will protect the individuals that need protection. *See id.*

62. *Compare* SB 390 (HCS), 2000 Ga. Gen. Assem., *with* SB 390 (HCSFA), 2000 Ga. Gen. Assem. The ninety percent sentence requirement was actually a Republican amendment. *See* Reed Interview, *supra* note 12. The proponents of the bill gladly accepted the amendment because it makes the bill stronger. *See id.* Now, those found to commit crimes motivated by bias and prejudice will serve longer sentences because they must actually serve a minimum of ninety percent of their sentences. *See id.*

63. *See* Georgia House of Representatives Voting Record, SB 390 (Mar. 16, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

64. *See* Georgia Senate Voting Record, SB 390 (Mar. 20, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

65. *See* Fort Interview, *supra* note 3.

66. *See id.* To illustrate this point Governor Barnes stated, "As a former prosecutor, I can tell you I wouldn't have any problems trying someone under this statute. In fact, I think it's easier to prove that a crime was done because of bias or prejudice than it is to show that a criminal chose a victim because he or she was a member of a specific group." Pruitt, *supra* note 8 (quoting Governor Roy Barnes).

67. *See* 2000 Ga. Laws 224, § 3, at 226.

Opposition to the Bill

Opposition to the bill took two forms. First, the constitutionality of the original version of the bill was in question because the judge was given the task of deciding whether prejudice was in fact a motivation for the crime.⁶³ The bill was later amended to require that the jury determine whether prejudice or bias was a motivating factor, and this amendment properly addressed those concerns.⁶³

Second, others opposed the concept of singling out certain types of crimes with greater protection.⁷⁰ Senate Minority Leader Eric Johnson questioned, "Why should vandalism against a synagogue be worse than the vandalism of a school? Both should be treated severely."⁷¹ Senator Billy Ray of the 48th Senate District voiced concerns that crimes such as the shooting at a Conyers high school would not be covered by such a bill.⁷² He argued that all crimes affect more than just the victim.⁷³ Additionally, Representative Glenn Richardson of the 26th House District stated, "Every crime is a hate crime."⁷⁴

Senator Ray suggested that an alternative would be requiring that full sentences be served.⁷⁵ Senator Ray further criticized the bill as not actually providing a longer sentence at all because the sentence still cannot exceed the statutory maximum.⁷⁶

68. *See* Telephone Interview with Sen. Billy Ray, Senate District No. 48 (May 17, 2000) [hereinafter Ray Interview].

69. *See id.* Additionally, Senator Clay Land changed his vote once the bill was amended to require the jury to determine the motivation and once the enhanced penalties fell within the range of penalties for the underlying crime. *See* Telephone Interview with Sen. Clay Land, Senate District No. 16 (May 19, 2000).

70. *See* Ray Interview, *supra* note 68.

71. Amy Frazier, *Senate to Take Up Hate Crimes Bill*, AP NEWSWIRE, Feb. 6, 2000, available in Westlaw, GANEWS.

72. *See* Ray Interview, *supra* note 68.

73. *See id.*

74. Kathy Pruitt, *House Okays Hate Crimes Bill*, ATLANTA J. & CONST., Mar. 17, 2000, at A1.

75. *See* Ray Interview, *supra* note 68.

76. *See id.*

The Act

The Act creates three new Code sections, 17-10-17 to -19, which address procedures for sentencing.⁷⁷

Code section 17-10-17(a) requires “enhanced” sentences for defendants found beyond a reasonable doubt to have “intentionally selected any victim or any property of the victim as the object of the offense because of bias or prejudice.”⁷⁸ The Act provides that the judge “shall” increase sentences in the following manner: For misdemeanors and aggravated misdemeanors, fines and sentences will be increased by fifty percent up to the maximum penalty allowed, and for felonies, sentences will be increased up to an additional five years, but cannot exceed the maximum allowed by law.⁷⁹

Subsection (b) requires that during sentencing the judge must state the amount by which the sentence is increased under subsection (a).⁸⁰ In addition, subsection (c) requires that a defendant convicted of a felony who is given an enhanced sentence under the Act is ineligible for parole or early release until at least ninety percent of the defendant’s sentence is served.⁸¹

Code section 17-10-18 requires that the State notify a defendant, after an indictment or accusation is filed but not later than arraignment, that it intends to seek the enhanced penalties as provided in Code section 17-10-17.⁸² The notice must be in writing and must include the “specific factor or factors authorizing an enhanced sentence.”⁸³

Code section 17-10-19 sets forth the procedure under which such enhanced penalties will be imposed.⁸⁴ First, the trier of fact shall determine the guilt or innocence of the defendant on the charge or charges.⁸⁵ Second, if the trier of fact determines the defendant is guilty on the charge or charges, then the trial shall recommence to determine whether the defendant “intentionally

77. See O.C.G.A. §§ 17-10-17 to -19 (Supp. 2000).

78. *Id.* § 17-10-17(a).

79. *See id.*

80. *See id.* § 17-10-17(b).

81. *See id.* § 17-10-17(c).

82. *See id.* § 17-10-18.

83. *Id.*

84. *See id.* § 17-10-19.

85. *See id.*

selected the victim or the property of the victim as the object of the offense.”⁸⁶ Third, if the trier of fact concludes that the defendant’s actions were motivated by bias or prejudice, the judge is required to enhance the defendant’s sentence as set forth in Code section 17-10-17.⁸⁷

The Act encompasses two components, a policy component and a legal component.⁸⁸ The legislature is making a declaration that random violence against citizens will not be tolerated.⁸⁹ The Act recognizes the state’s interest in condemning these types of crimes to the greatest extent it can.⁹⁰ The legal component consists of the penalty enhancement which is determined only upon conviction.⁹¹

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86. *Id.*

87. *See id.*

88. *See* Reed Interview, *supra* note 12.

89. *See id.*

90. *See id.*

91. *See id.* The enhanced penalty is not considered until after a conviction is secured. This ensures that the accused will not be prejudiced by the introduction of evidence to prove bias or prejudice. *See id.*