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SB 160 - "Blue Lives Matter" Protection of Public Safety Officers


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CRIMES AND OFFENSES

Crimes Against the Person: Provide for Increased Punishment when Certain Crimes are Committed Against Public Safety Officers; Amend Chapter 11 of Title 15, Title 16, and Code Section 85 of Part 1 of Article 5 of Chapter 9 of Title 45 of the Official Code of Georgia Annotated, Relating to the Juvenile Code, Crimes and Offenses, and Payment of Indemnification for Death or Disability of Certain Public Safety Officers, Respectively, so as to Provide the Superior Court with Exclusive Original Jurisdiction for Cases Involving Aggravated Assault upon a Public Safety Officer Involving the Use of a Firearm and Aggravated Battery upon a Public Safety Officer; Allow a Superior Court the Discretion to Transfer such Cases Back to Juvenile Court; Clarify the Definitions of a Class A or Class B Designated Felony Act in Light of the Jurisdictional Changes; Provide for Definitions; Change Provisions Relating to Aggravated Assault and Aggravated Battery and Provide for Mandatory Terms of Imprisonment and Fines under Certain Circumstances; Earmark Money Collected from Certain Fines to the Georgia State Indemnification Fund; Change Provisions Relating to Obstructing or Hindering Law Enforcement Officers and Increase the Punishment for Subsequent Convictions; Provide for the Offense of, and Criminal Penalties for, Placing Human or Animal Excreta upon Law Enforcement Officers; Change Provisions Relating to a Riot in a Penal Institution; Increase the Amount of Payment of Indemnification for Death or Disability; Provide for a Short Title; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 15-11-2, -560, -561, -562 (amended); 16-5-19 (new), -21, -24 (amended); 16-10-24, -56 (amended); 45-9-85 (amended)
BILL NUMBER:	SB 160
ACT NUMBER:	198
GEORGIA LAWS:	2017 Ga. Laws 500

SUMMARY: The Act redefines and broadens protection for public safety officers who are subjected to violent attacks while engaged in their duties. The Act creates original jurisdiction and stiffens penalties for juvenile offenders charged with violent crimes. The Act also increases indemnification payments made to the surviving spouse of a law enforcement officer who loses his or her life in the line of duty.

EFFECTIVE DATE: July 1, 2017

History

On August 14, 2016, in Marietta, Georgia, a fifteen-year-old shot a police officer while the officer was in the line of duty.¹ Less than eight hours earlier, an unidentified assailant shot and killed another police officer in Eastman, Georgia, while that officer was also on duty.² Authorities apprehended and charged the fifteen-year-old “with violating Georgia’s Street Gang Terrorism and Prevention Act, aggravated assault on a police officer, entering [an] auto[mobile], possession of a firearm during commission of a felony, and theft by receiving.”³ These acts of violence against law enforcement officers, and the media attention they received, sparked the creation and support of Senate Bill (SB) 160: “Back the Badge Act of 2017.”⁴

The Back the Badge Act embodies the principles of the growing Blue Lives Matter movement spreading throughout much of the

1. Ellen Eldridge, *Shooter of Marietta Officer Was Fifteen, Police Say*, ATLANTA J.-CONST. (Aug. 14, 2016, 12:34 PM), <http://www.ajc.com/news/crime—law/shooter-marietta-officer-was-police-say/naPtoestSDG2ZwRY88duhl/>.

2. *Georgia Officer Fatally Shot, Suspect Remains on the Loose*, FOX NEWS (Aug. 14, 2016), <http://www.foxnews.com/us/2016/08/14/georgia-officer-fatally-shot-suspect-remains-on-loose.html>.

3. Adrienne Haney, *Police: Teens Who Shot Cop Were Blood Gang Members*, 11 ALIVE NEWS (Aug. 15, 2016, 8:53 AM), <http://www.11alive.com/news/local/marietta/police-teens-who-shot-cop-were-blood-gang-members-/297276244>.

4. See Telephone Interview with Dylan Davis, Legal Aide to Chairman Rich Golick (R-40th) at 9 min., 30 sec. (Mar. 29, 2017) (on file with Georgia State University Law Review) [hereinafter Davis Interview].

United States.⁵ The movement responded to the Black Lives Matter movement, which was started to protest the troubling number of black citizens killed and mistreated at the hands of white police officers.⁶ These acts of violence reached a national climax in July 2016 when three brutal incidents occurred in a span of just four days.⁷ On July 5, 2016, Alton Sterling was shot to death by police officers in Baton Rouge, Louisiana, while selling CDs outside of a convenience store.⁸ On July 6, 2016, Philando Castile was killed by a police officer during a traffic stop in St. Paul, Minnesota.⁹ Following these events on July 8, 2016, five police officers in Dallas, Texas, were shot and killed at a demonstration against police violence.¹⁰

In response to these incidents, more than a dozen states have proposed laws that impose harsh penalties on individuals who commit crimes against law enforcement officers.¹¹ This year, thirteen states have introduced some version of these Blue Lives Matter bills.¹² Arkansas, Kentucky, and Mississippi expanded the type of employment receiving enhanced protection under their bills to include firefighters and emergency medical providers; Kansas and Missouri increased the number of offenses covered when committed

5. See *A Look at New 'Blue Lives Matter' Laws Passed by States*, ABC NEWS (May 26, 2017, 1:47 PM), <http://abcnews.go.com/amp/Politics/wireStory/blue-lives-matter-laws-passed-states-47666351>.

6. See Elizabeth Day, *#BlackLivesMatter: The Birth of a New Civil Rights Movement*, THE GUARDIAN (July 19, 2015, 5:00 AM), <https://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement>.

7. See Richard Fausset et al., *Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation*, NY TIMES (July 6, 2016), <https://www.nytimes.com/2016/07/06/us/alton-sterling-baton-rouge-shooting.html>; Matt Furber & Richard Perez-Pena, *After Philando Castile's Killing, Obama Calls Police Shootings 'an American Issue'*, NY TIMES (July 7, 2016), <https://www.nytimes.com/2016/07/08/us/philando-castile-falcon-heights-shooting.html>; Manny Fernandez et al., *Five Dallas Officers Were Killed as Payback, Police Chief Says*, NY TIMES (July 8, 2016), <https://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html?mcubz=2>.

8. Radley Balko, *Alton Sterling's Death Appears to be Another Police Shooting that was Both Legal and Preventable*, WASH. POST (July 6, 2016), https://www.washingtonpost.com/news/the-watch/wp/2016/07/06/alton-sterlings-death-appears-to-be-another-police-shooting-that-was-both-legal-and-preventable/?utm_term=.e71f051c1270.

9. Furber, *supra* note 7.

10. Fernandez, *supra* note 7.

11. See Julia Craven, *32 Blue Lives Matter Bills Have Been Introduced Across 14 States This Year*, HUFFINGTON POST (Mar. 9, 2017), http://www.huffingtonpost.com/entry/blue-black-lives-matter-police-bills-states_us_58b61488e4b0780bac2e31b8.

12. Anders Hagstrom, *ACLU Doubling Down Against State and Federal 'Blue Lives Matter' Bills*, DAILY CALLER (July 2, 2017), <http://dailycaller.com/2017/07/02/aclu-doubling-down-against-state-and-federal-blue-lives-matter-bills/>.

against law enforcement officers; and Arizona expanded the scope of protection under its bill to include off-duty peace officers not engaged in police activities.¹³ Of the states that have enacted Blue Lives Matter laws, Georgia is the only one that includes mandatory minimum sentencing in its provisions.¹⁴

The number of states that have proposed and subsequently enacted such legislation is relatively low; many of the bills were heavily criticized and failed to pass.¹⁵ Common criticism of these Blue Lives Matter bills stemmed from the ambiguous text of the statutes and the possibility of overly broad interpretations.¹⁶ Other criticisms included the bills' possible effects on law enforcement and their relationship with citizens.¹⁷ Many critics felt the laws would not only make it more difficult to prosecute police officers and easier to prosecute confrontational protesters, but these laws would also deepen the divide between law enforcement officers and citizens.¹⁸ Georgia legislators attempted to account for both the seriousness of crimes against law enforcement officers and the criticism of laws enacted to quell such violence; several bills were drafted with those aims in mind.¹⁹ After much debate, SB 160 made its way through the Senate and the House of Representatives and became a conglomeration of bills.²⁰ Governor Nathan Deal (R) signed SB 160 into law on May 8, 2017.²¹

13. *A Look at New 'Blue Lives Matter' Laws*, *supra* note 5.

14. SB 160 (HCS) § 3-2, p. 6, ll. 183–90, 2017 Ga. Gen. Assemb.; *see also A Look at New 'Blue Lives Matter' Laws*, *supra* note 5.

15. *See* Kravin, *supra* note 11; Collier Meyerson, *The Case Against 'Blue Lives Matter' Bills*, THE NATION (May 23, 2017) <https://www.thenation.com/article/case-blue-lives-matter-bills>.

16. Meyerson, *supra* note 15.

17. *A Look at New 'Blue Lives Matter' Laws*, *supra* note 13.

18. *Id.*

19. *See* SB 160, as introduced, p. 1, ll. 8–14, 2017 Ga. Gen. Assemb. (“provid[ing] for the offenses of aggravated assault and aggravated battery upon a public safety officer while the public safety officer is engaged in, or on account of the performance of, his or her official duties”); HB 258, as introduced, p. 1, ll. 2–5, 2017 Ga. Gen. Assemb. (providing minimum sentencing requirements for “persons who knowingly commit the offense of aggravated assault upon a peace officer through the discharge of a firearm while the peace officer is engaged in, or on account of the performance of, his or her official duties”); SB 116, as introduced, 2017 Ga. Gen. Assemb.; SB 154, as introduced, 2017 Ga. Gen. Assemb.

20. *See* State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017.

21. *See* State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017.

*Bill Tracking of SB 160**Senate Consideration of SB 160*

Senators Tyler Harper (R-7th), David Shafer (R-48th), Jeff Mullis (R-53rd), Greg Kirk (R-13th), Bill Cowsert (R-46th), and Steve Gooch (R-51st) sponsored SB 160.²² The Senate read the bill for the first time on February 14, 2017, and committed the bill to the Public Safety Committee.²³ The Senate Public Safety Committee favorably reported the bill by substitute on February 22, 2017.²⁴

The Committee substitute included most of the introduced bill's text. However, it made a few significant changes. First, the Committee substitute expanded the superior court's ability to transfer to the juvenile court an aggravated assault if committed with a firearm and an aggravated battery if either are committed against a public safety officer.²⁵ The superior court would be able to use the criteria set forth in Code section 15-11-562 to determine whether transfer was appropriate.²⁶

Second, the Committee substitute clarified the definition of a "Class A designated felony act" under the juvenile code.²⁷ Under the clarification, a "Class A designated felony act" includes aggravated assaults that are, in part, either not against a public safety officer or not involving a firearm.²⁸ Because the Committee substitute amended the definition of a "Class A designated felony act" under the juvenile code hinges in part on whether a firearm was used, the Committee substitute included a definition of "firearm."²⁹ A "firearm" is defined as a "handgun, rifle, shotgun, or other weapon which will or can be

22. Georgia General Assembly, SB 160, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/160>.

23. State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017.

24. *Id.*

25. SB 160 (SCS), § 5, p. 4, ll. 100–02, 2017 Ga. Gen. Assemb.

26. *Id.* No amendments were made to the criteria in Georgia Code 15-11-562 that the superior court shall consider in deciding whether to transfer. *Id.*

27. SB 160 (SCS), § 2, p. 2, ll. 29–45, 2017 Ga. Gen. Assemb. This section of the bill amends paragraph (12) of Code section 15-11-2, which defines a "Class A designated felony act" under the juvenile code. O.C.G.A. § 15-11-2(12); SB 160 (SCS), § 2, p. 2, ll. 29–31.

28. SB 160 (SCS), § 2, p. 2, ll. 32–43, 2017 Ga. Gen. Assemb.; *see also* O.C.G.A. § 15-11-2(12).

29. SB 160 (SCS), § 3, p. 3, ll. 73–75, 2017 Ga. Gen. Assemb.

converted to expel a projectile by the action of an explosive or electrical charge.”³⁰

SB 160 was read for the second time on February 23, 2017.³¹ On February 24, 2017, the Senate read the bill for the third and final time.³² The Senate passed the Committee substitute of SB 160 that same day by a vote of 40 to 12.³³

House Consideration of SB 160

Representative Bert Reeves (R-34th) sponsored SB 160 in the House.³⁴ The bill was first read in the House on February 27, 2017, and was assigned to the House Judiciary Non-Civil Committee.³⁵ The House read SB 160 for the second time the following day.³⁶ While in the House Judiciary Non-Civil Committee, Representatives Reeves and Alan Powell (R-32nd) and Senators Kirk and Harper worked together to change SB 160.³⁷ On March 22, 2017, the House Judiciary Non-Civil Committee favorably reported the bill by substitute.³⁸

The House Judiciary Non-Civil Committee amended the Senate Public Safety Committee substitute of SB 160 in seven distinct ways. First, the House Judiciary Non-Civil Committee created a new definition of a “public safety officer” which included more than peace officers and correctional officers.³⁹ The Committee removed

30. *Id.*

31. State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017.

32. *Id.*

33. *Id.*; Georgia Senate Voting Record, SB 160, Vote #89 (Feb. 24, 2017).

34. Georgia General Assembly, SB 160, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/160>.

35. State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017.

36. *Id.*

37. *Compare* SB 160 (SCS), 2017 Ga. Gen. Assemb., with SB 160 (HCS), 2017 Ga. Gen. Assemb. These changes incorporated many provisions from HB 116 and HB 258. Video Recording of House Proceedings at 52 min., 15 sec. (Mar. 27, 2017) (remarks by Vice Chairman Reeves (R-34th)), https://www.youtube.com/watch?v=xvUEB78ZN_4 [hereinafter House Proceedings Video]. Importantly, the House Judiciary Non-Civil Committee favorably reported SB 160 the same day that the Senate Public Safety Committee favorably reported HB 116. State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017. At this stage, the two bills were modified by their respective committees to be identical in all respects. *Compare* HB 116 (SCS), 2017 Ga. Gen. Assemb., with SB 160 (HCS), 2017 Ga. Gen. Assemb. Both were entitled the “Back the Badge Act of 2017.” HB 116 (SCS), § 1-1, p. 1, l. 22, 2017 Ga. Gen. Assemb.; SB 160 (HCS), § 1-1, p. 1, l. 22, 2017 Ga. Gen. Assemb.

38. State of Georgia Final Composite Sheet, SB 160, May 11, 2017.

39. Video Recording of House Non-Civil Judiciary Committee Meeting at 43 min., 17 sec. (Mar. 20,

“officer of the court” from the definition and replaced it with three specific occupations previously considered “officers of the court.”⁴⁰ These occupations are “jail officer,” “juvenile correctional officer,” and “probation officer.”⁴¹ The House Judiciary Non-Civil Committee then added stand-alone definitions for all three occupations.⁴²

Second, the House Judiciary Non-Civil Committee added tougher punishments for certain aggravated assaults when committed against public safety officers.⁴³ Under the Senate Committee substitute, all aggravated assaults committed against public safety officers were to be “punished by imprisonment for not less than five nor more than [twenty] years.”⁴⁴ The House Committee substitute broke down aggravated assaults into three separate sections—A, B, and C—and added distinct penalties for each.

Under Code section 16-5-21(c)(1)(A) (Section A), an aggravated assault against a public safety officer that “occurs by the discharge of a firearm by a person who is at least [seventeen] years of age,” shall be punished by imprisonment “for not less than ten nor more than [twenty] years.”⁴⁵ Thus, if a Section A offender is at least seventeen years of age, he or she is subject to a mandatory minimum sentence of ten years.⁴⁶

Under Code section 16-5-21(c)(1)(B) (Section B), an aggravated assault against a public safety officer “not involv[ing] the discharge of a firearm by a person who is at least [seventeen] years of age, and [not involving] the use of the person’s body,” shall be punished by imprisonment “for not less than five nor more than [twenty] years.”⁴⁷

2017) (remarks by Rep. Bert Reeves (R-34th)), <https://livestream.com/accounts/19771755/events/6810993/videos/152249598> [hereinafter SB 160 House Committee Video]; compare SB 160 (SCS) § 6, p. 5, ll. 148–49, 2017 Ga. Gen. Assemb., with SB 160 (HCS), § 3-1, p. 5, ll. 153–55, 2017 Ga. Gen. Assemb.

40. SB 160 House Committee Video, *supra* note 39, at 44 min., 6 sec.; compare SB 160 (HCS), § 3-1, p. 5, ll. 153–55, 2017 Ga. Gen. Assemb., with SB 160 (SCS), § 6, p. 5, ll. 144–49, 2017 Ga. Gen. Assemb.

41. SB 160 (HCS), § 3-1, p. 5, ll. 153–55, 2017 Ga. Gen. Assemb.

42. SB 160 (HCS), § 3-1, p. 5, ll. 142–47, 150–52, 2017 Ga. Gen. Assemb.

43. SB 160 (HCS), § 3-2, pp. 6–7, ll. 179–201, 2017 Ga. Gen. Assemb.

44. SB 160 (SCS), § 7, p. 6, ll. 171–74, 2017 Ga. Gen. Assemb. The Senate Public Safety Committee substitute retained the punishment in Georgia Code section 16-5-21 previously applied to aggravated assaults upon a peace officer. *Id.*

45. SB 160 (HCS), § 3-2, p. 6, ll. 179–90, 2017 Ga. Gen. Assemb.

46. SB 160 (HCS), § 3-2, p. 6, ll. 183–90, 2017 Ga. Gen. Assemb.

47. SB 160 (HCS), § 3-2, p. 6, ll. 191–93, 2017 Ga. Gen. Assemb.

Thus, if a Section B offender is at least seventeen years-old, the offender is subject to a mandatory minimum sentence of three years.⁴⁸

Under Code section 16-5-21(c)(1)(C) (Section C), an aggravated assault against a public safety officer “only involving the use of the person’s body” shall be punished by imprisonment “for not less than five nor more than [twenty] years,” with no mandatory minimum sentence.⁴⁹ As in Sections B and C, the House Judiciary Non-Civil Committee carved out lower penalties for assaults using only the person’s body, as opposed to assaults using “such person’s hands,” as was in the Senate Committee substitute.⁵⁰

Third, the House Judiciary Non-Civil Committee substitute made changes to the bill regarding the mandatory minimum sentences. The House Committee substitute allowed the court to depart from the mandatory minimum sentences when the prosecuting attorney and defendant agree to a lower sentence.⁵¹ Further, offenders must be at least seventeen years of age to be subjected to any mandatory minimum sentence.⁵²

Fourth, the House Judiciary Non-Civil Committee added monetary fines of at least \$2,000 for individuals convicted of an aggravated assault under Code section 16-5-21(c)(1) or aggravated battery under Code section 16-5-24(c)(1).⁵³ The Committee substitute also increased the indemnification payment made to spouses, dependents, or legal guardians of deceased or disabled law enforcement officers from \$100,000 to \$150,000.⁵⁴ Additionally, the House Judiciary Non-Civil Committee created a fine for a person convicted of resisting, obstructing, or opposing an officer under Code section 16-10-24.⁵⁵ The fine for this offense is a minimum of \$300.⁵⁶ For all

48. SB 160 (HCS), § 3-2, p. 6, ll. 194–95, 2017 Ga. Gen. Assemb.

49. SB 160 (HCS), § 3-2, p. 7, ll. 200–01, 2017 Ga. Gen. Assemb.

50. Compare SB 160 (SCS), § 7, p. 6, ll. 174–177, 2017 Ga. Gen. Assemb., with SB 160 (HCS), § 3-2, pp. 6–7, ll. 191–201, 2017 Ga. Gen. Assemb.

51. SB 160 (HCS), § 3-2, p. 6, ll. 188–90, 2017 Ga. Gen. Assemb.; *id.* § 3-3, p. 9, ll. 287–89.

52. *Id.* § 3-2, p. 6, ll. 183–99; *id.* § 3-3, p. 9, ll. 283–89.

53. SB 160 (HCS), § 3-2, p. 6, ll. 202–08, 2017 Ga. Gen. Assemb.; *id.* § 3-3, p. 9, ll. 290–96; see also SB 160 House Committee Video, *supra* note 39, at 49 min., 30 sec.

54. SB 160 (HCS), § 4-1, p. 12, ll. 383–94, 2017 Ga. Gen. Assemb. This change, as well as the addition of monetary fines, were initially included in SB 154. SB 154 (SCS), § 2, p. 3, ll. 67–73, 2017 Ga. Gen. Assemb.; *id.* § 4, p. 6, ll. 203–09; *id.* § 3, p. 5, ll. 150–56.

55. See SB 160 (HCS), § 3-4, p. 11, ll. 360–66, 2017 Ga. Gen. Assemb.

56. *Id.*

of the above fines, the Committee substitute merged SB 154's requirement that these fines be earmarked for the Georgia State Indemnification Fund to pay indemnification for death or disability.⁵⁷

Fifth, the House Judiciary Non-Civil Committee amended the punishment under Code section 16-10-24 for persons who resist, obstruct, or oppose specific officers⁵⁸ while the officer is discharging his or her official duties.⁵⁹ Rather than a fifteen-year maximum sentence regardless of whether the offender had been previously sentenced under this section, the Committee substitute added incremental increases in punishment based on subsequent convictions.⁶⁰

Sixth, the House Judiciary Non-Civil Committee made minor changes to the provision amending Code section 16-10-24(c), relating to throwing, projecting, or expelling human or animal blood, urine, feces, vomitus, or seminal fluid on or at officers covered under the bill.⁶¹ The Committee substitute removed language criminalizing mere attempts to cause an otherwise qualifying officer to come into contact with bodily fluids, and added a "knowingly and willfully" mens rea requirement.⁶²

Seventh, the House Judiciary Non-Civil Committee substitute further expanded the definition of a "Class B designated felony act" under the juvenile code to include aggravated batteries "not upon a public safety officer."⁶³

57. *Id.* § 3-2, p. 7, ll. 204–08; *id.* § 3-4, p. 11, ll. 362–66; *see also* SB 154 (SCS), § 2, p. 3, ll. 76–78, 2017 Ga. Gen. Assemb.; *id.* § 3, p. 5, ll. 159–61.

58. SB 160 (HCS), § 3-4, p. 10, ll. 332–40, 2017 Ga. Gen. Assemb. Before SB 160, Code section 16-10-24 only covered law enforcement officers. *See* O.C.G.A. §16-10-24 (2016). However SB 160, as introduced, expanded the provision to include a "prison guard, jailer, correctional officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer . . . or conservation ranger." SB 160, as introduced, § 8, p. 8, ll. 240–45, 2017 Ga. Gen. Assemb.

59. SB 160 (HCS), § 3-4, p. 10, ll. 339–340, 2017 Ga. Gen. Assemb.

60. *Compare* SB 160 (HCS), § 3-4, p. 11, ll. 341–51, 2017 Ga. Gen. Assemb., *with* SB 160 (SCS), § 9, p. 9, ll. 296–302, 2017 Ga. Gen. Assemb.

61. *Compare* SB 160 (HCS), § 3-4, p. 11, ll. 352–59, 2017 Ga. Gen. Assemb., *with* SB 160 (SCS), § 9, pp. 9–10, ll. 303–12, 2017 Ga. Gen. Assemb. The officers covered by this section are "law enforcement officer[s], prison guard[s], jailer[s], correctional officer[s], community supervision officer[s], county or Department of Juvenile Justice juvenile probation officer[s], probation officer[s] serving pursuant to Article 6 of Chapter 8 of Title 42, or conservation ranger[s] in the lawful discharge or their official duties." SB 160 (HCS), § 3-4, p. 11, ll. 352–59, 2017 Ga. Gen. Assemb.

62. *Compare* SB 160 (HCS), § 3-4, p. 11, ll. 352–59, 2017 Ga. Gen. Assemb., *with* SB 160 (SCS), § 9, p. 10, l. 307, 2017 Ga. Gen. Assemb.; SB 160 House Committee Video, *supra* note 39, at 54 min., 40 sec.

63. SB 160 (HCS), § 2-1, p. 2, ll. 40–46, 2017 Ga. Gen. Assemb.

On March 24, 2017, the House read the bill for the third time.⁶⁴ That same day the House adopted and passed the Committee substitute by a vote of 102 to 44.⁶⁵

Final Consideration by Senate

The Senate did not change the House Judiciary Non-Civil Committee substitute for SB 160.⁶⁶ On March 30, 2017, the Senate passed the House amendments to SB 160 by a vote of 49 to 3.⁶⁷ SB 160 was sent to Governor Nathan Deal (R) on April 10, 2017, and signed into law on May 8, 2017.⁶⁸

The Act

The Act is divided into four main parts. Part I dictates that the bill shall be known as the “Back the Badge Act of 2017.”⁶⁹ Part II of the Act addresses the juvenile code and redefines aggravated assault, aggravated battery, and aggravated assault with a deadly weapon.⁷⁰ It also establishes original superior court jurisdiction over juveniles for these crimes.⁷¹ Part III of the Act creates a new Code section and redefines the term “public safety officer.”⁷² It also installs mandatory minimum sentencing for violent crimes, as well as for violence against a public safety officer.⁷³ Part IV of the Act addresses the indemnity payments made to families of deceased or disabled law enforcement officers.⁷⁴

64. State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017.

65. *Id.*; Georgia House of Representatives Voting Record, SB 160, Vote #322 (Mar. 24, 2017).

66. *See* Georgia Senate Voting Record, SB 160, Vote #306 (Mar. 30, 2017) (agreeing to House Substitute).

67. *Id.*

68. State of Georgia Final Composite Status Sheet, SB 160, May 11, 2017.

69. 2017 Ga. Laws 500, § 1-1, at 501.

70. 2017 Ga. Laws 500, § 2-1, at 501.

71. *Id.*, § 2-2, at 501–02.

72. *Id.*, § 3-1, at 503–04.

73. *See, e.g.*, 2017 Ga. Laws 500, § 3-2, at 504–06.

74. 2017 Ga. Laws 500, § 4-1, at 509.

Part I

Part I creates the title for the Act, declaring as follows: “The Act shall be known and may be cited as the ‘Back the Badge Act of 2017.’”⁷⁵

Part II

Part II contains the portions of the Act pertaining to the juvenile code. Part II contains four subsections which amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated.⁷⁶

Section 2-1 of the Act amends Code section 15-11-2.⁷⁷ Specifically, the Act reserves as a “Class A designated felony” an aggravated assault that is—in part—not against a public safety officer and not involving a firearm, and an aggravated battery that is not against a public safety officer.⁷⁸ The Act also amends the aggravated assault and aggravated battery provisions to include the broader term “public safety officer.”⁷⁹

Because the definition of a “Class A designated felony act” under the juvenile code now hinges, in part, on whether a firearm was used, Section 2-2 defines what constitutes a “firearm.”⁸⁰ This definition, added to Code section 15-11-560, intentionally excludes toy or replica guns and only covers weapons which can be “converted to expel a projectile by the action of an explosive or electrical charge.”⁸¹

Section 2-2 of the Act also amends Code section 15-11-560 by granting the superior court original jurisdiction over two additional offenses committed by juveniles.⁸² Specifically, the superior court

75. 2017 Ga. Laws 500, § 1-1, at 501.

76. 2017 Ga. Laws 500, at 501-03; *see* O.C.G.A. §§ 15-11-2, 15-11-560 to -562 (Supp. 2017).

77. 2017 Ga. Laws 500, § 2-1, at 501.

78. O.C.G.A. § 15-11-2(12)(A)(ii), (12)(B) (Supp. 2017).

79. 2017 Ga. Laws 500, § 2-1, at 501. For full discussion of the definition of “public safety officer,” *see infra* text accompanying notes 109-15.

80. *See* O.C.G.A. §§ 15-11-2(12), 15-11-560(h) (Supp. 2017); 2017 Ga. Laws 500, § 2-2, at 502.

81. O.C.G.A. § 15-11-560(h) (Supp. 2017); *see* Video Recording of House Non-Civil Judiciary Committee Meeting at 1 hr., 34 min., 50 sec. (Feb. 27, 2017) (remarks by Rep. Bert Reeves (R-34th)), <https://livestream.com/accounts/19771755/events/6810993/videos/150571239> [hereinafter SB 160 House Committee Video II]. The full definition of a firearm used in this code section is “a 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.” O.C.G.A. § 15-11-560(h) (2017).

82. 2017 Ga. Laws 500, § 2-2, at 501-02. Code section 15-11-560 only covers juveniles thirteen-to-

possesses original jurisdiction over juveniles who commit either an aggravated battery upon a public safety officer, or an aggravated assault upon a public safety officer with a firearm.⁸³ Section 2-2 of the Act, however, grants superior court judges the discretion to transfer juveniles accused under this Code section back to juvenile court.⁸⁴ This language, found in Code section 15-11-560, reflects a compromise made by the Senate Public Safety Committee to ensure accused juveniles have the protections of the juvenile court if the judge deems it appropriate.⁸⁵

Section 2-3 of the Act amends Code section 15-11-561(a) relating to when a juvenile court can waive its jurisdiction and transfer the case to superior court.⁸⁶ Generally, under Code section 15-11-561, juveniles may only be transferred to superior court after a petition has been filed, a hearing has been held, and the juvenile court has made certain determinations.⁸⁷ The Act amends the portion of this section relating to the required juvenile court determinations for petitions involving children who committed an act at the age of thirteen or fourteen by replacing “victim” with “an alleged victim who is not a

seventeen years-old. O.C.G.A. § 15-11-560(b) (2017). The Act added these two additional offenses to a list of eight, resulting in ten total offenses that, if committed by a juvenile, the superior court has original jurisdiction over. 2017 Ga. Laws 500, § 2-2, at 501–02. All ten offenses are as follows:

- (1) Murder; (2) Murder in the second degree; (3) Voluntary manslaughter;
- (4) Rape; (5) Aggravated sodomy; (6) Aggravated child molestation;
- (7) Aggravated sexual battery; (8) Armed robbery if committed with a firearm; (9) Aggravated assault if committed with a firearm upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-21; or (10) Aggravated battery upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-24.

O.C.G.A. § 15-11-560(b)(1)–(10) (Supp. 2017).

83. O.C.G.A. § 15-11-560(b)(9) (Supp. 2017).

84. O.C.G.A. § 15-11-560(b)(10) (Supp. 2017).

85. See SB 160 (SCS), § 5, p. 4, ll. 100–02, 2017 Ga. Gen. Assemb.; see also Richard E. Redding, *The Effects of Adjudicating and Sentencing Juveniles as Adults: Research and Policy Implications*, 1 YOUTH VIOLENCE & JUV. JUST. 128, 128–29 (2003).

86. 2017 Ga. Laws 500, § 2-3, at 502. Georgia Code section 15-11-561 explains the process by which juveniles may be transferred from juvenile to superior court. O.C.G.A. 15-11-561(a) (2017). However, this section does not apply to a juvenile accused of committing an aggravated assault with a firearm or an aggravated battery against a public safety officer. See O.C.G.A. § 15-11-560(b)(9)–(10) (Supp. 2017) (granting original jurisdiction over these and other crimes to the superior courts, thus making 15-11-561 inapplicable to those offenses).

87. O.C.G.A. § 15-11-561(a) (2017).

public safety officer.”⁸⁸ This process is not required for the specific crimes listed under Code section 15-11-560.⁸⁹

Section 2-4 of the Act amends Code section 15-11-562 to correspond with the changes made by Section 2-2.⁹⁰ The Act amends this section only to add aggravated assault with a firearm and aggravated battery, committed against a public safety officer, to the list of offenses which may be transferred to juvenile court.⁹¹ Although Code section 15-11-562 sets the criteria a superior court judge must consider when deciding whether to transfer a case to juvenile court, the Act made no change to this criteria.⁹²

Part III

Part III contains the portions of the Act that pertain to crimes and offenses. Sections 3-1, 3-2, 3-3, 3-4, and 3-5 amend Title 16 of the Official Code of Georgia Annotated, relating to assault and battery,

88. 2017 Ga. Laws 500, § 2-3, at 502.

89. See O.C.G.A. § 15-11-560(b)(1)–(10) (Supp. 2017).

90. 2017 Ga. Laws 500, § 2-4, 502–03. Section 2-2 of the Act amended Code section 15-11-560 to allow the superior court to transfer to juvenile court juveniles who commit the specific aggravated assault and battery listed in sections 15-11-560(b)(9) and 15-11-560(b)(10). 2017 Ga. Laws 500, § 2-2, at 501–02.

91. 2017 Ga. Laws 500, § 2-4, 502–03.

92. 2017 Ga. Laws 500, § 2-4, 502–03. The Code section sets forth a non-exhaustive list of criteria judges may consider:

- (1) The age of such child; (2) The seriousness of the alleged offense, especially if personal injury resulted; (3) Whether the protection of the community requires transfer of jurisdiction; (4) Whether the alleged offense involved violence or was committed in an aggressive or premeditated manner; (5) The impact of the alleged offense on the alleged victim, including the permanence of any physical or emotional injury sustained, health care expenses incurred, and lost earnings suffered; (6) The culpability of such child including such child’s level of planning and participation in the alleged offense; (7) Whether the alleged offense is a part of a repetitive pattern of offenses which indicates that such child may be beyond rehabilitation in the juvenile justice system; (8) The record and history of such child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions, and other placements; (9) The sophistication and maturity of such child as determined by consideration of his or her home and environmental situation, emotional condition, and pattern of living; (10) The program and facilities available to the juvenile court in considering disposition; and (11) Whether or not a child can benefit from the treatment or rehabilitative programs available to the juvenile court.

O.C.G.A. § 15-11-562(a)(1)–(11) (2017).

aggravated assault, aggravated battery, obstructing or hindering law enforcement officers, and riots in a penal institution.⁹³

Section 3-1 of the Act creates Code section 16-5-19, which defines the terms used in the article.⁹⁴ The Act provides a definition for “public safety officer” that includes numerous emergency and law enforcement positions.⁹⁵ This definition is broad, and includes a wide range of officers, including any “peace officer,” “correctional officer,” “emergency health worker,” “firefighter,” “highway emergency response operator,” “jail officer,” “juvenile correctional officer,” and “probation officer.”⁹⁶ The purpose of expanding the definition of “public safety officers” is to recognize that “probation officers[,] correction officers, juvenile correction officers, [and] juvenile probation officers who go out, boots on the ground . . . are just as much in the line of duty and in the line of danger as our police officers are.”⁹⁷

Section 3-2 of the Act revises Code section 16-5-21.⁹⁸ The Act creates a mandatory minimum sentence for individuals who are convicted of aggravated assault against public safety officers and who are at least seventeen years of age.⁹⁹ When originally introduced, SB 160 did not allow the court to depart from these mandatory minimum sentences.¹⁰⁰ In response to criticism, the Act includes a provision allowing the court to depart from such mandatory minimum sentences when the prosecuting attorney and

93. 2017 Ga. Laws 500, at 503–08.

94. 2017 Ga. Laws 500, § 3-1, at 503–04.

95. O.C.G.A. § 16-5-19 (Supp. 2017). Section 3-1 defines the terms “peace officer,” “correctional officer,” “emergency health worker,” “firefighter,” “highway emergency response operator,” “jail officer,” “juvenile correctional officer,” “officer of the court,” and “probation officer.” O.C.G.A. § 16-5-19 (Supp. 2017). Previously, jail officers, juvenile correctional officers, and probation officers were grouped under “officers of the court.” O.C.G.A. § 16-5-19 (2016).

96. O.C.G.A. § 16-5-19(9) (Supp. 2017).

97. House Proceedings Video, *supra* note 37, at 1 hr., 5 min., 38 sec.

98. 2017 Ga. Laws 500, § 3-2, at 504–06.

99. O.C.G.A. § 16-5-21 (Supp. 2017). The House Judiciary Non-Civil Committee incorporated HB 258’s mandatory minimum sentences into SB 160. *Compare* HB 258 (HCS), § 1, p. 1, ll. 15–19, 2017 Ga. Gen. Assemb., *with* SB 160 (HCS), § 3-2, p. 6, ll. 183–90, 2017 Ga. Gen. Assemb.

100. *See* SB 160, as introduced, § 6, p. 4, ll. 125–27, 2017 Ga. Gen. Assemb. Neither the bill as introduced nor the Senate Public Safety Committee substitute allowed the judge to depart from the mandatory minimum sentences if either the offense was an aggravated battery, or the aggravated assault involved the use of any weapon, object, or device, other than such person’s hands. *Id.*; SB 160, as introduced, § 7, p. 6, ll. 196–201, 2017 Ga. Gen. Assemb.; SB 160 (SCS), § 7, p. 6, ll. 171–77, 2017 Ga. Gen. Assemb.; *id.* § 8, p. 8, ll. 246–51.

defendant have agreed to a sentence that is below such mandatory minimum sentence.¹⁰¹ Section 3-2 also creates a fine of at least \$2,000 for any person convicted under Code section 16-5-21.¹⁰² Finally, each sentence under Section 3-2 excludes juveniles under seventeen years of age from the mandatory minimums.¹⁰³ Excluding juveniles under seventeen was an important compromise made by the House Judiciary Non-Civil Committee.¹⁰⁴

Section 3-2 creates three distinct categories of aggravated assault against a public safety officer.¹⁰⁵ The penalties under Section 3-2 depend on the method and instrumentality by which the offender commits aggravated assault against the officer.¹⁰⁶ The first and most severe category encompasses aggravated assault against a public safety officer which “occurs by the discharge of a firearm”¹⁰⁷ This offense is punishable by imprisonment “for not less than ten nor more than [twenty] years.”¹⁰⁸ As discussed above, the offender must be at least seventeen years old.¹⁰⁹

The second category of aggravated assault against a public safety officer covers offenses which do not involve either “the discharge of a firearm” or the “use of the [offender’s] body.”¹¹⁰ Offenses in this category are punishable by imprisonment “for not less than five nor more than [twenty] years.”¹¹¹ All offenders over the age of seventeen are subjected to a mandatory minimum of three years with no possibility for the sentence to be suspended, stayed, probated,

101. 2017 Ga. Laws 500, § 3-2, at 505.

102. *Id.* The fine will be earmarked for the Georgia State Indemnification Fund. O.C.G.A. § 16-5-21(c)(2) (Supp. 2017).

103. O.C.G.A. § 16-5-19 (Supp. 2017).

104. *See* SB 160 House Committee Video, *supra* note 39, at 48 min., 39 sec. Representative Bert Reeves (R-34th) stated “we’ve been very conscious of making sure that we are not subjecting any potential juveniles who are transferred to superior court” to the mandatory minimum sentences. *Id.* at 52 min., 34 sec. Some opposed the mandatory minimum sentences because they remove discretion from judges. *See id.* at 46 min., 45 sec. Allowing judges to agree to a sentence below the mandatory sentence would give partial discretion back to the bench. *Id.*

105. *See id.* at 46 min., 15 sec. The House Judiciary Non-Civil Committee amended SB 160 to include HB 258’s tougher punishments for certain aggravated assaults when committed against public safety officers. *Compare* SB 160 (HCS), § 3-2, pp. 6–7, ll. 183–90, 2017 Ga. Gen. Assemb., with HB 258 (HCS), § 1, p. 1, ll. 15–19, 2017 Ga. Gen. Assemb.

106. 2017 Ga. Laws 500, § 3-2, at 505.

107. O.C.G.A. § 16-5-21(c)(1)(A) (Supp. 2017).

108. *Id.*

109. *Id.*

110. O.C.G.A. § 16-5-21(c)(1)(B) (Supp. 2017).

111. *Id.*

deferred, or withheld by the sentencing court.¹¹² Oddly, for offenders of this section, the minimum sentence is five years although the mandatory incarceration is only three years.¹¹³ During the House Judiciary Non-Civil Committee hearing, Representative Bert Reeves (R-34th) explained this apparent discrepancy meant the minimum sentence an offender can receive is five years, but the offender must serve at least three in prison and is thereafter eligible for parole.¹¹⁴

The third and final aggravated assault category created under this section addresses aggravated assault against a public safety officer “only involving the use of the person’s body.”¹¹⁵ The penalty for offenses under this subsection is imprisonment “for not less than five nor more than [twenty] years.”¹¹⁶ Unlike the other two categories of aggravated assault, this category does not contain a mandatory minimum sentence.¹¹⁷ This subsection encompasses assaults involving the use of the person’s “body,” not just assaults using “such person’s hands.”¹¹⁸ The legislature changed the word “hand” to “body” in response to fear that only referring to a person’s hands would not capture offenders who “elbowed . . . kned . . . or kicked an officer.”¹¹⁹

Section 3-3 of the Act resembles Section 3-2 in many ways. While Section 3-2 applies to certain aggravated assaults, Section 3-3 applies to similar aggravated batteries. Specifically, Section 3-3 of the Act amends Code section 16-5-24 by adding a three-year mandatory minimum incarceration sentence for aggravated battery against a public safety officer engaged in his or her duties.¹²⁰ Like Section 3-2, juveniles under seventeen are not subjected to the mandatory

112. *Id.* “[H]owever, in the court’s discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory minimum.” *Id.*

113. *Id.* (stating that offenders “shall be punished by imprisonment for not less than five nor more than 20,” and that they “shall be sentenced to a mandatory minimum term of imprisonment of three years”).

114. SB 160 House Committee Video, *supra* note 39, at 56 min., 18 sec.

115. O.C.G.A. § 16-5-21(c)(1)(C) (Supp. 2017).

116. *Id.*

117. *See id.*

118. *Id.*; compare SB 160 (SCS), § 7, p. 6, ll. 174–177, 2017 Ga. Gen. Assemb., with SB 160 (HCS), § 3-2, pp. 6–7, ll. 191–201, 2017 Ga. Gen. Assemb.

119. SB 160 House Committee Video, *supra* note 39, at 47 min., 30 sec.; compare SB 160 (SCS), § 7, p. 6, ll. 174–77, 2017 Ga. Gen. Assemb., with O.C.G.A. § 16-5-21(c)(1)(C) (Supp. 2017).

120. 2017 Ga. Laws 500, § 3-3, at 506–07.

minimum sentence, and the judge may also depart from the mandatory minimum if the prosecution and defense agree.¹²¹ Section 3-3 of the Act further amends Code section 16-5-24 by imposing a fine in an amount of at least \$2,000 for offenders.¹²²

Section 3-4 of the Act amends Code section 16-10-24, regarding obstruction of a law enforcement officer.¹²³ The Act adds new language related to the obstruction of a “prison guard, jailer, correctional officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or a conservation ranger.”¹²⁴ It also increases the penalty upon the second or third violation.¹²⁵ First-time offenders shall be imprisoned “for not less than one nor more than five years.”¹²⁶ A second-time offender shall be punished by imprisonment “for not less than two nor more than ten years.”¹²⁷ Finally, upon the third offense, the offender shall be punished by imprisonment “for not less than three nor more than [fifteen] years.”¹²⁸

Notably, Section 3-4 of the Act creates a charge for persons who obstruct officers by “knowingly or willfully throwing, projecting, or expelling human or animal blood, urine, feces, vomitus, or seminal fluid” at officers.¹²⁹ Among others, this section protects a range of officers who work in jails and correctional facilities.¹³⁰ This section also imposes a \$300 fine on any person convicted under Code section 16-10-24.¹³¹

121. 2017 Ga. Laws 500, § 3-3, at 507.

122. *Id.*

123. 2017 Ga. Laws 500, § 3-4, at 507–08.

124. O.C.G.A. § 16-10-24(a) (Supp. 2017).

125. O.C.G.A. § 16-10-24(b) (Supp. 2017).

126. O.C.G.A. § 16-10-24(b) (Supp. 2017).

127. *Id.*

128. *Id.*

129. O.C.G.A. § 16-10-24(c) (Supp. 2017). The punishment for this violation is “imprisonment for not less than one year nor more than five years.” O.C.G.A. § 16-10-24(c) (Supp. 2017). While in the House Non-Civil Judiciary Committee, the Committee simplified this provision and removed the language “causing or attempting to cause” a covered officer to come into contact with the fluid or material named in this section, because it posed issues regarding the intent required to violate this section. Compare SB 160 (HCS), § 3-4, p. 11, ll. 352–59, 2017 Ga. Gen. Assemb., with SB 160 (SCS), § 9, p. 10, l. 307, 2017 Ga. Gen. Assemb.; SB 160 House Committee Video, *supra* note 39, at 54 min., 40 sec.

130. See O.C.G.A. § 16-10-24(a)–(c) (Supp. 2017).

131. O.C.G.A. § 16-10-24(d) (Supp. 2017).

Section 3-5 of the Act defines “penal institution.”¹³² Under Code section 16-10-56, a penal institution is “any place of confinement for persons accused of or convicted of violating a law of this state or an ordinance of a municipality of political subdivision of this state.”¹³³

Part IV

Section 4-1 of the Act amends Code section 45-9-85 by increasing the indemnification payment from \$100,000 to \$150,000.¹³⁴

Analysis

Controversial Intended and Unintended Consequences

Senators Tyler Harper (R-7th), David Shafer (R-48th), Jeff Mullis (R-53rd), Greg Kirk (R-13th), Bill Cowsert (R-46th), and Steve Gooch (R-51st), introduced the Act to support police officers in the aftermath of the Dallas shootings.¹³⁵ Although the Act is a combination of five different bills, the overarching goal of the Act is better support and protection for Georgia’s public safety officers.¹³⁶ However, critics are concerned about the costs of these protections.

Increased Punishment and Imposed Mandatory Minimum Sentences

Perhaps the most controversial part of the Act is found in Section 3-2. This section expands the Code section to cover “public safety officers” and aggravated assaults and imposes mandatory minimum sentences for certain crimes.¹³⁷ The effect of expanding this definition is that the legislature has “widened the number of offenses eligible for mandatory minimum [sentences].”¹³⁸

132. O.C.G.A. § 16-10-56(a) (Supp. 2017).

133. O.C.G.A. § 16-10-56(a) (Supp. 2017).

134. 2017 Ga. Laws 500, § 4-1, at 509.

135. See Davis Interview, *supra* note 4, at 9 min., 30 sec.

136. See *id.* at 10 min., 53 sec.; SB 160 (HCS), p. 1, ll. 1–2, 2017 Ga. Gen. Assemb.

137. 2017 Ga. Laws 500, § 3-2, at 504–06.

138. House Proceedings Video, *supra* note 37, at 58 min., 30 sec. (remarks by Rep. Robert Trammell (D-132nd)).

A negative consequence of mandatory minimum sentences is that they reduce judicial discretion.¹³⁹ Mandatory minimum sentences may be necessary for crimes where there is wide disparity in judicial sentencing; however, “there was never any empirical evidence presented, either in committee or on the floor,” showing that superior court judges were not sentencing appropriately in regards to the crimes the mandatory minimum sentences cover.¹⁴⁰

To curb the potential negative effect of reducing judicial discretion, the drafters reached a compromise allowing a court to depart from the mandatory minimum by accepting other sentences when the prosecutor and defendant agree.¹⁴¹ This caveat was intended to mollify the opponents of mandatory minimum sentences because it recognized the importance of judicial discretion at times when mandatory minimum sentences are inappropriate.¹⁴² According to critics, mandatory minimum sentences give “prosecutors—not judges—[] the authority to extend lenience.”¹⁴³ Mandatory minimum sentences give prosecutors part of the discretion the judge should have; prosecutors have unreviewable discretion over both what charges to bring and whether to participate in plea bargaining.¹⁴⁴

In addition, it is unclear how allowing plea deals below the mandatory minimum sentences will affect cases that reach trial. Supporters argue that mandatory minimum sentences increase the number of successful plea bargains, thus decreasing litigation, because defendants are incentivized to accept the plea. However, the opposite effect may occur because defendants facing a high

139. Davis Interview, *supra* note 4, at 6 min., 30 sec.

140. See Telephone Interview with Rep. Robert Trammell (D-132nd), House Minority Leader at 5 min., 6 sec. (Apr. 3, 2017) (on file with Georgia State University Law Review) [hereinafter Trammell Interview].

141. O.C.G.A. §§ 16-5-21(c)(1)(A)–(B), -24(c)(1) (Supp. 2017). “[I]n the court’s discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below the mandatory minimum.” *Id.*

142. See Trammell Interview, *supra* note 140, at 8 min., 57 sec.

143. Bill Rankin, *Armed Robbery in Georgia: Unequal Justice*, ATLANTA J.-CONST. (Feb. 24, 2013, 7:57 AM), <http://www.myajc.com/news/state—regional-govt—politics/armed-robbery-georgia-unequal-justice/1GxPL05f1SSHMJHVt6IVxO/>.

144. Evan Bernick & Paul J. Larkin, Jr., *Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms*, LEGAL MEMORANDUM (Heritage Found., Washington, D.C.), Feb. 10, 2014, at 3.

mandatory minimum sentence may be more willing to go to trial and “take their chances” rather than plea.¹⁴⁵

Superior Court Jurisdiction of Juveniles

Prior to this Act, juveniles could be tried in superior court as adults in two circumstances: (a) under a discretionary transfer¹⁴⁶ or (b) if the youth fell within one of the statutory exclusions.¹⁴⁷ The Act adds two more crimes to this list of statutory exclusions: (a) aggravated assault if committed with a firearm upon a public safety officer, and (b) aggravated battery upon a public safety officer.¹⁴⁸

As with the rest of this Act, the intended consequence is to “send a message” that Georgia will treat offenses against public safety officers seriously.¹⁴⁹ However, juveniles tried as adults lose “all protective and rehabilitative possibilities available.”¹⁵⁰ Because juvenile offenders tried as adults have less access to reintegration and employment resources, an increase in recidivism is a possible unintended consequence of this change in jurisdiction.¹⁵¹ However, to offset these negative consequences, the superior court has discretion to transfer a case back to the juvenile court.¹⁵²

Constitutional Challenges

The Act’s changes to Code section 16-10-24, relating to obstructing or hindering law enforcement officers, are controversial.¹⁵³ Civil rights groups in Georgia argue that Section 3-4

145. House Proceedings Video, *supra* note 37, at 58 min., 30 sec. (remarks by Rep. Robert Trammell (D-132nd)).

146. O.C.G.A. § 15-11-561(a) (Supp. 2017).

147. O.C.G.A. § 15-11-560(b) (Supp. 2017). The statutory exclusions include: murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery committed with a firearm. *Id.*

148. 2017 Ga. Laws XXX, §§ 2-1, 2-2, at X–X.

149. House Proceedings Video, *supra* note 37, at 1 hr., 5 min., 38 sec. (remarks by Rep. Bert Reeves (R-34th)).

150. Redding, *supra* note 85, at 129.

151. *Id.*

152. O.C.G.A. § 15-11-560(e)(1) (Supp. 2017).

153. See Michelle Baruchman, *Civil Rights Groups Oppose State Bills Affecting Ability to Protest*, ATLANTA J.-CONST. (Mar. 15, 2017, 12:37 PM), <http://www.ajc.com/news/state—regional-govt—politics/civil-rights-groups-oppose-state-bills-affecting-ability-protest/PeHRptUOIcaqLC1SOi39O/>

of the Act is a “thinly-veiled attempt[] to restrict freedom of speech and [the] right to peacefully assemble in protest.”¹⁵⁴ Andrea Young, Executive Director of the American Civil Liberties Union of Georgia, stated, “[w]e are opposed to any legislation that would enhance penalties, [or] create felonies for people who are involved in protest”¹⁵⁵ Although the First Amendment protects the right of citizens to peacefully protest, this is not an absolute right because the government may impose reasonable restrictions on the time, place, and manner of protected speech.¹⁵⁶ These restrictions are permissible as long as they “are justified without reference to the content of the regulated speech . . . [,] are narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information.”¹⁵⁷

One such permissible restriction is requiring a permit for a protest or assembly.¹⁵⁸ Public Safety Committee Chairman Tyler Harper argues the Act “only deals with people who do not go through the proper channels to hold a protest”¹⁵⁹ Thus, the changes in penalties do not remove the right to assemble in protest, but only create penalties for not following the permissible requirements.¹⁶⁰ However, legal disputes exist, and there is still controversy over whether requiring permits, although generally accepted, is a veiled attempt to stifle free speech.¹⁶¹

154. See Baruchman, *supra* note 153.

155. *Id.*

156. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

157. *Id.* (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)) (internal quotation marks omitted).

158. See, e.g., *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 322 (2002). The Supreme Court specifically stated:

If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right.

Cox v. New Hampshire, 312 U.S. 569, 576 (1941).

159. Baruchman, *supra* note 153.

160. See *id.*

161. See *Ward*, 491 U.S. at 791. Under Code section 16-10-56, “[n]o person legally confined to a penal institution shall commit an unlawful act of violence or any other act in a violent or tumultuous manner in a penal institution.” O.C.G.A. § 16-10-56(b) (Supp. 2017).

Similarly, the Act's definition of a "penal institution" may pose problems for individuals engaged in protests. A person who violates this section is guilty of a felony.¹⁶² Prior to the Act, "penal institution," was undefined and juries determined whether a defendant was confined in a penal institution when committing the offense in question.¹⁶³ However, there was general consensus that "penal institution" encompassed the typical jail or prison.¹⁶⁴

Under the Act, the term "penal institution" is now broadly defined.¹⁶⁵ In the past, a "penal institution" was limited to jails and prisons, it is likely that under the new definition there will be no such limit. When analyzing the definition of "penal institution" in other states, it is clear that many states view a "penal institution" much more broadly than Georgia has up to this point. For example, Illinois' definition of a "penal institution" includes "a penitentiary, state farm, reformatory, prison, jail . . . or other institution for the incarceration or custody of persons under sentence for offense or awaiting trial or sentence for offenses."¹⁶⁶ In finding that a correctional center was a penal institution under the Illinois Code, the court in *People v. Orrs* found dispositive that "guards are present, [and] its inmates . . . are not there voluntarily."¹⁶⁷

Unlike Illinois, Georgia does not limit "penal institution" to an "institution."¹⁶⁸ Interpretations of Georgia's definition could produce uncomfortable results. For example, a protestor arrested and placed in a police officer's squad car may be considered in a "penal institution" because the protestor is in a place of confinement.¹⁶⁹ Thus, if the protestor acts in a "violent or tumultuous manner" while in the car, he or she could possibly be charged with creating a "riot in

162. O.C.G.A. § 16-10-56(c) (Supp. 2017).

163. See *Paul v. State*, 308 Ga. App. 275, 278, 707 S.E.2d 171, 174 (2011) (holding "the question of whether the Harris County jail qualified as a penal institution under O.C.G.A. § 16-10-56 was properly for the jury").

164. See *Chynoweth v. State*, 331 Ga. App. 123, 126, 768 S.E.2d 536, 540 (2015) (stating Georgia Code section 16-10-56 does not apply "outside of a penal institution"); *Glanton v. State*, 283 Ga. App. 232, 233, 641 S.E.2d 234, 235 (2007) (defendant conceded that county jail was a penal institution).

165. See O.C.G.A. § 16-10-56(a) (Supp. 2017). A "penal institution" is now "any place of confinement for persons accused of or convicted of violating a law of this state or an ordinance of a municipality or political subdivision of this state." *Id.*

166. *People v. Orrs*, 408 N.E.2d 1105, 1107 (Ill. App. Ct. 1980).

167. *Id.*

168. See O.C.G.A. § 16-10-56(a) (Supp. 2017).

169. See *id.*

a penal institution.”¹⁷⁰ This is not to say courts or juries would necessarily uphold such a finding, but under the Act’s definition of a penal institution, this appears possible.¹⁷¹

Georgia Criminal Justice Policy Considerations

A policy question posed by the Act is whether mandatory minimum sentences, particularly affecting first-time and juvenile offenders, are aligned with Georgia’s recent criminal justice reform policies. From 1990 to 2010, Georgia’s inmate population more than doubled.¹⁷² During this time, Georgia focused on “tough on crime” legislation, which resulted in one in thirteen Georgians being under correctional control by 2010.¹⁷³ Along with this increase in inmates came a drastic increase in cost; Georgia spent more than one billion dollars on corrections in 2012.¹⁷⁴ Despite the increased cost and incarceration rates, recidivism rates remained high.¹⁷⁵ In response to the growing cost, Governor Deal created a special council to implement evidence-driven reform in Georgia’s criminal justice system.¹⁷⁶ The goal of the special council was to develop reforms to decrease costs and increase public safety.¹⁷⁷ The special council’s policies “focused prison space on violent, career criminals while strengthening probation, drug courts and other sentencing alternatives for nonviolent offenders.”¹⁷⁸ These reforms worked, and county jail population across the state dropped to its lowest level since 2005.¹⁷⁹

170. See O.C.G.A. § 16-10-56(b) (Supp. 2017).

171. See O.C.G.A. § 16-10-56 (Supp. 2017).

172. PEW CTR. ON THE STATES., 2012 GEORGIA PUBLIC SAFETY REFORM 2 (2012), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewgeorgiasafetyreformpdf.pdf.

173. Gregory Newburn, *Mandatory Minimum Sentencing Reform Saves States Money and Reduces Crime Rates*, THE STATE FACTOR (Am. Legislative Exch. Council, Arlington, V.A.) Mar. 2016, at 6.

174. *Id.*

175. JUDGE MICHAEL P. BOGGS & W. THOMAS WORTHY, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 3 (2015), https://dcs.georgia.gov/sites/dcs.georgia.gov/files/related_files/site_page/2014-2015-GA-Council-on-Criminal-Justice-Reform.pdf.

176. Newburn, *supra* note 173, at 6. The cost of corrections includes more than the price of incarceration. See GA. DEP’T OF CORRS., FY 2015 ALLOCATION OF COST TO INMATES, PROBATIONERS, ETC. 1 (2015).

177. BOGGS & WORTHY, *supra* note 175, at 11.

178. *Id.* at 3.

179. *Id.* at 17.

The Act, by increasing sentence lengths and imposing mandatory minimum sentences, potentially regresses back toward the former “tough on crime” policies.¹⁸⁰ However, the changes in sentencing lengths only affect serious crimes and are intended to discourage crimes against public safety officers.¹⁸¹

The real question is whether the Act was necessary. Some critics claim the Act is simply a “feel good bill” with a “catchy title.”¹⁸² Prior to the Act, judges already had the discretion to “throw the book” at offenders who commit the crimes the Act covers.¹⁸³ Opponents of the Act argue increasing sentencing lengths, imposing mandatory minimum sentences, and removing judicial discretion are “steps in the wrong direction.”¹⁸⁴

Civilian Relationships with Law Enforcement Officers

Across the country, tensions have increased between police officers and communities of color.¹⁸⁵ These tensions typically center on race and cultural differences because approximately 73% of America’s police officers are white, and African Americans are incarcerated at more than five times the rate of white Americans.¹⁸⁶ One major concern for states enacting Blue Lives Matter bills, such as SB 160, is that these bills may cause further damage to the already strained relationship between citizens and law enforcement officers.¹⁸⁷ Although it is too early to know the actual impact Blue Lives Matter laws will have on police-community relations, some

180. House Proceedings Video, *supra* note 37, at 58 min., 30 sec. (remarks by Rep. Robert Trammell (D-132nd)).

181. See Davis Interview, *supra* note 4, at 9 min., 30 sec.

182. See Trammell Interview, *supra* note 140, at 5 min., 20 sec.

183. *Id.*

184. *Id.* at 2 min., 27 sec.

185. Jen Fifield, *Can Diverse Police Departments Ease Community Tension?*, PBS (Aug. 22, 2016, 9:04 AM), <http://www.pbs.org/newshour/rundown/can-diverse-police-departments-ease-community-tension/>; see also Scot Haug & Dale Stockton, *Reducing Tensions Between Police and Citizens*, HENDON MEDIA GROUP, http://www.hendonpub.com/resources/article_archive/results/details?id=5536 (last visited Sept. 22, 2017).

186. Perry Bacon Jr., *Trump and Other Conservatives Embrace ‘Blue Lives Matter’ Movement*, NBC NEWS (July 23, 2016, 4:46 PM), <http://www.nbcnews.com/politics/2016-election/trump-other-conservatives-embrace-blue-lives-matter-movement-n615156>; *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/criminal-justice-fact-sheet/> (last visited Sept. 22, 2017).

187. *A Look at New ‘Blue Lives Matter’ Laws*, *supra* note 5.

critics argue these laws treat the choice to work in law enforcement as equivalent to immutable characteristics, such as race.¹⁸⁸ Opponents further believe that Blue Lives Matter bills unjustly give police officers the same protections as minority groups and could be used to punish civilians fighting against police brutality.¹⁸⁹ Chanelle Helm, co-founder of Black Lives Matter Louisville, argued that Kentucky's Blue Lives Matter legislation was "insensitive to the community of color and people who hate crime laws actually represent."¹⁹⁰

The Black Lives Matter movement was a response to cases in which police used excessive or deadly force to apprehend African Americans, when such force could most likely have been avoided.¹⁹¹ The Blue Lives Matter movement was a direct response to the Black Lives Matter movement, thus exacerbating the tension that already existed between proponents of the respective movements.¹⁹² By passing laws in support of the Blue Lives Matter movement, states risk the perception of "choosing sides" and further increasing the tension between African American civilians and law enforcement officers.¹⁹³ Proponents of the bill point out that violence against police officers has been steadily increasing.¹⁹⁴ However, opponents of the bill point out that there were sixty-three law enforcement officers shot to death in 2016, which is lower than the average for the previous ten years.¹⁹⁵ These differing views typify the divide between opponents and proponents. The impact on police-community relations that Blue Lives Matter bills have remains to be seen.¹⁹⁶

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188. See Jonathan Russell, *Here's What's Wrong With #BlueLivesMatter*, HUFFINGTON POST (July 9, 2016, 2:56 PM), http://www.huffingtonpost.com/jonathan-russell2/heres-whats-wrong-with-bl_b_10906348.html.

189. See Jessica Schladebeck, *Kentucky 'Blue Lives Matter' Law Classifies Violence Against Police as Hate Crime*, NY DAILY NEWS (June 29, 2017), <http://www.nydailynews.com/news/national/ky-blue-lives-matter-law-dubs-violence-cops-hate-crime-article-1.3288793>.

190. *Id.*

191. See Day, *supra* note 7.

192. See Adam Quinn, *How "Blue Lives Matter" Perpetuates Police Violence*, PUBLIC SEMINAR (Oct. 12, 2016), <http://www.publicseminar.org/2016/10/how-blue-lives-matter-perpetuates-police-violence/#.WXjVeYjyvIU>.

193. See Meyerson, *supra* note 15.

194. *Id.*

195. *Id.*

196. See Quinn, *supra* note 192.

