

\_\_\_\_\_ offers the following  
 substitute to HB 984:

A BILL TO BE ENTITLED  
 AN ACT

1 To amend Titles 16 and 17 of the Official Code of Georgia Annotated, relating to crimes and  
 2 offenses and criminal procedure, respectively, so as to create the new offense of bias  
 3 motivated intimidation, providing criminal and civil penalties for targeting a victim or a  
 4 victim's property because of the defendant's belief regarding certain attributes of the victim;  
 5 to provide for definitions; to repeal certain provisions regarding sentencing of defendants  
 6 guilty of crimes involving bias or prejudice, notification to seek enhanced penalty, and  
 7 determination of defendant's guilt, object of the offense, and enhancement of sentence; to  
 8 provide for reporting of the crime of bias motivated intimidation and the attributes of the  
 9 victim; to amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia  
 10 Annotated, relating to the procedure for sentencing and imposition of punishment, so as to  
 11 change provisions relating to sentencing; to provide credit for time served; to change  
 12 provisions relating to the commencement of a sentence when the case has been appealed;  
 13 to provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
 14 other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 PART I  
 17 SECTION 1-1.

18 Title 16 of the Official Code of Georgia Annotated, related to crimes and offenses, is  
 19 amended by adding a new Code section to read as follows:

20 "16-11-37.2.

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

22 (1) 'Attributes' means and includes:

23 (A) Age;

24 (B) Ancestry;

25 (C) Color;

- 26           (D) Creed;  
 27           (E) Culture;  
 28           (F) Ethnicity;  
 29           (G) Exercise of religious beliefs;  
 30           (H) Homelessness;  
 31           (I) Mental disability;  
 32           (J) National origin;  
 33           (K) Physical disability;  
 34           (L) Race;  
 35           (M) Religion;  
 36           (N) Sex;  
 37           (O) Sexual orientation;  
 38           (P) Status of being a member of or having served in the armed forces of the United  
 39           States or National Guard; and  
 40           (Q) Status of being involved or having been involved in civil rights activities; and  
 41           (R) Status of exercising of the rights guaranteed by the First Amendment of the United  
 42           States Constitution.
- 43           (2) 'Culture' means the customary beliefs, social norms, and material traits of a racial,  
 44           ethnic, religious, or social group.
- 45           (3) 'Serious physical injury' means an injury that deprives a person of a member of his  
 46           or her body, renders a member of a person's body useless, seriously disfigures a person's  
 47           body or a member thereof, or causes organic brain damage which renders the body or any  
 48           member thereof useless.
- 49           (b) A person commits the offense of bias motivated intimidation when such person  
 50           maliciously and with the specific intent to intimidate, harass, or terrorize another person  
 51           because of that person's actual or perceived attributes:
- 52           (1) Causes death or serious physical injury to another person; or  
 53           (2) Damages or destroys any real or personal property of another person.
- 54           (c) Any person that violates subsection (b) of this Code section shall be guilty of the  
 55           offense of bias motivated intimidation and, upon conviction thereof, shall be punished by  
 56           imprisonment of not less than one nor more than five years, a fine of not more  
 57           than \$5,000.00, or both.
- 58           (d) Each violation of this Code section shall constitute a separate offense and shall not  
 59           merge with any other crime.
- 60           (e) A sentence imposed under this Code section shall run consecutively to any sentence  
 61           for any other offense related to the act or acts establishing an offense under this Code  
 62           section.

63 (f) Charges of violating subsection (b) of this Code section shall not be prosecuted by way  
 64 of an accusation but only by indictment or special presentment by a grand jury.

65 (g) Notwithstanding any other remedy at law, a person that suffers an injury to his or her  
 66 person or property as a result of a violation of this Code section shall have a cause of action  
 67 against the person violating this Code section to recover actual damages, costs, and  
 68 reasonable attorney's fees.

69 (h) The penalties provided in this Code section shall not preclude victims of bias motivated  
 70 intimidation from seeking any other remedies, criminal or civil, otherwise available."

71 **PART II**

72 **SECTION 2-1.**

73 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
 74 amended by repealing and reserving in their entirety Code Section 17-10-17, relating to  
 75 sentencing of defendants guilty of crimes involving bias or prejudice, circumstances, and  
 76 parole; Code Section 17-10-18, relating to notification to seek enhanced penalty; and Code  
 77 Section 17-10-19, relating to determination of defendant's guilt, object of the offense, and  
 78 enhancement of sentence.

79 **PART III**

80 **SECTION 3-1.**

81 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
 82 amended in Article 2 of Chapter 4, relating to arrest by law enforcement officers generally,  
 83 by adding a new Code section to read as follows:

84 "17-4-20.2.

85 (a) Whenever a law enforcement officer investigates an incident of an alleged violation of  
 86 Code Section 16-11-37.2, regarding bias motivated intimidation, whether or not an arrest  
 87 is made, the officer shall prepare and submit to the law enforcement officer's supervisor or  
 88 other designated person a written report of the incident entitled 'Bias Motivated  
 89 Intimidation Report.' Forms for such reports shall be designed and provided by the Georgia  
 90 Bureau of Investigation. The report shall include:

- 91 (1) Names of the parties;  
 92 (2) Relationship of the parties;  
 93 (3) Sex of the parties;  
 94 (4) Race of the parties;  
 95 (5) Dates of birth of the parties;

- 96 (6) Time, place, and date of the incident;  
 97 (7) Whether there is evidence to indicate that the incident occurred because of a person's  
 98 actual or perceived attributes as defined by subsection (a) of Code Section 16-11-37.2;  
 99 (8) Type and extent of the alleged violation;  
 100 (9) Existence of any objects or symbols associated with the terrorizing of persons based  
 101 upon actual or perceived ethnicity, race, religion, or sex;  
 102 (10) Number and types of weapons involved, if any;  
 103 (11) Existence of any prior difficulties between the parties;  
 104 (12) Type of police action taken in disposition of case;  
 105 (13) Whether the victim was apprised of available remedies and services; and  
 106 (14) Any other information the officer deems pertinent.
- 107 (b) The report provided for in subsection (a) of this Code section shall be considered for  
 108 statistical purposes only and, where no arrests are made, shall not be subject to the  
 109 provisions of Article 4 of Chapter 18 of Title 50. However, upon request, a defendant who  
 110 has been arrested for a violation of Code Section 16-11-37.2 or the victim shall be entitled  
 111 to review and copy any report prepared in accordance with this Code section relating to the  
 112 defendant
- 113 (c) Each police department, including local precincts and county sheriff departments, shall  
 114 report, according to rules and regulations of the Georgia Crime Information Center, all  
 115 incidents involving alleged violations of Code Section 16-11-37.2, both arrests and  
 116 nonarrests, to the Georgia Bureau of Investigation, which shall compile and analyze  
 117 statistics of bias motivated intimidation crimes and cause them to be published annually  
 118 in the Georgia Uniform Crime Reports. An offense shall be counted for each incident  
 119 reported to the police. A zero shall be reported if no incidents have occurred during the  
 120 reporting period."

121 **PART IV**  
 122 **SECTION 4-1.**

123 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the  
 124 procedure for sentencing and imposition of punishment, is amended by revising  
 125 subsection (f) of Code Section 17-10-1, relating to fixing of sentence, change in sentence,  
 126 eligibility for parole, prohibited modifications, and exceptions, as follows:

127 "(f) Within one year of the date upon which the sentence is imposed, or within 120 days  
 128 after receipt by the sentencing court of the remittitur upon affirmance of the judgment after  
 129 direct appeal, whichever is later, the court imposing the sentence has the jurisdiction,  
 130 power, and authority to correct or reduce the sentence and to suspend or probate all or any

131 part of the sentence imposed. The time periods prescribed in this subsection require the  
 132 defendant to file a motion within such time periods; however, the court shall not be  
 133 constrained to issue its order or hear the matter within such time periods. Prior to entering  
 134 any order correcting, reducing, or modifying any sentence, the court shall afford notice and  
 135 an opportunity for a hearing to the prosecuting attorney. Any order modifying a sentence  
 136 which is entered without notice and an opportunity for a hearing as provided in this  
 137 subsection shall be void. This subsection shall not limit any other jurisdiction granted to  
 138 the court in this Code section or as provided for in subsection (g) of Code Section 42-8-34."

#### 139 SECTION 4-2.

140 Said article is further amended by revising Code Section 17-10-9, relating to specification  
 141 by the judge imposing the sentence of time from which a penal sentence runs and the effect  
 142 of an appeal, as follows:

143 "17-10-9.

144 (a) In the imposition of sentence for violation of the penal laws, it shall be the duty of the  
 145 judge to specify that the term of service under the sentence shall be computed from the date  
 146 of sentence if the defendant is confined in jail or otherwise incarcerated and has no appeal  
 147 or motion for new trial pending.

148 (b) In cases which are appealed to the Georgia Court of Appeals or the Georgia Supreme  
 149 Court for reversal of the conviction, the sentence shall be computed from the date the  
 150 remittitur of the appellate court is made the judgment of the court in which the conviction  
 151 is had, provided the defendant is not at liberty under bond but is incarcerated or in custody  
 152 of the sheriff of the county where convicted. If the defendant was at liberty under bond  
 153 during the pendency of the appeal, once the remittitur of the appellate court is made the  
 154 judgment of the court in which the conviction is had, the prosecuting attorney shall have  
 155 the burden of notifying the defendant of the commencement of the sentence within 90 days  
 156 of such remittitur. When the prosecuting attorney fails to provide such notice, the sentence  
 157 shall be computed from the date of such remittitur.

158 (c) If a defendant has been convicted and sentenced but, because of his or her failure or  
 159 inability to post bond or bail for any reason, he or she has been incarcerated pending the  
 160 prosecution of an appeal to any court, the time of the original imposition of his or her  
 161 sentence until the time when the remittitur of the appellate court is made the judgment of  
 162 the court in which the conviction is had shall be counted as time spent under sentence for  
 163 all purposes."

164

**SECTION 4-3.**

165 Said article is further amended by revising Code Section 17-10-11, relating to granting of  
 166 credit generally, use in determining parole eligibility, and applicability of Code section, as  
 167 follows:

168 "17-10-11.

169 (a) ~~Each person convicted of a crime in this state~~ Except as provided in subsection (b) of  
 170 this Code section, upon conviction for an offense, a person shall be given full credit for  
 171 each day spent in confinement awaiting trial and for each day spent in confinement, in  
 172 connection with and resulting from a court order entered in the criminal proceedings for  
 173 which sentence was imposed; in any penal institution or facility and in any institution or  
 174 facility for treatment or examination of for a disability, as such term is defined in Code  
 175 Section 37-1-1, infirmity, or other physical or mental disability condition, including:

176 (1) Pretrial confinement, for any reason, since the date of arrest for the offense which is  
 177 the subject of the sentence; and

178 (2) Posttrial confinement awaiting the remittitur from an appellate court or transfer to the  
 179 Department of Corrections or other court ordered institution or facility.

180 (b) The court may exclude credit for time served in pretrial confinement when its sentence:

181 (1) Requires the person to complete a program at a probation detention center as set forth  
 182 in Code Section 42-8-35.4;

183 (2) Allows the person to participate in a work release program as set forth in Code  
 184 Section 42-1-4; or

185 (3) Is for a misdemeanor offense for time spent in confinement in a jurisdiction other  
 186 than the one in which the arrest for such offense occurred.

187 (c) The credit or credits set forth in subsection (a) of this Code section shall be applied  
 188 toward the convicted person's sentence and shall also be considered by parole authorities  
 189 the State Board of Pardons and Paroles in determining the eligibility of the such person for  
 190 parole.

191 ~~(b)~~(d) This Code section applies shall apply to sentences for all crimes, whether classified  
 192 as violations, misdemeanors, or felonies, and to all courts having criminal jurisdiction  
 193 located within the boundaries of this state."

194

**PART V**

195

**SECTION 5-1.**

196 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 197 without such approval.

198    **SECTION 5-2.**  
199        All laws and parts of laws in conflict with this Act are repealed.