Georgia Family Violence Law

TITLE 16. CRIMES AND OFFENSES

CHAPTER 5. CRIMES AGAINST THE PERSON

ARTICLE 2. ASSAULT AND BATTERY

O.C.G.A. § 16-5-23.1 (2013)

§ 16-5-23.1. Battery

(a) A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.

(b) As used in this Code section, the term "visible bodily harm" means bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts.

(c) Except as provided in subsections (d) through (l) of this Code section, a person who commits the offense of battery is guilty of a misdemeanor.

(d) Upon the second conviction for battery against the same victim, the defendant shall be punished by imprisonment for not less than ten days nor more than 12 months, by a fine not to exceed $1,000.00, or both. The minimum sentence of ten days for a second offense shall not be suspended, probated, deferred, stayed, or withheld; provided, however, that it is within the authority and discretion of the sentencing judge to:

(1) Allow the sentence to be served on weekends by weekend confinement or during the nonworking hours of the defendant. A weekend shall commence and shall end in the discretion of the sentencing judge, and the nonworking hours of the defendant shall be determined in the discretion of the sentencing judge; or

(2) Suspend, probate, defer, stay, or withhold the minimum sentence where there exists clear and convincing evidence that imposition of the minimum sentence would either create an undue hardship upon the defendant or result in a failure of justice.

(e) Upon a third or subsequent conviction for battery against the same victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years. The minimum sentence provisions contained in subsection (d) of this Code section shall apply to sentences imposed pursuant to this subsection.

(f) If the offense of battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household, then such offense shall constitute the offense of family violence battery and shall be punished as follows:

(1) Upon a first conviction of family violence battery, the defendant shall be guilty of and punished for a misdemeanor; and

(2) Upon a second or subsequent conviction of family violence battery against the same or another victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years. In no event shall this subsection be applicable to reasonable corporal punishment administered by parent to child.

(g) Any person who commits the offense of battery in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, "public transit vehicle" has the same meaning as in subsection (c) of Code Section 16-5-20.

(h) Any person who commits the offense of battery against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(i) Any person who commits the offense of battery against a teacher or other school personnel engaged in the performance of official duties or while on school property shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years or a fine of not more than $10,000.00, or both. For purposes of this Code section, "school property" shall include public school buses and public school bus stops as designated by local school boards of education.

(j) Except as otherwise provided in subsection (e) and paragraph (2) of subsection (f) of this Code section, any person who commits the offense of battery against a person who is 65 years of age or older shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(k) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, who commits the offense of battery against a person who is admitted to or receiving services from such facility, person, or entity shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years, or a fine of not more than $2,000.00, or both.

(l) Any person who commits the offense of battery against a sports official while such sports official is officiating an amateur contest or while such sports official is on or exiting the property where he or she will officiate or has completed officiating an amateur contest shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, the term "sports official" means any person who officiates, umpires, or referees an amateur contest at the collegiate, elementary or secondary school, or recreational level.

HISTORY: Code 1981, § 16-5-23.1, enacted by Ga. L. 1987, p. 1010, § 1; Ga. L. 1991, p. 971, §§ 7, 8; Ga. L. 1996, p. 449, § 1; Ga. L. 1997, p. 907, § 2; Ga. L. 1997, p. 1064, § 9; Ga. L. 1998, p. 128, § 16; Ga. L. 1999, p. 562, § 4; Ga. L. 2000, p. 16, § 1; Ga. L. 2004, p. 621, § 3; Ga. L. 2011, p. 227, § 4/SB 178.