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CRIMES AND OFFENSES Crimes Against the Person: Provide Enhanced Penalties for the Commission of the Offenses of Simple Assault, Aggravated Assault, Simple Battery, and Aggravated Battery Against Persons in a Domestic Context; Change the Definition of the Crime of Cruelty to Children in the Second Degree; Provide Penalties for Certain Crimes of Violence Committed in the Presence of Children; Exclude Corporal Punishment Administered by Parents, Guardians, or Others Acting in Loco Parentis from the Enhanced Penalties for Simple Assault or Simple Battery

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CRIMES AND OFFENSES

Crimes Against the Person: Provide Enhanced Penalties for the Commission of the Offenses of Simple Assault, Aggravated Assault, Simple Battery, and Aggravated Battery Against Persons in a Domestic Context; Change the Definition of the Crime of Cruelty to Children in the Second Degree; Provide Penalties for Certain Crimes of Violence Committed in the Presence of Children; Exclude Corporal Punishment Administered by Parents, Guardians, or Others Acting in Loco Parentis from the Enhanced Penalties for Simple Assault or Simple Battery

CODE SECTIONS:	O.C.G.A. §§ 16-5-20 to -21, -23 to -24, -70 (amended)
BILL NUMBER:	SB 113
ACT NUMBER:	290
GEORGIA LAWS:	1999 Ga. Laws 381
SUMMARY:	The Act, entitled the "Crimes Against Family Members Act of 1999," provides for broader and more severe penalties in cases of violence precipitated by domestic disputes. The Act enhances the penalties that judges may impose for assault and battery committed in a domestic setting. In addition, the Act equates commission of violent acts in the presence of minors with the crime of second-degree cruelty to children.
EFFECTIVE DATE:	April 22, 1999[1]

History

Each year in the United States, more than one million women suffer nonfatal violence at the hands of someone close to them.[2] Almost one

1. *See* 1999 Ga. Laws 381, §§ 8-9, at 387. The Act took effect upon approval by the Governor. *See id.*

2. *See* American Bar Association Website, Commission on Domestic Violence, *Statistics* (visited June 15, 1999) <http://www. abanet.org/domviol/stats.html> (citing *Bureau of Justice Statistics, Special Report: Violence Against Women: Estimates from*

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in three adult women experience at least one physical assault by a partner during adulthood.[3] Furthermore, a case of child abuse gets reported every ten seconds in the United States in 1995—a total of more than three million reports and almost one million confirmed victims.[4] During 1995 in Georgia, there were 77,640 child abuse reports representing 95,925 incidents of child abuse or neglect.[5] Every thirty minutes, a child is the victim of confirmed abuse in Georgia.[6] Finally, research shows that victims of child abuse are *six times* more likely to abuse their own children or others.[7]

Domestic or family violence involves one person's use of emotional, physical, or sexual violence, or threat of violence to obtain control of another family member or intimate.[8] Domestic violence may occur in the context of marriage, common-law relationships, or dating relationships and does not discriminate; it affects people from all walks of life, regardless of age, race, religious beliefs, educational background, income, or sexual preference.[9]

Given the foregoing statistics, domestic violence has become a serious problem in the United States and in Georgia. Thus, former Governor Zell Miller and Attorney General Thurbert Baker, in cooperation with advocacy groups for battered women, offered legislation during the 1997 and 1998 legislative sessions aimed at curbing domestic violence in Georgia.[10] Attorney General Baker and Governor Miller introduced the bills to address their growing concern over the prevalence and increasing severity of domestic violence in

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the Redesigned Survey, NCJ-154348, Aug. 1995, at 3).

3. *See id.* (citing American Psychological Association, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family*, 10 (1996)).

4. *See* Georgia Council on Child Abuse, Inc. Website (visited June 15, 1999) <http://www.gcca.org/index.html> (citing *National Center on Child Abuse Prevention Research, Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1995 Annual Fifty State Survey*).

5. *See id.* (citing Division of Family and Children Services, Child Abuse Central Registry 1995 Annual Report).

6. *See* Georgia Council on Child Abuse, Inc. Website, *supra* note 4.

7. *See id.*

8. *See* Project Safe Website (visited June 15, 1999) <http://www.athens.net:80/~rblum/psindex.html>.

9. *See id.*

10. *See* Kathey Pruitt et al., *Senate Passes Rules for Cosmetologists*, ATLANTA J. CONST., Feb. 11, 1999, at E12; *see also* Telephone Interview with Rachel Ferencik, Director, Georgia Commission on Family Violence (Apr. 22, 1999) [hereinafter Ferencik Interview] (noting that Attorney General Baker continued the effort after Governor Miller left office in 1999).

Georgia.[11] Their efforts failed, however, largely because provisions in the previous legislation called for mandatory minimum sentencing for abusers.[12]

Attorney General Baker and Lieutenant Governor Mark Taylor advocated similar legislation, SB 113, again in the 1999 legislative session; this time the bill omitted the mandatory minimum sentencing provisions for abusers in favor of "enhanced penalties," to make the bill more palatable to members of the General Assembly.[13]

Introduction

Senators Terrell Starr of the 44th District, Charles Walker of the 22nd District, and Rene Kemp of the 3rd District sponsored and introduced SB 113 on February 4, 1999 on behalf of Attorney General Thurbert Baker and Lieutenant Governor Mark Taylor.[14] The bill was assigned to the Senate Judiciary Committee, which favorably reported the bill, as amended, on February 9, 1999.[15] The Senate adopted the Judiciary Committee amendment and unanimously passed a floor amendment on February 11, 1999.[16] On February 12, 1999, the bill was assigned to the House Special Judiciary Committee, which favorably reported the bill, as amended, on March 16, 1999.[17] The House adopted the Special Judiciary Committee's amendment and passed a floor amendment on March 18, 1999.[18] The bill was returned to the Senate on March 23, 1999, where the Senate concurred with the House amendments.[19] The Senate forwarded the bill to Governor Roy Barnes, who signed SB 113 into law on April 22, 1999.[20]

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11. *See* Telephone Interview with Thurbert Baker, Georgia Attorney General (May 27, 1999) [hereinafter Baker Interview]. Attorney General Baker noted that he was also becoming increasingly concerned about the danger that domestic violence situations pose to police officers who are dispatched to deal with them. *See id.* "People are no longer just having marital 'spats'; they're killing each other." *Id.*
12. *See id.*; Pruitt et al., *supra* note 10. The previous years' bills both failed to pass in the House of Representatives. *See* Charles Walston et al., *Bill Would Add Costs of Tests*, ATLANTA J. & CONST., Feb. 4, 1999, at C3.
13. *See* Baker Interview, *supra* note 11; Ferencik Interview, *supra* note 10; Walston et al., *supra* note 12.
14. *See* State of Georgia Final Composite Status Sheet, May 3, 1999; GA. SENATE, WKLY. WRAP-UP REP. (Feb. 5, 1999).
15. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
16. *See id.*
17. *See id.*
18. *See id.*
19. *See id.*
20. *See id.*

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SB 113

Consideration by the Senate Judiciary Committee

Upon introduction, the bill was assigned to the Senate Judiciary Committee, where it passed unanimously, as amended, on February 9, 1999.[21] The Judiciary Committee's amendment proposed the addition of language to Code section 16-5-20 (simple assault), exempting corporal punishment administered by a parent, guardian, or a person acting *in loco parentis* from the crime of simple assault.[22] This exemption provision was part of the final version of the bill that became law.[23]

In addition, the Committee proposed the addition of language to Code section 16-5-70 (cruelty to children), excluding circumstances involving "force, duress, or threat of violence" from the definition of second-degree child cruelty.[24] An amendment on the House floor, however, later removed the "force, duress, or threat of violence" provision.[25]

From Senate Judiciary Committee to Senate Floor Amendments

The Senate adopted the Judiciary Committee's amendment by a vote of forty-five to one, and the bill, as amended on the Senate floor, passed the Senate unanimously on February 11, 1999.[26] The Senate floor debate focused on two floor amendments presented by Senator

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21. *See* GA. SENATE, WKLY. WRAP-UP REP. (Feb. 12, 1999); State of Georgia Final Composite Status Sheet, May 3, 1999.

22. *Compare* SB 113, as introduced, 1999 Ga. Gen. Assem., *with* SB 113 (SCA), 1999 Ga. Gen. Assem. Marilyn Trigg, Policy Specialist with the Georgia Coalition on Family Violence, Inc., noted that the "corporal punishment" provision had been a hot-button issue in previous years' versions of the bill because many of the legislators did not want to presume to tell parents how to discipline their children. *See* Telephone Interview with Marilyn Trigg, Policy Specialist, Georgia Coalition on Family Violence, Inc. (Apr. 21, 1999) [hereinafter Trigg Interview].

23. *See* O.C.G.A. § 16-5-20(d) (1999).

24. *Compare* SB 113, as introduced, 1999 Ga. Gen. Assem., *with* SB 113 (SCA), 1999 Ga. Gen. Assem. Senator Greg Hecht of the 34th District introduced the "threat of force" language to exclude from the bill's child cruelty provisions spouses who could not remove children from abusive situations because they feared for their own safety. *See* Ferencik Interview, *supra* note 10.

25. *See* text accompanying *infra* note 36.

26. *See* State of Georgia Final Composite Status Sheet, May 3, 1999; GA. SENATE, WKLY. WRAP-UP REP. (Feb. 12, 1999); Record of Proceedings on the Senate Floor (Feb. 11, 1999) (available in Georgia State University College of Law Library).

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Clay Land of the 16th District.[27] The first amendment, which was defeated by a vote of twenty-four to thirty-one, would have required those who commit crimes of aggravated assault and aggravated battery to serve at least 90% of their prison sentences.[28]

Senator Land's second amendment proposed to add language to Code section 16-5-70 that would ensure that only the primary aggressor in a domestic violence situation would be subject to the enhanced penalties for cruelty to children provided in the bill.[29] The Columbus solicitor's office and representatives of domestic violence shelters in the 16th District, who wanted assurances that the bill's enhanced penalties would not apply to domestic violence victims acting in self-defense, shared their concerns with Senator Land earlier on the morning of February 11, 1999.[30] The second amendment and the bill, as amended, both passed unanimously.[31]

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27. *See* GA. SENATE, WKLY. WRAP-UP REP. (Feb. 12, 1999).

28. *See id.* Senator Land assured the Senate that this amendment would merely codify current parole board policy. *See* Record of Proceedings on the Senate Floor (Feb. 11, 1999) (remarks of Sen. Land) (available in Georgia State University College of Law Library). Despite Senator Land's insistence that the amendment would not impose any additional actual costs on the prison system, Senator George Hooks of the 14th District, objected to the amendment and noted that he was aware of estimates that the imposition of mandatory 90% sentencing would cost $1.6 billion over four years. *See id.*; GA. SENATE, WKLY. WRAP-UP REP. (Feb. 12, 1999). Senator Rene Kemp of the 3rd District recommended that the amendment be voted down and noted that he had spoken with Attorney General Baker, who had expressed his concern that a mandatory minimum sentence provision would endanger the bill's passage. *See* Record of Proceedings on the Senate Floor (Feb. 11, 1999) (remarks of Sen. Kemp) (available in Georgia State University College of Law Library). Senator Michael Egan of the 40th District noted his concern that mandatory minimum sentencing would make victim spouses less likely to testify against the offending spouse because of the long-term loss of family income. *See id.*

29. *See* Record of Proceedings on the Senate Floor (Feb. 11, 1999) (remarks of Sen. Land) (available in Georgia State University College of Law Library).

30. *See id.*; Trigg Interview, *supra* note 22. Ms. Trigg noted that often a battered spouse cannot control a domestic violence situation and may have to react violently in self-defense. *See id.* Thus, the domestic violence support groups wanted assurances that the enhanced penalties of the bill (*e.g.*, those dealing with child-cruelty offenses) would not apply to acts committed by the battered spouse in self-defense. *See id.* "Defensive action by battered women to protect themselves or their children is often interpreted by law enforcement as an act of violence." American Bar Association, *supra* note 2 (citing U.S. Dep't of Justice, *Promising Practices Initiatives Report on the Expert Panels on Domestic Violence, Sexual Assault, and Stalking Technical Assistance Project* (1997)).

31. *See* GA. SENATE, WKLY. WRAP-UP REP. (Feb. 12, 1999); Record of Proceedings on the Senate Floor (Feb. 11, 1999) (available in Georgia State University College of Law Library); *Compare* SB 113 (SCA), 1999 Ga. Gen. Assem., *with* SB 113 (SFA), 1999 Ga. Gen. Assem.

From Senate Floor Amendments to House Special Judiciary Committee

The House Special Judiciary Committee favorably reported the bill, as amended, on March 16, 1999.[32] The Special Judiciary Committee added an amendment that eliminated simple assault and simple battery from the proposed crimes for which a primary aggressor would be culpable under the second-degree child cruelty provision of Code section 16-5-70.[33] In addition, the amendment provided that the bill's second-degree child cruelty provisions would apply only in instances when a child *actually* sees or hears an offense, not merely when a child *may* see or hear an offense.[34]

From House Special Judiciary Committee to House Floor Amendment

The House adopted the Special Judiciary Committee's amendment, and the House amended and passed the bill on March 18, 1999.[35] The House floor amendment removed the language previously added by the Senate Judiciary Committee that excluded situations of force, duress, or threat of violence from the second-degree child cruelty provisions.[36] The floor amendment also excluded "siblings" from the list of domestic relationships in all of the Code sections amended by the bill.[37] The amendment also made it clear that the bill did not validate same-sex marriages.[38] The House defeated another

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32. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.

33. *Compare* SB 113 (SFA), 1999 Ga. Gen. Assem., *with* SB 113 (HCA), 1999 Ga. Gen. Assem.

34. *Compare* SB 113 (SFA), 1999 Ga. Gen. Assem., *with* SB 113 (HCA), 1999 Ga. Gen. Assem.

35. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.

36. *Compare* SB 113 (SCA), 1999 Ga. Gen. Assem., *with* SB 113 (HFA), 1999 Ga. Gen. Assem. This language was removed because some of the legislators found it to be somewhat unclear, and they believed that the "primary aggressor" provisions had addressed the same concerns as the "duress" language (*i.e.*, that the bill's provisions could unintentionally affect a victim who cannot remove children from an abusive episode or must act violently in self-defense). *See* Ferencik Interview, *supra* note 10; Georgia Commission on Family Violence Website, *Legislative Update, Mar. 22, 1999* (visited June 15, 1999) <http://www.athens.net/~rblum/fvc/fvcleg99.html> [hereinafter Georgia Commission Website].

37. *Compare* SB 113 (HCA), 1999 Ga. Gen. Assem., *with* SB 113 (HFA), 1999 Ga. Gen. Assem. Siblings remain able, however, to obtain protective orders against one another under Code section 19-13-1. *See* Georgia Commission on Family Violence Website, *supra* note 36.

38. *Compare* SB 113 (HCA), 1999 Ga. Gen. Assem., *with* SB 113 (HFA), 1999 Ga. Gen.

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amendment that proposed excluding "persons living or formerly living in the same household" (*i.e,* persons who live in the same household, but do not qualify for any of the other listed family relationship categories) from the persons covered by the bill by a vote of 55 to 109.[39]

From House Floor Amendment to Version as Passed

The bill returned to the Senate from the House on March 23, 1999, and the Senate adopted the House amendments.[40] Governor Roy Barnes signed the bill into law on April 22, 1999.[41]

The Act

The Crimes Against Family Members Act of 1999 (the Act) amends Code section 16-5-20, regarding criminal simple assault, by adding a subsection that mandates elevated "high and aggravated" misdemeanor treatment for simple assault committed between parties having certain "domestic relationships."[42] The Act enumerates the following domestic relationships: past or present spouses, parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, and persons living or formerly living in the same household.[43] The Act, however, excludes from the domestic relationship definition "siblings living or formerly living in the same household."[44] Moreover, the Act excludes from its simple assault provisions parents, guardians, or others acting *in loco parentis* who administer corporal punishment to children.[45]

The Act also amends Code section 16-5-21, regarding criminal aggravated assault, by adding a subsection that mandates a minimum sentence of three years imprisonment for a conviction of aggravated assault committed between parties having any of the domestic

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Assem.

39. *See* Georgia Commission on Family Violence Website, *supra* note 36; Record of Proceedings on the House Floor (Mar. 18, 1999) (available in Georgia State University College of Law Library).

40. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.

41. *See id.*

42. *Compare* 1991 Ga. Laws 971, § 2, at 972 (formerly found at O.C.G.A. § 16-5-20 (1996)), *with* O.C.G.A. § 16-5-20 (1999).

43. *See* O.C.G.A. § 16-5-20(d) (1999).

44. *See id.*

45. *See id.*

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relationships enumerated in the previous paragraph.[46] The Act excludes siblings from the qualifying domestic relationship definition for purposes of the aggravated assault determination.[47] The Act does not exclude from its aggravated assault section parents who administer corporal punishment to their children.[48]

The Act also amends Code section 16-5-23, regarding criminal simple battery, by adding a subsection that mandates elevated "high and aggravated" misdemeanor treatment for simple battery committed between parties having any of the aforementioned domestic relationships.[49] The Act, however, excludes from the domestic relationship definition "siblings living or formerly living in the same household."[50] Moreover, the Act excludes from its simple battery provisions parents, guardians, or others acting *in loco parentis* who administer corporal punishment to children.[51]

In addition, the Act amends Code section 16-5-24, regarding criminal aggravated battery, by adding a subsection that mandates a minimum sentence of three years imprisonment for aggravated battery committed between parties having any of the aforementioned domestic relationships.[52] The Act excludes siblings from the qualifying domestic relationship definition for purposes of the aggravated battery determination.[53] The Act does not exclude from its aggravated battery section parents who use corporal punishment to their children.[54]

The Act also amends Code section 16-5-70 to include intentionally allowing a child to witness the commission of an assault or battery or a "family violence battery" in the list of activities for which courts may punish persons for cruelty to children.[55] Under the Act, courts may

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46. *Compare* 1994 Ga. Laws 1012, § 8, at 1025-26, *and* 1994 Ga. Laws 1920, § 2, at 1921 (formerly found at O.C.G.A. § 16-5-21 (Supp. 1998)), *with* O.C.G.A. § 16-5-21(*i*) (1999). The minimum prison sentence for ordinary cases of aggravated assault is one year. *See* O.C.G.A. § 16-5-21(b) (1999).

47. *See* O.C.G.A. § 16-5-21(*i*) (1999).

48. *See id.*

49. *Compare* 1991 Ga. Laws 971, § 6, at 973, *and* 1992 Ga. Laws 2066, § 1, at 2067 (formerly found at O.C.G.A. § 16-5-23 (Supp. 1998)), *with* O.C.G.A. § 16-5-23(f) (1999).

50. O.C.G.A. § 16-5-23(f) (1999).

51. *See id.*

52. *Compare* 1994 Ga. Laws 1012, § 9, at 1026-27 (formerly found at O.C.G.A. § 16-5-24 (Supp. 1998)), *with* O.C.G.A. § 16-5-24(h) (1999). The minimum prison sentence for ordinary cases of aggravated battery is one year. *See* O.C.G.A. § 16-5-24(b) (1999).

53. *See* O.C.G.A. § 16-5-24(h) (1999).

54. *See id.*

55. *Compare* 1996 Ga. Laws 1071, § 1, at 1071-72 (formerly found at O.C.G.A. § 16-5-70

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punish a "primary aggressor" for child cruelty when the aggressor intentionally allows a child under the age of eighteen to witness a forcible felony, battery, or family violence battery; knows that a child under the age of eighteen is present; or knows that a child witnesses or hears an act of forcible felony, battery, or family violence battery.[56] Finally, the Act makes clear that courts should construe none of its provisions as sanctioning "same sex" marriages.[57]

Opposition to SB 113

As noted above, prior versions of domestic violence bills had met with opposition from legislators concerned about mandatory minimum sentencing.[58] This version avoided that opposition because it focused on the classification of the crimes instead of mandatory punishment.[59]

Some legislators and their constituents raised concerns that SB 113, as introduced, could be used to criminalize parents' use of corporal punishment and fights between siblings.[60] The bill's amendments addressed these concerns.[61] Finally, some legislators wanted to make certain that courts would not use SB 113 to expand the definition of "family."[62] Ultimately, both the House and the Senate passed the Act unanimously.[63]

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(1996)), *with* O.C.G.A. § 16-5-70 (1999).

56. *See* O.C.G.A. § 16-5-70(c) (1999).
57. *See* 1999 Ga. Laws 381, § 7, at 387.
58. *See* Baker Interview, *supra* note 11.
59. *See id.*
60. *See* Ferencik Interview, *supra* note 10.
61. *See id.*
62. *See id.*
63. *See* Georgia House of Representatives Voting Record, SB 113 (Mar. 18, 1999); Georgia Senate Voting Record, SB 113 (Mar. 23, 1999).

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