Georgia State University Law Review

Volume 13
Issue 1 *November 1996*

Article 33

3-29-2012

CRIMES AND OFFENSES Offenses Against Public Health and Morals: Increase Penalties for Acts or Omissions Resulting in the Deprivation of Minors; Raise the Age of Admission into Establishments Where Live Performances Displaying Sexually Explicit Nudity or Conduct Occur

Georgia State University Law Review

Follow this and additional works at: http://digitalarchive.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Georgia State University Law Review (1996) "CRIMES AND OFFENSES Offenses Against Public Health and Morals: Increase Penalties for Acts or Omissions Resulting in the Deprivation of Minors; Raise the Age of Admission into Establishments Where Live Performances Displaying Sexually Explicit Nudity or Conduct Occur," *Georgia State University Law Review*: Vol. 13: Iss. 1, Article 33.
Available at: http://digitalarchive.gsu.edu/gsulr/vol13/iss1/33

This Peach Sheet is brought to you for free and open access by the College of Law Publications at Digital Archive @ GSU. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of Digital Archive @ GSU. For more information, please contact digitalarchive@gsu.edu.

CRIMES AND OFFENSES

Offenses Against Public Health and Morals: Increase Penalties for Acts or Omissions Resulting in the Deprivation of Minors; Raise the Age of Admission into Establishments Where Live Performances Displaying Sexually Explicit Nudity or Conduct Occur

CODE SECTIONS:	O.C.G.A. §§ 16-12-1, -103 (amended)
BILL NUMBER:	SB 396
ACT NUMBER:	622
GEORGIA LAWS:	1996 Ga. Laws 273
SUMMARY:	The Act addresses the physical abuse of children and defines "serious injury." The Act imposes more stringent penalties for willful acts or omissions that result in a finding of deprivation. The penalties include a felony charge when one causes serious injury to a child through such an act or omission, and lesser charges for first and subsequent offenses that do not result in serious injury. The Act also raises the age of admission to establishments that exhibit sexual conduct and nudity from eighteen to twenty-one years of age.
EFFECTIVE DATE:	July 1, 1996

History

Omissions Resulting in the Deprivation of Minors

Prior to the Act, Georgia had no felony child endangerment law.[1] Further, a parent or other individual who knowingly failed to prevent another individual from seriously injuring a child was subject to no more than a misdemeanor for a first or second offense.[2] Such individuals were subject to increasing penalties for subsequent offenses, but no felony conviction was possible until an individual was convicted of a "third or subsequent offense."[3] In Georgia, more and more children sustained serious injuries when parents or care providers failed to act.[4]

1. Telephone Interview with Kris Rice, Executive Director of the Coastal Children's Advocacy Center (May 8, 1996) [hereinafter Rice Interview].
2. 1994 Ga. Laws 1158, § 1, at 1160-61 (formerly found at O.C.G.A. § 16-12-1 (Supp. 1995)).
3. *Id.* at 1161.
4. Rice Interview, *supra* note 1. Ms. Rice referred to a case in Chatham County

Produced by The Berkeley Electronic Press, 1996
HeinOnline -- 13 Ga. St. U. L. Rev. 116 1996-1997

Yet, under the law, it was conceivable that one could watch his or her child die and only face misdemeanor charges.[5]

Since the penalties in force in Georgia were relatively mild and did not provide the deterrence necessary to prevent children from suffering continued harms, advocates proposed the introduction of a felonious child endangerment law.[6] However, these efforts failed due to concerns that such legislation would instigate false charges.[7] Thus, advocates sought to change existing legislation relating to the deprivation of a minor.[8] Kris Rice, on behalf of the Chatham County Child Abuse Task Force, contacted Senator Eric Johnson and proposed changes increasing the penalties for parents who "knowingly and willfully fail to protect their children from abuse by others."[9]

Admission to Establishments Where Sexually Explicit Nudity or Sexual Conduct is Displayed

Atlanta, Georgia recently ranked "first in its region in strip joints," and its "adult-entertainment scene" was estimated to "top $200 million annually."[10] Prior to the Act, an establishment "whereon there [was] exhibited a motion picture, show, or other presentation which . . . depict[ed] sexually explicit nudity, sexual conduct, or sadomasochistic abuse" could lawfully admit an eighteen-year-old man

---

involving a twenty-two-month-old child who allegedly caused the death of her six-month old brother in which the parent failed to supervise the children. *Id.; see* Tom Rose, *Did Baby Girl Kill Brother?: Police Suspect Infant's Jealousy in June Death of Sibling*, SAVANNAH NEWS PRESS, Sept. 8, 1992, at C1.

5. Rice Interview, *supra* note 1.

6. *Id.*

7. *Id.*; Telephone Interview with Sen. Eric Johnson, Senate District No. 1 (June 6, 1996) [hereinafter Johnson Interview II]. Senator Johnson stated that there were individuals who feared that false allegations would be made in cases involving only "spankings" by a parent or another. Johnson Interview II, *supra*.

8. Rice Interview, *supra* note 1.

9. *See* Letter from Kris Rice, for the Chatham County Child Abuse Task Force, to Sen. Johnson (Jan. 5, 1995) [hereinafter Rice Letter] (available in Georgia State University College of Law Library); *see also* Telephone Interview with Sen. Eric Johnson, Senate District No. 1 (May 7, 1996) [hereinafter Johnson Interview I]. The Coastal Children's Advocacy Center is part of the Chatham County Child Sexual Abuse Task Force, which consists of professionals representing law enforcement, mental health, education, child protective services, juvenile court, the district attorney's office, residential services, and child and victim advocacy organizations. Rice Letter, *supra*. After SB 396 passed in the Senate, Senator Johnson asked Representative Kip Klein to handle the bill on the floor of the House. *See* Telephone Interview with Rep. Kip Klein, House District No. 39 (Apr. 30, 1996) [hereinafter Klein Interview]. Representative Klein remained actively involved in this legislation. *Id.*

10. Vern E. Smith, *Not Only Divers Work Topless: Fighting Over a 'Modeling Studio'*, NEWSWEEK, Feb. 19, 1996, at 62.

HeinOnline -- 13 Ga. St. U. L. Rev. 117 1996-1997

or woman.[11] It was unlawful for a minor to represent falsely his age or for another person, professing to be a minor's parent or guardian, knowingly to "make a false representation" that the minor was eighteen years of age or older.[12]

After a nude dance club, the "Crazy Horse Saloon," opened near a residential area in Clayton County, the constituents of the 95th District of the House of Representatives sought to increase the regulation of adult-entertainment clubs.[13] Relying on the power to regulate "activities involving alcoholic beverages . . . permitted to the states under the Twenty-First Amendment to the United States Constitution,"[14] Representative Gail Buckner introduced HB 241 in response to her constituents' concerns, and subsequently attached her bill's language to SB 396 by floor amendment when it failed to win the necessary support to stand alone.[15]

SB 396

The Act increases and broadens the scope of punishment for individuals who fail to take preventative measures to protect children from abuse.[16] An act or omission that "would cause a minor to be found to be a deprived child" is classified under Code section 16-12-1(b)(3) as contributing to the deprivation of a minor.[17] The Act amends the penalties for one convicted under this Code section.[18] First, when an act or omission results in *serious injury* to a child, the Act increases the penalty from a misdemeanor to a felony.[19] Serious injury is defined

11. 1984 Ga. Laws 1495, § 3, at 1500 (formerly found at O.C.G.A. § 16-12-103(b) (1992)).

12. *Id.* at 1500-01.

13. Telephone Interview with Rep. Gail Buckner, House District No. 95 (Apr. 23, 1996) [hereinafter Buckner Interview]. The opening of the club came despite the reluctance of the City Council of Forest Park to grant the club's business license. *Id.*

14. 1994 Ga. Laws 2018, § 1, at 2019 (amending Ga. Const. art. III, § 6). Representative Buckner authored this constitutional amendment to correlate with the Twenty-First Amendment to the United States Constitution. Buckner Interview, *supra* note 13. *See generally* Harris v. Entertainment Sys., Inc., 259 Ga. 701, 386 S.E.2d 140 (1989) (holding Georgia's lack of a "constitutional equivalent to the Twenty-First Amendment" limited in part the state's power to prohibit nude dancing in places serving alcohol). Representative Buckner stated that she was "mindful" of the *Harris* case when she authored HB 241. Buckner Interview, *supra* note 13.

15. Buckner Interview, *supra* note 13; *see* HB 241, as introduced, 1996 Ga. Gen. Assem.; SB 396 (HFA), 1996 Ga. Gen. Assem.

16. *See generally* O.C.G.A. § 16-12-1 (1996).

17. *Id.* § 16-12-1(b)(3). The definition of the term "deprived child" includes the situation in which a child "[i]s without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health or morals." 1971 Ga. Laws 709, § 1, at 715 (codified at O.C.G.A. § 15-11-2(8)(A) (1994)).

18. O.C.G.A. § 16-12-1(d.1) (1996).

19. *Compare id.* § 16-12-1(d.1)(1) *with* 1994 Ga. Laws 1158, § 1, at 1160-61

HeinOnline -- 13 Ga. St. U. L. Rev. 118 1996-1997

as any injury involving a "broken bone, the loss of a member of the body, . . . or the substantial disfigurement of the body or of a member of the body or an injury which is life threatening."[20] Second, for offenses that do not result in serious injury, the Act provides progressive penalties, with a felony conviction for the third and subsequent offenses.[21]

As SB 396 was introduced, a first offense that did not involve serious injury would have been a misdemeanor resulting in a fine of "not *less* than $1,000.00" or imprisonment for "not *less* than 12 months."[22] The Senate Special Judiciary Committee changed this to a fine of "not *more* than $1,000.00" and imprisonment "for not *more* than 12 months" because of concerns that the penalty was too harsh.[23] SB 396 was passed by the Senate after adopting these changes.[24] The House Special Judiciary Committee added a provision to delineate more clearly the felony penalty for the conviction of offenses resulting in serious harm.[25]

The "Buckner" Floor Amendment

Representative Buckner utilized SB 396 as a "vehicle" to pass her legislation, HB 241, which increased the age of admission to establishments with live performances of a sexually explicit nature.[26]

(formerly found at O.C.G.A. § 16-12-1(d) (Supp. 1995)).

20. O.C.G.A. § 16-12-1(a)(4) (1996). Senator Johnson did not intend the definition to be exhaustive, but rather meant to illustrate what types of injury constitute serious injury. Johnson Interview II, *supra* note 7. The General Assembly wanted to make it clear that injuries such as a bruise do not fall within the definition. *Id.*

21. O.C.G.A. § 16-12-1(d.1)(4) (1996).

22. SB 396, as introduced, 1996 Ga. Gen. Assem. (emphasis added).

23. O.C.G.A. § 16-12-1(d.2) (1996); SB 396 (SCS), 1996 Ga. Gen. Assem. (emphasis added); Telephone Interview with Sen. Charles Clay, Senate District No. 37 (Apr. 25, 1996); Johnson Interview I, *supra* note 9. As passed, the Act's penalties constitute a notable increase over prior law, as evidenced by the former penalties for a first offense, which included a misdemeanor conviction, a fine of "not less than $200.00 nor more than $500.00," and imprisonment for "not less than one month nor more than five months." 1994 Ga. Laws 1158, § 1, at 1160 (formerly found at O.C.G.A. § 16-12-1(d)(1) (Supp. 1995)). The Senate committee substitute also corrected a typographical error in § 16-12-1(d.1)(3) as introduced. *Compare* SB 396 (SCS), 1996 Ga. Gen. Assem. *with* SB 396, as introduced, 1996 Ga. Gen. Assem. The committee changed the language "not less than $5,000 nor more than $1,000" to "not less than $1,000 nor more than $5,000." *Id.*

24. Final Composite Status Sheet, Mar. 18, 1996.

25. *Compare* SB 396, as introduced, 1996 Ga. Gen. Assem. *with* SB 396 (HCS), 1996 Ga. Gen. Assem.; Johnson Interview I, *supra* note 9.

26. Buckner Interview, *supra* note 13. HB 241, which failed to gain favor in committee, came as a result of concern about the proliferation of nude dance clubs across the state. Representative Buckner stated that "the average citizen of Georgia thinks we have more to offer than to be known for nude dance clubs." *Id.* Furthermore, she was interested in preventing those under the age of 21 from

HeinOnline -- 13 Ga. St. U. L. Rev. 119 1996-1997

The Act makes it unlawful for "any person knowingly to sell or to furnish . . . an admission ticket or pass or knowingly to admit a person under the age of 21 to premises whereon there is exhibited a show or performance which is harmful to minors and which . . . consists of sexually explicit nudity."[27] Further, the Act amends language that made it unlawful for a minor to misrepresent his age or for another individual to represent falsely the minor's age to accommodate the new age requirement.[28]

The Act includes an additional floor amendment, drafted by Representative Kip Klein, which adds a severability clause.[29] The new section provides that if any portion of the Act should "be found to be unconstitutional or violative of any law," the balance of the Act shall remain.[30] This clause was added to ensure that SB 396, as presented prior to the amendment by Representative Buckner, would prevail if someone successfully challenged her amendment on constitutional grounds.[31]

Jerry B. McNally

---

working in such clubs. *Id.* Representative Klein informed the House that he did not object to Representative Buckner's amendment, thereby facilitating the amendment's passage in the House. Klein Interview, *supra* note 9.

27. O.C.G.A. § 16-12-103(b)(2) (1996). Representative Buckner intended to clarify that the provision specifically addresses establishments for the purposes of nude entertainment or scenes. Buckner Interview, *supra* note 13.

28. *Compare* O.C.G.A. § 16-12-103(c)-(d) (1996) *with* 1984 Ga. Laws 1495, § 3, at 1500-01 (formerly found at O.C.G.A. § 16-12-103(c)-(d) (1992)). The Act also provides language making the provisions gender-neutral. *Id.*; Buckner Interview, *supra* note 13.

29. Klein Interview, *supra* note 9.

30. 1996 Ga. Laws 273, § 3, at 276.

31. Klein Interview, *supra* note 9. Representative Vinson Wall raised concerns about the Buckner amendment's constitutionality in floor debates and had originally voted against the amendment. Telephone Interview with Rep. Vinson Wall, House District No. 82 (May 7, 1996). His concerns related to the contradictions evidenced by the fact that an eighteen-year-old woman could "have children and join the armed forces," but would now be restricted from becoming a nude dancer if she chose that profession. *Id.* Senator Johnson stated that he did not oppose the amendment because such opposition so late in the Georgia General Assembly's session might have caused the entire bill to fail. Johnson Interview I, *supra* note 9.

HeinOnline -- 13 Ga. St. U. L. Rev. 120 1996-1997