

2009

CRIMES AND OFFENSES Crimes and Offenses: To Change and Enact Provisions of Law Relating to Classification of Sexual Offenders, Sexual Offender Registration, and Restrictions on Sexual Offenders' Residences, Workplaces, and Activities; to Amend Article 35 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, Relating to Appeals Requiring an Application for Appeal, so as to Make Such Code Section Applicable to Appeals from Decisions of Superior Courts Reviewing a Decision of the Sexual Offender Registration Review Board; to Amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,

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Relating to Procedures for Sentencing in Criminal Cases, so as to Provide That, with Respect to Sexual Offenses Committed After a Certain Date in This State, Classification Shall Be by the Sentencing Court Rather Than the Sexual Offender Registration Review Board; to Amend Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, Relating to Classification and Registration of Sexual Offenders and Regulation of the Conduct of Such Offenders, so as to Revise Provisions Relating to Registration of Sexual Offenders; to Change Certain Definitions; to Require the Department of Corrections to Forward Certain Information to Sheriffs; to Provide for Registration and Reporting by Sexual Offenders Who Do Not Have a Residence Address; to Provide for Taking of Palm Prints and DNA Samples in Certain Cases; to Change Certain Provisions Relative to Relief from Registration; to Change Provisions Relating to Residence, Workplace, and Volunteering Restrictions; to Change Provisions Relating to the Time Frame a Sheriff Has to Update Certain Information; to Remove Annual Registration Fees; to Change Registration Criteria for Persons Moving to This

State; to Change Certain Penalty Provisions; to Change Restrictions on Volunteer and Religious Activities; to Revise Provisions Relative to Classification of Sex Offenders; to Revise Certain Definitions; to Change Provisions Relative to the Process of Classification by the Sexual Offender Registration Review Board and Review of Such Classifications; to Provide for Procedure and Review; to Provide a Mechanism for Certain Elderly and Disabled Sexual Offenders to Petition the Superior Court to Be Released from Certain Residency Requirements; to Provide for Other Related Matters; to Provide for an Effective Date; to Repeal Conflicting Laws; and for Other Purposes.

Meredith H. Carr

Hillary Rightler

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Requirements; to Provide for Other Related Matters; to Provide for an Effective Date; to Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A §§ 5-6-35 (amended), 17-10-6.4 (new), 42-1-12 (amended), 42-1-14 (amended), 42-1-15 (amended)

BILL NUMBER: SB 157

ACT NUMBER: N/A

GEORGIA LAWS: N/A

SUMMARY: The purpose of this bill would have been to revise Georgia sex offender laws to promote the isolation of dangerous sexual predators from the public and ensure that they are adequately monitored in a manner that is constitutional. The key focus of the bill would have been to ensure the law properly directs resources towards protecting society from the sexual offenders who pose the greatest threat to others by truly isolating the dangerous sexual predator. The bill sought to narrow some of the previous statutory reporting requirements for sexual offenders that were implemented in 2008, after the Georgia legislature passed SB 1, which prohibited offenders from residing, working, or volunteering within 1000 feet of any child care facility, church, school, or area where minors congregate. The only offenders exempted from these requirements were sexual offenders who could offer sufficient proof of employment or residency established before July 1, 2006.

SB 157 aimed to lessen some of these requirements by providing for certain exceptions. Specifically, the bill would have narrowed the restrictions on volunteer activities, permitting registered sexual offenders to volunteer in activities limited to persons who are eighteen years or older and activities involving worship services or religious activities, provided such activities do not involve supervising, teaching, directing minors, or otherwise participating with minors in an unsupervised environment.

The bill also would have given superior courts the power to release an individual from the residency requirements if the court finds that the individual does not pose a substantial risk of recidivism, and the offender either resides in a nursing home, is totally or permanently disabled, or is seriously physically incapacitated due to illness or injury.

The bill would have exempted private, unlicensed, in-home day care for the purposes of the residence, employment, and volunteer restrictions.

The bill also would have given homeless offenders who can provide no residence address specific direction as to how to comply with the statutory requirements. Homeless sexual offenders would have been allowed to provide the place where they sleep as an address. The bill would have required homeless offenders to report

weekly to the sheriff's office in the county in which they reside.

SB 157 would have added a new code section, 17-10-6.4, to give the sentencing court discretion to classify a sexual offender according to the likelihood the offender will commit another crime against a minor or engage in another dangerous sexual offense. The bill would have provided for the offender to be categorized according to a Level I risk, Level II risk, or "Sexually dangerous predator" based on a review of a risk assessment profile and any evidence introduced by the prosecution or defense. The bill would have further provided that the information considered by the sentencing court would become a matter of public record. The bill also would have provided for specific appeal guidelines pursuant to the risk assessment classification or category assigned to each offender.

SB 157 would have also made the kidnapping or false imprisonment of a minor a sexual offense only when the offense involved conduct of a sexual nature.

The bill also would have revised various punishment requirements under the affected sections. Specifically, it would have amended Code section 42-1-12(n) by eliminating a mandatory punishment of imprisonment for life upon a conviction of a second offense for failing to comply with the registration requirements.

EFFECTIVE DATE: N/A

History

The main purpose of SB 157 was to reform Georgia's sex offender laws to ensure that resources would be aimed at isolating the truly dangerous sexual predator so that the laws provide the proper protection from these offenders and are still constitutional.¹

In an effort to strengthen Georgia's sex offender laws, the legislature passed HB 1059 in 2006 which imposed strict residency restrictions on convicted sexual offenders in Georgia.² The Georgia Supreme Court later found the provisions in Code section 42-1-15 regarding these restrictions "to be unconstitutional to the extent that it permits the regulatory taking of appellant's property without just and adequate compensation."³

The legislature then responded in 2008 by enacting SB 1, which prohibited offenders from residing, working, or volunteering within 1000 feet of any child care facility, church, school, or area where minors congregate.⁴ SB 1 exempted sexual offenders who could offer sufficient proof of employment or residency established before July 1, 2006 to avoid the regulatory takings issue.⁵ The new law went into effect on July 1, 2008, and the constitutionality of SB 1 was then challenged on numerous grounds resulting in various portions being struck down by the Supreme Court of Georgia as unconstitutional.⁶

On October 21, 2008, the Supreme Court of Georgia, in *Santos v. State*, struck down a portion of Code section 42-1-12 as unconstitutional as it applied to homeless sex offenders who had no street or route address for their residence.⁷ Code section 42-1-12 requires convicted sexual offenders to register with the sheriff of the

1. Interview with Sen. Seth Harp (R-29th) (Mar. 23, 2009) [hereinafter Harp Interview].

2. See generally Debra Hunter & Paul Sharman, *Review of Selected 2006 Georgia Legislation, Crimes and Offenses*, 23 GA. ST. U. L. REV. 11 (2006).

3. Madison Burnett & Ashley Fuller, *Review of Selected 2008 Georgia Legislation, Crimes and Offenses*, 25 GA. ST. U. L. REV. 139 (2008) (quoting *Mann v. Ga. Dep't of Corr.*, 653 S.E.2d 740, 745 (Ga. 2007)).

4. *Id.*

5. *Id.* at 139–50 (providing a thorough discussion of the provisions of SB 1).

6. *Santos v. State*, 668 S.E.2d 676 (Ga. 2008); *Bradshaw v. State*, 671 S.E.2d 485 (Ga. 2008).

7. *Santos*, 668 S.E.2d at 679.

county in which the offenders reside and provide the sheriff the address of their residence and other required registration information.⁸ In the event of a change, sex offenders must provide the county sheriff of the old county where the offender was last registered with the new residence address within seventy-two hours before the change and to the sheriff of the new county within seventy-two hours after establishing a new residence.⁹ The term “address” is defined as “the street or route address of the sexual offender’s residence,” and the Code specifically provides “the term does not mean a post office box, and homeless does not constitute an address.”¹⁰

Santos was a homeless sex offender who was charged with violating the registration requirements of Code section 42-1-12 when he failed to register a new address with Hall County where he was homeless after departing from his previously registered address at a homeless shelter in Gainesville.¹¹ Santos challenged Georgia’s reporting requirements on the grounds that Code section 42-1-12 is “unconstitutionally vague” as applied to homeless offenders who have no residence address to report.¹² The Court agreed and held the statute did not provide “fair notice” as to what homeless offenders without a residence address must do to comply with the statute.¹³ The Court criticized the statute for containing no objective standards or guidelines to instruct such offenders as to how to comply with the statutory requirements.¹⁴ Absent any direction or a standard of conduct applicable to homeless offenders who possess no street or route address, the Court concluded Code section 42-1-12 is unconstitutionally vague.¹⁵ The Court also cited the specific provision in the statute that states “homeless does not constitute an address” and points to other various examples from other jurisdictions that provide more specific guidance to homeless

8. O.C.G.A. § 42-1-12(a)(16) (2009); *id.* § 42-1-12(f)(2)–(3).

9. *Id.* § 42-1-12(f)(4).

10. *Id.* § 42-1-12(a)(1).

11. *Santos*, 668 S.E.2d at 678.

12. *Id.* at 677.

13. *Id.*

14. *Id.* at 678.

15. *Id.*

offenders in their sex offender registration statutes in support of its conclusion.¹⁶

The Supreme Court of Georgia's decision in *Santos* was one of the reasons the legislature drafted SB 157 to revise Georgia's sex offender registration requirements so that the registration requirements were constitutional.¹⁷

In November 2008, in *Bradshaw v. State*, the Supreme Court of Georgia struck down a provision in the existing law that imposed a mandatory life sentence in prison on sex offenders who were convicted twice of failing to meet the registry requirements.¹⁸ Appellant Bradshaw was convicted twice of violating Code section 42-1-12(f) when he failed to provide his valid current address to authorities within seventy-two hours of changing his address.¹⁹ Pursuant to Code section 42-1-12(n), Bradshaw was given the mandatory sentence of life in prison.²⁰ The Supreme Court held that the mandatory sentence constituted cruel and unusual punishment under the Eighth Amendment to the Constitution of the United States.²¹ The Court's reasoning contained an inter-jurisdictional proportionality analysis comparing Georgia's mandatory life imprisonment sentence to the punishments of other states for the same conduct and found a "gross disparity" between Georgia's sentencing scheme and that of other states.²²

On March 30, 2009, U.S. District Judge Clarence Cooper issued an injunction enjoining the law banning sex offenders from volunteering at churches.²³ Under current Georgia law, sex offenders are prohibited from all of the following activities: singing in adult choirs, playing piano or reading in a church service, serving on church committees, preparing food for homeless, attending adult Bible study, setting up for church events, and speaking to the congregation during

16. *Id.*

17. See Harp Interview, *supra* note 1.

18. *Bradshaw*, 671 S.E.2d at 492.

19. *Id.* at 487.

20. *Id.*

21. *Id.* at 492.

22. *Id.* at 491-92.

23. R. Robin McDonald, *Senator Irked at Failure to Fix Sex Offender Law*, FULTON COUNTY DAILY REP., Apr. 8, 2009, at 1.

services.²⁴ The March order issued is part of the pending case, *Whitaker v. Perdue*, filed on June 20, 2006.²⁵ The *Whitaker* case is a class action suit that will challenge various provisions of the current sex offender laws that have not yet fallen to constitutional challenges.²⁶ Whitaker, the lead plaintiff in the case, became a convicted sex offender when she was seventeen for engaging in consensual oral sex with a fifteen-year-old.²⁷

SB 157 was introduced to try to fix the problems with the current law so that the state would have “a law that is enforceable and will protect families and children in Georgia,” but that would also “pass constitutional muster” and save the state money and resources that would otherwise be wasted in the courts.²⁸

Bill Tracking of SB 157

Consideration and Passage by the Senate

Representatives Seth Harp (R-29th), Bill Cowsert (R-46th), Nan Orrock (D-36th), David Adelman (D-42nd), and Gloria Butler (D-55th), respectively, sponsored SB 157.²⁹ The Senate read the bill for the first time on February 17, 2009.³⁰ On February 24, the Senate Committee favorably reported on the bill, which was then read a second time on February 25, 2009.³¹

The bill, as originally introduced, was designed to remedy the extensive constitutional challenges by changing several provisions of the previously enacted sex offender bill that had been declared unconstitutional by Georgia courts.³² Specifically, as introduced, the bill sought to change and enact provisions of law relating to the classification of sexual offenders, sexual offender registration, and

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. SB 157, as introduced, 2009 Ga. Gen. Assem.

30. State of Georgia Final Composite Status Sheet, SB 157, Apr. 3, 2009.

31. *Id.*

32. *See* SB 157, as introduced, 2009 Ga. Gen. Assem.

restrictions on sexual offender's residencies, workplaces, and activities.³³ One of the bill's main changes related to the registration of homeless persons classified as sexual offenders.³⁴ The previously enacted law was declared unconstitutional by the Georgia Supreme Court because it did not provide for proper notification of the homeless as to what procedural reporting measures were required.³⁵ Additionally, section 3 of SB 157 attempted to isolate crimes of a purely sexual nature to ensure that those registered in Georgia as "sexual offenders" have actually committed a crime of a sexual nature.³⁶ Further, the bill as introduced sought to create a classification system for sexual offenders rather than having one "level."³⁷ The bill would have divided sexual offenders into three distinct groups: Level I risk assessment classification, Level II risk assessment classification, and sexually dangerous predator classification.³⁸ Such classifications would be based upon the court's review of several different factors, including a risk assessment profile, any evidence introduced by the prosecution, and any evidence introduced by the defense.³⁹ Additionally, sexual history polygraph information would also be deemed admissible for purposes of determining sexual offender classification.⁴⁰ Having such classifications would allow law enforcement to concentrate its resources most heavily on the "sexually dangerous predator" because this classification possesses the greatest risk to public safety.⁴¹ SB 157 would also have the trial court, rather than the sex offender

33. *Id.*

34. *See* SB 157, as introduced, § 3(1), 2009 Ga. Gen. Assem. (amending the text of Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated by striking "and homeless does not constitute an address").

35. *Santos*, 668 S.E.2d at 679.

36. SB 157 (SCSFA), § 3, p. 2, 2009 Ga. Gen. Assem. These revisions were made in response to the scenario where an armed robber who ordered a minor to the floor would be convicted of a sex crime, even though the crime in no way involved sex. *See* Harp Interview, *supra* note 1.

37. SB 157, as introduced, 2009 Ga. Gen. Assem.

38. *Id.* § 2(b).

39. *Id.* § 2(b)(1)–(3).

40. *Id.*

41. Video Recording of Senate Proceedings, Mar. 3, 2009 at 3 hr., 21 min., 32 sec. (remarks by Sen. Seth Harp (R-29th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_129987583,00.html [hereinafter Senate Floor Video].

registration board, make the determination of sexual offender classification and sentencing.⁴²

According to Senator Harp (R-29th), as introduced the bill was designed to be constitutional where Georgia's sexual offender law has previously failed, and to isolate the *truly* sexually dangerous predator.⁴³

On February 25, 2009, the Senate Judiciary Committee offered a substitute to SB 157, and on March 3, 2009, Senator Harp offered Floor Amendment 1 to amend the Senate Judiciary Committee's substitute to SB 157, which revised lines 161 through 166 of the bill.⁴⁴ Such change was made to lines 161–166 to more fully clarify the language about where an offender sleeps, is employed, or attends an institution of higher education.⁴⁵

Additionally, a change was made to line 168, addressing the sexual offender's duty to update required registration information, to alter the time requirement for notification from “within 72 hours of any change” to “72 hours *before* any change.”⁴⁶ Such amendment was made in response to law enforcement's findings about the ease of enforceability of the sexual offender law, thus playing a role in allowing law enforcement to successfully focus their attention on the truly *dangerous* predators.⁴⁷ Lastly, the Floor Amendment changed

42. Video Recording of House Judiciary Non-Civil Committee, Mar. 19, 2009 at 9 min., 36 sec. (remarks by Sen. Seth Harp (R-29th)), http://www.legis.state.ga.us/legis/2009_10/house/Committees/judiciaryNonCivil/judyncArchives.htm [hereinafter House Committee Video]. Deputy Attorney General Mary Beth Westmoreland noted that this change is something that would be implemented *prospectively*—from the implementation of the bill forward. *Id.* at 10 min., 5 sec. (remarks by Mary Beth Westmoreland, Deputy Attorney General). This change would see that the trial judges receive all the requisite information that the sex offender registration board used to receive when determining sentencing. *Id.*

43. Senate Floor Video, *supra* note 41, at 3 hr., 19 min., 56 sec. (remarks by Sen. Seth Harp (R-29th)) (explaining that, though the bill is extensive, the two main goals are to create a sustainable, constitutional law of sexual offenders and to concentrate law enforcement resources on the truly sexually dangerous predator).

44. See SB 157 (SCSFA), § 7, p. 7, ln. 161–64, 2009 Ga. Gen. Assem. (amending subsection (f) of Code Section 42-1-12 to include not only where the sexual offender resides, but also where the sexual offender “sleeps, is employed, or attends an institution of higher education”).

45. Senate Floor Video, *supra* note 41, at 3 hr., 20 min., 40 sec. (remarks by Sen. Seth Harp (R-29th)).

46. See SB 157 (SCSFA), § 7, p. 7, ln. 168, 2009 Ga. Gen. Assem.

47. Senate Floor Video, *supra* note 41, at 3 hr., 21 min., 42 sec. (remarks by Senator Seth Harp (R-29th)).

line 175, also found in Section 7, to require sexual offenders to report updated registration information to the sheriff of “each” county to which the offender is moving, rather than give this information to the sheriff of “the” county to which the offender is moving.⁴⁸ This amendment was in response to law enforcement’s comments and was incorporated as a means of bringing greater clarity and ease of implementation to the bill.⁴⁹

As noted by Senator Harp during the Floor Debate on March 3, 2009, the main focus of this bill was to create a workable sexual offender law in Georgia that would withstand the multiple constitutional challenges the past law has faced.⁵⁰ As Senator Harp points out, in our current state, Georgia is essentially left without a sexual offender registration law at all; until the appropriate sections of the Code are amended and made constitutionally sound, Georgia, in reality, will have no decent sexual offender law.⁵¹ And as Senator Harp notes, this leaves dangerous “cracks” in the system that may allow predators an opportunity to strike.⁵²

After introduction of this Floor Amendment and a brief Floor Debate,⁵³ SB 157 was read for a third time and was passed by the Senate on March 3, 2009.⁵⁴ The bill passed by a vote of 52 to 2.⁵⁵

Consideration by the House

On March 4, 2009, the House first read SB 157, and the following day on March 5, 2009, the House completed a second read of the bill.⁵⁶ Several weeks later on March 30, 2009, the bill was referred to the House Judiciary Non-Civil Committee, which favorably reported on SB 157,⁵⁷ yet from there, the bill has faced opposition and

48. See SB 157 (SCSFA), § 7, p. 7, ln. 175, 2009 Ga. Gen. Assem.

49. *Id.*

50. *Id.*

51. House Committee Video, *supra* note 42, at 4 min., 6 sec. (remarks by Sen. Seth Harp (R-29th).

52. *Id.* Senator Harp also notably called the current sexual offender law “a skunk” and said he decided to take this “skunk” and try to make it into a “perfumed kitty.” *Id.*

53. Senate Committee Video, *supra* note 41, at 3 hr., 18 min., 14 sec.

54. State of Georgia Final Composite Status Sheet, SB 157, Apr. 3, 2009.

55. Georgia Senate Voting Record, SB 157, Mar. 3, 2009.

56. State of Georgia Final Composite Status Sheet, SB 157, Apr. 3, 2009.

57. *Id.*

controversy in the House. The controversy led to the House's withdrawing and recommitting SB 157 to the House on April 3, 2009.⁵⁸ Accordingly, the 2009 legislative session ended without a House vote on SB 157.

The Bill

The bill would have amended Code section 5-6-35 of the Official Code of Georgia Annotated, relating to appeals requiring an application for appeal so as to make the Code section applicable to appeals from superior court decisions reviewing a decision of the Sexual Offender Registration Review Board.⁵⁹

The bill would have amended Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to sentencing procedures in criminal cases, to provide classification for sexual offenders by the sentencing court rather than the Sexual Offender Registration Review Board.

Proposed Code section 17-10-6.4 would have permitted a sex offender convicted on or after the effective date of this Code section to have a sentencing court place the offender into a risk-assessment category of Level I, Level II, or sexually dangerous predator based on its determination of the likelihood that the sex offender would engage in another dangerous sexual offense.⁶⁰ The Code section would have instructed the court to base its review on a risk assessment profile completed by the Department of Corrections and any evidence introduced by the prosecution and the defense.⁶¹ The Code section would have further provided that such information would become a matter of public record.⁶²

Additionally, any sex offender who changed residence from another state or territory of the United States to Georgia and was not already designated under Georgia law as a sexually dangerous predator would have had his or her required information forwarded to

58. *Id.*

59. *See* SB 157 (SCSFA), § 1, p. 1, ln. 4, 2009 Ga. Gen. Assem.

60. *Id.*

61. *Id.*

62. *Id.*

Sexual Offender Registration Review Board to be assigned a risk assessment classification under Code section 42-1-14.⁶³ The amendments to Code section 42-1-14 also would have provided detailed procedures and timelines for appealing these determinations.⁶⁴

The bill further would have amended Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to classification and registration of sexual offenders and regulation of the conduct of such offenders.⁶⁵

First, Code Section 42-1-12 would have been amended by striking the phrase “homeless does not constitute an address” and requiring homeless offenders who do not have a residence address to register with the sheriff in the county in which the offender sleeps.⁶⁶ The homeless offender further would have been required to report weekly to the sheriff to provide the place where he or she sleeps, eats, works, or otherwise frequents.⁶⁷ These requirements were meant to bring the law in compliance with the decision of the Georgia Supreme Court in *Santos v. State*.⁶⁸

Code section 42-1-12 also would have been amended to change the definition of kidnapping and false imprisonment of a minor to only be classified as a sexual offense when the offense by its nature is sexual.⁶⁹

The bill would have amended Code section 42-1-12 to require that specific information be forwarded to the sheriff’s office of the county where the sexual offender intends to reside including the sex offender’s fingerprints, palm print, photographs, address, and information regarding his crime of conviction.⁷⁰

The bill would have relaxed the residency restriction requirements by amending Code section 42-1-12 to provide an exemption for private in-home day care facilities that are not licensed by the state

63. See SB 157 (SCSFA), § 12, p. 10, 2009 Ga. Gen. Assem.

64. *Id.*

65. See SB 157, as passed Senate, 2009 Ga. Gen. Assem.

66. *Id.*

67. *Id.*

68. See discussion *supra* notes 1–28 and accompanying text.

69. See SB 157, as passed Senate, 2009 Ga. Gen. Assem.

70. *Id.*

from constituting a “child care facility” for residency restriction purposes.⁷¹ The bill would have struck the provision requiring sex offenders to provide user passwords, but still would have required e-mail addresses and usernames be reported. In response to the Georgia Supreme Court’s *Bradshaw v. State* decision, Code section 42-1-12 would have been further amended by striking the provision requiring mandatory life imprisonment for a second conviction for failing to comply with the reporting and registration requirements.⁷²

Code section 42-1-15 would have been amended to relax the requirements regarding where an offender can volunteer.⁷³ Under SB 157, an offender would not have been precluded from volunteering in activities limited to persons who are eighteen years of age or older or from participating in worship services or other religious activities that do not include supervising, teaching, directing, or otherwise participating with minors in an unsupervised environment.⁷⁴

The bill also would have introduced a new Code section, 42-1-16, to allow an individual or someone acting on the behalf of the individual to petition a superior court to issue an order releasing the individual sex offender from the residency requirements under certain circumstances.⁷⁵ To obtain a release order under the new Code section, the court would have had to find, by a preponderance of the evidence, that the individual did not pose a substantial risk of perpetrating any future dangerous sexual offense and that the individual either: (1) resided in a hospice, skilled nursing home, or residential care facility; (2) was totally or permanently disabled; or (3) was otherwise seriously physically incapacitated due to illness or injury.⁷⁶

71. SB 157, as passed Senate, 2009 Ga. Gen. Assem.

72. See discussion *supra* notes 1–28 and accompanying text.

73. See SB 157, as passed Senate, 2009 Ga. Gen. Assem.

74. *Id.*

75. *Id.*

76. *Id.*

Analysis

Georgia's sex offender laws are widely criticized as the strictest in the nation and the highest court in the state has already upheld many challenges to the current law and has struck down many portions of the law for violating both the Georgia and United States Constitution.⁷⁷ In addition to the *Bradshaw* and *Santos* cases, there are still other lawsuits currently pending in the courts.⁷⁸ The Federal District Judge in the *Whitaker* case has already enjoined the portion of the law restricting volunteering in religious activities and will likely be open to hearing more constitutional challenges to the law that are not remedied by the legislature.⁷⁹

This bill was a collective effort by sheriffs' offices, prosecutors, and members of the General Assembly not just to respond to many of the concerns expressed by the courts and others who criticized the law for being overly broad, unconstitutionally vague, and in certain circumstances imposing cruel and unusual punishment, but also to reform the law so that it more accurately allocated resources to isolate truly dangerous sexual predators.

As Senator Harp (R-29th) laments, Georgia's law enforcement members are having a "devil of a time" attempting to enforce the current sex offender law.⁸⁰ One main factor contributing to this problem is the fact that Georgia's registry currently overflows with offenders who may not have even committed a crime of a sexual nature.⁸¹ Yet, despite these registrant's probable lack of threat to society (from a sexual offense standpoint), Georgia's law enforcement teams must still exert precious time and energy towards enforcing the cumbersome law against each and every person named in the registry.⁸² Indeed, such over-inclusion has faced wide criticism

77. Maureen Downey, *Open Doors, Fix Registry*, ATLANTA J.-CONST., Mar. 18, 2009, available at http://www.ajc.com/opinion/content/opinion/stories/2009/03/18/offended_0318.html.

78. See Bill Rankin, *Lawyer Argues Sex Offender Law off Target, Unconstitutional*, ATLANTA J.-CONST., Mar. 18, 2009, available at http://www.ajc.com/metro/content/metro/stories/2009/06/08/sex_offender_law.html.

79. See discussion *supra* note 23 and accompanying text.

80. See Harp Interview, *supra* note 1.

81. *Id.*

82. *Id.*

in the State, with Georgia's newspapers pointing out that if the registry listed only the truly *serious* offenders, it would become a more useful tool to our law enforcement.⁸³

One scenario bringing to light the realities of these criticisms is as follows: a person who commits the crime of armed robbery and, in the process of doing so, orders a minor to the ground and so “falsely imprisons” that minor, would, in addition to being convicted for armed robbery, *also* be convicted of a sex crime and thus be labeled a “sexual offender” and entered in the registry.⁸⁴ Thus, despite the fact that this person's crime had nothing to do with sex, and the ordering of the minor to the ground was not sexual in nature, this person would now bear the label of sex offender, be required to comply with all the requirements that accompany such a label, and Georgia's law enforcement would thus be charged with the responsibility of keeping tabs on this offender.⁸⁵

Senator Harp was confident that SB 157 would have remedied such problems and ensured that offenders in the above scenario—and other similar scenarios—would not be included in the sex offender registry. Specifically, section 3 of SB 157 sought to amend subsections (a)(9)(A)(i)–(ii) and subsections (a)(9)(B)(i)–(ii) of Code section 42-1-12 to include the phrase “when the offense by its nature is a sexual offense against a minor or an attempt to commit a sexual offense against a minor” to the Code provisions governing kidnapping and false imprisonment.⁸⁶

Additionally, SB 157 includes a new ‘risk assessment classification’ system that will help alleviate the problems associated with an over-loaded registry list.⁸⁷ Rather than treating all sexual offenders the same, section 3 of SB 157 delineates three risk assessment classifications: Level I, Level II, and sexually dangerous predator.⁸⁸ Senator Harp and other supporters of the bill were most

83. Downey, *supra* note 77.

84. See Harp Interview, *supra* note 1.

85. *Id.*

86. SB 157 (SCSFA), § 3, p. 4, ln. 8, 2009 Ga. Gen. Assem.

87. SB 157 (SCSFA), § 2, p. 3, ln. 1, 2009 Ga. Gen. Assem.

88. See *id.* SB 157 further clarifies a “sexually dangerous predator” as meaning a sexual offender who was designated as a sexually violent predator between the dates of July 1, 1996 and June 30, 2006. *Id.* Further, this classification includes those offenders who were determined by the Sexual Offender

concerned with isolating and protecting the public from those offenders classified as sexually dangerous predators.⁸⁹ In parsing out different levels of sexual offenders, persons like the lead plaintiff in *Whitaker v. Perdue* would be placed at a lower level and spared from many of the invasive requirements of the law, freeing up law enforcement's time and man power to allow them to focus on tracking the truly dangerous predators who threaten Georgia's children and families.⁹⁰ Senator Harp praises the due diligence conducted by the Attorney General's office and others who worked on this bill and the risk assessment classifications specifically, which are based on the federal law concerning sexual offenders.⁹¹

A third way SB 157 attempted to whittle down the sex offender registry in Georgia is found in Section 14 of the bill. This section would add a new section to the Georgia Code, to be codified at 42-1-16.⁹² The section would have released from the bill's residency requirement those individuals who are assessed as not posing a substantial risk of perpetrating any future dangerous sexual offense when those individuals reside in a nursing home or hospice facility, are totally and permanently disabled, or are otherwise seriously physically incapacitated due to illness or injury.⁹³ Again, this was an attempt to work towards the goal of isolating only the *truly* dangerous and allowing law enforcement to more properly focus their time and resources, a goal which seems common among most parties, despite the bill's failure. The provision also contributes to the goal of achieving overall constitutionality, because Georgia's courts would likely take issue with the reality of removing elderly and ill offenders from their nursing and hospice homes because of sex offender residency requirements.⁹⁴

Registration Review Board of a court sentencing to be at risk of *perpetrating any future dangerous sexual offense. Id.*

89. See Harp Interview, *supra* note 1.

90. *Id.*

91. Harp Interview, *supra* note 1; Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587, 645-46.

92. See SB 157 (SCSFA), § 14, p. 15, 2009 Ga. Gen. Assem.

93. *Id.*

94. As Senator Harp (R-29th) pointedly asks, "What are we supposed to do, roll the bed out in the street? You can't do that. That will never pass constitutional muster." See Harp Interview, *supra* note 1.

Overall, the purpose of SB 157 can be characterized as intending to achieve two main goals: first, the bill sought to reshape the law that HB 1059 introduced in 2006 as to meet constitutional scrutiny;⁹⁵ second, the bill sought to shape the sex offender registry list in such a way as to identify the truly dangerous sexual predators and so that law enforcement can allocate resources efficiently to ensure that these offenders will not have the opportunity to strike again.⁹⁶ In doing so, the overall goal was to make Georgia's families and children safer.

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95. Harp Interview, *supra* note 1.

96. *Id.*