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CRIMES AND OFFENSES Offenses Against Public Order and Safety: Increase Penalty for Commission of Crime with a Firearm by a Convicted Felon; Provide for Life Confinement Upon a Subsequent Conviction; Provide for Felony Offense of Riot When a Person in a Penal Institution Commits an Act of Violence

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CRIMES AND OFFENSES

***Offenses Against Public Order and Safety:
Increase Penalty for Commission of Crime with a
Firearm by a Convicted Felon; Provide for Life
Confinement Upon a Subsequent Conviction; Provide
for Felony Offense of Riot When a Person in a
Penal Institution Commits an Act of Violence***

CODE SECTIONS: O.C.G.A. §§ 16-10-56, 16-11-133 (new)
BILL NUMBER: HB 87
ACT NUMBER: 12
GEORGIA LAWS: 1995 Ga. Laws 137
SUMMARY: The Act provides that a felon, who previously has been convicted of one of eight serious felonies and then subsequently is convicted for using a firearm in the commission of certain enumerated felonies, shall be punished by imprisonment for fifteen years to run consecutively with any other sentence. The Act provides that upon the second such conviction, the convicted felon will be sentenced to life imprisonment without probation. The Act also provides that a prisoner in a penal institution who commits a violent act commits the felonious offense of riot in a penal institution.

EFFECTIVE DATE: July 1, 1995

History

Representative Lynda Coker first introduced this bill in 1993 in response to public outcry, concern, and fear over the escalating crime rate.¹ Although no specific incident motivated the introduction of this bill, gun control was a major issue in the press, and this bill addressed crimes in which guns were used.²

1. Telephone Interview with Rep. Lynda Coker, House District No. 31 (Apr. 3, 1995) [hereinafter Coker Interview I].

2. *Id.*

By punishing persons who commit crimes with firearms, the bill balanced prevention of violent crimes against citizens' rights to bear arms.³ Some members of the House Judiciary Committee who are defense attorneys opposed the more stringent mandatory sentencing of criminals convicted of certain felonies.⁴ Other committee members were concerned about the scarce number of available prison beds.⁵ As a result of this opposition, no action was taken by the House on this bill in 1993.⁶

Representative Coker introduced the bill again in 1994.⁷ The House passed the bill, but it was tabled in the House and held for possible inclusion in Governor Zell Miller's 1994 crime control package.⁸ When the Governor's crime package came to the floor and did not include these provisions, Representative Coker tried to amend the crime package to include this bill, but she received little support.⁹

Representative Coker introduced the bill again in 1995 in order to send a strong anti-crime message.¹⁰ She believes that a prison reform movement is on the horizon, and that this Act ensures that the limited number of prison beds are given to the most violent criminals.¹¹

HB 87

The Act targets the most dangerous criminals by making it a separate felony, with a mandatory fifteen-year sentence, for a felon who has previously been convicted of one of a list of serious crimes to commit a subsequent felony using a firearm.¹² The Act adds Code section 16-11-133.¹³ Subsection (a) defines "felony" as "any offense punishable by imprisonment for a term of one year or more" and defines "firearm" as "any handgun, rifle, shotgun,

3. Telephone Interview with Rep. Lynda Coker, House District No. 31 (June 15, 1995) [hereinafter Coker Interview II].

4. Coker Interview I, *supra* note 1; see 1994 Ga. Laws 1959, § 11 (codified at O.C.G.A. § 17-10-6.1 (Supp. 1995)).

5. Coker Interview I, *supra* note 1.

6. Coker Interview I, *supra* note 1.

7. Coker Interview I, *supra* note 1.

8. Coker Interview I, *supra* note 1.

9. Coker Interview II, *supra* note 3.

10. Coker Interview I, *supra* note 1.

11. Coker Interview II, *supra* note 3.

12. O.C.G.A. § 16-11-133 (Supp. 1995).

13. *Id.*

stun gun, taser, or other weapon which . . . expel[s] a projectile by the action of an explosive or electrical charge.”¹⁴ Subsection (b) provides that “[a]ny person who has previously been convicted of or who has previously entered a guilty plea to the offense of murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, or any felony involving the use or possession of a firearm” is subject to the provisions of Code section 16-11-133.¹⁵

The Act provides a mandatory sentence of fifteen years imprisonment if a person subject to this Code section subsequently is convicted of using or possessing a firearm in the commission or attempt to commit a felony involving one of the following offenses:

- (1) Any crime against or involving the person of another;
- (2) The unlawful entry into a building or vehicle;
- (3) A theft from a building or theft of a vehicle;
- (4) Any crime involving the possession, manufacture, delivery, distribution, dispensing, administering, selling, or possession with intent to distribute any controlled substance . . . ; or
- (5) Any crime involving the trafficking of cocaine, marijuana, or illegal drugs¹⁶

This fifteen-year term runs consecutively with any other sentence the felon has received for conviction of the enumerated felonies.¹⁷

If a previously convicted felon is convicted for a second time under this Code section, the Act provides life imprisonment without probation.¹⁸ Subsection (d) provides that the primary felonies under subsections (b) and (c) are considered separate offenses from the underlying felony.¹⁹

However, as Fulton County Assistant District Attorney Don Geary pointed out, the Act does not prohibit a judge from suspending or probating all or part of the fifteen-year sentence and does not prohibit the Board of Pardons and Paroles from paroling the felon before completing the fifteen-year sentence.²⁰

14. *Id.* § 16-11-133(a).

15. *Id.* § 16-11-133(b).

16. *Id.*

17. *Id.*

18. *Id.* § 16-11-133(c).

19. *Id.* § 16-11-133(d).

20. Telephone Interview with Don Geary, Fulton County Assistant District

Even if the judge sentences the felon to serve fifteen years, it is likely that the Board of Pardons and Paroles will parole the felon, who actually may serve less than five years of the fifteen-year sentence.²¹ Furthermore, although the Act requires that the felon be sentenced to life imprisonment without probation following a second conviction, the Board of Pardons and Paroles can still parole the felon.²² According to Assistant District Attorney Geary, persons sentenced to life imprisonment often are paroled after serving only seven to eleven years of a life sentence.²³ He explained that the Board of Pardons and Paroles derives its authority from the Georgia Constitution.²⁴ Thus, only a constitutional amendment explicitly designating that neither the fifteen-year sentence nor the life imprisonment sentence can be paroled would ensure that the legislative intent of this Act is effectuated.²⁵

The Act also adds Code section 16-10-56, which makes it a felony for a prisoner in a penal institution to commit a violent act.²⁶ This felony, designated as "riot[ing] in a penal institution," is punishable by imprisonment of one to twenty years.²⁷ The riot provision was not included in the original bill.²⁸

As originally introduced, the provisions of HB 87 applied to all persons previously convicted of any felony, not only to those persons previously convicted of one of the eight serious felonies designated in the Act.²⁹ The bill passed out of the House Public Safety Committee with strong support.³⁰ Representative J.E. "Billy" McKinney and several other representatives expressed

Attorney (June 16, 1995) [hereinafter Geary Interview].

21. *Id.*

22. *Id.* The sentencing judge, however, is prohibited from suspending the sentence and imposing parole instead. O.C.G.A. § 16-11-133(c) (Supp. 1995).

23. Geary Interview, *supra* note 20.

24. Geary Interview, *supra* note 20; GA. CONST. art. IV, § I, ¶ 2.

25. Geary Interview, *supra* note 20. Rep. Coker said that the legislative intent of the Act was that neither the fifteen-year sentence nor the life-imprisonment sentence be subject to parole. Coker Interview II, *supra* note 3.

26. O.C.G.A. § 16-10-56(a) (Supp. 1995).

27. *Id.* § 16-10-56(b).

28. HB 87, as introduced, 1995 Ga. Gen. Assem.

29. Compare HB 87, as introduced, 1995 Ga. Gen. Assem. with O.C.G.A. § 16-11-133(b) (Supp. 1995).

30. Coker Interview I, *supra* note 1.

concern on the House floor that subsection (b), which made the bill applicable to "any felon," might be too broad because it would include those persons convicted of lesser or "paper" felonies.³¹ Representative McKinney believed that the penalties were too strict for such nonviolent felonies.³² However, Representative Coker wanted this Act to send a strong message against crime, so she assured the representatives that she would address this issue if the Senate shared a similar concern.³³ Representative McKinney opposed the bill because he believes that Georgia already has enough "law and order" and that the state only needs to enforce the laws already on the books.³⁴ He also opposed the bill because he believes the prison system is not large enough to accommodate more prisoners.³⁵ Despite these concerns, the bill passed the House with no changes and was sent to the Senate.³⁶

After the bill was sent to the Senate, the Georgia Department of Corrections (Department) issued a fiscal note stating that the cost of implementing this bill would be \$372 million.³⁷ However, in 1994, the Department had issued a fiscal note stating that the cost would be negligible.³⁸ Representative Coker analyzed the cost and estimated it to be between fifty and seventy-five million dollars, which she believed her constituents would support.³⁹

The Department was also concerned with the bill's impact on the prison population.⁴⁰ The Department estimated that the bill

31. Coker Interview I, *supra* note 1. Rep. Coker stated that paper felonies are white collar crimes that include credit card fraud, bad checks, and embezzlement. Telephone Interview with Rep. Lynda Coker, House District No. 31 (Aug. 25, 1995) [hereinafter Coker Interview III].

32. Telephone Interview with Rep. J.E. "Billy" McKinney, House District No. 51 (June 16, 1995) [hereinafter McKinney Interview].

33. Coker Interview I, *supra* note 1.

34. McKinney Interview, *supra* note 32. Rep. McKinney viewed the Act as superfluous and the result of "political grandstanding." McKinney Interview, *supra* note 32.

35. McKinney Interview, *supra* note 32.

36. Coker Interview I, *supra* note 1.

37. Coker Interview I, *supra* note 1. Rep. Coker explained that when legislation is introduced, the fiscal office tries to determine what the implementation cost will be to the State of Georgia. Coker Interview III, *supra* note 31. In this case, the fiscal office conferred with the Department of Corrections to determine the fiscal impact of the bill. Coker Interview III, *supra* note 31.

38. Coker Interview I, *supra* note 1.

39. Coker Interview I, *supra* note 1.

40. Coker Interview II, *supra* note 3.

would increase the jail population by two thousand inmates in ten years.⁴¹ Representative Coker said that even if there is a scarcity of prison beds, the bill would ensure that the most serious offenders are imprisoned.⁴² However, the Senate Rules Committee was concerned with the cost of implementing the bill.⁴³ Representative Coker addressed this concern by agreeing to narrow subsection (b), making the Act applicable only to persons who previously had been convicted of one of the seven most serious felonies included in the Governor's 1994 crime control package⁴⁴ or any felony which had involved the use or possession of a firearm.⁴⁵ Although some senators wanted to weaken the impact of the bill by making the fifteen-year sentence run concurrently with any other sentence, Representative Coker was able to retain the requirement that the fifteen-year sentence run consecutively with any other sentence.⁴⁶

Finally, the Department requested a provision to punish rioting in penal institutions.⁴⁷ In response, the Senate added Code section 16-10-56, making it a felony to riot in a penal institution.⁴⁸

The bill was sent back to the House, which approved the Senate's amendments.⁴⁹

Susan Beth Jacobs

41. Coker Interview II, *supra* note 3.

42. Coker Interview II, *supra* note 3.

43. Coker Interview I, *supra* note 1.

44. 1994 Ga. Laws 1966 (codified at O.C.G.A. § 17-10-6.1 (Supp. 1995)).

45. Coker Interview I, *supra* note 1; HB 87 (SFA), 1995 Ga. Gen. Assem.

46. Coker Interview I, *supra* note 1.

47. Coker Interview I, *supra* note 1.

48. O.C.G.A. § 16-10-56 (Supp. 1995); *see also supra* notes 26-29 and accompanying text.

49. Coker Interview I, *supra* note 1.