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K. Richardson

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DOMESTIC RELATIONS

Family Violence Act: Modify Provisions

CODE SECTIONS:	O.C.G.A. §§ 17-4-20 (amended), 19-13-1 (amended), 19-13-3 (amended), 19-13-4 (amended), 19-13-6 (amended)
BILL NUMBERS:	HB 1399, HB 1400, HB 1406, HB 1407
ACT NUMBERS:	1321, 1322, 1323, 1324
SUMMARY:	The Acts broaden the category of protected persons, reduce the standard for issuance of a temporary protective order, ease provisions in state licensing requirements for family violence shelters, and promote training of law enforcement officers in handling domestic violence cases.
EFFECTIVE DATE:	July 1, 1988

History

In 1981, the Georgia General Assembly passed SB 79, adopting procedures for the prevention of family violence. The Act defined family violence as the commission of any felony, "battery, assault, criminal damage to property, unlawful restraint, or criminal trespass" between "spouses, parents and children, or other persons related by consanguinity or affinity and living in the same household."¹ The Act gave jurisdiction over these matters to the superior court in the defendant's county of residence.² Any adult could file a petition with the court alleging an act of family violence.³ The court could order temporary relief at its discretion to protect the petitioner or a minor in the household from domestic violence.⁴ For the temporary protective order to issue, the Act required the petitioners to allege "a substantial likelihood of immediate danger of family violence."⁵ Within ten days after filing the petition, the petitioner was required to prove the allegations by a preponderance of the evidence.⁶

The Act gave courts a broad range of powers to prevent domestic vio-

1. O.C.G.A. § 19-13-1 (1982). The Act excludes "reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention." *Id.*

2. O.C.G.A. § 19-13-2 (1982).

3. 1981 Ga. Laws 880 (formerly found at O.C.G.A. § 19-13-3(a) (1982)).

4. 1981 Ga. Laws 880 (formerly found at O.C.G.A. § 19-13-3(b) (1982)).

5. *Id.*

6. O.C.G.A. § 19-3-3(c) (Supp. 1988). Subsection (c) has not been amended since its enactment.

lence, including granting one spouse exclusive possession of the residence, awarding temporary custody of minor children and establishing visitation rights, ordering spousal support or child support payments, and ordering any additional protection necessary.⁷ The 1981 Act further amended the Code to provide that a law enforcement officer could arrest if the officer had "probable cause to believe that an act of family violence . . . has been committed."⁸

That same year, the General Assembly passed HB 203, which empowered the Department of Human Resources (DHR) to establish family violence shelters to provide temporary care for persons subject to family violence.⁹ This Act contained a broader definition of family violence covering family members or household members who resided together.¹⁰ The Act authorized the DHR to receive applications for developing family violence shelters; to set minimum standards for certification and evaluation of the shelters for compliance; and to serve as a research, education, and information clearinghouse on issues of domestic violence.¹¹

The Family Violence Act underwent minor revisions in 1982, 1983, 1984, and 1985. The 1982 amendment provided additional powers to the superior court to order any party involved in a family violence hearing to receive appropriate psychiatric or psychological treatment to prevent recurrence of the violence.¹² The 1983 amendments allowed the DHR to establish family violence programs in addition to the family violence shelters; connection of these programs with the shelters was not required.¹³ The 1984 amendment simply called for a copy of the temporary protective order to be furnished to the petitioner.¹⁴ The 1985 amendment provided that family violence shelter staff members or social workers, or the clerk of the court, could provide assistance to a person wishing to file a petition and that this assistance would not constitute the practice of law.¹⁵

Although the Family Violence Act itself was not amended in 1986, the General Assembly made a significant change in the warrantless arrest provision of O.C.G.A. § 17-4-20. A police officer originally had been granted the power to arrest without a warrant if the officer had "probable cause to believe that an act of family violence" had been committed.¹⁶

7. O.C.G.A. § 19-13-4(a) (Supp. 1988).

8. O.C.G.A. § 17-4-20(a) (Supp. 1988).

9. 1981 Ga. Laws 663.

10. O.C.G.A. § 19-13-20(3) (1982 & Supp. 1988). The definition includes any attempt to cause bodily injury or "placing another in fear of imminent serious bodily injury." *Id.*

11. O.C.G.A. § 19-13-21 (Supp. 1988).

12. O.C.G.A. § 19-13-4(a)(11) (Supp. 1988).

13. O.C.G.A. §§ 19-13-20(4), 19-13-21(a)(5), 19-13-22(a)(4) (Supp. 1988).

14. O.C.G.A. § 19-13-3(b) (Supp. 1988).

15. O.C.G.A. § 19-13-3(d) (Supp. 1988).

16. 1981 Ga. Laws 880 (formerly found at O.C.G.A. § 17-4-20(a) (1982)).

The 1986 amendment gave the officer additional authority to arrest without a warrant if "a criminal offense as set forth in paragraphs (1) and (2) of Code Section 19-13-1 has occurred between persons of the opposite sex dwelling together openly in a meretricious relationship."¹⁷

In the 1988 Georgia General Assembly, the Family Violence Act was amended further. The four-bill legislative package was designed to promote education and training of police officers in handling domestic violence cases, make enforcement of the Domestic Violence Act easier, and close enforcement loopholes.¹⁸

HB 1399

HB 1399 reduced the standard for issuance of a domestic violence temporary protective order.¹⁹ Previous language required the petitioner to allege "a substantial likelihood of immediate danger of family violence" when filing a petition for relief.²⁰ HB 1399 requires only an allegation "that probable cause exists to establish that family violence has occurred in the past and may occur in the future."²¹ This language was suggested by DeKalb County Superior Court Judge Clarence Seeliger to make it easier for a judge to issue the protective order.²²

The House Special Committee on Judiciary amended the bill to require that the petitioner make the allegations "with specific facts."²³ The bill as amended by the House committee passed the General Assembly.

HB 1400

HB 1400 relaxed the standard required to find a person guilty of a misdemeanor for violation of the Family Violence Act.²⁴ The Code previously required that a person violate a protective order of eviction or exclusion from the residence and refuse to leave the premises when requested in order to be guilty of a misdemeanor.²⁵ HB 1400 removed the latter requirement, making it a misdemeanor simply to violate the provisions of a domestic violence order of eviction or exclusion from the residence or

17. 1986 Ga. Laws 657. This was a controversial expansion of police power collateral to the Family Violence Act. The bill obtained the minimum requisite votes for passage, with the final and deciding vote cast by House Speaker Tom Murphy. Telephone interview with Representative Cathey Steinberg, House District No. 46 (Dec. 5, 1988) [hereinafter Steinberg Interview].

18. Telephone interview with Representative Cathey Steinberg, House District No. 46 (Apr. 30, 1988).

19. HB 1399, as introduced, 1988 Ga. Gen. Assem.

20. 1981 Ga. Laws 880 (formerly found at O.C.G.A. § 19-13-3(b) (1982)).

21. O.C.G.A. § 19-13-3(b) (Supp. 1988).

22. Miller, *Tougher Laws, Proper Police Training Would Aid Abused Women*, Panel Told, Atlanta J., Oct. 22, 1987, at 36A, col. 1.

23. HB 1399 (HCA), 1988 Ga. Gen. Assem.

24. HB 1400, as introduced, 1988 Ga. Gen. Assem.

25. 1985 Ga. Laws 905.

household.²⁶ HB 1400 passed the General Assembly in its original version.

HB 1406

HB 1406 amended O.C.G.A. § 19-13-4 by giving the superior court issuing a protective order the jurisdiction to order enforcement by the sheriff, any deputy sheriff, or any other state, county, or municipal official.²⁷ The bill passed the General Assembly without change or opposition.

HB 1407

HB 1407 was the only family violence bill to draw any opposition but, nevertheless, passed the General Assembly without change. HB 1407 allows the warrantless arrest of an abused victim's former spouse for violation of the Family Violence Act.²⁸ Previously, only a current household member could be arrested without a warrant for violation of the Act.²⁹ To arrest a former spouse without a warrant, the police were required to have probable cause to believe that a felony had been committed.³⁰

HB 1407 allows the warrantless arrest of a former spouse even though the act of domestic violence may be a misdemeanor.³¹ HB 1407 redefines "family violence" to include violent acts between "past or present spouses, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living in the same household."³²

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26. O.C.G.A. § 19-13-6 (Supp. 1988).

27. O.C.G.A. § 19-13-4 (Supp. 1988).

28. O.C.G.A. § 19-13-1 (Supp. 1988).

29. See 1981 Ga. Laws 880 (formerly found at O.C.G.A. § 19-13-1 (1982)); O.C.G.A. § 17-4-20(a) (Supp. 1988).

30. See 1981 Ga. Laws 880 (formerly found at O.C.G.A. § 17-4-20(a)(1982)).

31. O.C.G.A. § 19-13-1 (Supp. 1988).

32. O.C.G.A. § 19-13-1 (Supp. 1988). Because the new definition of family violence was expanded to include violent acts "between persons living in the same household," the Code provision was dropped which allowed the warrantless arrest of "persons of the opposite sex dwelling together openly in a meretricious relationship." 1986 Ga. Laws 657. This is considered a "landmark" expansion of those persons protected by the Act. Steinberg Interview, *supra* note 17.