

9-1-1988

CRIMES AND OFFENSES Sexual Offenses: Prohibit Solicitation of Persons Under Age of Seventeen

S. Gray

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

S. Gray, *CRIMES AND OFFENSES Sexual Offenses: Prohibit Solicitation of Persons Under Age of Seventeen*, 5 GA. ST. U. L. REV. (1988).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol5/iss1/62>

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

CRIMES AND OFFENSES

Sexual Offenses: Prohibit Solicitation of Persons Under the Age of Seventeen

CODE SECTIONS: O.C.G.A. §§ 16-6-12 (amended), 16-6-13 (amended), and 16-6-15 (amended)

BILL NUMBER: HB 1221

ACT NUMBER: 1439

SUMMARY: The Act amends the Georgia pandering statute, O.C.G.A. § 16-6-12, to define the offense in gender-neutral language. The Act also amends O.C.G.A. §§ 16-6-13 and 16-6-15 to punish the offenses of prostitution, keeping a house of prostitution, pimping, pandering, and soliciting sodomy as felonies when persons under the age of seventeen are involved.

EFFECTIVE DATE: July 1, 1988

History

In 1943, the Georgia Legislature first established the crimes of participation in sexual acts for money.¹ The 1943 Act further provided that these crimes were punishable as misdemeanors for a first offense and as

1. 1943 Ga. Laws 569—70. Specifically, under sections 1 and 2 it became unlawful to:

receive or offer or agree to receive another into any house, . . . other structure, or vehicle . . . for the purpose of prostitution or assignation . . . ; knowingly own . . . or rent any place . . . [used for the purpose of] prostitution or assignation; or . . . reside in, enter, or remain in any . . . structure . . . or vehicle . . . for the purpose of prostitution or assignation; . . . aid, abet, or participate in the doing of any of the acts herein prohibited . . . [:] . . . cause . . . a female to become a prostitute or remain an inmate of a house of prostitution; . . . induce, persuade, or encourage a female to come into or leave this State for the purpose of prostitution, or to become an inmate in a house of prostitution; . . . receive or give, or agree to receive or give any money or thing of value for procuring, or attempting to procure any female to become a prostitute or an inmate for a house of prostitution; . . . knowingly accept, receive, levy, or appropriate any money or other thing of value without consideration from a prostitute or from the proceeds of any woman engaged in prostitution; or . . . aid, abet, or participate in the doing of any acts herein prohibited

Id.

felonies for subsequent offenses.²

In 1968, this law was revised to create the separately identifiable crimes of prostitution,³ pimping,⁴ keeping a place of prostitution,⁵ pandering,⁶ and solicitation of sodomy.⁷ These offenses were classified as misdemeanors under the 1968 Act.⁸

Two years later, the prostitution and solicitation laws were amended to provide more severe penalties. Under the 1970 Act, pimping, pandering, and keeping a house of prostitution became punishable as misdemeanors of a high and aggravated nature.⁹ Prostitution remained punishable as a misdemeanor.¹⁰ Except for the specific criminalization of "certain types of organized prostitution,"¹¹ the substantive crimes remained unchanged.

The definitions of the sexual offenses in HB 1221 are substantially the

2. 1943 Ga. Laws 570.

3. O.C.G.A. § 16-6-9 (1988). Prostitution is committed when "a person . . . performs or offers or consents to perform an act of sexual intercourse for money." *Id.*

4. O.C.G.A. § 16-6-11 (1988). Pimping is committed when a person:

- (1) Offers or agrees to procure a prostitute for another;
- (2) Offers or agrees to arrange a meeting of persons for the purpose of prostitution;
- (3) Directs another to a place knowing such direction is for the purpose of prostitution;
- (4) Receives money or other thing of value from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or
- (5) Aids or abets, counsels, or commands another in the commission of prostitution . . . where the proceeds or profits derived therefrom are to be divided on a pro rata basis.

Id.

5. O.C.G.A. § 16-6-10 (1988). Keeping a place of prostitution is defined as "having or exercising control over the use of any place or conveyance which would offer seclusion or shelter for the practice of prostitution . . . [and] knowingly grant[ing] or permit[ing] the use of such place for the purpose of prostitution." *Id.*

6. O.C.G.A. § 16-6-12 (1988). "A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution." *Id.*

7. O.C.G.A. § 16-6-15(a) (1988). "A person commits the offense of solicitation of sodomy when he solicits another to perform or submit to an act of sodomy . . ." *Id.* The crime of sodomy is committed when a person "performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another." O.C.G.A. § 16-6-2(a) (1988).

8. 1968 Ga. Laws 1299, 1301—02.

9. 1970 Ga. Laws 236. Misdemeanors of a high and aggravated nature are defined as crimes "which are susceptible of intricate organization and which involve the moral tone of the State." *Id.*

10. *Id.* at 238.

11. O.C.G.A. § 16-6-11 (1988). For example, the definition of pimping was extended to apply to any person who "[a]ids or abets, counsels or commands another in the Commission of prostitution, or who aids or assists [sic] in prostitution where the proceeds or profits derived therefrom are to be divided on a pro-rata basis." 1970 Ga. Laws at 237—38.

same as those in the 1968 Act. Changes in grammar or structure have left the substantive offenses and corresponding punishments unaltered.¹²

Although the definitions of the existing offenses are not changed by HB 1221, the age of the participants is now determinative of the seriousness of the crimes of pandering¹³ and solicitation of sodomy.¹⁴ Additionally, determinations of guilt or sentencing may not be "suspended, probated, deferred or withheld" upon a second conviction for pandering involving a person under the age of seventeen.¹⁵

HB 1221

HB 1221 amends O.C.G.A. § 16-6-13, which defines punishment for the offenses of keeping a place of prostitution,¹⁶ pimping,¹⁷ and pandering,¹⁸ by specifically addressing infractions involving persons under the age of seventeen. Under the Act, a panderer who solicits a person or assembles two or more persons under the age of seventeen for the purpose of prostitution is guilty of a felony.¹⁹ As punishment, the panderer is subject to a fine of not less than \$1000 nor more than \$5000, imprisonment for not less than one year nor more than five years, or both.²⁰

As introduced, HB 1221 required that the person solicited be under the age of sixteen in order for the crime to be a felony.²¹ The House Committee on Special Judiciary increased the age to seventeen, thereby broadening the group of youths protected by the statute.²² This revision was incorporated into the final version.²³

The original version of HB 1221 provided that sentencing discretion was to be limited for subsequent convictions for solicitation of sodomy²⁴ in the same way it was to be limited for subsequent convictions for pandering.²⁵ The House Committee on Special Judiciary eliminated the provision with respect to solicitation of sodomy.²⁶

The House Committee on Special Judiciary also attempted to add a

12. O.C.G.A. §§ 16-6-9 to -12, 16-6-15 (1988). The definition of pandering, however, was expanded in 1970 to criminalize "knowingly assembl[ing] females at a fixed place for the purpose of being solicited by others to perform an act of prostitution." 1970 Ga. Laws 238.

13. O.C.G.A. § 16-6-13(b) (1988).

14. O.C.G.A. § 16-6-15(b) (1988).

15. O.C.G.A. § 16-6-13(b) (1988).

16. O.C.G.A. § 16-6-10 (1988).

17. O.C.G.A. § 16-6-11 (1988).

18. O.C.G.A. § 16-6-12 (1988).

19. O.C.G.A. § 16-6-13(b) (1988).

20. *Id.*

21. HB 1221, as introduced, 1988 Ga. Gen. Assem.

22. HB 1221 (HCS), 1988 Ga. Gen. Assem.

23. O.C.G.A. § 16-6-13(b) (1988).

24. HB 1221, as introduced, 1988 Ga. Gen. Assem.

25. *See supra* text accompanying note 15.

26. HB 1221 (HCS), 1988 Ga. Gen. Assem.

requirement that solicitation of sodomy involve payment of money.²⁷ The provision was eliminated by the House before the bill was approved for submission to the Senate.²⁸ Therefore, the final version does not include payment of money as an element of the offense of solicitation of sodomy.²⁹ However, a person offering money to solicit an act of sodomy by a person under the age of seventeen will be convicted of a felony rather than a misdemeanor.³⁰

The legislature's decision not to require the payment of money as an element of the offense leaves intact a 1984 Georgia Court of Appeals decision, *Allen v. State*.³¹ In *Allen*, the defendant appealed the trial court's refusal to dismiss a charge of prostitution.³² Allen, a transvestite, had offered to "screw" an undercover police officer for thirty-five dollars.³³ Allen maintained that the charge was improper because he should have been charged with solicitation of sodomy rather than prostitution. The court upheld the conviction, finding that the charge of prostitution was not erroneous because it included the payment of money as an element, whereas the offense of solicitation of sodomy did not.³⁴ The court's decision indicates that the prohibition against prostitution applies to males as well as females.

Prohibitions against the particular conduct of only one sex have prompted equal protection challenges to prosecution for certain sexual offenses. In *Fluker v. State*,³⁵ for example, a man convicted of pandering claimed that the statute violated the equal protection clauses of the federal and state constitutions. Fluker argued that the statute was unconstitutional because it defined the crime of pandering as male solicitation or assemblance of females for the purposes of prostitution, but did not penalize females who solicit or assemble males for the same purpose.³⁶ The Georgia Supreme Court rejected Fluker's contention, noting that Fluker failed to meet his burden of proof that a favored class of male prostitutes or female panders existed to support his equal protection challenge.³⁷

Further, the *Fluker* court referred to *Michael M. v. Superior Court of Sonoma County*,³⁸ a United States Supreme Court decision. In that case the Court decided that the legislature may properly distinguish between sexes and "provide for the special problems of women" when defining and

27. *Id.*

28. HB 1221 (HCSFA), 1988 Ga. Gen. Assem.

29. See O.C.G.A. § 16-6-15(a) (1988).

30. O.C.G.A. § 16-6-15(b) (1988).

31. 170 Ga. App. 96, 316 S.E.2d 500 (1984).

32. *Allen v. State*, 170 Ga. App. 96, 316 S.E.2d 500 (1984).

33. *Id.* at 96, 316 S.E.2d at 501.

34. *Id.* at 97, 316 S.E.2d at 502.

35. 248 Ga. 290, 282 S.E.2d 112 (1981).

36. *Fluker v. State*, 248 Ga. at 290-91, 282 S.E.2d at 113.

37. *Id.* at 292, 282 S.E.2d at 114.

38. 450 U.S. 464 (1981).

punishing certain sexual offenses.³⁹ Relying on *Michael M.*, the Georgia Supreme Court justified the application of Georgia's pandering statute to male solicitors of female prostitutes only.⁴⁰ HB 1221, however, revises Georgia's pandering statute by expressly prohibiting pandering activities, regardless of the sex of any involved party.⁴¹

S. Gray

39. *Michael M. v. Superior Court of Sonoma County*, 450 U.S. at 469.

40. *Fluker*, 248 Ga. at 293, 282 S.E.2d at 115. The court quoted Justice Rehnquist's opinion in *Michael M.*:

The relevant inquiry, however, is not whether the statute is drawn as precisely as it might have been, but whether the line chosen by the . . . [l]egislature is within constitutional limitations That other States may have decided to attack the same problems more broadly, with gender-neutral statutes, does not mean that every State is constitutionally compelled to do so.

Id. at 292, 282 S.E.2d at 114.

41. O.C.G.A. § 16-6-12 (1988). The Act substitutes "he or she" for "he," and "person" has been substituted for "female." The statute now states: "A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution." *Id.* Recall that the court in *Allen* held that males can properly be charged with prostitution. *See supra* text accompanying notes 31-34.