

9-1-1989

## CRIMES AND OFFENSES Reckless Abandonment of a Child: Provide Elements of the Offense and Criminal Penalties

R. Conte

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### Recommended Citation

R. Conte, *CRIMES AND OFFENSES Reckless Abandonment of a Child: Provide Elements of the Offense and Criminal Penalties*, 6 GA. ST. U. L. REV. (1989).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol6/iss1/28>

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## CRIMES AND OFFENSES

### *Reckless Abandonment of a Child: Provide Elements of the Offense and Criminal Penalties*

CODE SECTION: O.C.G.A. § 16-5-72 (new)  
BILL NUMBER: HB 29  
ACT NUMBER: 666  
SUMMARY: The Act sets forth the elements of the felony criminal offense of reckless abandonment of a child under one year of age. The Act also imposes a criminal penalty of not less than ten nor more than twenty-five years imprisonment upon any individual who is found guilty of the offense.  
EFFECTIVE DATE: July 1, 1989

#### *History*

HB 29 was introduced in response to the “rash of cases” reported in the electronic news media in which infants were physically abandoned “on doorsteps, in trash cans and dumpsters, and on the side of the road.”<sup>1</sup> The bill’s sponsor was particularly concerned about those cases in which a person abandons a newborn infant and that infant is later found dead.<sup>2</sup> The bill was designed to give Georgia’s district attorneys the means of prosecuting any individual who deliberately abandons an infant when the result of that physical abandonment is the death of the infant.<sup>3</sup>

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1. Telephone interview with Representative Roy Allen, House District No. 125 (Mar. 8, 1989) [hereinafter Allen Interview].

2. *Id.*

3. *Id.* Representative Allen distinguished “physical abandonment” of a child from financial abandonment, in which one fails to provide financial support to a child as obligated by agreement or law. The Act addresses only physical abandonment of a child, not financial abandonment. Representative Allen also emphasized that prior to the Act, any individual whose physical abandonment of a child or infant resulted in death could not be prosecuted, in his opinion, under any of Georgia’s homicide statutes. Such an individual could not be prosecuted, he opined, under a felony murder theory because of the absence of an “underlying felony” in such a case. Representative Allen is an attorney who includes criminal defense work in his practice. *Id.*

*HB 29*

The Act sets forth the elements of the felony criminal offense known as reckless abandonment of a child.<sup>4</sup> The Act states that any "parent, guardian, or other person" who is supervising or has custody of any child less than one year old commits this offense when that person "willfully and voluntarily physically abandons" the child, intending to sever "all parental or custodial duties and responsibilities," and leaves the child "in a condition which results" in death.<sup>5</sup> The Act also provides that any person found guilty of this offense shall be punished by a prison term of ten to twenty-five years.<sup>6</sup>

In its original form, HB 29 applied to the willful and voluntary physical abandonment of any child under the age of eighteen and did not mention death of the child.<sup>7</sup> The original bill would have required that the custodial parent or guardian have the intent to sever his "parental or custodial duties and responsibilities" to the child, to abandon the child, and leave it "without a lawful parent, guardian, or custodian."<sup>8</sup>

The House Judiciary Committee offered a substitute to HB 29 which changed the age of the child involved from under eighteen years to under one year.<sup>9</sup> The committee substitute deleted the requirement that the custodial parent or guardian leave the child without a lawful parent or guardian.<sup>10</sup> Instead, the House Judiciary Committee's substitute included a requirement that the custodial parent or guardian must physically abandon the child and leave it in such a "condition which results in the death" of the child.<sup>11</sup> The Judiciary Committee's substitute to HB 29 was adopted unanimously in both chambers after a House floor amendment to the bill.<sup>12</sup>

4. O.C.G.A. § 16-5-72 (Supp. 1989).

5. O.C.G.A. § 16-5-72(a) (Supp. 1989).

6. O.C.G.A. § 16-5-72(b) (Supp. 1989). Representative Allen explained the parameters of the prison sentence as an attempt to demonstrate to the people of Georgia "just how serious we are in the General Assembly" about the problem which this Act addresses. Allen Interview, *supra* note 1.

7. HB 29, as introduced, 1989 Ga. Gen. Assem.

8. *Id.*

9. HB 29 (HCS), 1989 Ga. Gen. Assem. Representative Allen explained that the House committee substitute accurately reflected his original intent to protect infants, especially newborn infants, from physical abandonment. Allen Interview, *supra* note 1. Representative Allen stated that he fully supported the House Judiciary Committee's substitute for his original bill and conceded that the bill, as introduced, was perhaps "too broad" in its reach by setting the age of the child at under 18 years instead of under one year. *Id.*

10. HB 29 (HCS), 1989 Ga. Gen. Assem.

11. *Id.* Representative Allen said that his attention was drawn to this particular issue by "tragic" stories in the electronic news media of abandoned newborn infants who often died as a result of that physical abandonment. Allen Interview, *supra* note 1.

12. HB 29 (HCSFA), 1989 Ga. Gen. Assem. The floor amendment to the committee

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One district attorney, who supports the general objectives of HB 29, questioned the arbitrariness of the age limit in the Act.<sup>13</sup> In particular, the district attorney questioned the Legislature's failure to extend the age limitation in the final version of HB 29 beyond those children under one year of age to include other infants and very young children who might also be helpless if recklessly abandoned in the manner contemplated by HB 29.<sup>14</sup>

*R. Conte*

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substitute for HB 29 changed the language referring to the gender of the person who commits the offense from the masculine "he" to the neutral "the person." *Compare* HB 29, as introduced, 1989 Ga. Gen. Assem. and HB 29 (HCS), 1989 Ga. Gen. Assem. *with* HB 29 (HCSFA), 1989 Ga. Gen. Assem.

13. Interview with DeKalb County District Attorney Robert E. Wilson, in Decatur (Apr. 20, 1989). Mr. Wilson stated, however, that he was "particularly pleased" with the 25-year maximum prison term included in the provisions for this offense. *Id.*

14. *Id.*