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CRIMES AND OFFENSES Controlled Substances: Provide Penalty for Trafficking in Methamphetamine, Increase Criminal Penalty for Drug Related Offenses Which Occur in Designated Areas, Criminalize the Use of Minors for any Drug Related Activity, Reimburse Political Candidates for the Cost of Required Drug Tests

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CRIMES AND OFFENSES

Controlled Substances: Provide Penalty for Trafficking in Methamphetamine, Increase Criminal Penalty for Drug Related Offenses Which Occur in Designated Areas, Criminalize the Use of Minors for any Drug Related Activity, Reimburse Political Candidates for the Cost of Required Drug Tests

CODE SECTIONS: O.C.G.A. §§ 16-13-30, -31, (amended), 16-13-32.5 (new), 21-2-140 (amended)

BILL NUMBERS: HB 601, HB 1779, SB 593, SB 834

ACT NUMBERS: 1070, 1153, 1162, 1195

SUMMARY: These acts expand Georgia's drug legislation. SB 593 criminalizes the use of a minor for any drug related activity. HB 1779 criminalizes the possession, distribution, or manufacturing of controlled substances within 1000 feet of certain designated areas, such as playgrounds and housing projects. SB 834 provides a penalty for trafficking in methamphetamine. HB 601 amends Code section 21-2-140 to provide reimbursement to candidates for state office for the cost of required drug tests.

EFFECTIVE DATE: July 1, 1992

History

Although Georgia already had some of the strictest drug laws in the country,¹ twenty-nine drug bills² were proposed during the 1992

1. Telephone Interview with Sen. Harrill L. Dawkins, Senate District No. 45 (Apr. 13, 1992) [hereinafter Dawkins Interview]. Sen. Dawkins is the Senate floor leader and is responsible for sponsoring legislation for Governor Zell Miller.

2. HB 86 (Penalty for Trafficking in Marijuana), HB 87 (Felony for Juvenile Drug Trafficking); HB 115 (Increase DUI Penalty); HB 242 (Felony for Drug Use by Law Enforcement or Prison Officials); HB 248 (Random Drug Testing of Prison Inmates); HB 249 (Drug Crime Forfeiture Procedure); HB 250 (First Offender Status); HB 297 (Alcohol/Drug Reduction Program); HB 358 (Alcohol/Drug Reduction Program Records Procedure); HB 562 (Alcohol/Drug Course; State Board of Education, Supply Teacher); HB 601 (Candidate's Drug Testing); HB 827 (Drug Abuse Prevention Services; Good Faith Provider; Liability); HB 933 (Drug Testing of Safety Sensitive Personnel); HB 1187 (Controlled Substances in Therapeutic Research); HB 1332 (Punitive Damage Limitation for Certain Drugs); HB 1342 (Amend List of Controlled Substances); HB 1480 (Life Imprisonment for Drug Trafficking); HB 1779 (Trafficking Near Playgrounds); HB 1917 (Increase Penalty for Trafficking in Cocaine); SB 114

legislative session. The bills were proposed at the request of constituents³ who were afraid of the impact that the prevalence of drugs may have on their children.⁴ However, legislators who sponsored the drug bills which were passed acknowledged that the laws will probably have little effect on the current drug problem.⁵

The clamor by constituents seeking tougher drug laws resulted in the proposal of legislation that did little more than reiterate existing laws.⁶ Protecting children from drugs is of great public concern.⁷ Education may be the best weapon against the drug problem,⁸ but as long as public fear continues legislators will continue to propose reactive, rather than remedial, bills.⁹

HB 1779

The Act makes it a crime to distribute or manufacture marijuana or any controlled substance within 1000 feet of public housing or any government property which has been set aside for use as a park or recreational facility.¹⁰ One of the bill's sponsors was urged by her constituents to propose legislation that would help protect children from exposure to drugs.¹¹ As proposed, the bill increased the mandatory

(Controlled Substances Forfeiture Provisions); SB 438 (Controlled Substances Parole); SB 439 (Controlled Substances Trafficking Penalty); SB 569 (Controlled Substances Forfeiture Procedures); SB 579 (DUI/Drug Point Reduction Program); SB 592 (Drug Free Residential Areas); SB 593 (Controlled Substances/Marijuana Penalty); SB 676 (Drug Trafficking Near Schools); SB 678 (Procedure for Drug Testing By Law Enforcement) SB 834 (Trafficking Methamphetamine Penalty Provision). Seven of these bills passed. HB 601 (Candidates Drug Testing) (amending O.C.G.A. § 21-2-140 (1992)); HB 1187 (Controlled Substances in Therapeutic Research) (amending O.C.G.A. § 43-34-126 (1992)); HB 1342 (Amended List of Controlled Substances) (amending O.C.G.A. § 16-13-25 (1992)); HB 1779 (Trafficking Near Playgrounds) (O.C.G.A. § 16-13-32.5 (1992)); SB 579 (DUI/Drug Point Reduction Program) (amending O.C.G.A. § 40-5-86 (1992)); SB 593 (Controlled Substances/Marijuana Penalty) (amending O.C.G.A. § 16-13-30 (1992)); SB 834 (Trafficking Methamphetamine Penalty Provision) (amending O.C.G.A. § 16-13-31 (1992)).

3. Telephone Interview with Rep. Maretta M. Taylor, House District No. 94 (Apr. 9, 1992) [hereinafter Taylor Interview].

4. Telephone Interview with Rep. Bob Holmes, House District No. 28 (Apr. 10, 1992) [hereinafter Holmes interview]. Sen. Dawkins and Rep. Taylor expressed the same view. Dawkins Interview, *supra* note 1; Taylor Interview, *supra* note 3.

5. The legislation was passed to let citizens know that politicians hear their concerns. Dawkins Interview, *supra* note 1; Holmes Interview *supra* note 4.

6. Dawkins Interview, *supra* note 1; Holmes Interview, *supra* note 4.

7. Taylor Interview, *supra* note 3; Holmes Interview, *supra* note 4.

8. Dawkins Interview, *supra* note 1; Taylor Interview, *supra* note 3; Holmes Interview, *supra* note 4.

9. Holmes Interview, *supra* note 4.

10. O.C.G.A. § 16-13-32.5 (1992).

11. Taylor Interview, *supra* note 3.

penalty for persons found possessing, selling, distributing, or manufacturing drugs within 1000 feet of any municipal recreational area playground or park.¹²

SB 592, which was introduced at the request of the Governor, was similar to HB 1779 in that it also proposed an increased penalty for those found to have conducted any illegal drug activity within 1000 feet of public recreational areas.¹³ However, SB 592 provided that illegal drug activity in or near public housing should likewise be more severely penalized.¹⁴ There was some debate about the public housing provision. It was said that this provision unfairly penalized individuals in low-income housing.¹⁵ One senator claimed the added language would lead to the selective enforcement of drug laws.¹⁶ Nonetheless, SB 592 moved swiftly through the Senate. In response to the allegations that the bill was targeted at minorities, one of the sponsors of HB 1779 agreed to add the proposed public housing language to HB 1779.¹⁷ The addition of the public housing language did not slow the passage of HB 1779. It passed the House and the Senate with little subsequent debate and SB 592 was dropped.¹⁸

Last year the General Assembly passed similar legislation increasing the penalty for "manufacturing, distributing, dispensing, or possessing controlled substances in, on, or near public or private schools."¹⁹ The penalty imposed by HB 1779 for illegal activity in or near public parks or housing is consistent with last year's legislation. An offender may receive up to twenty years in prison or a \$20,000 fine or both for a first offense,²⁰ and may receive up to forty years imprisonment or a \$400,000 fine or both for second or subsequent offenses²¹ in or around schools,²² public housing, playgrounds, and parks.²³

The Act provides "an affirmative defense to prosecution . . . that the prohibited conduct took place entirely within a private residence, that no person 17 years of age or younger was present in such private

12. SB 592, as introduced, 1992 Ga. Gen. Assem.

13. SB 592 contained language identical to that in HB 1779 except for the public housing provision. *Compare* SB 592, as introduced, 1992 Ga. Gen. Assem. *with* HB 1779, as introduced, 1992 Ga. Gen. Assem.

14. SB 592, as introduced, 1992 Ga. Gen. Assem.

15. Taylor Interview, *supra* note 3.

16. *Id.* Rep. Taylor indicated that these comments were made by Sen. Bishop, Senate District No. 15. *Id.*

17. *Id.*; *see also* Ken Edelstein, *Rookie's Drug Bill Breezes Through House, Stiff Penalties Proposed for Drug Sales in Parks*, Columbus Ledger, Mar. 6, 1992, at A6.

18. Edelstein, *supra* note 17.

19. O.C.G.A. § 16-13-32.4 (1992); *see* Edelstein, *supra* note 17, at B2.

20. O.C.G.A. §§ 16-13-32.4(b)(1), -32.5(c)(1) (1992).

21. *Id.* §§ 16-13-32.4(b)(2), -32.5(c)(2) (1992).

22. *Id.* § 16-13-32.4 (1992).

23. *Id.* § 16-13-32.5 (1992).

residence at any time during the commission of the offense, and that the prohibited conduct was not carried on for purposes of financial gain."²⁴ The Act also provides for municipalities or counties to place signs designating these areas as drug-free zones at their discretion.²⁵ Many other states have similar legislation, and the drug-free areas in these states are marked with signs that explain the additional penalty incurred when the law is violated.²⁶

SB 834

The Act amends the drug trafficking provision of the Georgia Code to include methamphetamine.²⁷ As introduced, SB 834 outlined penalties for persons who knowingly sell, manufacture, deliver, or bring into the state five or more grams of methamphetamine.²⁸ The bill was sent to the House Special Judiciary Committee where language was substituted to match other trafficking laws in Georgia which require twenty-eight grams, not five, of controlled substances like cocaine.²⁹ This change was requested by the Attorney General's Office.³⁰

Methamphetamine is an illegal drug that has recently been increasing in use and availability.³¹ It is known as "crank" or "speed" and is made from pharmaceuticals that can be purchased legally.³² At a meeting between the Director of the Office of National Drug Control Policy, also known as the "Federal Drug Czar,"³³ and Clayton County drug enforcement officials, it was realized that Georgia criminalized the possession of, but not trafficking in, methamphetamine.³⁴

The bill, as introduced, made selling, manufacturing, or delivering five or more grams of methamphetamine a felony.³⁵ This would have made selling methamphetamine a more severe crime than selling cocaine or cocaine derivatives.³⁶ The House Special Judiciary

24. *Id.* § 16-13-32.5(g) (1992).

25. *Id.* § 16-13-32.5(f) (1992).

26. Taylor Interview, *supra* note 3. In California the drug-free zones are designated by signs which warn that anyone who violates state drug laws in or near the marked area will have to serve an additional sentence consecutively. *Id.*

27. O.C.G.A. § 16-13-31 (1992).

28. SB 834, as introduced, 1992 Ga. Gen. Assem.

29. SB 834 (HCS), 1992 Ga. Gen. Assem.; O.C.G.A. § 16-13-31(a)(1) (1992).

30. Telephone Interview with Sen. Mac Collins, Senate District No. 17 (Apr. 10, 1992) [hereinafter Collins Interview]. Sen. Collins contributed significantly to the drug legislation "packet" that was introduced last year, and ran his campaign on a "get tough on drugs" theme. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* Bob Martinez is the Director of the Office of National Drug Control Policy.

34. Collins Interview, *supra* note 30.

35. SB 834, as introduced, 1992 Ga. Gen. Assem.

36. Schedule II drugs are listed at O.C.G.A. § 16-13-26 (1992). Different illegal

Committee's substituted language brought the bill into conformance with current drug laws. The substituted language was adopted and passed. It provides a penalty for anyone who "sells, manufactures, delivers, or brings into this state or has possession of 28 grams or more"³⁷ instead of five grams as was originally proposed.³⁸ This brings the legislation in line with the standard for trafficking in other illegal drugs having a comparable street value.³⁹

SB 593

The Act makes it a crime to hire, solicit, engage, or use a minor in illegal drug activity.⁴⁰ The bill was introduced at the request of the Governor's Office, and met with little opposition.⁴¹ The Special Judiciary Committee offered an amendment that expanded the scope of the proposed bill.⁴² In its original form, the bill only reached adults who used minors when the minors were found with a sufficient quantity of a controlled substance to "indicate an intent to distribute controlled substances or marijuana."⁴³ The amendment removed this limiting language, allowing the courts to determine the evidentiary standard necessary to prove intent.⁴⁴

The Act closed a loophole which drug traffickers have been utilizing for years: the use of children for distribution.⁴⁵ Without this legislation

drugs have different street values, and the penalty for trafficking in these substances differs according to the potency or street value. For example, O.C.G.A. § 16-13-31(c) provides that a person possessing fifty or more pounds of marijuana is guilty of trafficking, whereas O.C.G.A. § 16-13-31(b) provides that possession of four or more grams of morphine or opium or any of their derivatives is a "felony offense of trafficking in illegal drugs." O.C.G.A. § 16-13-31 (1992). The street price of methamphetamine is most similar to that of cocaine derivatives; the range of national prices for one gram of cocaine is \$35-\$175, and the range of national prices for one gram of crack is \$25-\$60. Drug Enforcement Administration, U. S. Department of Justice, *Illegal Drug Price Purity Report*, Mar. 1991. A gram of methamphetamine costs \$50-\$150. *Id.*

37. O.C.G.A. § 16-13-31(e) (1992).

38. SB 834, as introduced, 1992 Ga. Gen. Assem.

39. See O.C.G.A. § 16-13-31 (1992).

40. O.C.G.A. 16-13-30(k) (1992).

41. Taylor Interview, *supra* note 3.

42. SB 593 (HCS), Ga. Gen. Assem. The amendment struck the following language: "counterfeit substance, or marijuana in sufficient quantity to reasonably indicate under all the circumstances an intent to distribute unless the manufacturing, distribution, or dispensing has a lawful purpose." The following language was inserted instead: "counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law." *Id.*

43. SB 593, as introduced, 1992 Ga. Gen. Assem.

44. SB 593 (HCS), 1992 Ga. Gen. Assem.; O.C.G.A. § 16-13-30 (1992).

45. Dawkins Interview, *supra* note 1.

adults could escape conviction and elude law enforcement officers by using children as distributors.⁴⁶

Another bill, HB 87, was introduced in an attempt to address the use of children by adult drug dealers.⁴⁷ However, it penalized the children without reaching the adult drug offenders.⁴⁸ HB 87 would have penalized juveniles thirteen years of age or older⁴⁹ for acts which, if committed by an adult, would be designated as felonies for trafficking in illegal drugs.⁵⁰ HB 87 also provided special provisions for juveniles who had been found trafficking on three or more occasions.⁵¹ This bill passed the House but not the Senate.⁵²

The Act penalizes those who use minors of any age for drug trafficking.⁵³ There are many cases of children who are as young as eight years old delivering drugs on their bicycles.⁵⁴ HB 87 aimed to make the use of minors less attractive by treating them more like adult offenders.⁵⁵ In contrast, SB 593 penalizes the adults who use the minors for unlawful purposes.⁵⁶

HB 601

Three new drug testing bills were proposed this session, although only one, HB 601, passed.⁵⁷ HB 601 was held over from the previous legislative session.⁵⁸ The Act increases the amount of money which candidates for state elected positions may be reimbursed for their drug test which is required pursuant to section 21-2-140.⁵⁹ This legislation,

46. *Id.*

47. Final Composition Status Sheet, Mar. 31, 1992.

48. HB 87, as introduced, 1992 Ga. Gen. Assem.

49. O.C.G.A. § 15-11-37 provides the penalties for juveniles who commit acts which, if done by an adult, would constitute a felony ("designated felony acts"). O.C.G.A. § 15-11-37 (Supp. 1992).

50. HB 87, as introduced, 1992 Ga. Gen. Assem.

51. The Act proposed that juveniles found guilty at three or more separate court appearances would have their cases transferred to superior court for criminal prosecution. *Id.*

52. Final Composition Status Sheet, Mar. 31, 1992.

53. O.C.G.A. § 16-13-30(k) (1992).

54. Dawkins Interview, *supra* note 1.

55. HB 87, as introduced, 1992 Ga. Gen. Assem.

56. O.C.G.A. § 16-13-30(k) (1992).

57. HB 248 proposed random drug testing of prison inmates. HB 601 amended the statute regulating drug testing of all state political candidates and HB 933 proposed issuing drug tests to safety sensitive personnel. Only HB 601, which amends O.C.G.A. § 21-2-140 (1990) passed. That bill increased the amount of money that political candidates could be reimbursed for their mandatory drug tests and altered the qualifications required of drug testing laboratories.

58. Holmes Interview, *supra* note 4; Final Composite Status Sheet, Mar. 31, 1992.

59. O.C.G.A. § 21-2-140 (1992). This legislation was first enacted in 1990. 1990 Ga. Laws 2015. It was amongst the bills from the 1990 packet of drug legislation that

mandating drug testing of candidates, was enacted in 1990.⁶⁰ One of the sponsor's of the original 1990 legislation and this bill proposed the legislation out of a sense of fairness rather than any genuine fear that state politicians were not drug free.⁶¹ The sponsor of the 1990 legislation felt that if city council or state politicians require drug testing of state employees, they too should undergo drug testing.⁶² Additionally, if in order to appease public concern about the use of illegal drugs politicians must infringe upon the rights of government employees, the politicians themselves should be treated similarly.⁶³

This Act makes technical changes of little significance to Code section 21-2-140.⁶⁴ Primarily, the amendment softens the financial burden on politicians for their required drug tests by allowing reimbursement up to \$50 upon submission of "a valid pauper's affidavit."⁶⁵ Additionally, the quality control of the laboratories qualified to administer drug testing is now left to the discretion of the commissioner of human resources.⁶⁶ Previously, it was statutorily fixed to require that qualifying labs add "one to three blind test samples per shift."⁶⁷

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passed and was also sponsored by Sen. Holmes. Holmes Interview, *supra* note 4.

60. Holmes Interview, *supra* note 4.

61. The sponsor was responding to legislation that required school teachers to undergo drug testing. He felt it was unfair to require them to be subjected to a drug test unless the politicians enacting such a law were also willing to be tested. Holmes Interview, *supra* note 4.

62. *Id.*

63. *Id.* Sen. Holmes felt that coordination among the law enforcement agencies was essential in tackling the current drug problem. *Id.* Additionally, he felt more drug education and rehabilitation facilities were needed and that both the supply and the demand side of the drug problem need to be addressed. *Id.*

64. The Act changes the definition of "illegal drug" and slightly alters the wording in paragraph (3) of subsection (a), increasing the maximum amount of reimbursement candidates may receive for the cost of their drug test, changing certain provisions regarding qualified laboratories, and repealing conflicting laws. O.C.G.A. § 21-2-140 (Supp. 1992).

65. O.C.G.A. § 21-2-140(c) (Supp. 1992).

66. *Id.* § 21-2-140(e) (Supp. 1992).

67. 1990 Ga. Laws 2017 (formerly found at O.C.G.A. § 21-2-140(e) (Supp. 1991)).