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CRIMINAL PROCEDURE Limitations on Prosecution: Provide for the Tolling of the Statute of Limitations for Prosecutions of Certain Offenses Against Children

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CRIMINAL PROCEDURE

Limitations on Prosecution: Provide for the Tolling of the Statute of Limitations for Prosecutions of Certain Offenses Against Children

CODE SECTION: O.C.G.A. § 17-3-2.1 (new)
BILL NUMBER: HB 240
ACT NUMBER: 1398
SUMMARY: The Act provides that the applicable statute of limitations for certain criminal offenses against victims under sixteen years of age will be tolled until the victim reaches the age of sixteen or the violation is reported to certain governmental agencies, whichever occurs first.
EFFECTIVE DATE: July 1, 1992

History

The background and history of HB 240 is very similar to that of HB 1968, a bill which provided for a civil limitation period for childhood sexual abuse and which, like HB 240, was passed during the 1992 legislative session.¹

One of the problems of prosecuting child abusers is that the victim is often too young to understand what has happened to him or her,² or cannot, for a variety of reasons, press charges against the abuser.³ By the time the child has grown up enough to realize that he or she has been victimized, or is in a position to bring charges, the applicable statute of limitations has expired.⁴ For example, if a child is abused, the state would have seven years under the previous law to commence the prosecution of the abuser.⁵ However, even at twelve or thirteen years of age, the child may not be able to comprehend the nature of what happened to him or her.⁶ A child may also have problems with

1. See *Legislative Review*, 9 GA. ST. U. L. REV. 154 (1992).

2. 1992: *The Georgia Legislature at a Glance*, ATLANTA J. & CONST., Mar. 7, 1992, at B4 (Sen. Judy Moye said that "[the Act] is needed because many children who are victims of abuse do not realize at the time that a crime is being committed against them."); Telephone Interview with Sen. Judy Moye, Senate District No. 34 (Apr. 14, 1992) [hereinafter Moye Interview] (calling HB 240 an excellent, timely bill).

3. Moye Interview, *supra* note 2; Telephone Interview with Rep. Mike Snow, House District No. 2 (Apr. 15, 1992) [hereinafter Snow Interview]. Rep. Snow was one of the sponsors of HB 240.

4. Moye Interview, *supra* note 2; Snow Interview, *supra* note 3.

5. O.C.G.A. § 17-3-1(c) (1989); Moye Interview, *supra* note 2.

6. Moye Interview, *supra* note 2.

reporting the abuse, particularly where he or she is dependent on the abuser.⁷

Defense attorneys have expressed concern, however, that potential defendants should not be required to face long, indefinite periods within which the state may commence a prosecution against them for events which allegedly occurred several years before.⁸

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In an attempt to balance the competing concerns of the victims of child abuse and the people who are accused of abuse, the Georgia Assembly passed HB 240, which leaves the applicable statutes of limitation intact for certain offenses against children, but tolls the statute until the child turns sixteen or the violation is reported to certain governmental agencies, whichever occurs first.⁹

The Act amends chapter 3 of title 17 by providing that certain offenses against children be excluded from the applicable limitations period.¹⁰ These offenses include cruelty to children, rape, sodomy, aggravated sodomy, statutory rape, child molestation, aggravated child molestation, enticing a child for indecent purposes, and incest.¹¹ The Act provides that if the victim of any of these offenses is under sixteen years of age when the violation occurs, the applicable statute of limitations will not begin running until the victim reaches the age of sixteen, or "the violation is reported to a law enforcement agency, prosecuting attorney, or other governmental agency, whichever occurs earlier."¹² According to one of the Act's sponsors, the term "governmental agency" means an agency with law enforcement functions, not welfare agencies or schools.¹³ This language reflects the concern over the protection of those children who do not or cannot report the abuse until reaching adulthood while allowing the limitations period to run when the abuse is discovered before the victim turns sixteen.¹⁴

Finally, the Act provides that the limitation period for violations of the offenses listed above occurring before July 1, 1992, will not be tolled

7. Moyer Interview, *supra* note 2; Snow Interview, *supra* note 3.

8. Moyer Interview, *supra* note 2; Snow Interview, *supra* note 3.

9. O.C.G.A. § 17-3-2.1 (Supp. 1992).

10. *Id.*

11. *Id.*

12. *Id.* § 17-3-2.1(a)(7) (Supp. 1992).

13. Snow Interview, *supra* note 3.

14. Moyer Interview, *supra* note 2; Snow Interview, *supra* note 3.

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as described in the Act.¹⁵ The Act only applies to those violations occurring on or after July 1, 1992, so there is no issue of retroactivity.

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15. O.C.G.A. § 17-3-2.1(b) (Supp. 1992).