

9-1-1994

CRIMES AND OFFENSES Offenses Against Health and Morals: Provide Felony Penalties for Soliciting, Engaging in, Contracting with, Conspiring with, Encouraging, Abetting, or Directing a Minor to Commit a Violent Felony

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Recommended Citation

Daniel E. Turner, *CRIMES AND OFFENSES Offenses Against Health and Morals: Provide Felony Penalties for Soliciting, Engaging in, Contracting with, Conspiring with, Encouraging, Abetting, or Directing a Minor to Commit a Violent Felony*, 11 GA. ST. U. L. REV. (1994). Available at: <https://readingroom.law.gsu.edu/gsulr/vol11/iss1/14>

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CRIMES AND OFFENSES

Offenses Against Health and Morals: Provide Felony Penalties for Soliciting, Engaging in, Contracting with, Conspiring with, Encouraging, Abetting, or Directing a Minor to Commit a Violent Felony

CODE SECTION: O.C.G.A. § 16-12-1 (amended)
BILL NUMBER: HB 533
ACT NUMBER: 1172
SUMMARY: The Act prohibits a person from knowingly and willfully soliciting, engaging in, contracting with, conspiring with, encouraging, abetting, or directing a minor to commit a crime which is a felony and is violent in nature. Additionally, the Act prohibits a person from knowingly or willfully providing a weapon to a minor to be used in the commission of a felony. A violator of this Act is guilty of a felony and is subject to a minimum one-year prison sentence for the first violation, with sentences increasing for subsequent violations.
EFFECTIVE DATE: July 1, 1994

History

Violent felonies committed by minors have risen dramatically in Georgia and across the nation.¹ Many violent felonies occur as a result of adults encouraging minors to commit these crimes.² In many instances, the adult may directly benefit from the commission of the act. For example, the adult may obtain some of the cash from an armed robbery simply by providing a weapon to an impressionable youth and then encouraging the youth to commit the crime.³ The minor more than likely would not be punished with the same severity as an adult.⁴ Additionally, prior to the adoption of HB 533, the adult would have

1. Mark Silk & R. Robin McDonald, *Bad Kids: Polls And Politicians Say Get Tough, But It May Not Be That Simple*, ATLANTA J. & CONST., Apr. 10, 1994, at G1. "Since 1987, armed robberies by Georgians age 17 and younger . . . increased by 300 percent. Kidnapping by teens leaped 200 percent; aggravated sodomy and rape, 200 percent; murder 150 percent; and voluntary manslaughter by a whopping 400 percent . . ." *Id.*

2. Telephone Interview with Rep. Lanett L. Stanley, House District No. 50 (May 29, 1994) [hereinafter Stanley Interview]. Rep. Stanley was one of the sponsors of HB 533. *Id.*

3. *Id.*

4. *Id.*

been insulated from a felony conviction for encouraging the crime until a third offense.⁵ Thus, the adult would have gained benefits from the commission of a violent crime without subjecting himself to the punishment associated with the crime.

Constituents, police officers, and other authorities urged legislation which would provide tougher sentences for adults who encourage minors to commit felonies.⁶ The 1993 Georgia General Assembly introduced similar legislation; however, it was not adopted because it included all violent and nonviolent felonies.⁷

HB 533

The purpose of the Act is to provide stronger sentencing guidelines for adults who contribute to the delinquency of a minor by soliciting, coercing, intimidating, or conspiring with a minor to commit a violent felony.⁸ The Act amends Code section 16-12-1 by adding two new sections which create a new felony offense and corresponding sentencing guidelines.⁹

The Act provides two new definitions in subsection (a). "Delinquent act" is defined by reference to Code section 15-11-2.¹⁰ "Felony" is defined as "any act which constitutes a felony under the laws of the state, the laws of any other state of the United States, or the laws of the United States."¹¹

The Act then establishes two new offenses under subsection (b) of the Code section.¹² First, the Act prohibits any person from "knowingly and willfully" contributing to the delinquency of a minor by hiring, soliciting, engaging, contracting with, conspiring with, encouraging, abetting, or directing a minor to commit a felony or delinquent act that includes violence as an element.¹³ Second, the Act prohibits any person from "knowingly and willfully" providing a weapon to a minor "to commit any felony which encompasses force or violence as an element."¹⁴ The intent of the Act is to allow for a prosecution regardless of whether the minor actually commits the felony.¹⁵

5. 1982 Ga. Laws 968 (codified at O.C.G.A. § 16-12-1(d)(1)-(3) (1992)).

6. Stanley Interview, *supra* note 2.

7. *Id.*

8. *Id.*

9. O.C.G.A. § 16-12-1(b), (e) (Supp. 1994).

10. *Id.* § 16-12-1(a)(1) (Supp. 1994) (citing *id.* § 15-1-2(6), which outlines juvenile acts considered delinquent under Georgia law).

11. *Id.* § 16-12-1(b)(2) (Supp. 1994).

12. *See id.* § 16-12-1(b)(1)-(2) (Supp. 1994).

13. *Id.* § 16-12-1(b)(4) (Supp. 1994).

14. *Id.* § 16-12-1(b)(5) (Supp. 1994).

15. Telephone Interview with Rep. Roy Barnes, House District No. 33 (Apr. 6, 1994) [hereinafter Barnes Interview].

The Act provides that a person convicted of the offense shall be guilty of a felony.¹⁶ On the first offense, the defendant is imprisoned a minimum of one year and a maximum of five years.¹⁷ For all subsequent offenses, the defendant is imprisoned a minimum of three years and a maximum of twenty years.¹⁸

HB 533 went through several noteworthy changes prior to its adoption by the General Assembly. After being introduced on the floor of the House, the bill was sent to the House Judiciary Committee.¹⁹ The first significant change made by the Committee was to delete the phrase "violent crime" from the bill and add the phrase "felony which encompasses force or violence as an element of the offense."²⁰ The Committee argued that this change was necessary to clarify which felonies were included.²¹ The Committee provided a broad definition of "felony" to allow for a conviction under this Code section even if the person encourages a minor to commit a felony in another state.²² The Committee also intended for the Act to allow a conviction if the encouraged offense is not a felony in Georgia but is a felony in the state where it is to be committed.²³

The Committee also added a scienter element to the offense by adding "knowingly and willfully."²⁴ Additionally, the Committee created the offense for providing a weapon to a minor to commit a felony.²⁵ This offense was added to provide felony punishment when a person encourages a minor to commit a felony and provides the minor with a weapon.²⁶ For instance, if a person encourages a minor to commit a burglary and provides the minor a weapon, the person encouraging the crime could be charged with a felony.²⁷ The intent of this legislation is to provide that the felony need not have an element of force or violence so long as the crime has the potential to become violent because of the weapon provided.²⁸ For example, if a person encourages a minor to sell drugs and provides a weapon, the person

16. O.C.G.A. § 16-12-1(e) (Supp. 1994).

17. *Id.* § 16-12-1(e)(1) (Supp. 1994).

18. *Id.* § 16-12-1(e)(2) (Supp. 1994).

19. See Final Composite Status Sheet, Mar. 16, 1994.

20. Compare HB 533, as introduced, 1994 Ga. Gen. Assem. with HB 533 (HCS), 1994 Ga. Gen. Assem.

21. Barnes Interview, *supra* note 15.

22. *Id.*; see HB 533 (HCS), 1994 Ga. Gen. Assem.

23. Barnes Interview, *supra* note 15.

24. HB 533 (HCS), 1994 Ga. Gen. Assem. Rep. Barnes said that this scienter element is standard practice for all felonies. Barnes Interview, *supra* note 15.

25. HB 533 (HCS), 1994 Ga. Gen. Assem. See *supra* note 14 and accompanying text.

26. Barnes Interview, *supra* note 15.

27. *Id.*

28. *Id.*

who encourages the crime could be charged with a felony.²⁹ However, the language of the Act indicates that the felony or delinquent act to be committed must encompass violence as an element of the offense.³⁰ Finally, the Committee substantially reduced the minimum prison sentence for a defendant and struck the provision for large fines.³¹ The bill passed the House as substituted by the Committee and was sent to the Senate.

The Senate sent the bill to the Senate Judiciary Committee.³² The Committee reported favorably and sent the bill back to the Senate.³³ However, the bill was substantially amended on the Senate floor.³⁴ The first significant change offered by the Senate included an amended version of the "Georgia Street Gang Terrorism and Prevention Act," codified at Code section 16-15-3.³⁵ The amendment added rape to the list of crimes considered a pattern of criminal gang activity.³⁶

The Senate version also deleted the term "violent crime" and replaced it with "felony."³⁷ In addition, the Senate amendment deleted the phrase "which encompasses force or violence as an element of the offense."³⁸ Thus, under the Senate version, an adult who encouraged a minor to commit any felony could have been charged with a felony.³⁹

Finally, the Senate version strengthened the sentencing provisions in subsection (e).⁴⁰ Under the Senate version, the minimum required sentence could not be "suspended, probated, deferred, or withheld."⁴¹ The bill passed the Senate as amended. The bill was then sent back to the House for concurrence but the House refused to concur.⁴² Members of the House argued that the bill should only include violent crimes and that not all felonies include violence as an element of the offense.⁴³ For instance, in Georgia, it is a felony to represent an onion as a "vidalia onion" if it is not a "vidalia onion."⁴⁴ Representative Barnes argued it would be ridiculous to charge an adult with a felony for

29. *Id.*

30. O.C.G.A. § 16-12-1(b)(4)-(5) (Supp. 1994).

31. HB 533 (HCS), 1994 Ga. Gen. Assem.

32. *See* Final Composite Status Sheet, Mar. 16, 1994.

33. *Id.*

34. *See* HB 533 (SFA), 1994 Ga. Gen. Assem.

35. *Id.*; *see* O.C.G.A. § 16-15-3 (1992).

36. HB 533 (SFA), 1994 Ga. Gen. Assem.

37. *Id.*

38. *Id.*

39. *See id.*

40. *See* HB 533 (SFA), 1994 Ga. Gen. Assem.

41. *Id.*

42. Barnes Interview, *supra* note 15.

43. *Id.*

44. *Id.*

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encouraging activity similar to this.⁴⁵ Additionally, the House rejected the more stringent sentencing guidelines providing instead for judicial discretion.⁴⁶

The bill then went to a Conference Committee. The Conference Committee substituted the bill as originally passed by the House and sent to the Senate. Both the Senate and the House passed the bill as substituted by the Conference Committee.⁴⁷

Summarizing the purpose of the bill, Representative Stanley stated: "Young people don't come up with ideas of committing violent acts on their own. Adults need to know they can't use our children."⁴⁸

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45. *Id.*

46. *Id.*

47. *See* Final Composite Status Sheet, Mar. 16, 1994.

48. Stanley Interview, *supra* note 2.