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## CRIMES AND OFFENSES Crimes Against the Person: Designate Hijacking a Motor Vehicle as a Felony

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## CRIMES AND OFFENSES

### *Crimes Against the Person: Designate Hijacking a Motor Vehicle as a Felony*

**CODE SECTIONS:** O.C.G.A. §§ 15-11-37 (amended), 16-5-44.1 (new), 16-14-3, 17-6-1, 17-10-9.1 (amended)  
**BILL NUMBER:** HB 1080  
**ACT NUMBER:** 1211  
**SUMMARY:**

The Anti-motor Vehicle Hijacking Act of 1994 expressly addresses the crime of hijacking a motor vehicle. The Act amends several sections of the Georgia Code in order to provide Georgia's judicial system with the appropriate weapons to combat the most recent outbreak of motor vehicle hijackings, more commonly known as carjackings. The Act specifically provides that carjackings committed by juveniles are felonies. In addition to defining the act of hijacking a motor vehicle, the Act also provides definitions for the terms "firearm," "motor vehicle," and "weapon."

Furthermore, the Act makes the hijacking of a motor vehicle a separate and distinct offense, enforced by a two-tiered sentencing scheme. First-time offenders are subject to a prison sentence of ten to twenty years and a fine of \$10,000 to \$100,000. However, repeat offenders are subject to life imprisonment and a fine of \$100,000 to \$500,000. Additionally, designated carjackers must forfeit to the state any property misappropriated as a result of the commission of their crime.

Procedurally, the Act includes carjacking as a bailable offense, for which bail may be considered only by a superior court judge. Finally, the Act prohibits post-conviction release of persons convicted of carjacking.

**EFFECTIVE DATE:** April 19, 1994

### *History*

"In less than three days, two men—two citizens going about their daily lives in suburban Atlanta—were killed by thugs who wanted their

cars. It's called carjacking, and it's a relatively new crime that fuels our fear and reminds us of how violent a society we've become."<sup>1</sup>

Ironically, the technology designed to protect unattended automobiles may make carjacking more likely.<sup>2</sup> "With the increasingly sophisticated technology behind automobile alarm systems, it's much easier for carjackers to simply take a car already occupied than to try to disarm the security system of a parked car."<sup>3</sup> As a result of this ever-increasing technology, the growth in carjackings as a mechanism for stealing automobiles could be explosive.<sup>4</sup>

Prior to HB 1080, no Act specifically addressing the act of carjacking had ever been passed.<sup>5</sup> During the 1994 Georgia General Assembly, Senator Rene Kemp introduced SB 230, which also proposed a solution to the act of carjacking.<sup>6</sup> Although SB 230 was rejected, the 1994 Assembly compromised between the two solutions by incorporating the language of SB 230 into HB 1080.<sup>7</sup>

### HB 1080

HB 1080 was introduced by Representative Keith Heard in response to the increasing number of violent carjackings committed each year.<sup>8</sup> The Act was introduced to "nip the problem in the bud" before carjackings occur in epidemic proportions.<sup>9</sup> Additionally, many of the specific provisions of the Act were designed to parallel the Governor's crime bill package.<sup>10</sup>

The Anti-motor Vehicle Hijacking Act of 1994 amends Code section 15-11-37 by adding a new subsection.<sup>11</sup> The new subsection expressly addresses carjackings committed by juveniles under the age of thirteen, designating these acts as felonies.<sup>12</sup> This provision of the Act was necessary in order to combat carjackings that occur as a result of gang initiation rituals.<sup>13</sup>

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1. *A Rational Response in Scary Times*, ATLANTA CONST., Jan. 12, 1994, at A1.

2. Telephone Interview with Rep. Keith Heard, House District No. 89 (Mar. 28, 1994) [hereinafter Heard Interview].

3. *Id.*

4. *Id.*

5. *Id.* Before the passage of HB 1080, the act of carjacking was simply treated as another type of armed robbery. *Id.*

6. *Id.*

7. *Id.*

8. Heard Interview, *supra* note 2. Lt. Governor Pierre Howard was instrumental in the introduction and subsequent passage of HB 1080. *Taking a Rational Approach to Crime*, ATLANTA CONST., Jan. 20, 1994, at A14.

9. Heard Interview, *supra* note 2.

10. *Id.*

11. O.C.G.A. § 15-11-37(a)(2)(B)(v) (1994).

12. *Id.*

13. Heard Interview, *supra* note 2.

The primary force of the Act consists of new Code section 16-5-44.1.<sup>14</sup> The new Code section defines the terms "firearm," "motor vehicle," and "weapon,"<sup>15</sup> and specifically describes when the act of carjacking is committed.<sup>16</sup> "A person commits the offense of hijacking a motor vehicle when such person while in possession of a firearm or weapon obtains a motor vehicle from the person or presence of another by force and violence or intimidation or attempts or conspires to do so."<sup>17</sup>

The Act also puts teeth in the measure by providing a two-tiered sentencing scheme.<sup>18</sup> First-time offenders of the carjacking statute face a minimum prison sentence of ten years and a maximum sentence of twenty years.<sup>19</sup> In addition to imprisonment, first-time carjackers are subject to fines of at least \$10,000 up to a maximum of \$100,000.<sup>20</sup> Repeat offenders face tougher measures, including imprisonment for life and a fine of at least \$100,000 up to a maximum of \$500,000.<sup>21</sup>

The Act distinguishes carjacking from other crimes by providing for the offense of carjacking as a separate offense, not to be merged with any other offense.<sup>22</sup>

The Act further provides that any property connected with the offense of carjacking be forfeited to the state according to the forfeiture provision of Code section 16-13-49.<sup>23</sup>

14. O.C.G.A. § 16-5-44.1 (Supp. 1994).

15. *Id.* § 16-5-44.1(a) (Supp. 1994).

(1) "Firearm" means any handgun, rifle, shotgun, or similar device or weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge and includes stun guns and tasers as defined by subsection (a) of Code Section 16-11-106, as amended, and any replica, article, or device having the appearance of a firearm.

(2) "Motor vehicle" means any vehicle which is self-propelled.

(3) "Weapon" means an object, device, or instrument which when used against a person is likely to or actually does result in serious bodily injury or death or any replica, article, or device having the appearance of such a weapon including, but not limited to, any object defined as a weapon by Code Section 16-11-127.1 or as a dangerous weapon by Code Section 16-11-121.

*Id.*

16. *Id.* § 16-5-44.1(b) (Supp. 1994).

17. *Id.*

18. *Id.* § 16-5-44.1(c) (Supp. 1994).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* § 16-5-44.1(d) (Supp. 1994).

23. *Id.* § 16-5-44.1(e) (Supp. 1994). Any forfeiture of property resulting from a conviction for the crime of carjacking is governed by O.C.G.A. § 16-13-49, which enables the owner to recover the forfeited property. *Id.* § 16-13-49(e)(1)-(4) (Supp. 1994).

In addition to addressing the offense of carjacking, the Act amends Code section 16-14-3(9)(A) by including carjacking as a "racketeering activity."<sup>24</sup>

Code section 17-6-1(a) was amended to provide that carjacking is bailable only before a superior court judge.<sup>25</sup> Additionally, Code section 17-10-9.1(a) was amended to prevent carjackers from being considered for post-conviction release.<sup>26</sup>

Prior to final passage, the Act underwent major revisions. As introduced, the Act amended chapter 8 of title 16, relating to theft.<sup>27</sup> The initial HB 1080 defined carjacking as a felony, punishable by imprisonment of two to twenty years.<sup>28</sup> The bill was studied by the House Special Judiciary Committee, which offered a substitute to Representative Heard's original bill.<sup>29</sup> The House Committee's substitute provided for carjacking in Code sections 16-8-40 and -41, which address robbery and armed robbery respectively.<sup>30</sup>

In the Senate, the bill was reviewed by the Special Judiciary Committee, which made substantial changes in the substitute version passed earlier by the House.<sup>31</sup> The Senate Committee substitute did not retain any of the provisions of the original version of HB 1080<sup>32</sup> or any of the changes in the House Committee's substitute version.<sup>33</sup> Instead, the Senate incorporated the provisions drafted in SB 230 by Senator Kemp into HB 1080 as a substitute version of the bill.<sup>34</sup> This substitute was passed in the Senate without any further changes, and the House concurred with the Senate amendments.<sup>35</sup>

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24. *Id.* § 16-14-3(9)(A)(xxxii) (Supp. 1994). This amendment subjects the act of carjacking to Georgia's body of law governing Racketeer Influenced and Corrupt Organization, more commonly known as the Georgia RICO Act. *Id.* §§ 16-14-1 to -15 (1992 & Supp. 1994).

25. *Id.* § 17-6-1(a) (Supp. 1994).

26. *Id.* § 17-10-9.1(a) (Supp. 1994).

27. HB 1080, as introduced, 1994 Ga. Gen. Assem.

28. *Id.*

29. HB 1080 (HCS), 1994 Ga. Gen. Assem.

30. *Id.*

31. Compare HB 1080 (HCS), 1994 Ga. Gen. Assem. with HB 1080 (SCS), 1994 Ga. Gen. Assem.

32. Compare HB 1080, as introduced, 1994 Ga. Gen. Assem. with O.C.G.A. § 16-5-44.1 (Supp. 1994).

33. Compare HB 1080 (HCS), 1994 Ga. Gen. Assem. with O.C.G.A. § 16-5-44.1 (Supp. 1994).

34. Heard Interview, *supra* note 2; see *supra* note 6 and accompanying text.

35. Compare HB 1080 (SCS), 1994 Ga. Gen. Assem. with O.C.G.A. § 16-5-44.1 (Supp. 1994).