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## CRIMES AND OFFENSES Crimes Against the Person: Redefine Aggravated Assault and Provide for Additional Penalties

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## CRIMES AND OFFENSES

### *Crimes Against the Person: Redefine Aggravated Assault and Provide for Additional Penalties*

CODE SECTIONS: O.C.G.A. § 16-5-21 (amended)  
BILL NUMBER: HB 1198  
ACT NUMBER: 1254  
SUMMARY: The Act expands the offense of aggravated assault by providing that an aggravated assault is committed when a person unlawfully discharges a firearm from within an automobile toward another person. The Act provides for additional sentencing with regard to the newly defined act of aggravated assault, which is punishable by imprisonment for five to twenty years.  
EFFECTIVE DATE: July 1, 1994

#### *History*

As violent crime continues its steady flow into the suburbs, legislators from outside the Perimeter are positioning themselves as some of the strongest proponents of anti-crime bills expected to flood the General Assembly this year. . . . The heightened concern about crime in the suburbs will translate into tough legislative proposals.<sup>1</sup>

Representative Vinson Wall introduced this Act in response to the overwhelming increase in the number of drive-by shootings over the past year.<sup>2</sup> "Carjackings and drive-by shootings are something that are happening in the metro area more and more. . . . I get the spillover in Gwinnett County."<sup>3</sup> Primarily, drive-by shootings are associated with

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1. Kathy Alexander, '94 Georgia Legislature, *Suburban Lawmakers Take Aim at Crime Hitting Home: Incidents Outside the Perimeter Spark Plans for Legislation*, ATLANTA CONST., Jan. 6, 1994, at E1 [hereinafter *Lawmakers Take Aim at Crime*].

2. Telephone Interview with Rep. Vinson Wall, House District No. 82 (Mar. 25, 1994) [hereinafter *Wall Interview*]. Rep. Wall was the sponsor of HB 1198. *Id.* In addition to Rep. Wall, Reps. John Mobley, Grace Davis, Billy McKinney, and Charles Bannister were instrumental in introducing the bill to the General Assembly. HB 1198, as introduced, 1994 Ga. Gen. Assem. Rep. Wall also stated that he relied on information from Lieutenant Prince from the Atlanta Police Department and Gale Buckner of the Georgia Bureau of Investigation while drafting the bill. *Wall Interview, supra.*

3. *Lawmakers Take Aim at Crime, supra* note 1 (quoting Rep. Vinson Wall).

street gang initiation rituals and drug dealings.<sup>4</sup> Although there is currently a federal law that specifically addresses drive-by shootings, Representative Wall believes the federal bill is unduly burdensome because it requires police officers to prove intent.<sup>5</sup>

Prior to the 1994 Georgia General Assembly, nothing similar to HB 1198 had been introduced because drive-by shootings represent a new type of crime; therefore, the General Assembly had not specifically addressed drive-by shootings in previous anti-crime packages.<sup>6</sup> In addition to the recent rash of drive-by shootings, the media's coverage of these crimes has focused the public's attention on the issue.<sup>7</sup> As a result, constituents demanded a legislative solution to this new problem.<sup>8</sup>

### *HB 1198*

The Act amends chapter 5 of title 16 by redefining the circumstances under which an aggravated assault occurs and providing for additional penalties as a result of this new definition.<sup>9</sup> The primary purpose of the amendment is to expressly address the crime of drive-by shootings by specifically incorporating it into Georgia law.<sup>10</sup> This primary purpose was captured with the addition of a third situation in which the offense of aggravated assault applies.<sup>11</sup> The old law described only two instances in which a person commits the act of aggravated assault.<sup>12</sup> First, a person commits aggravated assault when a person assaults another person with the intent to murder, rape, or rob.<sup>13</sup> Second, a person commits aggravated assault when a serious bodily injury results or is likely to result from the person's use of a deadly weapon, object, device, or instrument.<sup>14</sup> The Act retained these first two instances and added a third to include drive-by shootings.<sup>15</sup>

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4. Wall Interview, *supra* note 2.

5. *Id.*; see Drive-By Shooting Prevention Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified at 18 U.S.C. § 36).

6. Telephone Interview with Rep. J.E. (Billy) McKinney, House District No. 51 (Mar. 24, 1994).

7. *Id.*

8. *Id.* "Every time you open the paper there is someone who is a victim. . . . It's time the Legislature put more teeth in their laws." Lucy Soto, *Lawmakers Prepare for "High-wire Year" Proposals to Expand Boards on Agenda*, ATLANTA CONST., Jan. 6, 1994, at J1.

9. Compare O.C.G.A. § 16-5-21(a) (1992) with *id.* § 16-5-21(a) (Supp. 1994).

10. Wall Interview, *supra* note 2.

11. *Id.*

12. O.C.G.A. § 16-5-21 (1992).

13. *Id.*

14. *Id.*

15. See *id.* § 16-5-21(a)(1)-(3) (Supp. 1994). The new subsection provides in full: "A person or persons without legal justification by discharging a firearm from within a

The Act's next major amendment sets forth the minimum and maximum prison terms for an aggravated assault committed in the manner set forth by the Act's newly added third scenario.<sup>16</sup> Under the old law, a person convicted of a drive-by shooting could have been sentenced to the minimum one-year prison term.<sup>17</sup> The new subsection puts teeth into the aggravated assault laws by mandating a minimum five-year prison term.<sup>18</sup>

As originally introduced, the Act amended chapter 10 of title 17 relating to the procedure for imposing the death penalty.<sup>19</sup> The provision attempted to add as a statutory aggravating circumstance "the offense of murder committed while the offender was engaged in the commission of [a] drive-by shooting."<sup>20</sup> However, this stiff sentencing for a murder that occurs as the result of a drive-by shooting did not survive the House floor's scrutiny.<sup>21</sup> The original bill also proposed a new Code section that expressly addressed the offense of drive-by shooting and stated that the act must create a "grave risk to human life."<sup>22</sup>

The House Committee on Judiciary offered a substitute to HB 1198 which deleted both amendments.<sup>23</sup> The Committee substitute provided for an amendment to Code section 16-5-21(a).<sup>24</sup> The amendment added a third category which includes drive-by shootings within the definition of aggravated assault.<sup>25</sup> This category included drive-by shootings

motor vehicle toward a person or persons." *Id.* § 16-5-21(a)(3) (Supp. 1994).

16. *Id.* § 16-5-21(g) (Supp. 1994). This subsection provides in full: "A person convicted of an offense described in paragraph (3) of subsection (a) of this Code section shall be punished by imprisonment for not less than five nor more than 20 years." *Id.*

17. *Id.* § 16-5-21(b) (1992). The old Code section provided in full: "Except as provided in subsections (c), (d), (e), and (f) of this Code section, a person convicted of the offense of aggravated assault shall be punished by imprisonment for not less than one nor more than 20 years." *Id.*

18. *Id.* § 16-5-21(g) (Supp. 1994).

19. HB 1198, as introduced, 1994 Ga. Gen. Assem.

20. *Id.*

21. HB 1198 (HFS), 1994 Ga. Gen. Assem. According to a contemporary newspaper account:

[T]he bill was stripped of its original requirement that deaths resulting from drive-by shootings be punishable by the death penalty. Aggravated assault is punishable by up to 20 years in prison, and critics said district attorneys were still likely to use that offense because it would be easier to prove than drive-by shootings.

Lucy Soto, *County's Lawmakers Win a Few, Lose a Few as Bills Wend Way Through Legislative Process*, ATLANTA CONST., Feb. 20, 1994, at J1.

22. HB 1198, as introduced, 1994 Ga. Gen. Assem.

23. HB 1198 (HCS), 1994 Ga. Gen. Assem.

24. *Id.*

25. *Id.*

committed "with the intent to intimidate, harass, injure, or murder."<sup>26</sup> The Committee substitute also provided for a sentence of five to thirty years for the commission of a drive-by shooting.<sup>27</sup> This substitute did not pass as a result of the additional element of intent required to establish drive-by shooting as a crime.<sup>28</sup>

Representative Wall offered a House floor substitute which was only a slight deviation from the House Committee's substitute version.<sup>29</sup> The third scenario describing a drive-by shooting as an aggravated assault was streamlined and the sentencing range was changed to three to twenty years.<sup>30</sup> Representative Wall's floor substitute passed the House but was amended by the Senate Committee on Special Judiciary.<sup>31</sup> The Committee replaced Representative Wall's floor substitute sentencing range of three to twenty years with five to twenty years.<sup>32</sup> The General Assembly adopted the Senate Committee's substitute bill as the final version.<sup>33</sup>

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26. *Id.*

27. *Id.*

28. Wall Interview, *supra* note 2.

29. Compare HB 1198 (HFS), 1994 Ga. Gen. Assem. with HB 1198 (HCS), 1994 Ga. Gen. Assem.

30. See HB 1198 (HFS), 1994 Ga. Gen. Assem.

31. Final Composite Status Sheet, Mar. 16, 1994; see HB 1198 (SCA), 1994 Ga. Gen. Assem.

32. Compare HB 1198 (HCS), 1994 Ga. Gen. Assem. with Final Composite Status Sheet, Mar. 16, 1994; see HB 1198 (SCS), 1994 Ga. Gen. Assem.

33. See O.C.G.A. § 16-5-21 (Supp. 1994).