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CRIMINAL PROCEDURE Searches and Seizures: Confiscation of Weapons from Juveniles Upon Arrest for Delinquency

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CRIMINAL PROCEDURE

Searches and Seizures: Confiscation of Weapons from Juveniles Upon Arrest for Delinquency

CODE SECTIONS: O.C.G.A. §§ 17-5-51 to -52 (amended)
BILL NUMBER: HB 1337
ACT NUMBER: 1114
SUMMARY: The Act permits the confiscation of weapons used in crimes committed by juveniles and the retention of those weapons for use in law enforcement. It also allows proceeds derived from the sale of confiscated weapons to go to the county or municipality in which the crime was committed.
EFFECTIVE DATE: July 1, 1994

History

Prior to the passage of HB 1337, any weapon used in the commission of a crime or any weapon obtained from a person convicted of carrying a concealed weapon was considered contraband and was automatically forfeited.¹ If a defendant was convicted of a crime or attempted crime against any person, the weapon was turned over to the sheriff of the county of confiscation.² The sheriff was then permitted to either destroy or sell the weapon, distributing the proceeds to the county treasury.³

Former Code sections 17-5-51 and -52 did not provide for the confiscation of weapons used by juveniles in the commission of a crime or delinquent act.⁴ Juvenile crime is on the rise, and therefore if the weapons used by juveniles cannot be confiscated, there is a great risk the same weapons will be used in other crimes.⁵ HB 1337 was recommended by the former Chief of Police in Gordon, Georgia, Cuyler Payne, who is now the Probate Judge of Wilkinson County.⁶ He stated

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1. 1977 Ga. Laws 1131 (codified at O.C.G.A. § 17-5-51 (1982)).
 2. 1976 Ga. Laws 167 (codified at O.C.G.A. § 17-5-52(a) (1982)).
 3. 1976 Ga. Laws 167 (codified at O.C.G.A. § 17-5-52(a)-(b) (1982)).
 4. Telephone Interview with Rep. Kenneth Birdsong, House District No. 123 (Mar. 17, 1994) [hereinafter Birdsong Interview].
 5. *Id.*
 6. *Id.* Gordon, Georgia has a population of roughly 3000 and the police department confiscates eight to twelve guns a year from juveniles. Telephone Interview with Probate Judge Cuyler Payne, Irwinton, Georgia (Mar. 23, 1994) [hereinafter Payne Interview].

that these amendments were necessary because "guns are a serious problem, and we're not even touching the surface."⁷

HB 1337

The Act amends Code section 17-5-51 by expanding the circumstances under which a weapon may be confiscated.⁸ The Act now permits a weapon to be confiscated when the "possession or carrying" of the weapon constitutes "a crime or delinquent act."⁹ This change allows weapons to be permanently confiscated from juveniles as well as adults.¹⁰ Before this amendment, weapons taken from juveniles who had committed a crime or delinquent act were either returned to the owner, if known, or kept in a locker at the police station.¹¹

The Act also amends Code section 17-5-52(a) to permit the disposal of a confiscated weapon after a final judgment has been entered against one who used the weapon in the commission of a crime or a delinquent act.¹² This section of the amendment now appears to be consistent with the amendment to Code section 17-5-51. The amended Code section 17-5-52(a) also permits the sheriff to retain the weapon for use in law enforcement rather than either destroy the weapon or sell the weapon to the highest bidder at a sheriff's sale.¹³ This provision was added in a floor amendment in order to make the Act consistent with current Georgia law regarding weapons confiscation.¹⁴

The Act amends Code section 17-5-52(b) which makes it mandatory that the proceeds from the sale of the weapon be turned in to the treasury of the municipality where the crime was committed, instead of the county, after the costs of the advertising and sale are deducted.¹⁵ The clause permitting the deduction of the costs of advertising and selling the weapon was added to the original bill.¹⁶

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7. Payne Interview, *supra* note 6.

8. O.C.G.A. § 17-5-51 (Supp. 1994).

9. *Id.*

10. Birdsong Interview, *supra* note 4.

11. Payne Interview, *supra* note 6. Juveniles often obtain weapons from their parents or pay adults to buy weapons for them. *Id.*

12. O.C.G.A. § 17-5-52(a) (Supp. 1994).

13. *Id.*

14. Birdsong Interview, *supra* note 4; HB 1337 (HCAFA), 1994 Ga. Gen. Assem.

15. O.C.G.A. § 17-5-52(b) (Supp. 1994). Before the Act, Code section 17-5-52(b) allowed the proceeds from the sale of confiscated weapons to be turned in only to the treasury of the county where the sale was made. 1976 Ga. Laws 167 (codified at O.C.G.A. § 17-5-52(b) (1982)).

16. HB 1337 (HCAFA), 1994 Ga. Gen. Assem.