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CRIMES AND OFFENSES Sexual Offenses: Provide that Under Certain Conditions Chemical Treatment and Treatment by a Qualified Mental Health Professional May be Required as a Condition of Probation by a Court Sentencing a First Time Offender of Child Molestation; Provide for Treatment Prior to Release from Custody; Provide that No Treatment be Administered Until Person has been Fully Informed of Side Effects of Hormonal Chemical Treatment and has Consented in Writing; Provide for Administration of Treatment by State Board of Pardons and Paroles; Provide that Physician of Qualified Mental

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Health Professional Who Acts in Good Faith Compliance in Administration of Treatment or Counseling be Immune from Civil or Criminal Liability; Provide that Person Undergoing Treatment Participate in and Pay for Counseling

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CRIMES AND OFFENSES

Sexual Offenses: Provide that Under Certain Conditions Chemical Treatment and Treatment by a Qualified Mental Health Professional May be Required as a Condition of Probation by a Court Sentencing a First Time Offender of Child Molestation; Provide for Treatment Prior to Release from Custody; Provide that No Treatment be Administered Until Person has been Fully Informed of Side Effects of Hormonal Chemical Treatment and has Consented in Writing; Provide for Administration of Treatment by State Board of Pardons and Paroles; Provide that Physician or Qualified Mental Health Professional Who Acts in Good Faith Compliance in Administration of Treatment or Counseling be Immune from Civil or Criminal Liability; Provide that Person Undergoing Treatment Participate in and Pay for Counseling

CODE SECTIONS: O.C.G.A. §§ 16-6-4 (amended), 42-9-44.2 (new)
BILL NUMBER: HB 211
ACT NUMBER: 484
GEORGIA LAWS: 1997 Ga. Laws 1578
SUMMARY: The Act allows a court to require that a first time offender of aggravated child molestation, before sentencing, undergo a psychiatric evaluation to determine whether medroxyprogesterone acetate treatment would be effective in changing the person's behavior. The Act provides that chemical treatment and treatment by a qualified mental health professional may be required as a condition of probation, and allows such treatment to begin before the person is released from custody. The Act specifies that such treatment shall not be administered until the person has been fully informed of the side effects of the chemical treatment and consents to the treatment in writing. The Act authorizes the Board of Pardons and Paroles to require chemical and psychiatric treatment as a condition of parole to a person convicted of a second or subsequent offense of child molestation. The Act allows the State Board of Pardons and Paroles to administer the treatment. The Act provides that any physician or qualified mental health professional who administers such treatment in good faith be immune from civil or criminal liability. The Act requires that a person

participating in treatment must pay for and participate in counseling from a private or public provider of outpatient mental health services.

EFFECTIVE DATE: July 1, 1997

History

Child molesters have a high rate of recidivism.¹ Europe has coped with this problem for years by using chemical castration, which has been effective in limiting the sex drive of child molesters.² Countries such as Denmark, Germany, and Switzerland have reduced child molestation recidivism rates from 65% to 10%.³ Until recently in the United States, only a narrow range of punishments could be given to child molesters, leaving citizens to “pray” that molesters will not strike again after being released from jail.⁴ “Despite statistics that show a decline in rape and other violent sex crimes nationwide, a wave of preventative and punitive laws is sweeping the country to put the public at ease and sexual offenders in their place.”⁵ The country gets tough on sex offenders when particular cases receive national attention.⁶ In September 1996, California became the first state to require that repeat child molesters receive chemical castration treatment.⁷ California’s statute requires weekly injections of the drug Depo-Provera to those who are convicted a second time of child molestation in order to dampen sexual desire.⁸ Those who supported the statute in California relied on statistics from Europe where the “repeat-offender rate dropped from almost 100 percent to just [two]

1. See *Senate Passes Castration Bill*, FLA. TIMES-UNION, Mar. 28, 1997, at B1.

2. See *id.*

3. See Editorial, *1997 Georgia Legislature Try “Castration” on Molesters*, ATLANTA J. & CONST., Feb. 18, 1997, at A6.

4. See Vickie Chachere & Robert Schaller, *Children Fall Prey: Pedophiles Drop Through System’s Cracks*, TAMPA TRIB., Jan. 7, 1996, at 1.

5. Daniel B. Wood, *States are Rushing to Curb Sex Crimes: California Leads Way with Crackdown on Statutory Rape, Use of “Chemical Castration”*, CHRISTIAN SCI. MONITOR, Sept. 5, 1996, at 4.

6. See *id.*

7. See *California Castration Law Signed*, ATLANTA J. & CONST., Sept. 18, 1996, at A5 [hereinafter *Castration Law Signed*]. “Chemical castration” entails administering a chemical injection that reduces sexual urges and makes males impotent.” Record of Proceedings in the Senate Judiciary Committee (Mar. 5, 1997) (remarks by Rep. George Grindley, Jr.) [hereinafter *Grindley Remarks*] (available in Georgia State University College of Law Library). This drug is ineffective for female molesters, so apparently the bill provides for the same treatment for women if and when a drug is discovered that will be effective for females. Record of Proceedings on the House Floor (Feb. 11, 1997) (available in Georgia State University College of Law Library).

8. See *Castration Law Signed*, *supra* note 7.

percent.⁹ Many legal experts considered California's chemical castration statute the "most punitive child-molestation measure ever adopted in the U.S."¹⁰ The American Civil Liberties Union called chemical castration "barbaric."¹¹ Therapists and experts have "questioned its effectiveness, saying that some child molesters are driven not by sexual desire but by a need for power and control."¹²

Despite considerable controversy, Iowa, Washington, Georgia, and Louisiana were among the states that considered adopting legislation similar to California's statute.¹³ Indeed, chemical castration was a "big hit at the [Georgia] Capitol."¹⁴ Florida and Alabama also had chemical castration bills on their legislative dockets.¹⁵ Prior to the Act, if an individual was convicted of child molestation a second time, he or she could face life in prison without parole.¹⁶

Chemical castration, according to Senator Charles Clay, provides more protection to the public because "[w]hen a convicted child molester is either released on parole or goes back into the community, there'll be one other small piece [of legislation] in [the Code] that helps protect the children."¹⁷

Representative George H. Grindley, Jr. decided to sponsor HB 211 after he read about California's bill and learned that ten years of testing the treatment showed great success. He believed the bill was necessary for Georgia.¹⁸ Although Representative Grindley believes that different areas of the Act might need further evaluation and "tightening up" in the future, he wanted HB 211 passed as soon as possible so that Georgia could begin benefitting from the program.¹⁹ Representative William C. Randall co-sponsored the bill because he was concerned for the safety of children.²⁰ Representative Randall stated

9. *Id.*

10. Wood, *supra* note 5.

11. See *California Castration Law Signed*, *supra* note 7.

12. *Id.*

13. See Thomas A. Fogarty & Dawn Bormann, *Hormone Treatment Favored for Sex Crimes*, DES MOINES REG., Feb. 6, 1997, at 1.

14. James Salzer, *Chemical Castration Bill Before Legislature*, FLA. TIMES-UNION, Jan. 17, 1997, at B4.

15. See Margaret Talev, *Chemical Castration Endorsed*, TAMPA TRIB., Feb. 26, 1997.

16. See James Salzer, *House Oks "Chemical Castration"*, FLA. TIMES-UNION, Feb. 12, 1997, at B1. A chemical injection costs less than giving a repeat molester life in prison, and castration protects the children. Grindley Remarks, *supra* note 7.

17. Kathey Alexander, *'97 Georgia Legislature: Senate OKs Chemical Castration Bill*, ATLANTA J. & CONST., Mar. 28, 1997, at B2.

18. Telephone Interview with Rep. George H. Grindley, Jr., House District No. 35 (June 19, 1997) [hereinafter Grindley Interview].

19. *Id.*

20. Telephone Interview with Rep. William C. Randall, House District No. 127 (Apr. 18, 1997) [hereinafter Randall Interview].

that he has no sympathy for child molesters, and that he believes most molesters know that they are "sick."²¹ He believes that chemical castration is an "additional tool that the courts can use to deter and cure child molestation."²² Representative Ron A. Crews co-sponsored the bill because the "recidivism for child molesters is extraordinarily high," and chemical castration seems to be highly effective in limiting this behavior.²³

HB 211

Introduction

The Georgia General Assembly referred HB 211 to the House Special Judiciary Committee.²⁴ Several substantive changes were made to the bill in committee²⁵ before it was passed on the House floor.²⁶ Then, it was referred to the Senate Judiciary Committee, which passed it on to the Senate with the House's substitute.²⁷ The Senate passed the bill by floor amendments on March 27, 1997.²⁸ The House concurred with the Senate amendments.²⁹ The Act's language reflects many concerns regarding informed consent, medical and mental health treatment, and constitutionality.³⁰

The General Assembly did not enact this bill in order to reduce child molester's sentences;³¹ the Act does not authorize judges to do so.³² Instead, the Act merely states that if molesters are going to receive

21. *Id.*

22. *Id.*

23. Telephone Interview with Rep. Ron A. Crews, House District No. 78 (Apr. 18, 1997) [hereinafter Crews Interview].

24. See Final Composite Status Sheet, Mar. 28, 1997.

25. Compare HB 211, as introduced, 1997 Ga. Gen. Assem., with HB 211 (HCS), 1997 Ga. Gen. Assem.

26. See Final Composite Status Sheet, Mar. 28, 1997.

27. See *id.*

28. See *id.* Compare HB 211 (HCS), 1997 Ga. Gen. Assem., with HB 211 (SCSFA), 1997 Ga. Gen. Assem.

29. See Final Composite Status Sheet, Mar. 28, 1997.

30. Before the bill was enacted, the Georgia Association of Criminal Defense Lawyers expressed concern that the bill would raise a constitutional problem if coercion was involved in administering the treatment. Record of Proceedings in the Senate Judiciary Committee (Mar. 5, 1997) (remarks by representative of the Georgia Association of Criminal Defense Lawyers) (available in Georgia State University College of Law Library). The Association stressed that the bill must allow for only voluntary treatment. *Id.* Representative Grindley assured that the purpose of the bill was to deter deviant sexual conduct, not to punish. Grindley Remarks, *supra* note 7.

31. See Grindley Interview, *supra* note 18. Apparently, some district attorneys had criticized the bill because they believed that it would reduce molester's sentences. See *id.*

32. See *id.*

parole, the children will be provided more protection against subsequent offenses.³³

Court May Require that Child Molesters Undergo Chemical Castration and Mental Health Treatment as Condition of Probation

The Act amends former Code section 16-6-4, relating to child molestation and aggravated child molestation, by striking subsection (d) in its entirety and inserting in its place a new subsection (d) with three parts.³⁴ Subsection (d)(1) reiterates the language of previous Code section 16-6-4(d).³⁵ Subsection (d)(2) authorizes a court to require that a first offender of child molestation whose victim is sixteen years of age or younger to undergo, before sentencing, a psychiatric evaluation to determine whether medroxyprogesterone acetate or its equivalent would help change the offender's behavior.³⁶ Subsection (d)(3) provides immunity from liability to physicians and professionals administering treatment, assuming they act in good faith and in compliance with the Code.³⁷

Age of Victim

As introduced, the bill required that the offense be committed against a child fourteen years of age or younger at the time of the offense.³⁸ However, the age requirement was changed to sixteen years in the House Committee's substitute,³⁹ and that change remained in the Senate's final version.⁴⁰ This change was made because children who are sixteen years old are still considered juveniles.⁴¹ The change was necessary in order to remain compatible with the entire statutory code of Georgia.⁴²

33. *See id.* Representative Grindley believes that molesters should stay in jail as long as possible. *Id.*

34. *Compare* 1996 Ga. Laws 957, § 4, at 959 (formerly found at O.C.G.A. § 16-6-4 (1996)), *with* O.C.G.A. § 16-6-4 (Supp. 1997).

35. O.C.G.A. § 16-6-4 (Supp. 1997).

36. *Id.* § 16-6-4(d)(2).

37. *Id.* § 16-6-4(d)(3).

38. HB 211, as introduced, 1997 Ga. Gen. Assem.

39. *Compare* HB 211, as introduced, 1997 Ga. Gen. Assem., *with* HB 211 (HCS), 1997 Ga. Gen. Assem.

40. HB 211 (SCSFA), 1997 Ga. Gen. Assem.; O.C.G.A. § 16-6-4 (Supp. 1997).

41. Randall Interview, *supra* note 20. When a child becomes 17 years old, he/she is treated differently than one 16 years old and younger in the court system. *See* Crews Interview, *supra* note 23. Representatives Randall and Crews were not opposed to the Senate Amendment. *Id.*; Randall Interview, *supra* note 20.

42. *See* Grindley Interview, *supra* note 18. Most "minors" are specified as being 16 years old and younger in the Code. *See id.*

Chemical Treatment, Coupled with Mental Health Therapy

Further, the Act provides that if a qualified mental health professional determines that the chemical treatment would be effective, the court may require that the offender undergo chemical treatment coupled with treatment by a qualified mental health professional as a condition of probation.⁴³ Although not specifically spelled out in the Act, only those molesters who consent to treatment and who are likely to benefit from treatment will be required to undergo treatment as a condition of parole.⁴⁴ This language regarding mental health treatment was not in the original bill, but was added in House Committee.⁴⁵ Mental therapy was initially brought up in committee meetings because treatment in Europe was proven more successful with combined counseling.⁴⁶ Representative William C. Randall insisted on this change because his research revealed that chemical treatment could not succeed without the mental therapy.⁴⁷ Molesters often use not only sex organs, but foreign objects as well.⁴⁸ Therefore, if the chemical treatment is effective in reducing sex drive, molesters could still commit the crime.⁴⁹ Mental therapy is needed to take care of molestation as a mental illness.⁵⁰

Mental Health Professional Administering Treatment Must be Qualified

The Senate Amendment added language requiring that the mental health professional administering the treatment be "qualified."⁵¹ The Act does not specify a definition of a "qualified mental health professional." Representative Crews understood the definition to cover one who is board certified with a masters degree.⁵² Representative Grindley understood a qualified mental health professional to be anyone who is licensed to practice medicine.⁵³ He wanted the definition of a qualified mental health professional to be as broad as

43. O.C.G.A. § 16-6-4(d)(2) (Supp. 1997).

44. See Grindley Interview, *supra* note 18; Randall Interview, *supra* note 20; Crews Interview, *supra* note 23. Representative Grindley believed that any ambiguous provisions could be "tightened up" later. Grindley Interview, *supra* note 18.

45. Compare HB 211, as introduced, 1997 Ga. Gen. Assem., with HB 211 (HCS), 1997 Ga. Gen. Assem.

46. See Grindley Interview, *supra* note 18.

47. See Randall Interview, *supra* note 20.

48. See *id.*

49. See *id.*

50. See *id.*

51. Compare HB 211 (HCS), 1997 Ga. Gen. Assem., with HB 211 (SCSFA), 1997 Ga. Gen. Assem.

52. See Crews Interview, *supra* note 23.

53. See Grindley Interview, *supra* note 18.

possible to ensure that there would be enough professionals who could and would be able to administer the treatment.⁵⁴

Provisions Arranged for Treatment Between the Court and the Defendant at Sentencing

Additionally, the Senate amendment added that the court may require the treatment as a condition of parole "upon provisions arranged between the court and the defendant."⁵⁵ This addition means that when the defendant agrees to treatment during sentencing (the treatment is conditional on the defendant's agreement to have it as part of his or her sentence), the details of the treatment would be worked out between the court and the defendant.⁵⁶ Whether the treatment will be required as a condition of parole is ultimately the sentencing judge's decision, and the judge should have considerable discretion in making that decision.⁵⁷ The judge may take many facts into consideration, including testimony from medical professionals and the defendant's personal background.⁵⁸

Beginning Treatment Prior to Release from Custody or Confinement

The Act further provides that a person required to undergo the treatment who is in custody of a law enforcement agency or in jail shall begin the chemical treatment and counseling prior to release from confinement.⁵⁹ A person who is required to undergo the treatment and who is not in the custody of a law enforcement agency or in jail at the time of sentencing shall be taken into custody or confined until treatment can begin.⁶⁰ The Board of Pardons and Paroles has the authority to require a defendant sentenced before the bill's passage to take the chemical and mental treatment as a condition of parole.⁶¹ This language was essentially contained in the original bill; however, a few minor changes were made in House Committee, which added that the provision applies to a person "required to undergo such treatment."⁶² The provision of treatment before release from

54. *See id.*

55. Compare HB 211 (HCS), 1997 Ga. Gen. Assem., with HB 211 (SCSFA), 1997 Ga. Gen. Assem.

56. *See* Crews Interview, *supra* note 23.

57. *See* Grindley Interview, *supra* note 18.

58. *See id.*

59. O.C.G.A. § 16-6-4(d)(2) (Supp. 1997).

60. *See id.*

61. *See* Grindley Interview, *supra* note 18. The Act covers every molester who consents to treatment and who is likely to benefit from the treatment to undergo treatment as a condition of parole. *See id.*

62. Compare HB 211, as introduced, 1997 Ga. Gen. Assem., with HB 211 (HCS),

confinement serves the public policy of more effectively protecting children from released molesters.⁶³ Further, the change was made in order to emphasize that those receiving the treatment are those who agreed to the treatment; this provision does not apply to those who refuse to undergo chemical treatment and mental therapy.⁶⁴

Treatment Until Probation or Parole Has Been Served or Until Treatment is No Longer Necessary

The Act further provides that the treatment may continue after the person's release from custody or confinement until the person demonstrates to the court that the treatment is no longer necessary.⁶⁵ As introduced, the bill stated that the Department of Corrections would have to demonstrate to the court that the treatment was no longer needed.⁶⁶ However, this language was changed in House Committee because the Department of Corrections has no authority to administer the treatment.⁶⁷ In order for the molester to be released from treatment during the parole, the General Assembly intended that there be a certification by a mental health professional that the molester is "cured" and a hearing before a court to determine whether treatment should be discontinued.⁶⁸ After the period of parole is served, the State cannot require the molester to continue treatment.⁶⁹

Informed Consent

The Act requires that treatment shall not be administered until the person has been fully informed about the side effects of medroxyprogesterone acetate treatment or its chemical equivalent and has consented to such treatment in writing.⁷⁰ The original bill and the House Committee substitute provided for consent in writing.⁷¹ The Senate's amendment added language regarding informed consent.⁷²

1997 Ga. Gen. Assem.

63. See Randall Interview, *supra* note 20; Crews Interview, *supra* note 23.

64. See Randall Interview, *supra* note 20; Crews Interview, *supra* note 23.

65. O.C.G.A. § 16-6-4(d)(2) (Supp. 1997).

66. HB 211, as introduced, 1997 Ga. Gen. Assem.

67. See Randall Interview, *supra* note 20; HB 211 (HCS), 1997 Ga. Gen. Assem.

68. See Randall Interview, *supra* note 20.

69. See *id.*

70. O.C.G.A. § 16-6-4(d)(2) (Supp. 1997); see *infra* note 78 (listing side effects).

71. HB 211, as introduced, 1997 Ga. Gen. Assem.; HB 211 (HCS), 1997 Ga. Gen. Assem.

72. HB 211 (SCSFA), 1997 Ga. Gen. Assem.

Conformance with O.C.G.A. § 44-9-44.2

The chemical and mental health treatment must be administered in conformity with procedures and conditions set forth in subsection (c) of new Code section 42-9-44.2.⁷³

Physician or Qualified Mental Health Professional Immunity from Liability

The Senate floor amendment added subsection (d)(3) to Code section 16-6-4.⁷⁴ This Code section provides that a physician or qualified mental health professional who administers chemical treatment or counseling in good faith in compliance with provisions of Code sections 16-6-4 and 42-9-44.2(c)⁷⁵ be immune from civil or criminal liability for his or her actions in connection with the treatment or counseling.⁷⁶ This safeguard was necessary for the protection of medical personnel.⁷⁷ A possibility existed that qualified mental health professionals would be unwilling to administer the treatment without some sort of immunity.⁷⁸ Provisions in Georgia law already establish immunity for physicians for a variety of procedures.⁷⁹

Authority of Board of Pardons and Paroles; Payment for Treatment

New Code section 42-9-44.2(a) gives the Board of Pardons and Paroles discretion, in considering the grant of parole to a person convicted of a first, second, or subsequent offense of child molestation,

73. O.C.G.A. § 16-6-4(d)(2) (Supp. 1997); *see infra* notes 80-94 and accompanying text.

74. HB 211 (SCSFA), 1997 Ga. Gen. Assem.

75. *See infra* notes 91-94 and accompanying text.

76. O.C.G.A. § 16-6-4(d)(3) (Supp. 1997).

77. *See* Randall Interview, *supra* note 20.

78. *See* Grindley Interview, *supra* note 18. Doctors, who often have good reasons to be concerned about the effects of certain medical treatments, have legitimate concerns about immunity from suit due to the side effects of "chemical castration." *See id.* A psychologist from Emory University testified that three different types of drugs have been used for this treatment, none of which are 100% effective. Record of Proceedings in the Senate Judiciary Committee (Mar. 5, 1997) (remarks by Dr. Abel, psychologist from Emory University) (available in Georgia State University College of Law Library). The side effects of using the drugs in this fashion include the following: 12% of users have had gall bladders removed within a few months; 4% of users developed diabetes; and some users developed infection of veins leading to blood clots (that could possibly lead to death). *See id.* The decision as to whether the drug will be helpful depends on each individual's assessment. *See id.* Malpractice insurance has quadrupled after doctors have included sex offenders in their patient group. *See id.* A waiver of liability should encourage more physicians to administer the treatment. Grindley Remarks, *supra* note 7.

79. *See* Grindley Interview, *supra* note 18.

to require as a condition of parole that the person undergo chemical treatment.⁸⁰ The Code section further provides that the person must participate in and pay for mental health counseling from a public or private provider.⁸¹ This language did not appear in the original or House Committee version of the bill.⁸² The General Assembly's intent was for molesters to pay for the chemical treatment, as well as the mental therapy.⁸³ Monthly fees for supervision already exist for persons who are on parole.⁸⁴ The cost of the chemical castration treatment ranges between \$35 to \$40 per week.⁸⁵ The cost of counseling depends on the independent physician's rates.⁸⁶ The new Code section further provides that the treatment must be consented to in writing.⁸⁷

Duration of Treatment

The original bill's provision that the Department of Corrections had to demonstrate to the Board that treatment is no longer necessary was changed by the House Committee.⁸⁸ New Code section 42-9-44.2(b) provides that a person required to undergo the chemical treatment and mental therapy as a condition of parole must begin the treatment prior to his or her release from confinement.⁸⁹ Additional treatment may continue after the person's release on parole until the person demonstrates to the Board of Pardons and Paroles that the treatment is no longer necessary.⁹⁰

Administration of Treatment by the State Board of Pardons and Paroles

New Code section 42-9-44.2(c) provides for the administration of treatment by the State Board of Pardons and Paroles through licensed medical personnel whom the molester employs and the Board

80. O.C.G.A. § 42-9-44.2(a) (Supp. 1997).

81. *Id.*

82. Compare HB 211, as introduced, 1997 Ga. Gen. Assem., and HB 211 (HCS), 1997 Ga. Gen. Assem., with HB 211 (SCSFA), 1997 Ga. Gen. Assem.

83. See Randall Interview, *supra* note 20; Crews Interview, *supra* note 23.

84. See O.C.G.A. § 42-9-42(d)(2) (1997). The current parole supervision fee is at least \$10 per month. See *id.*

85. See Grindley Interview, *supra* note 18. Costs could decrease in the future, and subsidization might be possible, when the treatment is more commonly put to use. See *id.*

86. See *id.*

87. O.C.G.A. § 42-9-44.2(a) (Supp. 1997).

88. Compare HB 211, as introduced, 1997 Ga. Gen. Assem., with HB 211 (HCS), 1997 Ga. Gen. Assem.

89. O.C.G.A. § 42-9-44.2(b) (Supp. 1997).

90. See *id.*

approves.⁹¹ The Code section also provides that any physician or qualified mental health professional acting in good faith compliance in the administration of the treatment be immune from civil or criminal liability.⁹² It also requires the Department of Corrections to provide access for the licensed medical personnel to begin treatment of those molesters that are confined.⁹³ Further, such medical personnel must inform the person about the side effects of the chemical treatment, and the person undergoing treatment must acknowledge informed consent in writing.⁹⁴

Lisa M. Gable

91. *Id.* § 42-9-44.2(c).

92. *Id.*

93. *Id.*

94. *Id.*