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CRIMINAL PROCEDURE Limitations on Prosecution: Enable Prosecution for Serious Violent Felonies to be Commenced at any Time Under Certain Circumstances; Provide for an Increase in the Statute of Limitations for Aggravated Sodomy; Provide for Increase in Age Limitation on Prosecutions of Certain Crimes Involving Children Who Are Victims Be Increased to Age Eighteen

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CRIMINAL PROCEDURE

Limitations on Prosecution: Enable Prosecution for Serious Violent Felonies to be Commenced at any Time Under Certain Circumstances; Provide for an Increase in the Statute of Limitations for Aggravated Sodomy; Provide for Increase in Age Limitation on Prosecutions of Certain Crimes Involving Children Who Are Victims Be Increased to Age Eighteen.

CODE SECTION:	O.C.G.A. § 17-3-1 (amended)
BILL NUMBER:	HB 410
ACT NUMBER:	785
GEORGIA LAWS:	2002 Ga. Laws 650
SUMMARY:	The Act provides that prosecution for serious violent offenses may be commenced at any time under certain circumstances. The Act removes the statute of limitation for the prosecution of Armed Robbery, Kidnapping, Rape, Aggravated Child Molestation, Aggravated Sodomy, and Aggravated Sexual Battery when DNA evidence is available to determine the identity of the accused and a sufficient portion of such DNA evidence is available for the accused to test. The Act also provides that the age limitation on prosecutions of certain crimes involving children who are victims be increased to age eighteen.
EFFECTIVE DATE:	July 1, 2002

History

Of the “seven deadly sins,” murder has long been the only crime not subject to a statute of limitations for prosecution in Georgia.¹

1. Video Recording of Senate Proceedings, Apr. 10, 2002 (remarks by Sen. Greg Hecht), at <http://www.state.ga.us/services/leg/video/2002/archive.html>.

Many public policy reasons underlie the existence of the statute of limitations provisions, including ensuring fairness to the defendant, providing swift prosecution, avoiding delay, and avoiding the “difficulties of proof” found in older cases.² The United States Supreme Court has noted that the “general policy behind all statute of limitations [is] keeping stale claims out of court”³ and that such statutes have long been “fundamental to a well-ordered judicial system.”⁴ While prosecution of serious and violent felonies has also been fundamental to a well-ordered society, the public policies supporting statute of limitations have been deemed paramount.⁵ However, with the advent of deoxyribonucleic acid (DNA) technology, many policy concerns justifying statute of limitations have been rendered obsolete.⁶

Georgia Code section 24-4-60, as enacted two years ago by the General Assembly, created a state DNA database.⁷ This DNA database is “fed with samples taken from every felon incarcerated in a Georgia prison.”⁸ This year’s movement in the General Assembly to remove the statute of limitations on felonies encompassed in HB 410 has been considered follow-up legislation to the creation of the state DNA database.⁹

The passage of HB 410 was ensured largely through the lobbying efforts of the Georgia Network to End Sexual Assault (GNESA). GNESA became interested in an amended statute of limitations bill after reviewing the first-year statistics from Georgia’s felon DNA database.¹⁰ GNESA discovered an alarming number of “hits;” that is a lot of convicted felons were matched with DNA evidence from old

2. *Scott v. Borelli*, 666 N.E.2d 322, 326 (Ohio App. 1995).

3. *Walker v. Armco Steel Corp.*, 446 U.S. 740, 751 n.12 (1980).

4. *Board of Regents of the SUNY v. Tomanio*, 446 U.S. 478, 487 (1980).

5. *See generally, id.*

6. *See generally, The Future of Forensic DNA Testing: Predictions of the Research and Development Working Group*, National Institute of Justice (National Commission on the Future of DNA Evidence), Nov. 2000, at 6, available at <http://www.ojp.usdoj.gov/nij/pubs-sum/183697.htm> [hereinafter National Institute of Justice Report].

7. O.C.G.A. § 24-4-60 (2000).

8. Duane D. Stanford, 2002 *GEORGIA LEGISLATURE: Law Would Nix Felony Case Time Limit*, ATLANTA J. CONST., Jan. 19, 2002, at 4H.

9. *Id.*; Interview with Sen. Greg Hecht, Senate District No. 34 (May 17, 2002) [hereinafter Hecht Interview]. Scholars have found that “[i]n the future, it is likely that an increasing number of suspects will be identified by database searches.” National Institute of Justice Report, *supra* note 6.

10. Telephone Interview with Ellen D. Williams, GNESA lobbyist (June 25, 2002) [hereinafter Williams Interview].

rape cases.¹¹ After reviewing these statistics, GNESEA lobbied the Lieutenant Governor to present remedial legislation.¹²

The Lieutenant Governor fully supported GNESEA's plea to eliminate the statute of limitations and enlisted the help of State Senator Greg Hecht, who officially sponsored the legislation.¹³ While speaking to the Senate, Senator Hecht remarked that "[t]his DNA database and the DNA technology available to us has allowed us to take care of crimes that were perpetuated beyond the four and seven year statute of limitations previously . . . established by law."¹⁴ Hecht continued, also noted "now [is the] opportunity for us to bring to justice those criminals who have previously inflicted pain [through] molestation, kidnapping, rape, and even murder to justice."¹⁵ Commenting on the ideas behind this bill, Lieutenant Governor Mark Taylor said that "[t]hese are very serious crimes . . . [that] are the most egregious in society."¹⁶ The Lieutenant Governor continued, commenting that "[t]here's no time limit on the suffering these crimes cause, and there should be no time limit on our ability to find out who did the crimes."¹⁷ Summing up the spirit of the bill, the Lieutenant Governor noted that "[t]here is no statute of limitations on a person's pain."¹⁸

HB 410

Introduction

On February 5, 2001, Representative Jim Stokes of the 92nd District introduced HB 410, which would continue to give trial judges the authority to modify a sentence up to one year after the date

11. *Id.*

12. *Id.*

13. *Id.*; Hecht Interview, *supra* note 9.

14. Video Recording of Senate Proceedings, Feb. 5, 2002 (remarks by Sen. Greg Hecht), at <http://www.state.ga.us/services/leg/video/2002/archive.html>.

15. *Id.*

16. Duane D. Stanford, 2002 *GEORGIA LEGISLATURE: Law Would Nix Felony Case Time Limit*, ATLANTA J. CONST., Jan. 19, 2002, at 4H.

17. *Id.*

18. Rachel Ramos, *Bill Proposes Lifting Some Statutes of Limitations*, FULTON CO. DAILY REP., Feb. 8, 2002.

the sentence was originally imposed.¹⁹ The House assigned the bill to its Judiciary Committee, which favorably reported the bill on February 13, 2001.²⁰ On March 7, 2001 the House voted 153 to 8 to pass the bill.²¹ The bill then made its way to the Senate, where on March 15, 2001, the Senate's Judiciary Committee favorably reported it.²² However, at this point, HB 410 seemed to quietly fade away because the Senate never voted on it during the 2001 session.²³

State Senator Greg Hecht introduced SB 333 on January 18, 2002.²⁴ The Senate assigned SB 333 to the Judiciary Committee, which favorably reported the bill on February 1, 2002.²⁵ On February 4, 2002 the Senate unanimously passed SB 333.²⁶ The bill was then sent to the House, which assigned the bill to its Judiciary Committee.²⁷ The House Judiciary Committee favorably reported SB 333 on April 10, 2002.²⁸ No further action was taken on SB 333 in the 2002 legislative session.²⁹

On January 14, 2002, the Senate recommitted HB 410.³⁰ On April 9, 2002, the Senate Judiciary Committee offered a substitute to HB 410 and favorably reported the bill to the Senate.³¹ The Judiciary Committee's substitute struck all of the original HB 410 language and replaced it with language almost identical to the Senate version of SB 333.³² The major change to SB 333, renewed by the substitute to HB 410, was the addition of language requiring the existence of conclusive DNA evidence in order to prosecute for of armed robbery.³³ On April 10, 2002, the Senate unanimously passed the

19. State of Georgia Final Composite Status Sheet, HB 410, Mar. 21, 2001; Video Recording of Senate Proceedings, Feb. 2, 2001 (remarks by Rep. Jim Stokes), at <http://www.state.ga.us/services/leg/video/2002/archive.html>.

20. *Id.*

21. Georgia House of Representatives Voting Record, HB 410 (Mar. 7, 2001).

22. State of Georgia Final Composite Status Sheet, HB 410, Apr. 12, 2002.

23. *Id.*

24. State of Georgia Final Composite Status Sheet, SB 333, Apr. 12, 2002.

25. *Id.*

26. Georgia Senate Voting Record, SB 333 (Feb. 4, 2002).

27. State of Georgia Final Composite Status Sheet, HB 410, Apr. 12, 2002.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Compare HB 410, as introduced, 2001 Ga. Gen. Assem., with HB 410 (SCS), 2002 Ga. Gen. Assem.; Hecht interview, *supra* note 9.

33. Compare SB 333, as introduced, 2001 Ga. Gen. Assem., with HB 410 (SCS), 2002 Ga. Gen. Assem.

substituted version of HB 410.³⁴ On April 12, 2002, the House disagreed with the Senate substitute.³⁵ Both the House and Senate insisted on their versions, and appointed a Committee of Conference to reach an agreement.³⁶ The Committee produced a version acceptable to both on that same day.³⁷ Finally, on April 12, 2002, the Senate adopted the Conference Report and the House adopted the Report by a vote of 153 to 2.³⁸ The Committee of Conference Report on HB 410 offered the substitute that became the final version as passed.³⁹ There were some linguistic and structural changes made between the initial Senate substitute to HB 410 and the Committee of Conference's substitute; however, the most striking change was the Committee's requirement that DNA evidence exist before the statute of limitations is waived for the prosecution of all crimes covered under the Act, not just for the prosecution of armed robbery, as SB 333 originally proposed.⁴⁰ The General Assembly sent the bill to Governor Roy Barnes, who signed HB 410 into law on May 10, 2002.⁴¹

The Act

The Act amends Code section 17-3-2, relating to limitation on prosecutions, by adding language to subsection (b), which noted that "prosecution for [crimes other than murder] punishable by death or life imprisonment must be commenced within seven years after the commission of the crime. . . ."⁴² The new language provides for an exception to this rule in newly created subsection c.1.⁴³ The new subsection c.1 provides a list of offenses, the prosecution of which may be commenced at any time, provided "DNA evidence is used to

34. Georgia Senate Voting Record, HB 410 (Apr. 10, 2002).

35. State of Georgia Final Composite Status Sheet, HB 410, Apr. 12, 2002.

36. *Id.*

37. *Id.*

38. Georgia House Voting Record, HB 410 (Apr. 12, 2002); State of Georgia Final Composite Status Sheet, HB 410, Apr. 12, 2002.

39. State of Georgia Final Composite Status Sheet, HB 410, Apr. 12, 2002.

40. Compare HB 410 (SCS), 2002 Ga. Gen. Assem., with HB 410 (CS), 2002 Ga. Gen. Assem.

41. State of Georgia Final Composite Status Sheet, HB 410, Apr. 12, 2002.

42. Compare 1996 Ga. Laws 1115, § 4, at 1117 (formerly found at O.C.G.A. § 17-3-1(b)(1996)), with O.C.G.A. § 17-3-1(b) (Supp. 2002).

43. O.C.G.A. § 17-3-1 (c.1) (Supp. 2002).

establish the identity of the accused,” including armed robbery as defined in Code section 16-8-41, kidnapping as defined in Code section 16-5-40, rape as defined in Code section 16-6-1, aggravated child molestation as defined in Code section 16-6-4, aggravated sodomy as defined in Code section 16-6-2, and aggravated sexual battery as defined in Code section 16-6-22.2.⁴⁴ The exception to Code section 17-3-1(b) is available provided “that a sufficient portion of the physical evidence tested for DNA is preserved and available for testing by the accused and provided . . . the DNA evidence . . . establish[es] the identity of the accused.”⁴⁵

The Act also amended Code section 17-3-1(c), dealing with the four-year statute of limitations for the prosecution of felonies other than those listed in subsections a, b, or c.1, and seven-year statute of limitations for prosecution of those felonies, committed against victims under the age of fourteen.⁴⁶ The amendment strikes the age fourteen designation, and changes it to eighteen.⁴⁷

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44. *Id.*

45. *Id.*

46. Compare 1996 Ga. Laws 1115, § 4, at 1117 (formerly found at O.C.G.A. § 17-3-1(b) (1996)), with O.C.G.A. § 17-3-1(c) (Supp. 2002).

47. Compare 1996 Ga. Laws 1115, § 4, at 1117 (formerly found at O.C.G.A. § 17-3-1 (1996)), with O.C.G.A. § 17-3-1 (Supp. 2002).