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PENAL INSTITUTIONS General Provisions: Change the Provisions Relating to Registration Requirements Applicable to Certain Sex Offenders; Include Additional Offenses Relating to Victims Who Are Minors; Clarify Language for Annual Registration; Revise Language Referring to Registration While Incarcerated; Provide for Annual Photographs of Offenders; Provide for Exclusions of Certain Liability in Certain Circumstances

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PENAL INSTITUTIONS

General Provisions: Change the Provisions Relating to Registration Requirements Applicable to Certain Sex Offenders; Include Additional Offenses Relating to Victims Who Are Minors; Clarify Language for Annual Registration; Revise Language Referring to Registration While Incarcerated; Provide for Annual Photographs of Offenders; Provide for Exclusions of Certain Liability in Certain Circumstances

CODE SECTION:	O.C.G.A. § 42-1-12 (amended)
BILL NUMBER:	HB 463
ACT NUMBER:	47
GEORGIA LAWS:	2003 Ga. Laws 281
SUMMARY:	The Act updates the regulation requirements for sex offenders. The Act includes additional offenses that require an individual to register with the state, such as possession of child pornography and conspiracy to transport, ship, receive, or distribute child pornography. Further, the Act requires an offender to register (1) within ten days of his release from prison, (2) if the offender changes his address, and (3) within ten days of the anniversary of the original registration. The Act also requires an offender to be photographed every year. Finally, the Act provides that real estate brokers, and their employers, shall not be held liable for failure to disclose any information related to the registry.
EFFECTIVE DATE:	May 28, 2003

History

“Lawmakers are united in their desire to do everything possible to protect the children of Georgia from those who would prey upon them.”¹ As a result, the Georgia Bureau of Investigation (“GBI”), Prosecuting Attorneys, and the Georgia General Assembly continuously seek to improve and update legislation relating to the sexual offender registry.² For example, in 2001, the GBI enhanced the registry’s reach by requiring registration of first offenders and persons who plead *nolo contendere*.³

The General Assembly created the sex offender registry in 1996 as a response to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (“Jacob Wetterling Act”).⁴ Then, as new issues emerged from the registry’s implementation, the GBI and the General Assembly wanted to improve and enhance the system.⁵ One concern was that the registry did not keep updated photographs of offenders.⁶ Additional concerns existed regarding enforcing compliance.⁷ The Act addresses these concerns by adding further specificity to the existing law.⁸

The Georgia Association of Realtors also assisted in crafting the bill.⁹ As a proactive measure, and in response to several suits in other parts of the country, the Georgia Association of Realtors sought to add language limiting the liability of realtors failing to disclose information related to the registry.¹⁰

1. Georgia Juvenile Services Association, Daily Report No. 26, at http://gjsa.org/daily_report_number_26.html (last visited May 9, 2003).

2. See Telephone Interview with Rep. Michael Boggs, House District No. 145 (May 14, 2003) [hereinafter Boggs Interview].

3. See Gregory T. Jones, *Review of Selected 2001 Georgia Legislation*, 18 GA. ST. U. L. REV. 227, 230 (2001).

4. 42 U.S.C. § 14071 (1994). The Jacob Wetterling Act is part of a 1994 federal crime bill “requir[ing] states to implement a registration program by September 13, 1997 or lose [10%] of their federal law enforcement assistance funding.” Karen K. Harris, *Review of Selected 1996 Georgia Legislation*, 13 GA. ST. U. L. REV. 257, 258 (1996).

5. See Boggs Interview, *supra* note 2.

6. See Telephone Interview with John Bankhead, Georgia Bureau of Investigation (May 14, 2003).

7. See *id.*

8. See *id.*

9. See *id.*

10. See Boggs Interview, *supra* note 2; Telephone Interview with Keith Hatcher, Georgia Association of Realtors (June 23, 2003).

*HB 463**Introduction*

Representatives Mike Boggs, Lynn Westmoreland, Jimmy Skipper, Tom Bordeaux, and Carl Rogers of the 145th, 86th, 116th, 125th, and 20th districts, respectively, sponsored HB 463.¹¹ After introduction to the House on February 18, 2003, the Speaker assigned the bill to the House Judiciary Committee, which favorably reported it on March 3, 2003.¹² The House unanimously passed HB 463 on March 6, 2003.¹³

After introduction to the Senate on March 24, 2003, the bill was referred to the Senate Judiciary Committee, which favorably reported the bill, as substituted by the Committee, on April 11, 2003.¹⁴ The Senate unanimously passed the bill, as substituted, on April 22, 2003.¹⁵ The bill then returned to the House for a vote regarding the Senate substitute.¹⁶ On April 25, 2003, the final day of the legislative session, the House agreed to the substitute by a vote of 153 to 2.¹⁷

Consideration in the House

The bill, as introduced, sought to amend Code section 42-1-12, relating to the sexual offender registry.¹⁸ Representative Boggs stated on the House floor that HB 463 simply updated the sex offender registry law, per the GBI's instruction.¹⁹ He also stated that in addition to a few technical modifications, the bill would add the offense of "conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct as a conviction that is reportable under the Act."²⁰ Furthermore, the bill would require offenders to report to the appropriate sheriff within ten

11. See HB 463, as introduced, 2003 Ga. Gen. Assem.

12. See State of Georgia Final Composite Status Sheet, HB 463, Apr. 25, 2003.

13. See *id.*; Georgia House of Representatives Voting Record, HB 463 (Mar. 6, 2003).

14. See State of Georgia Final Composite Status Sheet, HB 463, Apr. 25, 2003.

15. See *id.*; Georgia Senate Voting Record, HB 463 (Apr. 22, 2003).

16. See State of Georgia Final Composite Status Sheet, HB 463, Apr. 25, 2003.

17. See *id.*; Georgia House of Representatives Voting Record, HB 463 (Apr. 25, 2003).

18. See Audio Recording of House Proceedings, Mar. 3, 2003 (remarks by Rep. Michael Boggs), at <http://www.ganet.org/services/lrg/audio/2003archive.html> [hereinafter House Audio].

19. *Id.*

20. *Id.*

days of their release from prison and have their photograph taken at the time they report.²¹ The House unanimously passed HB 463 on March 6, 2003.²²

Consideration in the Senate

The Senate Committee retained the bill's substance, while accommodating concerns in the real estate community.²³ To do so, the Senate Committee added a section providing that no cause of action shall arise as a result of a real estate broker's failure to disclose information relating to the registry.²⁴ The Senate adopted the Committee substitute and passed HB 463 unanimously on April 22, 2003.²⁵

Reconsideration in the House

On April 25, 2003, Representative Bordeaux explained the Senate substitute to the House, which agreed to the substitute by a vote of 153 to 2.²⁶

The Act

The Act amends Code section 42-1-12 in several respects.²⁷ First, the Act adds to the list of offenses which subject offenders to registration.²⁸ In particular, the Act adds the offense of possession of child pornography to the already reportable offenses of "creating,

21. See O.C.G.A. § 41-1-12 (Supp. 2003).

22. See State of Georgia Final Composite Status Sheet, HB 463, Apr. 25, 2003. On that same day, Representatives Boggs and Franklin introduced a floor amendment, which included minor technical changes. See HB 463 (HFA), 2003 Ga. Gen. Assem. The floor amendment was adopted without objection. See House Audio, *supra* note 18.

23. See Boggs Interview, *supra* note 2.

24. Compare HB 463, as introduced, 2003 Ga. Gen. Assem., with HB 463 (SCS), 2003 Ga. Gen. Assem.

25. See State of Georgia Final Composite Status Sheet, HB 463, Apr. 25, 2003.

26. See *id.*; Georgia House of Representatives Voting Record, HB 463 (Apr. 25, 2003).

27. Compare 1996 Ga. Laws 1520, § 1, at 1520 (formerly found at O.C.G.A. § 42-1-12(a)(1)(A) (Supp. 2002)), with O.C.G.A. § 42-1-12(a)(1)(A) (Supp. 2003).

28. Compare 1996 Ga. Laws 1520, § 1, at 1520 (formerly found at O.C.G.A. § 42-1-12(a)(2)(B)(ii) (Supp. 2002)), with O.C.G.A. § 42-1-12(a)(2)(B)(ii) (Supp. 2003).

publishing, selling, or distributing” child pornography.²⁹ Moreover, the Act broadens the language from “any material depicting a minor” to “any material depicting a minor or a portion of a minor’s body engaged in sexually explicit conduct.”³⁰ Further, the Act adds the offense of “[c]onspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct.”³¹

The Act also clarifies the offender registration requirements.³² The Act requires offenders to “report in person within ten days of release from prison, placement on probation, parole, or supervised release to the appropriate sheriff’s office of the county or counties where the person resides, is employed, or attends school.”³³ The Act also requires the offender to report within a ten-day period if their residence, employment, vocation, or school addresses change.³⁴ If an offender moves to a new state, they must notify the sheriff of the county where they last registered within ten days of moving.³⁵ In addition, the Act requires the offender to report within ten days of the “anniversary date of the original registration.”³⁶ If the offender is incarcerated, these requirements will be stayed; however, upon release, the offender must register within ten days.³⁷

The Act also includes a photography requirement, which provides that an offender must report annually to the sheriff within ten days of the original registration date to be photographed.³⁸ Finally, the Act provides liability protection for realtors.³⁹ In real estate transactions,

29. *Compare* 2002 Ga. Laws 1402, § 1, at 1402 (formerly found at O.C.G.A. § 42-1-12(a)(4)(B)(viii) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(a)(4)(B)(viii) (Supp. 2003).

30. *Compare* 2002 Ga. Laws 1402, § 1, at 1402 (formerly found at O.C.G.A. § 42-1-12(a)(4)(B)(viii) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(a)(4)(B)(viii) (Supp. 2003).

31. *Compare* 1996 Ga. Laws 1520, § 1, at 1520 (formerly found at O.C.G.A. § 42-1-12(a)(4)(B)(x) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(a)(4)(B)(x) (Supp. 2003).

32. *Compare* 2002 Ga. Laws 1402, § 1, at 1405-07 (formerly found at O.C.G.A. § 42-1-12(a)(4) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(a)(4) (Supp. 2003).

33. *Compare* 2002 Ga. Laws 1402, § 1, at 1403-04 (formerly found at O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2003).

34. *Compare* 2002 Ga. Laws 1402, § 1, at 1404 (formerly found at O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2003).

35. *Compare* 2002 Ga. Laws 1402, § 1, at 1404 (formerly found at O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2003).

36. *Compare* 2002 Ga. Laws 1402, § 1, at 1404 (formerly found at O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2003).

37. *Compare* 2002 Ga. Laws 1402, § 1, at 1404 (formerly found at O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(b)(4)(A) (Supp. 2003).

38. *Compare* 2002 Ga. Laws 1402, § 1, at 1404 (formerly found at O.C.G.A. § 42-1-12(d)(1)(D) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(d)(1)(D) (Supp. 2003).

39. *Compare* 1996 Ga. Laws 1520, § 1, at 1520 (formerly found at O.C.G.A. § 42-1-12(m) (Supp. 2002)), *with* O.C.G.A. § 42-1-12(m) (Supp. 2003).

the Act immunizes brokers, and related entities that provide property management services, for failing to disclose information required by this Code section and relating to registered sexual offenders in the area.⁴⁰

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40. Compare 1996 Ga. Laws 1520, § 1, at 1520 (formerly found at O.C.G.A. § 42-1-12(m) (Supp. 2002)), with O.C.G.A. § 42-1-12(m) (Supp. 2003).