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SB 1 - C.J.'s Law

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MOTOR VEHICLES AND TRAFFIC

Uniform Rules of the Road: Amend Title 40 of the Official Code of Georgia Annotated, Relating to Motor Vehicles and Traffic, so as to Provide for a Penalty for Hit and Run Accidents that Result in Serious Injury; Clarify a Cross-Reference Relating to Suspensions of Drivers' Licenses; Provide a Definition; Provide for an Exception; Provide a Short Title; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 40-5-63 (amended);
40-6-394 (amended)

BILL NUMBER: SB 1

ACT NUMBER: 151

GEORGIA LAWS: 2019 Ga. Laws 492

SUMMARY: The Act primarily functions to increase the penalty for drivers who cause death or serious bodily injury as a result of a vehicular accident and then flee the scene. Also known as C.J.'s Law, the Act establishes a maximum prison sentence of ten years for such a hit-and-run violation. In addition, the Act rewords and clarifies existing statutory language regarding license suspensions subsequent to reckless driving or driving under the influence of alcohol or drugs.

EFFECTIVE DATE: July 1, 2019

History

On the night of January 24, 2009, a car struck twenty-three-year-old Charlie Jones (C.J.) as he walked home along Piedmont Road in Cobb County, Georgia.¹ The driver failed to stop,

1. Rebekka Schramm, *New Twist in 9-Year-Old Cobb County Hit-and-Run Case*, CBS 46 (Jan. 24, 2018), https://www.cbs46.com/news/new-twist-in-year-old-cobb-county-hit-and/article_8055813d-81aa-55f2-8ae4-7e3ad10efd72.html [<https://perma.cc/9PMP-WSLN>].

and as C.J. lie in the roadway, a second vehicle inadvertently ran over and killed him.² The second driver stopped and called the police, but the first hit-and-run driver was never found.³ Every year since the crash, C.J.'s mother has attended a vigil at the crash site to remember her son and plead for the unknown driver to “[d]o the right thing and come forward.”⁴

Even if police found the driver, under prior Georgia law the penalty range for a hit-and-run resulting in serious or fatal injuries was one to five years.⁵ Unsatisfied that the then-current hit-and-run statutes did not adequately deter against fleeing the scene of an accident, State Representative Mable Thomas (D-56th) and others introduced legislation in the 2017–2018 session of the Georgia General Assembly aimed at increasing the maximum penalty from five to ten years.⁶ House Bill 765, known colloquially as C.J.'s Law, passed in the Georgia House of Representatives on February 28, 2018, but it failed to pass in the Georgia Senate due to an amendment that “gutted” the legislation.⁷ This happened despite the Senate Committee's favorable reporting on March 15, 2018.⁸

Notwithstanding this setback, C.J.'s Law was reintroduced in the 2019–2020 session of the General Assembly, this time via Senator Elena Parent (D-42nd).⁹ She viewed C.J.'s Law as a “worthy effort” in the pursuit of making roadways safer for non-motorists such as pedestrians and bicyclists.¹⁰ She believed C.J.'s Law and others like it would encourage safer roadways, thereby promoting the growth

2. *Id.*; Claire Simms, *State Senate Approves 'C.J.'s Law*, FOX 5 NEWS (Feb. 21, 2019, 8:54 PM), <http://www.fox5atlanta.com/news/state-senate-approves-cj-s-law-> [<https://perma.cc/VU97-TWH6>].

3. Schramm, *supra* note 1.

4. *Id.*

5. O.C.G.A. § 40-6-270(b) (2018).

6. Christopher Buchanan, *Ga. House Bill Aims to Crack Down, Raise Punishment for Hit-and-Run Drivers*, 11ALIVE (Mar. 7, 2018, 5:50 PM), <https://www.11alive.com/article/news/ga-house-bill-aims-to-crack-down-raise-punishment-for-hit-and-run-drivers/85-526707266> [<https://perma.cc/Y5EN-RJZ2>]; Georgia General Assembly, HB 765, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/765>.

7. State of Georgia Final Composite Status Sheet, HB 765, May 10, 2018; Telephone Interview with Sen. Elena Parent (D-42nd) (May 30, 2019) (on file with the Georgia State University Law Review) [hereinafter Parent Interview].

8. Parent Interview, *supra* note 7.

9. Georgia General Assembly, SB 1, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20192020/SB/1> [hereinafter SB 1, Bill Tracking].

10. Parent Interview, *supra* note 7.

and use of alternative forms of transportation.¹¹ In this regard, the versatility of C.J.'s Law is what led a “coalition” of supporters from various arenas to advocate and lobby on behalf of the bill.¹²

This coalition included C.J.'s cousin, Marcus Coleman, who sought a review of Georgia's hit-and-run laws where a serious bodily injury was concerned, and Georgia Bikes, which wanted to change laws that make it dangerous for bicyclists to be on the roadway.¹³ Additionally, the Prosecuting Attorneys' Council of Georgia joined the coalition and led several meetings with people in “important positions” to explain the need for and utility of C.J.'s Law.¹⁴ With this varied support group in place, C.J.'s Law was poised to pass through the Senate and House largely unscathed.¹⁵

Bill Tracking of SB 1

Consideration and Passage by the Senate

Senator Elena Parent (D-42nd) sponsored Senate Bill (SB) 1 in the Senate with Senator Jennifer Jordan (D-6th), Senator Harold Jones II (D-22nd), Senator Greg Kirk (R-13th), Senator Ellis Black (R-8th), and Senator Matt Brass (R-28th) cosponsoring.¹⁶ The bill was prefiled on November 19, 2018, and the Senate first read it on January 30, 2019.¹⁷ The Senate then referred the bill to the Senate Judiciary Committee that same day.¹⁸

The Committee favorably reported the bill by substitute on February 8, 2019.¹⁹ The substitute incorporated new language that limited criminal liability to individuals who “knew or should have

11. *Id.*

12. *Id.*

13. *Id.*; Georgia Bikes is a 501(c)(3) nonprofit corporation with a “mission [] to improve bicycling conditions and promote bicycling throughout the state of Georgia.” *Mission & Accomplishments*, GA. BIKES, <https://georgiabikes.org/orginfo/aboutus/mission> [https://perma.cc/Rf5B-TJ59] (last updated June 5, 2017).

14. Parent Interview, *supra* note 7.

15. Georgia House of Representatives Voting Record, SB 1, #272 (Mar. 22, 2019); Georgia Senate Voting Record, SB 1, #43 (Feb. 21, 2019).

16. SB 1, Bill Tracking, *supra* note 9.

17. State of Georgia Final Composite Status Sheet, SB 1, May 22, 2019; SB 1, Bill Tracking, *supra* note 9.

18. State of Georgia Final Composite Status Sheet, SB 1, May 22, 2019.

19. *Id.*

known” that the vehicular accident caused death or serious bodily injury.²⁰

The Senate read the bill for the second time on February 11, 2019.²¹ Then, on February 21, 2019, the Senate read the bill for a third time.²² Senator William Ligon (R-3rd) accompanied by Senators Mike Dugan (R-30th), John Albers (R-56th), Ben Watson (R-1st), and Steve Gooch (R-51st) introduced two floor amendments to the bill.²³ The first eliminated the phrase “or should have known” from the bill, which further limited criminal liability to those who knew that the accident caused serious injury or bodily harm.²⁴ The second amendment allowed for an exception for any individual who exchanged insurance information with the other party before leaving the scene of the accident.²⁵ Both amendments passed, and the Senate adopted the bill by a vote of 50 to 1.²⁶

Consideration and Passage by the House

Representative William Boddie (D-62nd) sponsored the bill in the House, and the House first read it on February 22, 2019.²⁷ The House read the bill for a second time on February 25, 2019.²⁸ The House Judiciary Non-Civil Committee reported favorably on the bill with no opposition on March 14, 2019.²⁹

The House read the bill for the third time on March 22, 2019, and it passed the same day by a vote of 131 to 34.³⁰ The Senate sent the bill to the Governor on April 5, 2019, and he signed it into law as Act 151 on May 3, 2019.³¹ The Act’s effective date is July 1, 2019.³²

20. SB 1, Bill Tracking, *supra* note 9.

21. State of Georgia Final Composite Status Sheet, SB 1, May 22, 2019.

22. *Id.*

23. SB 1 (SFA) (1 AM 41 0409), 2019 Ga. Gen. Assemb.; SB 1 (SFA) (2 AM 41 0410), 2019 Ga. Gen. Assemb.

24. SB 1 (SFA) (1 AM 41 0409), 2019 Ga. Gen. Assemb.

25. SB 1 (SFA) (2 AM 41 0410), 2019 Ga. Gen. Assemb.

26. Georgia Senate Voting Record, SB 1, #43 (Feb. 21, 2019); SB 1, Bill Tracking, *supra* note 9.

27. State of Georgia Final Composite Status Sheet, SB 1, May 22, 2019; SB 1, Bill Tracking, *supra* note 9.

28. State of Georgia Final Composite Status Sheet, SB 1, May 22, 2019.

29. *Id.*

30. *Id.*; Georgia House of Representatives Voting Record, SB 1, #272 (Mar. 22, 2019).

31. State of Georgia Final Composite Status Sheet, SB 1, May 22, 2019.

32. O.C.G.A. § 40-6-394(c) (Supp. 2019).

The Act

The Act amends the following portions of the Official Code of Georgia Annotated: Article 63 of Chapter 5 of Title 40, relating to periods of suspension and conditions to return of license; and Article 394 of Chapter 5 of Title 40, relating to serious injury by vehicle.³³ The overall purpose of the Act is to increase the “penalty for hit and run accidents that result in serious injury.”³⁴

Section 1

Section 1 titles the Act as “C.J.’s Law.”³⁵

Section 2

Section 2 of the Act amends paragraph (1) of subsection (d) of Code section 40-5-63. Code section 40-5-63 relates to driver’s license suspension periods as well as conditions to reinstate a suspended driver’s license following a vehicular homicide or hit-and-run.³⁶ The Act removes the explanatory phrases “relating to homicide by vehicle” and “relating to serious injury by vehicle,” as associated with Code sections 40-6-393 and 40-6-394, respectively.³⁷ Further, a cross-reference was added to clarify that only subsection (b) of Code section 40-6-394 triggers the three-year license suspension.³⁸

Section 3

Section 3 of the Act amends Code section 40-6-394, which relates to serious injury by vehicle.³⁹ Specifically, subsection (a) is added to

33. 2019 Ga. Laws 492, §§ 2-3, at 492.

34. *Id.*

35. 2019 Ga. Laws 492, § 1, at 492.

36. 2019 Ga. Laws 492, § 2, at 492.

37. *Id.*

38. *Id.*

39. 2019 Ga. Laws 492, § 3, at 492.

clarify the meaning of bodily harm as used in Code section 40-6-394.⁴⁰ Bodily harm refers to:

an injury to another person which deprives him or her of a member of his or her body, renders a member of his or her body useless, seriously disfigures his or her body or a member thereof, or causes organic brain damage which renders his or her body or any member thereof useless.⁴¹

Subsection (b) is added to identify the instances where one “commits the crime of serious injury by vehicle.”⁴² This occurs when a person, absent “malice aforethought, causes an accident that results in bodily harm while” driving impaired or driving recklessly.⁴³ A felony conviction will result along with a prison sentence ranging from one to fifteen years.⁴⁴

Subsection (c) increases the maximum penalty from five to ten years for hit-and-run drivers who knew the accident resulted in bodily harm, as defined in subsection (a), but failed to stop.⁴⁵ However, a driver is not guilty under this subsection if the driver exchanges insurance information with the other party before leaving the scene of the accident.⁴⁶

Analysis

The Knowledge Requirement

The thrust of C.J.’s Law is to give prosecutors “more tools in their toolbox” by raising the maximum penalty for hit-and-run accidents from five to ten years.⁴⁷ Yet, to convict a person under C.J.’s Law, a prosecutor will have to show that the driver knew that bodily harm

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. 2019 Ga. Laws 492, § 3, at 492.

46. *Id.*

47. Parent Interview, *supra* note 7.

resulted from the accident.⁴⁸ Proving that a hit-and-run driver, who by definition did not stop to investigate the extent of the injuries, knew that the injured person lost “a member of his or her body,” or worse, may prove difficult.⁴⁹ In fact, this very issue was explored by example during Senate debates. In the hypothetical scenario offered by Senator Jeff Mullis (R-53rd), a driver encounters an “angry protest that has become violent [and] has spilled out to the road.”⁵⁰ The driver proceeds to the crowd, but the protestors begin rocking and banging the car.⁵¹ Out of fear, the driver “take[s] off” and hits one of the protestors in the road.⁵² Too afraid to stop the car for fear of his or her own safety, the driver continues driving, ultimately unaware whether the protestor was seriously injured after the impact.⁵³ On its face, without knowledge of the extent of injuries, the driver could not be charged under this statute. This approach may in fact reward a driver who fails to render assistance and discover the extent of the injuries in a case like C.J.’s. The Supreme Court of Georgia recently interpreted the knowledge requirement as it relates to hit-and-run injuries, and its decision prevents this counterintuitive outcome.⁵⁴

In *State v. Mondor*, a criminal defendant was charged with a hit-and-run under Code section 40-6-270, which provides the protocols a driver must follow when involved in an accident, as well as the penalty for “knowingly failing to stop.”⁵⁵ Similar to Senator Mullis’s hypothetical scenario, the defendant in *Mondor* argued that he did not have “knowledge that ‘an accident had occurred resulting in death, damage, or injury to another,’” and that because such knowledge was a prerequisite to conviction of a hit-and-run, he could not be found guilty under the statute.⁵⁶ The Supreme Court of Georgia reasoned that the conscious, knowing failure to stop necessarily implies that the driver is aware of the “circumstances

48. O.C.G.A. § 40-6-394(c) (Supp. 2019).

49. *Id.*

50. Video Recording of Senate Proceeding, Day 19 at 1 hr., 39 min., 20 sec. (Feb. 21, 2019) (remarks by Sen. Jeff Mullis (R-53rd)), https://youtu.be/fkKMA0_qScE.

51. *Id.*

52. *Id.*

53. *Id.*

54. *See generally* *State v. Mondor*, 306 Ga. 338, 830 S.E.2d 206 (2019).

55. *Id.* at 211.

56. *Id.* at 212 (quoting *Dworkin v. State*, 210 Ga. App. 461, 462, 436 S.E.2d 665 (1993)).

from which the duty to stop and comply arises in the first place.”⁵⁷ Accordingly, Code section 40-6-270 was interpreted to “require[] knowledge of an accident that resulted in . . . injury, death, or damage” based on the “knowing[] fail[ure] to stop.”⁵⁸

By incorporating violations of Code section 40-6-270 into C.J.’s Law, the “knowingly failing to stop” language as interpreted in *Mondor* should remain consistent when questions arise as to a hit-and-run driver’s knowledge of resulting bodily harm.⁵⁹ That is, a driver who consciously fails to stop and render assistance under C.J.’s Law will necessarily be charged with knowledge of the bodily harm that prompted the obligation to stop in the first place. This recent decision in *Mondor* should prevent a loophole where hit-and-run drivers avoid the ten-year sentence under C.J.’s Law by denying knowledge of any bodily harm.

In exceptional cases, a driver may knowingly fail to stop for some reason other than the known bodily injury that resulted. Like in Senator Mullis’s example, a driver could continue driving due to concerns for his or her own safety. While such a situation may eventually come under the purview of C.J.’s Law depending on the resulting injuries, prosecutors have wide discretion and the ten-year sentence is not mandatory “because the facts and circumstances of each case may vary.”⁶⁰ In this way, C.J.’s Law strikes a fair balance between deterring hit-and-run accidents and allowing for prosecutorial flexibility.

Comparison to Other State Laws in the Eleventh Circuit

After the Act, the penalties in Georgia for failure to report a vehicle accident more closely resemble the penalties put in place by neighboring states in the Eleventh Circuit. Prior to the Act’s passage, Georgia’s five-year maximum sentence for failure to report an accident was the lowest in the circuit.⁶¹ Now, Georgia’s penalties are

57. *Id.*

58. O.C.G.A. § 40-6-270(b) (2018); *Mondor*, 306 Ga. at 344, 830 S.E.2d at 212.

59. O.C.G.A. § 40-6-270(b) (2018).

60. Parent Interview, *supra* note 7.

61. ALA. CODE §§ 13A-5-6 to -7 (2015), 32-10-6 (2010); FLA. STAT. §§ 316.027, .061, .063 (2011); O.C.G.A. § 40-6-270(b) (2018).

comparable to Alabama's, but they are still lower than some of Florida's.⁶²

The Act's changes to Georgia's penalties for failure to report a vehicle accident bridged the gap between Georgia's law and Alabama's, but some notable differences remain. Alabama law distinguishes between accidents that result in injury to another person and those that only damage property.⁶³ Although Alabama law does not further enhance the penalty in cases of *serious* injury (whereas C.J.'s law does), the penalty for failure to report an accident resulting in personal injury in Alabama mirrors the penalty imposed under C.J.'s Law: imprisonment for a maximum of ten years.⁶⁴ The two laws are also distinct as to the required mental state: the Act requires that the accused be aware of the injury caused, but the Alabama law is silent on the issue of knowledge.⁶⁵

Florida's laws on failure to report an accident are significantly different from Georgia's in a number of ways. First, Florida statutes provide diverse penalties, ranging from a noncriminal traffic infraction to possible imprisonment for up to thirty years.⁶⁶ The maximum potential punishment under Florida law depends on the type of harm caused by the accident, and Florida law provides a unique maximum penalty for damage to unattended property, damage to attended property, bodily injury, serious bodily injury, and death.⁶⁷ Georgia law, in contrast, provides only two categories of punishment for failure to report an accident: a felony punishable by up to ten years of imprisonment for causing death or serious bodily injury and a misdemeanor for anything less.⁶⁸

The penalties for failure to report a vehicle accident in the Eleventh Circuit may be correlated to the prevalence of the crime in each state, but there is no conclusive evidence. Florida's more nuanced laws criminalizing failure to report an accident and establishing more severe penalties may be explained by the

62. See ALA. CODE §§ 13A-5-6 to -7 (2015), 32-10-6 (2010); FLA. STAT. §§ 316.027, .061, .063 (2011); O.C.G.A. § 40-6-270(b) (2018).

63. ALA. CODE § 32-10-6 (2010).

64. *Id.*; O.C.G.A. § 40-6-394(c) (Supp. 2019).

65. ALA. CODE § 32-10-6 (2010); O.C.G.A. § 40-6-394(c) (Supp. 2019).

66. FLA. STAT. §§ 316.027, .061, .063 (2011).

67. FLA. STAT. §§ 316.027, .061, .063 (2011).

68. O.C.G.A. §§ 40-6-270 (2018), -394 (Supp. 2019).

significance of the hit-and-run problem in Florida.⁶⁹ In July 2014, Florida implemented changes increasing penalties for failure to report an accident.⁷⁰ Despite the increased penalties and an annual campaign to raise awareness and to increase rates of reporting accidents, rates of failure to report have persisted, and as of last year, Florida still has the third-highest rate of fatalities arising from hit-and-run accidents in the United States.⁷¹ Georgia and Alabama, on the other hand, have similar statutes, and both states have relatively lower rates of failure to report an accident compared to Florida.⁷²

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69. *Stay at the Scene*, FLA. HIGHWAY SAFETY & MOTOR VEHICLES, <https://www.flhsmv.gov/safety-center/driving-safety/hitrn/> [<https://perma.cc/QC4Y-ZZLZ>] (last visited July 17, 2019).

70. *Id.*

71. *Id.*; Matt Schmitz, *Hit-And-Run Deaths Are Way Up: How Dangerous Is Your State?*, CARS.COM (Apr. 26, 2018), <https://www.cars.com/articles/hit-and-run-deaths-are-way-up-how-dangerous-is-your-state-1420699813513/> [<https://perma.cc/2ERZ-PB62>].

72. Schmitz, *supra* note 71.