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## CRIMES AND OFFENSES Sexual Exploitation of Children: Provide for Criminal and Civil Penalties

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## CRIMES AND OFFENSES

### *Sexual Exploitation of Children: Provide for Criminal and Civil Penalties*

CODE SECTION: O.C.G.A. § 16-12-100 (amended)  
BILL NUMBER: HB 454  
ACT NUMBER: 750  
SUMMARY: The Act amends the Code to define sexual exploitation of children, mandate reporting by film processors of suspected exploitation, and provide criminal penalties as well as forfeiture of materials or property used in such crimes or derived from its gross profits.  
EFFECTIVE DATE: July 1, 1987

#### *History*

O.C.G.A. § 16-12-100, amended in 1983,<sup>1</sup> addresses the problem of enticing a minor to take part in sexually explicit conduct for the purpose of preserving that conduct on film. A person found guilty of such enticement can be sentenced to not less than three nor more than twenty years in prison, fined more than \$20,000, or both. The 1983 law redefined a minor as a person under the age of eighteen instead of under the age of fourteen.<sup>2</sup>

#### *HB 454*

The act of enticement was defined and made punishable by the 1983 amendment. However, it did not criminalize the production of material depicting the sexually explicit conduct.<sup>3</sup> Produced underground, these materials were then marketed.<sup>4</sup> HB 454 was drafted and introduced in response to the need to make such production illegal.<sup>5</sup> The Act criminal-

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1. 1983 Ga. Laws 1437.

2. O.C.G.A. § 16-12-100(a)(1) (1984).

3. O.C.G.A. § 16-12-100(a)(4) (1984).

4. Hansen, *Wave of Sexual Cases Stirs Parent's Worst Fears*, Atlanta J. & Const., Oct. 8, 1986, at 1A, col. 1. Hansen lists a number of Georgia's most recent and celebrated child molestation cases. Among these, both Dr. Berry, Atlanta child psychologist and convicted child molester, and Mr. Poetter, former director of Annwakee and accused child molester, were found to be in possession of child pornography.

5. Telephone interview with Representative Mary Jane Galer, House District No. 97

izes production and also makes unlawful selling, giving, exhibiting, distributing, promoting, or possessing with the intent to sell the materials.<sup>6</sup> The Act also criminalizes possession of these materials,<sup>7</sup> bringing or causing such materials to be brought into the state,<sup>8</sup> and advertising or exchanging any medium which provides information as to where such illicit materials may be found.<sup>9</sup>

In its original version, HB 454 attempted to strike a more severe blow against the producers and processors of such materials than did the final version.<sup>10</sup> While the bill as a whole received no opposition, some trial lawyers objected to portions of the original language.<sup>11</sup> Section 1 of the initial version would have amended O.C.G.A. § 16-6-4 dealing with child molestation to provide that, when a person charged under this section is found to be in possession of visual or printed matter depicting a minor engaged in sexual activity with the accused, the court or jury may make a determination of the age of the minor without actual identification or testimony of the minor.<sup>12</sup> The House Special Judiciary Committee eliminated this provision, along with a section that would have allowed the court or jury to determine if the minor depicted was under the age of eighteen by observation of the medium, testimony of a witness to the production or an expert, or any other acceptable provision of law or evidence.<sup>13</sup> The House committee substitute also deleted two exemptions: the exemption from liability for employees of commercial film developing businesses acting within the scope of their employment at the direction of their employers, and the exemption for materials depicting "lawful conduct between

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(May 15, 1987) [hereinafter Galer Interview]. Galer was approached by the Columbus Parent-Teacher Association and asked to draft such a bill. The group provided her with information from the Attorney General's Commission on Pornography. She used recommendations from this commission in drafting HB 454. Fred Aiken, Representative for the 21st District, proposed a similar bill. He was encouraged to introduce such legislation by the Cobb County District Attorney. *Id.*

6. O.C.G.A. § 16-12-100(b)(5) (Supp. 1987).

7. See *Stanley v. Georgia*, 394 U.S. 557 (1969). A Georgia law that punished the mere possession of obscene matter was held by the Supreme Court to violate the first and fourteenth amendments. The state's interest in protecting the minds of its citizens from the ill effects of obscenity was found to be inconsistent with the first amendment's protection of the right to receive information. Since HB 454 criminalizes the possession of obscene material, the bill may be subjected to the same constitutional challenge. However, its prohibitions may be distinguished from *Stanley* in that the state's interest is not in protecting the mind of the possessor, but in protecting the minor who is exploited in the production of these materials. Only materials depicting the sexual exploitation of minors are affected, and both the act of exploitation and preserving that exploitation on film are criminal.

8. O.C.G.A. § 16-12-100(b)(7) (Supp. 1987).

9. O.C.G.A. § 16-12-100(b)(6) (Supp. 1987).

10. HB 454, as introduced, 1987 Ga. Gen. Assem.

11. Galer Interview, *supra* note 3.

12. HB 454, as introduced, 1987 Ga. Gen. Assem.

13. HB 454 (HCS), 1987 Ga. Gen. Assem.

spouses."<sup>14</sup> These changes were made in the original version of HB 454 to further the purpose of the bill, which was to allow for the confiscation of materials depicting the sexual exploitation of minors.<sup>15</sup>

The House committee substitute deleted "sodomasochistic abuse for the purpose of sexual stimulation"<sup>16</sup> from the definition of sexually explicit conduct, but added five more clearly defined categories.<sup>17</sup> The words "visual or print medium" were changed to "visual medium"<sup>18</sup> because different standards apply to written materials.<sup>19</sup>

The Act requires film processors to report any visual or printed matter submitted to them for processing which they suspect depicts a minor engaged in sexually explicit conduct.<sup>20</sup> Processors are granted immunity from criminal or civil liability for reporting and participating in judicial proceedings as long as participation is in good faith.<sup>21</sup> Persons convicted of an offense under the Act are subject to forfeiture of any property gained from the gross profits of such illegal activity and any property "used, or intended to be used, to commit such offense."<sup>22</sup> The court must determine that such property is subject to forfeiture "beyond a reasonable doubt."<sup>23</sup> A person in violation of this section is guilty of a felony punishable by not less than one nor more than twenty years of imprisonment, a fine of not more than \$100,000, or both.<sup>24</sup>

The Act requires that property subject to forfeiture must be "directly derived from [sic] gross profits"<sup>25</sup> of the offense or violation, thus ensuring only that property can be forfeited.<sup>26</sup>

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14. HB 454 § 2, as introduced, 1987 Ga. Gen. Assem.

15. Telephone interview with Representative Jim Martin, House District No. 26 (May 20, 1987) [hereinafter Martin Interview].

16. HB 454 § 1 (HCS), 1987 Ga. Gen. Assem.

17. O.C.G.A. § 16-12-100(a)(4)(E)—(I) (Supp. 1987).

18. Compare O.C.G.A. § 16-12-100(a)(5) (1984) with O.C.G.A. § 16-12-100(a)(5) (Supp. 1987).

19. Martin Interview, *supra* note 15.

20. O.C.G.A. § 16-12-100(c) (Supp. 1987).

21. *Id.*

22. O.C.G.A. § 16-12-100(e)(1)(B) (Supp. 1987).

23. O.C.G.A. § 16-12-100(e)(3) (Supp. 1987).

24. O.C.G.A. § 16-12-100(g) (Supp. 1987).

25. O.C.G.A. § 16-12-100(f)(1)(C) (Supp. 1987).

26. Martin Interview, *supra* note 15.