

3-1-1987

## CRIMES AND OFFENSES Amendments to Criminal Statutes: Allow Previous Prosecutions to Continue

S. Whitehead

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

---

### Recommended Citation

S. Whitehead, *CRIMES AND OFFENSES Amendments to Criminal Statutes: Allow Previous Prosecutions to Continue*, 3 GA. ST. U. L. REV. (1987).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol3/iss2/40>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

## CRIMES AND OFFENSES

### *Amendments to Criminal Statutes: Allow Previous Prosecutions to Continue*

CODE SECTION:	O.C.G.A. § 16-1-11 (new)
BILL NUMBER:	SB 230
ACT NUMBER:	175
SUMMARY:	The Act provides a universal saving clause for pending criminal prosecutions when the prosecution is pursuant to a statute which has been legislatively repealed, repealed and reenacted, or amended prior to conviction.
EFFECTIVE DATE:	March 16, 1987

#### *History*

In 1986, the Supreme Court of Georgia decided *Robinson v. State*.<sup>1</sup> The court was presented with the issue whether the traditional method of bill drafting—reenactment with modification—actually constituted a repeal of a statute.<sup>2</sup> In *Robinson*, the defendant was indicted under a statute<sup>3</sup> which made the possession, sale, manufacture, or transfer of twenty-eight grams of cocaine or any mixture containing cocaine a crime.<sup>4</sup> While the defendant was under indictment and awaiting trial, the legislature amended the criminal statute.<sup>5</sup> The amended statute subtly changed the definition of trafficking in cocaine.<sup>6</sup> The court decided, in a 4 to 3 deci-

---

1. 256 Ga. 564, 350 S.E.2d 464 (1986).

2. 256 Ga. at 564, 350 S.E.2d at 464.

3. O.C.G.A. § 16-13-31(a) (1984).

4. In its prior form, O.C.G.A. § 16-13-31(a) read: "Any person who knowingly sells, manufactures, delivers, or brings into this state or who is knowingly in actual possession of 28 grams or more of cocaine or any mixture containing cocaine . . . commits the felony offense of trafficking in cocaine." O.C.G.A. § 16-13-31(a) (1984) (emphasis added). The mixture language was later amended. See *infra* note 6.

5. 1986 Ga. Laws 397. The *Robinson* court characterized the change in O.C.G.A. § 16-13-31(a) as a repeal and reenactment, *Robinson*, 256 Ga. at 565-66, 350 S.E.2d at 465, but the legislature characterized the change as an amendment to O.C.G.A. 16-13-31(a).

6. The amended statute reads: "Any person who knowingly sells, manufactures, delivers, or brings into this state or who is knowingly in actual possession of 28 grams or more of cocaine or of any mixture with a purity of 10 percent or more of cocaine . . . commits the felony offense of trafficking in cocaine . . ." O.C.G.A. § 16-13-31(a)(1) (Supp. 1987) (emphasis added for changed language).

sion, that such a change rendered the subsequent conviction of Robinson invalid.<sup>7</sup>

The court noted that “[a]t common law, the repeal of a criminal statute abated all prosecutions which had not reached final disposition in the highest court authorized to review them.”<sup>8</sup> Thus, under Georgia law, “[w]hen a statute making described conduct a crime is repealed prior to final judgment on a conviction, the repeal ends the prosecution if the legislature has not provided otherwise in a saving clause.”<sup>9</sup> The court then concluded that the traditional method of bill drafting—reenactment with modification—constituted a repeal. Therefore, a prosecution under a reenacted and modified statute must be abated, just as it would be under a repealed statute.<sup>10</sup> Since no saving clause was provided, the amendment of the statute at issue in *Robinson* resulted in the termination of the prosecution.

Questions about the doctrine of abatement<sup>11</sup> are documented throughout the history of the common law, both in England and the United States.<sup>12</sup> Generally, abatement is perceived as a judicially created rule of statutory construction based upon a reasonable presumption of legislative intent.<sup>13</sup> In response to the abatement doctrine, various legislatures began employing general saving legislation which applied to all repeals, reenactments, or amendments.<sup>14</sup> These general saving acts abrogate the common law rule of abatement by providing for continuation of prosecutions despite a change in the law. Before *Robinson*, the courts in Georgia had not applied the abatement doctrine to the legislative modification of a statute.

### SB 230

The purpose of the Act is to abrogate the rule as defined in *Robinson*. The Act adds a new Code section, O.C.G.A. § 16-1-11, to the general provisions chapter of the criminal code. SB 230 legislatively supersedes the judicially-created rule by stating that any repeal, repeal and reenactment, or amendment of any criminal statute “shall not affect or abate the status

7. 256 Ga. at 565-66, 350 S.E.2d at 465.

8. 256 Ga. at 565, 350 S.E.2d at 465 (quoting *Bradley v. United States*, 410 U.S. 605, 607-08 (1973)).

9. *Id.*

10. *Id.*

11. Abatement is the doctrine whereby the repeal, repeal and reenactment, or amendment of a criminal statute will halt any prosecutions under that statute when there is no saving clause.

12. Note, *Today's Law And Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. PA. L. REV. 120, 121-27 (1972) [hereinafter Note].

13. *Id.* at 122. See also *Hamm v. City of Rock Hill*, 379 U.S. 306 (1964) (doctrine of abatement follows the presumption that such was the intent of the legislature, and if the legislature had intended otherwise it would have been demonstrated).

14. Note, *supra* note 12, at 127.

as a crime" of conduct defined as criminal that occurred prior to the change in the law.<sup>15</sup> Thus, a general intent to "save" all prosecutions pending under criminal statutes that subsequently undergo some legislative fine-tuning is implied, unless the legislature expressly declares otherwise.

The Act went through only minor change in the legislative process. The House Judiciary Committee offered a substitute, which was accepted, omitting reference to the *Robinson* decision and omitting the language in the preamble of the original version which stated that the Act was "to provide for a statement of intent and purpose."<sup>16</sup> Thus, the final version of SB 230 did not, in the newly created Code section, mention that it was enacted in response to the *Robinson* decision. The final version, however, includes a preamble which states the motive and purpose of SB 230.<sup>17</sup>

The *Robinson* decision was seen as potentially detrimental to pending criminal prosecutions. Under *Robinson*, the legislature's ability to modify the law when necessary was perceived to be in jeopardy.<sup>18</sup> The legislature thus sought to reverse the effect of the *Robinson* decision<sup>19</sup> by abolishing completely the abatement doctrine.<sup>20</sup> The result of an "odd decision,"<sup>21</sup> therefore, was legislatively abrogated.

*S. Whitehead*

---

15. O.C.G.A. § 16-1-11 (Supp. 1987).

16. SB 230, as introduced, 1987 Ga. Gen. Assem.

17. SB 230 (AP), 1987 Ga. Gen. Assem.

18. Telephone interview with Joseph Drolet, Fulton County District Attorney's Office (Apr. 30, 1987) [hereinafter Drolet Interview].

19. Telephone interview with Senator Edward Hine, Jr., Senate District No. 52 (Apr. 30, 1987).

20. *Id.*

21. Drolet Interview, *supra* note 18.