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CRIMES AND OFFENSES

Offenses Against Health and Morals: Prohibit People Who Have Criminal Records from Residing In, Being Domiciled In, or Being Employed by Certain Facilities

CODE SECTIONS:	O.C.G.A. §§ 16-12-1.1, 49-5-65.1 (new)
BILL NUMBER:	SB 176
ACT NUMBER:	282
GEORGIA LAWS:	1997 Ga. Laws 713
SUMMARY:	The Act relates to the general provisions regarding offenses against health and morals, specifically adding sections prohibiting people who have committed certain crimes from residing, being domiciled, or being employed by a "facility." The Act refers to a facility as any daycare center, family daycare home, groupcare facility, or group daycare home, or similar facility. The Department of Human Resources shall deny the issuance or revoke the license, commission, or registration of a facility that violates the Act.
EFFECTIVE DATE:	July 1, 1997

History

Senator Thomas Price introduced and authored SB 176.¹ A constituent approached him about her six-year-old daughter whom she had left with a babysitter in the neighborhood while she and her husband went out for a little while.² She had hired a fourteen-year-old boy in the neighborhood to babysit her son and daughter.³ The mother thought that the boy was a good choice for a babysitter because the boy's mother owned and operated a daycare center out of their home.⁴ However, the babysitter molested the little girl, and her brother witnessed it.⁵ The mother was devastated and after she went through appropriate judicial channels, the boy was adjudicated for child molestation.⁶

1. See Telephone Interviews with Sen. Thomas E. Price, Senate District No. 56 (Apr. 17, 1997, June 11, 1997) [hereinafter Price Interviews].

2. See *id.*

3. See *id.*

4. See *id.*

5. See *id.*

6. See *id.*

During this process, the mother discovered that the babysitter had been previously adjudicated for child molestation.⁷ Throughout the judicial process, the mother questioned judges and attorneys about how an adjudicated child molester could be allowed to live in a home that was also a daycare center where he was constantly around children.⁸ The mother was told there was no law prohibiting an individual who had committed a crime, such as child molestation, from living in a home that was also a daycare center as long as the person did not have the duty to care for the children.⁹ The existing law applied only to the owner of the daycare center (the babysitter's mother), and anyone she had working for her.¹⁰ The law did not apply to the son because he did not have the duty to care for the children.¹¹ However, even though the boy did not have the duty to care for children, they were still at a great risk with a convicted child molester living in the home. The Act corrects this deficiency in the law.

SB 176

The Act prohibits people who have specified criminal records from residing in, being domiciled in, or being employed by certain facilities.¹² The Act also gives the Department of Human Resources (DHR) authority to deny a license to a facility that has an individual living or working in the home when that individual has been convicted of any crimes enumerated in Code section 16-12-1.1.¹³

The original version of SB 176 prohibited anyone who had been convicted of certain crimes from residing in, being domiciled in, or being employed by a daycare facility.¹⁴ The Senate Special Judiciary Committee changed Code section 16-12-1.1 to make it clear that the operator of a facility, not the facility itself, is liable for a violation.¹⁵ The House amended the bill to broaden the scope and included daycare centers, family daycare homes, groupcare facilities, group daycare homes, and other similar facilities.¹⁶ The House amendment also clarified the rights and responsibilities of the DHR.¹⁷ The Act was approved by the Governor and became effective July 1, 1997.

7. *See id.*

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.*

12. O.C.G.A. §§ 16-12-1.1, 49-5-65.1 (Supp. 1997).

13. *Id.* § 49-5-65.1.

14. SB 176, as introduced, 1997 Ga. Gen. Assem.

15. SB 176 (SCS), 1997 Ga. Gen. Assem.

16. SB 176 (HCA), 1997 Ga. Gen. Assem.

17. *Id.*

The Senate Special Judiciary Committee Substitute and Senate Floor Amendment

The Senate Special Judiciary Committee defined the terms "facility" and "operator" in Code section 16-12-1.1.¹⁸ "Facility" is defined as "any day-care center, family day-care home, group-care facility, group day-care home, or similar facility at which any child who is not a member of the operator's family is received for pay for supervision and care, without transfer of legal custody, for fewer than 24 hours per day."¹⁹ "Operator" is defined as "any person who applies for or holds a permit or license to operate a facility."²⁰ Additionally, the Senate Committee substitute clarified that the operator is at fault when there is a violation, not the facility.²¹ These changes were made because the original version was confusing and ambiguous as to who the law applies to.²²

On the Senate floor, the bill was amended further for clarification purposes.²³ First, the word "knowingly" was added when referring to the fault of the operator in Code section 16-12-1.1(b).²⁴ The operator must know that an individual that has been convicted of one of the enumerated crimes is residing at or being domiciled at the operator's facility or being employed by the operator.²⁵ The lawmakers believed that it would be difficult to prosecute an operator who did not know that an individual who had been convicted of an enumerated crime was residing or working in the facility.²⁶ Furthermore, the Senate floor added the language "or has been adjudicated a delinquent for"²⁷ to ensure that any juvenile who commits the enumerated infractions would be included within the scope of the statute.²⁸

An individual who has been convicted of or entered a plea of guilty or nolo contendere to any of the following offenses may not reside in, be domiciled in, or be employed at a facility: battery when the victim at the time of the offense was a minor; a violation of a sexual offense enumerated in chapter 6 of title 16 when the victim of the offense is a minor; contributing to the delinquency of a minor; murder; voluntary

18. SB 176 (SCS), 1997 Ga. Gen. Assem.

19. O.C.G.A. § 16-12-1.1(a)(1) (Supp. 1997).

20. *Id.* § 16-12-1.1(a)(2).

21. *Id.* § 16-12-1.1(b); SB 176 (SCS), 1997 Ga. Gen. Assem.

22. See Price Interviews, *supra* note 1. Compare SB 176, as introduced, 1997 Ga. Gen. Assem. with SB 176 (SCS), 1997 Ga. Gen. Assem.

23. See Final Composite Status Sheet, Mar. 28, 1997.

24. SB 176 (SFA), 1997 Ga. Gen. Assem.

25. See O.C.G.A. § 16-12-1.1(b) (Supp. 1997); see also *infra* notes 29-30 and accompanying text (regarding enumerated crimes).

26. See Price Interviews, *supra* note 1.

27. SB 176 (SFA), 1997 Ga. Gen. Assem.

28. See Price Interviews, *supra* note 1.

manslaughter; aggravated sodomy; rape; aggravated sexual battery; or robbery.²⁹ The Act also includes a criminal attempt of any of these crimes within its scope.³⁰ The Senate passed the bill and sent it to the House where it was assigned to the House Human Relations and Aging Committee.³¹

The House Amendment

When the bill was sent to the House Human Relations and Aging Committee,³² the Committee offered an amendment³³ to clarify the scope of the statute and the authority of the DHR.³⁴ First, the amendment broadens the scope of the statute.³⁵ The original version that passed the Senate stated that "no center," referring to daycare centers, shall employ or allow anyone to reside in or be domiciled in that center who has been convicted of any of the enumerated crimes in Code section 16-12-1.1.³⁶ The House amendment expands this language to include daycare centers, family daycare homes, groupcare facilities, group daycare homes, or similar facilities.³⁷ Thus, an operator of any of the above facilities may not employ or allow a person to reside in, or be domiciled in their facility if that person has been convicted of, or has entered a plea of guilty or nolo contendere to any offense specified in Code section 16-12-1.1.³⁸

Second, the Act clarifies the authority of the DHR.³⁹ The original version gave the DHR the authority to deny a license to someone who has an individual living or working in the home who has been convicted of any of the crimes enumerated in the bill.⁴⁰ The Senate version gave the DHR the discretionary authority to deny the issuance of or to revoke any permit or license.⁴¹ The DHR believed that the organization of the statute was ambiguous, and wanted to make it clear that the DHR did not have to go to the court in order to revoke a

29. See O.C.G.A. § 16-12-1.1(b) (Supp. 1997).

30. *Id.*

31. See Final Composite Status Sheet, Mar. 28, 1997.

32. See *id.*

33. SB 176 (HCA), 1997 Ga. Gen. Assem.

34. See Price Interviews, *supra* note 1.

35. Compare SB 176, as introduced, 1997 Ga. Gen. Assem., with SB 176 (HCA), 1997 Ga. Gen. Assem.

36. SB 176, as introduced, 1997 Ga. Gen. Assem.; see *supra* notes 29-30 and accompanying text (regarding enumerated crimes).

37. O.C.G.A. § 49-5-65.1 (Supp. 1997); SB 176 (HCA), 1997 Ga. Gen. Assem.

38. See O.C.G.A. § 49-5-65.1 (Supp. 1997); see also *supra* notes 29-30 and accompanying text (regarding offenses specified in Code section 16-12-1.1).

39. SB 176 (HCA), 1997 Ga. Gen. Assem.

40. SB 176, as introduced, 1997 Ga. Gen. Assem.

41. *Id.*; Final Composite Status Sheet, Mar. 28, 1997.

license.⁴² The language in the amendment is clear that the DHR “shall either deny the issuance of or revoke the license, commission, or registration of any such facility violating the provisions of this Code section.”⁴³ The Senate agreed to the amendment.⁴⁴

Applicability

The effective date of the Act was July 1, 1997.⁴⁵ Thus, on the application to request certification for a facility, there now will be a question that asks if the center has anyone, including a minor, who lives, works, or is domiciled in the facility that has been convicted of any of the crimes enumerated in Code section 16-12-1.1⁴⁶ If the operator answers “yes,” then the individual will not receive certification.⁴⁷ The DHR must deny the issuance of a license or revoke the license, commission, or registration of the facility if the operator has an individual, including a minor, that has committed one of the enumerated crimes, who is living, domiciled, or employed in the facility.⁴⁸

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42. See Price Interviews, *supra* note 1.

43. O.C.G.A. § 49-5-65.1 (Supp. 1997) (emphasis added).

44. See Final Composite Status Sheet, Mar. 28, 1997.

45. See *id.*

46. See Price Interviews, *supra* note 1.

47. See *id.*

48. See O.C.G.A. 49-5-65.1 (Supp. 1997).