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CRIMES AND OFFENSES Crimes Against the Person: Prohibit HIV - or Hepatitis-Infected Persons from Endangering Peace Officers and Correctional Officers

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CRIMES AND OFFENSES

Crimes Against the Person: Prohibit HIV- or Hepatitis-Infected Persons from Endangering Peace Officers and Correctional Officers

CODE SECTION:	O.C.G.A. § 16-5-60 (amended)
BILL NUMBER:	SB 20
ACT NUMBER:	54
GEORGIA LAWS:	2003 Ga. Laws 306
SUMMARY:	The Act prohibits HIV- or hepatitis-infected persons from assaulting peace officers or correctional officers with bodily fluids, saliva, urine, or feces. An offender attempting to infect an officer with HIV or hepatitis is guilty of a felony.
EFFECTIVE DATE:	July 1, 2003

History

In 1988, the Georgia General Assembly amended Code section 16-5-60 to protect Georgia citizens from reckless conduct by HIV-infected persons.¹ That law did not specifically protect peace officers or correctional officers from HIV-infected persons.² Senator Carol Jackson of the 50th district brought the lack of specific protection to the Senate's attention.³ She was concerned that HIV-positive and hepatitis-infected individuals may attempt to infect peace officers and correctional officers during an arrest.⁴ Under the 1988 Act, a violator would only be guilty of a

1. See 1988 Ga. Laws 1799, § 3, at 1803 (formerly found at O.C.G.A. § 16-5-60 (1988)).

2. See *id.*

3. See *Briefs*, ATLANTA J. CONST., Jan. 22, 2003, available at 2003 WL 8964044; see also SB 20, as introduced, 2003 Ga. Gen. Assem.

4. See Interview with Sen. Carol Jackson, Senate District No. 50 (Apr. 17, 2003) [hereinafter Jackson Interview].

misdemeanor if convicted of this crime.⁵ Senator Jackson introduced SB 20 to change the crime from a misdemeanor to a felony.⁶

SB 20

Senators Carol Jackson of the 50th district, Michael Meyer von Bremen of the 12th district, and Valencia Seay of the 34th district sponsored SB 20.⁷ The bill was read in the Senate for the first time on January 27, 2003, and was referred to the Senate State Institutions and Property Committee.⁸ On March 3, 2003, the Senate Committee favorably reported the bill.⁹ On March 5, 2003, Senator Jackson read the bill to the Senate and proposed an amendment.¹⁰ The amendment added “with the intent to transmit HIV or hepatitis,” thus requiring a mens rea for the crime.¹¹ The amendment included the mens rea requirement to prevent convictions where an HIV-positive person did not know he had HIV, or where he accidentally allowed some bodily fluids to come into contact with an officer.¹² The bill, as amended, passed without objection by a vote of 49 to 3 on March 5, 2003.¹³

The bill was read in the House for the first time on March 6, 2003, and then the Speaker referred it to the Special Judiciary Committee.¹⁴ On April 9, 2003, the House Committee favorably reported the bill.¹⁵

5. See *id.*; Audio Recording of Senate Proceedings, Mar. 5, 2003 (remarks by Sen. Carol Jackson), at <http://www.state.ga.us/services/leg/audio/2003archive> [hereinafter Senate Audio]. In *Burk v. State*, the Georgia Court of Appeals upheld a misdemeanor endangerment conviction under Code subsection 16-5-60(b). 478 S.E.2d 416, 418 (Ga. Ct. App. 1996). At trial, the jury found that an inmate, who knew that he had HIV, violated Code subsection 16-5-60(b) when he attempted to bite a correctional officer. However, the conviction was only a misdemeanor. *Id.* at 417.

6. See Senate Audio, *supra* note 5.

7. See SB 20, as introduced, 2003 Ga. Gen. Assem.

8. See State of Georgia Final Composite Status Sheet, SB 20, Apr. 25, 2003.

9. See *id.*

10. See *id.*; Senate Audio, *supra* note 5.

11. See Interview with Sen. Michael Meyer von Bremen, Senate District No. 12 (Apr. 17, 2003) [hereinafter Meyer von Bremen Interview]. Compare SB 20, as introduced, 2003 Ga. Gen. Assem., with O.C.G.A. § 16-5-60 (2003).

12. See Meyer von Bremen Interview, *supra* note 11. Without the mens rea language, Senator Meyer von Bremen was concerned that a person could be convicted of a felony by accidentally infecting an officer with HIV. For example, an inmate could accidentally sneeze on a prison guard, and the guard may respond by saying, “you just earned yourself 20 more years.” Senator Meyer von Bremen envisioned guarding against these scenarios and also protecting individuals who did not know that they were infected with HIV or hepatitis. *Id.*

13. See Georgia Senate Voting Record, SB 20 (Mar. 5, 2003); see generally Senate Audio, *supra* note 5.

14. See State of Georgia Final Composite Status Sheet, SB 20, Apr. 25, 2003.

15. See *id.*

The House passed SB 20 without opposition by a vote of 156 to 7 on April 14, 2003.¹⁶

The Act

The Act amends Code section 16-5-60 by adding subsection (d) to specifically protect peace officers and correctional officers from assaults by HIV- or hepatitis-infected persons.¹⁷ The new subsection makes it a felony for any HIV- or hepatitis-infected person to assault a peace officer or correctional officer with bodily fluids, saliva, or feces with the intention of infecting the officer.¹⁸

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16. *See id.*; Georgia House of Representatives Voting Record, SB 20 (Apr. 14, 2003); Audio Recording of House Proceedings, Apr. 14, 2003 (remarks by Reps. Greg Morris, Ronald L. Forster, John Noel, and Judy Manning), at <http://www.state.ga.us/services/leg/audio/2003archive>. Representative Forster asked Representative Morris if the bill benefited correctional officers so that inmates would know that their sentences would be extended if they commit these acts. Representative Morris replied that he thought the bill would make correctional officers safer. Representative Noel asked Representative Morris if current laws covered this situation. Representative Morris said that he did not believe that any laws did. Representative Manning asked Representative Morris to clarify whether the punishment would increase an inmate's sentence or if it would be time served if they were found guilty of violating this bill. Representative Morris responded that this would be a separate crime and would increase the inmate's sentence. *Id.*

17. *See* Jackson Interview, *supra* note 4. Compare 1988 Ga. Laws 1799, § 3, at 1803 (formerly found at O.C.G.A. § 16-5-60 (Supp. 2002)), with O.C.G.A. § 16-5-60 (2003).

18. *See* O.C.G.A. § 16-5-60 (2003).