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CRIMES AND OFFENSES Child Endangerment: Define Criminal Negligence; Provide for Legislative Findings and Intent; Change the Definition of Cruelty to Children to Provide for Third Degree Cruelty to Children; Provide for Penalties; Provide for Definitions; Make It Unlawful for Persons to Engage in Certain Activities Associated with manufacturing of Possessing Methamphetamine in the Presence of Children; Refine the Term "Serious Injury" to Include Sexual Abuse of a Minor Under the Age of 16 Years

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CRIMES AND OFFENSES

Child Endangerment: Define Criminal Negligence; Provide for Legislative Findings and Intent; Change the Definition of Cruelty to Children and to Provide for Third Degree Cruelty to Children; Provide for Penalties; Provide for Definitions; Make It Unlawful for Persons to Engage in Certain Activities Associated with Manufacturing or Possessing Methamphetamine in the Presence of Children; Redefine the Term "Serious Injury" to Include Sexual Abuse of a Minor Under the Age of 16 Years; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 16-2-1, 16-5-70 (amended), 16-5-73 (new), 16-12-1 (amended)
BILL NUMBER:	SB 467
ACT NUMBER:	439
GEORGIA LAWS:	2004 Ga. Laws 57
SUMMARY:	The Act states its intent to protect Georgia's children while respecting parents' rights to discipline them. It amends the definition of a crime in Georgia by defining criminal negligence. It amends the crime of cruelty to children in the second degree by adding the criminal negligence standard of intent. It defines the offense as causing "a child under the age of eighteen cruel or excessive physical or mental pain." Further, the offense is punishable as a felony with the penalty of imprisonment for one to ten years. The Act also changes the former second-degree charge to cruelty to children in the third degree, a misdemeanor. The Act adds a felony criminal charge for "intentionally

	[causing] or [permitting] a child to be present where any person is manufacturing methamphetamine or possessing a chemical substance with the intent to manufacture" that drug. The penalty for this crime is imprisonment for two to fifteen years. The Act provides the penalty of imprisonment for five to twenty years if a perpetrator's violation of the methamphetamine provision seriously injures a child. The Act also revises the definition of "serious injury" as it relates to contributing to the delinquency, unruliness, or deprivation of a minor to include sexual abuse of a child under age sixteen.
EFFECTIVE DATE:	July 1, 2004

History

The 2004 legislative session was the fourth consecutive year that child advocates fought for the passage of child protection legislation like that included in SB 467.[1] Until 2004, Georgia was the only state in the United States without a felony child abuse statute with a standard of criminal negligence.[2] This legislation filled a gap in Georgia's criminal code because before the bill's passage prosecutors had difficulty charging offenders with child abuse resulting from the reckless disregard for a child's safety.[3] The existing cruelty to children statute did not provide for a felony offense when a perpetrator's intent fell short of malice or willful conduct.[4] SB 467

1. Editorial, *Forgo Politics and Make Georgia Safer for Children*, ATLANTA J. CONST., Dec. 4, 2003, at A18, *available at* 2003 WL 68976539.

2. *See id.*

3. *See* Craig Schneider, *Perdue, Taylor Join Forces on Child Endangerment Bill*, ATLANTA J. CONST., Jan. 9, 2004, at D1, *available at* 2004 WL 55879350 ("In cases of parental neglect, abandonment and endangerment, Taylor said, prosecutors often are forced to adapt other laws to fit a crime against a child.") [hereinafter *Join Forces*].

4. 1999 Ga. Laws 381, § 6, at 386-87 (formerly found at O.C.G.A § 16-5-70(a)-(b) (2003)).

allows prosecutors to charge perpetrators with a felony when their conduct or failure to act is the result of criminal negligence.[5]

Prior attempts to pass a child endangerment statute failed largely because of controversial amendments that distorted the focus of the legislation from child endangerment to such issues as abortion or gun control.[6]

The 2003 legislative session's version of this legislation, SB 1, failed largely because of attempts to tack on anti-abortion amendments.[7] For example, Representative James Mills of the 67th district proposed amendments in 2003 to insert language stating that the General Assembly believes that it is a woman's right to know of the medical risks, gestational age of her fetus, and the father's financial obligations prior to consenting to an abortion, and he proposed another amendment that stated that the minimum age of a child protected by the Act was three months of gestation.[8] Representative Austin Scott of the 138th district also proposed an amendment that would have protected children "both born and unborn."[9]

The gun lobby also attempted to pervert the child endangerment legislation as some feared the proposed statute could implicate gun owners who do not store their weapons properly.[10] Senator Preston Smith of the 52nd district attempted to amend SB 1 to state: "[T]he lawful ownership, possession, keeping, or storing of a firearm, including that which is ready for immediate use in self-defense, shall not be considered criminal negligence under this section."[11] The

5. SB 467, as introduced, 2004 Ga. Gen. Assem.

6. *See* Interview with Wendi Clifton, Esquire, Interim Executive Director, Prevent Child Abuse Georgia (Apr. 14, 2004) [hereinafter Clifton Interview].

7. *See id.*; Dave Williams, *Leaders Predict Far Less Hostility: Budget Crunch, Political Fights Loom, but Upheaval of Last Year Is Likely Over*, FLA. TIMES-UNION, Jan. 11, 2004, at A1, *available at* 2004 WL 62399775 ("The Senate passed the bill last year, only to see it fail in the House when Republicans attempted to attach an abortion-related measure."); *see also* Failed Senate Floor Amendment to SB 1, introduced by Sen. Ralph Hudgens, Mar. 25, 2003 ("A person commits the offense of endangering a child if he or she with criminal negligence hurts or terminates the life of the fetus of a woman who is beyond her twenty-fourth week of pregnancy."); Craig Schneider, *Politics the Wild Card in Child Endangerment Bill: GOP's Perdue, Democrats' Taylor Both Claim Issue as Their Own*, ATLANTA J. CONST., Jan. 8, 2004, at C1, *available at* 2004 WL 55879136 ("[A]bortion opponents wanted to use the law to prosecute women who obtain abortions.") [hereinafter *Politics the Wild Card*].

8. *See* Failed House Floor Amendments to SB 1, introduced by Rep. James Mills, Apr. 25, 2003.

9. *See* Failed House Floor Amendment to SB 1, introduced by Rep. Austin Scott, Apr. 25, 2003.

10. Clifton Interview, *supra* note 6 (recounting misguided efforts by gun lobbyists to amend the 2003 Child Endangerment Bill).

11. Failed Senate Floor Amendment to SB 1, introduced by Sen. Preston Smith, Mar. 25, 2003.

National Rifle Association, however, stated the group's neutral stance on the 2003 bill in a letter to Senator Michael Meyer von Bremen of the 12th district.[12]

These amendments' detrimental impact can mortally wound otherwise viable legislation.[13] Representative Wendell Willard of the 40th district warned about this problem prior to the 2004 legislative session, stating, "When you have these amendments passed, other legislators don't want to take a contrary position on abortion or guns because it can be used against them as campaign fodder."[14]

Before the 2004 legislative session began, some advocates expressed concern because Governor Sonny Perdue, a Republican, and Lieutenant Governor Mark Taylor, a Democrat, had competing versions of child protection legislation.[15] Lieutenant Governor Taylor, who worked on this legislation for two previous years, made efforts to quell partisan rancor and to put child protection first when he wrote to the Governor, "Personally, I don't care how it gets done, who does it, or who gets credit for it. Together, I think we can give this legislation the final push it needs."[16] Wendi Clifton, Esquire, a leading child advocate and Interim Executive Director of Prevent Child Abuse Georgia, worked on the legislation for three years and expressed optimism for inter-party cooperation.[17] She reminded everyone of what was at stake only days before the session started, stating, "This is not about partisan politics. This is about holding adults accountable for injuring or killing children."[18] Four days before the session began, the Governor and Lieutenant Governor

12. *See* Letter from Randy Kozuch, Director, National Rifle Association, Institute for Legislative Action, to Sen. Michael Meyer von Bremen (Mar. 25, 2003) (on file with the Georgia State University Law Review) ("Thank you for contacting me to inquire the position of the National Rifle Association on Senate Bill 1. The National Rifle Association, Institute for Legislative Action, has taken a neutral position on this bill. The bill's language does not target firearms or any other specific instrument.").

13. *See* Editorial, *supra* note 1 ("Child endangerment bills have struggled for four years in the General Assembly only to be sabotaged by ideological lawmakers attempting to turn the bills into anti-abortion or pro-gun manifestos.").

14. *Id.* (quoting Rep. Wendell Willard).

15. *See Politics the Wild Card*, *supra* note 7. Charles Bullock, Professor of Political Science at the University of Georgia, expressed concern that the party differences between the Governor and Lieutenant Governor and their potential face-off in Georgia's 2006 gubernatorial race could impede the bill's passage. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

publicly expressed that they would champion the legislation that Representative Willard was writing.[19]

Following three years of sustained efforts by child advocates throughout Georgia, child protection legislation stood poised for passage as the 2004 legislative session began as it enjoyed strong bi-partisan support and legislators expressed intent to engross the bill to fend off potentially lethal amendments.[20] As child advocate Clifton stated, "If this bill was not going to pass this time[, with the support of leaders of both parties in Georgia,] it probably never will pass."[21]

Bill Tracking of SB 467

Consideration by the Senate

Senators Daniel Lee, David Shafer, Preston Smith, Eric Johnson, and Don Balfour of the 29th, 48th, 52nd, 1st, and 9th districts, respectively, sponsored SB 467.[22] On February 3, 2004, the Senate first read SB 467, and Lieutenant Governor Mark Taylor, the Senate President, assigned it to the Senate Judiciary Committee.[23] The Senate Judiciary Committee favorably reported on the bill, by substitute, on February 10, 2004.[24]

The Senate Judiciary Committee substitute changed the definition of "intent to manufacture" in the methamphetamine provision.[25] The definition changed from "'[i]ntent to manufacture' means the intent to manufacture a chemical substance as demonstrated by the chemical substance's usage, quantity, or manner of storage, including but not limited to storing it in proximity to another chemical substance or equipment used to manufacture methamphetamine" to "'[i]ntent to manufacture' means but is not limited to the intent to manufacture methamphetamine, which may be demonstrated by a chemical substance's usage, quantity, or manner or method of

19. *Join Forces*, *supra* note 3.
20. *See id.* ("This year, Willard said, he hopes to 'engross' the bill in the House, a procedure that would preclude any changes.").
21. Clifton Interview, *supra* note 6.
22. SB 467, as introduced, 2004 Ga. Gen. Assem.
23. *See* State of Georgia Final Composite Status Sheet, SB 467, Feb. 3, 2004 (May 19, 2004).
24. State of Georgia Final Composite Status Sheet, SB 467, Feb. 10, 2004 (May 19, 2004).
25. *Compare* SB 467, as introduced, 2004 Ga. Gen. Assem., *with* SB 467 (SCS), 2004 Ga. Gen. Assem.

storage, including but not limited to storing it in proximity to another chemical substance or equipment used to manufacture methamphetamine."[26] This change broadened the definition.[27] The Senate Committee also substituted "intentionally" for "knowingly" for the criminal intent required for the methamphetamine provision's violation.[28] Unlike the bill's other provisions, the methamphetamine provision's language had not undergone three years of legislative scrutiny, and the Judiciary Committee recommended these changes.[29]

Senators Preston Smith and Michael Meyer von Bremen offered a floor amendment to the Senate Judiciary Committee substitute that added a comma, changing part of the definition of "serious injury" from "the substantial disfigurement of the body or of a member of the body or an injury which is life threatening" to "the substantial disfigurement of the body or of a member of the body, or an injury which is life threatening."[30] The Senators offered this change because members of the House had indicated the comma's need, and they added the comma out of "an abundance of caution."[31]

Passage by the Senate

By a 47 to 0 vote, the Senate adopted the Senate Committee substitute, adopted the floor amendment, and passed SB 467, as amended, on February 13, 2004.[32] Upon passage, Lieutenant Governor Taylor commented on SB 467's reception in the House, stating, "[W]orking together we've sent a strong message today to

26. *Compare* SB 467, as introduced, 2004 Ga. Gen. Assem., *with* SB 467 (SCS), 2004 Ga. Gen. Assem.

27. *Compare* SB 467, as introduced, 2004 Ga. Gen. Assem., *with* SB 467 (SCS), 2004 Ga. Gen. Assem.

28. *Compare* SB 467, as introduced, 2004 Ga. Gen. Assem., *with* SB 467 (SCS), 2004 Ga. Gen. Assem.

29. *See* Clifton Interview, *supra* note 6; *see also Join Forces*, *supra* note 3 (noting the relative recentness of the methamphetamine provision).

30. *Compare* SB 467 (SCS), 2004 Ga. Gen. Assem., *with* SB 467 (SCSFA), 2004 Ga. Gen. Assem.

31. *See* Audio Recording of Senate Proceedings, Feb. 13, 2004 (remarks by Sen. Daniel Lee), *at* http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html ("Word from the House was that it lacked something, it lacked a comma in a certain place, and out of an abundance of caution to send over to the House something that no one could be against and no one could find fault with, we're adding a comma.") [hereinafter Senate Audio].

32. Georgia Senate Voting Record, SB 467 (Feb. 13, 2004); State of Georgia Final Composite Status Sheet, SB 467, Feb. 13, 2004 (May 19, 2004).

our friends in the House that this is the year to pass child protection, child endangerment legislation."[33]

Consideration by the House, SB 467 Engrossed

The House read SB 467 for the first time on February 16, 2004, and the Speaker assigned it to the House Judiciary Committee.[34] On February 17, 2004, the House voted to engross SB 467 by a 136 to 5 margin.[35] The House Judiciary Committee gave SB 467 a favorable report on March 12, 2004.[36]

Passage by the House

By a 161 to 1 vote, the House passed SB 467 on March 19, 2004.[37]

The Act

Section 1

The Act's purpose is to protect Georgia's children without unnecessarily infringing on parents' rights to discipline their children.[38]

Section 2

The Act amends Code section 16-2-1 by adding the definition of criminal negligence.[39] The Act designated the existing language, "A 'crime' is a violation of a statute of this state in which there is a joint operation of an act or omission to act and intention or criminal negligence," as Code subsection (a) and added the criminal

33. *See* Senate Audio, *supra* note 31 (remarks by Lieutenant. Governor Mark Taylor).
34. State of Georgia Final Composite Status Sheet, SB 467, Feb. 16, 2004 (May 19, 2004).
35. Georgia House of Representatives Voting Record, SB 467 (Feb. 17, 2004).
36. State of Georgia Final Composite Status Sheet, SB 467, Mar. 12, 2004 (May 19, 2004).
37. Georgia House of Representatives Voting Record, SB 467 (Mar. 19, 2004); State of Georgia Final Composite Status Sheet, SB 467, Mar. 19, 2004 (May 19, 2004).
38. *See* 2004 Ga. Laws 57, § 1, at 57.
39. O.C.G.A. § 16-2-1 (Supp. 2004).

negligence definition as Code subsection (b).[40] Subsection (b) now states, "Criminal negligence is an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby."[41]

Section 3

The Act amends Code section 16-5-70 by changing the existing charge of cruelty to children in the second degree to cruelty to children in the third degree.[42] The Act amends that Code section to include a new second-degree charge when a perpetrator "with criminal negligence causes a child under the age of eighteen cruel or excessive physical or mental pain."[43] The Act specifies that the penalty for second-degree child cruelty is imprisonment for one to ten years.[44]

Section 4

The Act added a new Code section that provides a felony charge when "[a]ny person [] intentionally causes or permits a child to be present where any person is manufacturing methamphetamine or possessing a chemical substance with the intent to manufacture methamphetamine."[45] The Act provides for a penalty of imprisonment for two to fifteen years for its violation and a penalty of imprisonment for five to twenty years if a child suffers a serious injury due to the violation.[46] The Act further defines "chemical substance," "child," "intent to manufacture," "methamphetamine," and "serious injury."[47]

40. *Compare* O.C.G.A. § 16-2-1 (Supp. 2004), *with* 1968 Ga. Laws 1249, 1269 (formerly found at O.C.G.A. § 16-2-1 (2003)).
41. O.C.G.A. § 16-2-1 (Supp. 2004).
42. *Compare* O.C.G.A. § 16-5-70 (Supp. 2004), *with* 1999 Ga. Laws 381, § 6, 386-87 (formerly found at O.C.G.A. § 16-5-70 (2003)). The former second-degree charge's penalties followed that crime when it became third-degree child cruelty. *Compare* O.C.G.A. § 16-5-70 (Supp. 2004), *with* 1999 Ga. Laws 381, § 6, 386-87 (formerly found at O.C.G.A. § 16-5-70 (2003)).
43. *Compare* O.C.G.A. § 16-5-70 (Supp. 2004), *with* 1999 Ga. Laws 381, § 6, 386-87 (formerly found at O.C.G.A. § 16-5-70 (2003)).
44. O.C.G.A. § 16-5-70 (Supp. 2004).
45. O.C.G.A. § 16-5-73 (Supp. 2004).
46. *Id.*
47. *Id.*

Section 5

The Act amends Code section 16-12-1, which criminalizes contributing to the delinquency, unruliness, or deprivation of a minor, by amending that section's definition of "serious injury" to include sexual abuse of a child under age sixteen.[48]

Section 6

This Act became effective on July 1, 2004 and is not retroactive.[49]

Analysis

Methamphetamine Provision: Quick Response to a New Kind of Epidemic

Governor Perdue, a previous foster parent, introduced the methamphetamine provision into the Act, and Lieutenant Governor Taylor agreed with the language.[50] The Georgia Bureau of Investigation ("GBI") had targeted methamphetamine, the State's fastest-growing illegal substance, by announcing that it was drafting a bill that would provide prosecutors with the tools necessary to hold parents criminally accountable when they place their children at risk by manufacturing the drug in their presence.[51] In addition to the abuse and neglect that often strikes children in homes affected by substance abuse, methamphetamine endangers children because caregivers that manufacture methamphetamine use otherwise benign household substances, such as cold medicine or lye, that become highly flammable and combustible when heated on household stoves to make the drug.[52]

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48. *Compare* O.C.G.A. § 16-12-1 (Supp. 2004), *with* 1996 Ga. Laws 273, § 1 (formerly found at O.C.G.A. § 16-12-1 (2003)).

49. *See* 2004 Ga. Laws 57, § 6, at 59.

50. *Join Forces*, *supra* note 3.

51. *See* Jill Young Miller & Craig Schneider, *When Meth Hits Home: Meth's Forsaken Children: When Parents Disappear into a Chaotic World of Drug Abuse, Danger and Heartbreak Follow for Their Sons and Daughters*, ATLANTA J. CONST., Nov. 30, 2003, at A1, *available at* 2003 WL 68976026. The Georgia General Assembly's prior failure to pass a child endangerment law made it difficult for prosecutors to charge parents whose methamphetamine manufacture imperils children. *Id.*

52. *See id.*

Methamphetamine's exponential growth exposed Georgia's children to danger and injured many of them.[53] According to GBI Director Vernon Keenan, methamphetamine "came into Georgia like a tidal wave."[54] Georgia police raided 29 methamphetamine labs in 1999, 395 in 2002, and 439 in 2003.[55] Over the course of eleven months in 2003, Georgia police rescued sixty-one children exposed to methamphetamine, but due to underreporting, the actual number is likely much higher.[56] North Georgia GBI Agent Phil Price estimated that children lived at approximately half of the methamphetamine labs they raided but many such labs go undetected. As Price indicated, "That leaves a lot of kids out there."[57]

Chelton Hicks personified methamphetamine's destructive harm to children.[58] This one-year-old child suffered burns on thirty percent of his body when his father dropped a coffee can containing chemicals used to make methamphetamine and the consequent fire overwhelmed the child's home on February 17, 2001.[59] Chelton underwent ten subsequent surgeries and ultimately died June 16, 2001.[60]

On March 18, 2004—the day before SB 467's House debate—a fire in Griffin, Georgia, likely caused by cooking methamphetamine, caused the death of three children: Joshua Cade Moore, Christian Moore, and Destin Moore, ages five, four, and two, respectively.[61] Their baby sitter, Jennifer Martin, also perished as she attempted to rescue the children.[62] From the scene of the deaths, John Oxendine, Georgia Insurance and Fire Safety Commissioner, called upon legislators to pass SB 467, saying, "We think we need to be very

53. *See id.*
54. *Id.*
55. *Id.*
56. Miller & Schneider, *supra* note 50. This exceeded the previous year's total of fifty-two. *Id.*
57. *Id.*
58. *See* Audio Recording of House Proceedings, Mar. 19, 2004 (remarks by Rep. Wendell Willard), *at* http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html [hereinafter House Audio]; *see also* Clifton Interview, *supra* note 6.
59. House Audio, *supra* note 58.
60. *Id.*
61. *See* Eric Stirgus & Jeffry Scott, *3 Boys, Baby Sitter Die in Trailer Fire: Police Suspect Illegal Methamphetamine Drug Lab May Have Sparked Spalding County Tragedy*, ATLANTA J. CONST., Mar. 19, 2004, at A1, *available at* 2004 WL 73417866; *see also* State of Georgia Final Composite Status Sheet, SB 467, Mar. 19, 2004 (May 19, 2004).
62. Stirgus & Scott, *supra* note 61.

tough on this."[63] While speaking for SB 467, Representative Willard discussed the Griffin fire as another sad example illustrating the need for this law.[64]

According to child advocate Wendi Clifton, Governor Perdue was responsive to the dilemma of children in homes that serve as methamphetamine labs.[65] Prompted by the GBI's assertions about the epidemic, Governor Perdue's office contacted child advocates on December 3, 2003 about adding the methamphetamine provision to what would become SB 467.[66] The original language crafted by the Governor's office remained mostly intact and provides prosecutors with a necessary tool to prosecute caregivers who jeopardize their children's safety by manufacturing this volatile drug in their presence.[67]

Statute's Effectiveness Dependent on Its Breadth

Clifton stated that methamphetamine's relatively recent emergence as a danger to Georgia's children underscores how essential it was that legislators did not reduce the Act to a list of specific charges that parents could face under the law.[68] During the House debate, Representative Bobby Franklin of the 17th district, criticized SB 467 because its language was too broad and expressed his preference for a list of specific criminal acts or omissions.[69] However, Clifton noted that, if the law limited prosecutors with these specificities, unanticipated dangers to child safety would go unpunished and undeterred until the General Assembly could revise the law.[70] She noted:

> [We] could not codify a list of all the things an adult could do to a child [in the future]. The list would be so long [that we] could never . . . capture it all . . . . [T]he language we crafted around the definition of criminal negligence . . . would [] cover things

63. *Id.*
64. *See* House Audio, *supra* note 58.
65. *See* Clifton Interview, *supra* note 6.
66. *Id.*
67. *Id.*
68. *See id.*
69. *See* House Audio, *supra* note 58 (remarks by Rep. Bobby Franklin).
70. Clifton Interview, *supra* note 6.

> [that caregivers do to endanger children, while] leaving discretion to prosecuting attorneys without leaving a lot of room for [dangers] to slip through the cracks.[71]

Intended Consequences: Rebutting the Parade of Horribles

Section 1 of the Act stated the intent of the General Assembly as follows:

> [T]o protect the well-being of this state's children while preserving the integrity of family discipline. The General Assembly believes that balancing the protection of the health and safety of this state's children, while preserving a parent's right to discipline his or her child, is important to all Georgians and vital to the safety of this state's children.[72]

Despite the declared intent to the contrary, some opposed the Act out of fear that it would punish reasonable parent-child discipline.[73] Representative Franklin criticized Code section 1 by stating that it would not appear in the Georgia Code—thus doing nothing to ward off the possibility of illegitimate use by prosecutors.[74] However, courts will have Code section 1 at their disposal when they need it to derive the statute's intent.[75] During SB 467's Senate debate, Senator Daniel Lee of the 29th district, the bill's sponsor, stated unequivocally, "This bill in no stretch of the imagination, Senator, could be used to outlaw a parent disciplining [his or her] child, in my opinion."[76]

Representative Franklin also questioned whether prosecutors could use SB 467 to prosecute parents for making their teenage children attend church, for having a dirty home, for not having a trigger lock

71. *Id.*
72. *See* 2004 Ga. Laws 57, § 1, at 57.
73. *See* House Audio, *supra* note 58 (remarks by Rep. Bobby Franklin).
74. *See id.*
75. Clifton Interview, *supra* note 6.
76. *See* Senate Audio, *supra* note 31.

on their guns, or for waiting twenty seconds before retrieving a child who followed a ball into the street.[77]

Clifton explained that the definition of criminal negligence prevents the parade of horribles that Representative Franklin described.[78] That definition requires "an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby."[79] This makes prosecution for making a child go to church or for having a dusty living room very unlikely because one would not expect the trier of fact to find this parental behavior "willful, wanton, or reckless disregard for safety."[80]

However, if the caregiver neglects the home so that children co-reside with maggots, rats, and raw sewage—putting children at risk for illness—prosecutors could hold parents accountable under this law.[81]

As for trigger locks, Representative Franklin stated in the SB 467 House debate, "Isn't it ironic that just yesterday the Lieutenant Governor was parading around with the trigger lock people? The gun lock people. What they're wanting is unless you have your gun locked-up, you're going to be prosecuted."[82] Clifton explained, "This law does not require trigger locks, there is no implication that it requires trigger locks, and I don't think courts will ever interpret that this requires trigger locks. If this law had imposed trigger locks in any way, the NRA would have opposed [SB 467]."[83] However, if a parent leaves a loaded firearm on a coffee table and a toddler picks it up and subsequently shoots someone, a prosecutor could charge the caregiver under this law, and a trier of fact could find criminal liability for willful, wanton, or reckless disregard for that child's safety.[84]

Regarding fears that parents could face prosecution for mere accidents, Lieutenant Governor Mark Taylor clearly described the

77. *See* House Audio, *supra* note 58 (remarks by Rep. Bobby Franklin).
78. *See* Clifton Interview, *supra* note 6.
79. O.C.G.A. § 16-2-1 (Supp. 2004).
80. *See* Clifton Interview, *supra* note 6.
81. *See id.*
82. *See* House Audio, *supra* note 58 (remarks by Rep. Bobby Franklin).
83. Clifton Interview, *supra* note 6.
84. *See id.*

Act's purpose: "This legislation does not punish accidents."[85] He stated that the Act's purpose is to punish reckless criminal negligence, citing leaving a child in a hot car in the summertime as an example.[86] Lieutenant Governor Taylor explained: "Parents must always be responsible for the safety of their kids. That is the very definition of a parent."[87]

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85. Craig Schneider, *Child Danger Bill on Way to Perdue*, ATLANTA J. CONST., Mar. 20, 2004, at A1, *available at* 2004 WL 73417995 (quoting Lieutenant. Governor Mark Taylor).
86. *Id.*
87. *Id.*