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CRIMES AND OFFENSES

Prostitution: Increase Penalties for Offenses of Pimping and Pandering of a Minor

CODE SECTIONS:	O.C.G.A. §§ 16-6-9, -13, -14, -15 (amended)
BILL NUMBER:	SB 33
ACT NUMBER:	19
GEORGIA LAWS:	2001 Ga. Laws 92
SUMMARY:	The Act provides for a penalty of five to ten years imprisonment, and a fine of \$2500 to \$10,000, for the crimes of pimping, pandering, and solicitation of sodomy when these crimes involve the prostitution of persons under the age of eighteen. The Act also provides for a penalty of one to ten years imprisonment for the crime of pandering by compulsion, regardless of the age of the victim. Finally, the definition of prostitution is expanded to include the exchange of any sexual act, including sexual intercourse and sodomy, for any item of value.
EFFECTIVE DATE:	March 27, 2001 ¹

History

State and Federal Prosecution Under the Old Law

In 1999, Judge Glenda Hatchett, then the chief judge of Fulton County's Juvenile Court, went to District Attorney Paul Howard's office with a delegation to request increased legal scrutiny of child prostitution.² The delegates told Mr. Howard that they were especially concerned about certain strip clubs which they alleged encouraged child

1. See 2001 Ga. Laws 92, §§ 7-8, at 94. The Act became effective upon approval by the Governor. See *id.*, § 7, at 94.

2. See Jane O. Hansen, *Where Is Lloydia*, ATLANTA J. CONST., Nov. 12, 2000, at A1 [hereinafter Hansen, *Lloydia*].

prostitution on their premises and provided children with false identification so that they could work in the clubs.³ According to Judge Hatchett, the District Attorney reminded the delegates that pimping was only a misdemeanor offense, told them that targeting strip clubs would constitute “harassment,” and suggested that the women form a “grass-roots campaign” to address the issue.⁴

According to Paul Howard, his office did interview a number of girls identified to him by the Juvenile Court, but none were willing provide any information about criminal activity.⁵ Beginning in late 2000, however, his office began prosecuting people under related felonies such as statutory rape and false imprisonment.⁶ In December of 2000, District Attorney Paul Howard put together a task force to address the problem of child prostitution in Fulton County.⁷

Andrew Moore, thirty-eight, was convicted of pimping and statutory rape on February 9, 2001.⁸ His was the first conviction in a series of cases brought in Fulton County for felonies related to child prostitution.⁹ Moore’s victim was twelve years old.¹⁰ Moore received the maximum penalty of twenty-two years for convictions of statutory rape, pimping, and threatening a person with a pistol.¹¹

Mr. Moore was also a defendant in a case brought under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), along with his wife and twelve others.¹² Most of the defendants in the federal case were arrested on January 23, 2001.¹³ The detailed federal indictment contained 226 counts, including racketeering, interstate child prostitution, kidnaping, extortion, involuntary servitude, distributing

3. *See id.*

4. *See id.*

5. *See id.*

6. *See id.*

7. *See* Jane O. Hansen, *The Pimps: Prostitution’s Middle Man Slides By in Court*, ATLANTA J. CONST., Jan. 7, 2001, at A9 [hereinafter Hansen, *Middle Man*].

8. *See* Steve Visser, *Man Guilty of Pimping 12-Year-Old Co-Defendant is Acquitted in Fulton Case*, ATLANTA J. CONST., Feb. 9, 2001, at D1 [hereinafter Visser, *Guilty of Pimping*].

9. *See id.*

10. *See id.*

11. *See* Steve Visser, *Man Gets 22 Years as Law Bears Down on Pimping*, ATLANTA J. CONST., Feb. 13, 2001, at B4 [hereinafter Visser, *Law Bears Down*].

12. *See* Ron Martz, *Bond Denied for 8 Charged with Pimping Young Girls*, ATLANTA J. CONST., Jan. 27, 2001, at H4.

13. *See id.*

drugs to a minor, and providing false identification.¹⁴ The youngest girl involved was ten years old.¹⁵ Despite the number of counts, the maximum penalty any of the suspects faced was twenty years.¹⁶ Three girls were also arrested—two as prostitutes and one as a runaway.¹⁷

The United States Attorney's office alleged that the pimps acted as an enterprise, with commonly understood rules of conduct, a common vocabulary, and a common interest in maintaining control over their prostitutes.¹⁸ According to the indictment, the defendants essentially enslaved at least thirty-one girls, selling them amongst the various defendants, transporting them as far away as California, and employing "breakers" to use drugs, violence, and repeated rape to break their victims' wills and ensure compliance.¹⁹

After the arrests, one Metropolitan Avenue resident told the *Atlanta Journal-Constitution* that the pimps and prostitutes were quickly replaced by "a new group of faces," and suggested, somewhat inconsistently, that the main impact of police enforcement of laws against prostitution was to displace the conduct to other neighborhoods.²⁰ Jerry Froelich, a criminal defense attorney, argued that federal prosecution of drug dealers under the RICO Act has not had any appreciable impact on drug trafficking.²¹ He also claimed that similar enforcement efforts aimed at child prostitution are likely to be equally ineffective because "when there's money involved, there's always people willing to step in."²² Delores French, a local media personality who identifies herself as a prostitute, expressed concern that this police activity would lead to increased enforcement of the laws criminalizing what she calls "the consensual business."²³ Theodore Jackson, the head of the Federal Bureau of Investigation in Atlanta, said that while

14. *See Atlanta Child Sex Ring Busted Federal Grand Jury Indicts 14 in Crimes*, FLA. TIMES-UNION (Jacksonville), Jan. 26, 2001, at B3.

15. *See id.*

16. *See id.*

17. *See id.*

18. *See Jane O. Hansen & Bill Torpy, 11 Arrested in City—Federal Sweep Targeting Pimps of Young Girls*, ATLANTA J. CONST., Jan. 25, 2001, at A1.

19. *See id.*

20. *See Bill Torpy, Arrest of Pimping Suspects Lifts Cops, Residents*, ATLANTA J. CONST., Jan. 28, 2001, at C1.

21. *See id.*

22. *Id.*

23. *Id.*

eliminating prostitution is impossible, his office was trying to ensure that pimps “have some standards.”²⁴

The Nature and Scope of the Problem

In a survey commissioned by the *Atlanta Journal-Constitution*, thirty-three percent of urban juvenile court judges said they thought that underage prostitution was a “growing problem.”²⁵ Only five percent of juvenile judges said they felt that underage prostitution had decreased.²⁶ Although the concern was greater among urban judges, rural judges reported a dramatic increase in the average number of cases of child prostitution seen in their courtrooms—up seventy-three percent since 1995.²⁷ This increase may in part be because the numbers in rural areas are small relative to urban areas; rural judges estimate an average of three child prostitutes pass through their courtrooms per month,²⁸ while at least one Fulton County judge estimates her current average to be ten times that.²⁹

These numbers are estimates in part because many of these children are charged with offenses other than prostitution.³⁰ In addition, more than half of the judges surveyed reported the suspicion that police avoid bringing in child prostitutes because of the additional work involved in processing a juvenile offender and the lack of services available for helping prostituted children.³¹

Atlanta police know who the pimps are in their jurisdiction, and they know which ones specialize in prostituting children.³² But because pimping was a misdemeanor under former law even when it involved prostituting a child, and because the offense of pimping is difficult to prove, police often did not intervene even in cases that clearly involved the prostitution of young children.³³ The police generally blamed the

24. *Id.*

25. See Jane O. Hansen, *Prostitutes Getting Younger as Sex Trade Grows, Judges Say*, ATLANTA J. CONST., Jan. 8, 2001, at A1 [hereinafter Hansen, *Sex Trade Grows*].

26. *See id.*

27. *See id.*

28. *See id.*

29. See Ron Martz, *New Laws Guarding Children from Pimps Have Real Force*, ATLANTA J. CONST., Mar. 28, 2001, at A1.

30. *See Hansen, Sex Trade Grows, supra* note 25, at A1.

31. *See id.*

32. *See Hansen, Middle Man, supra* note 7, at A9.

33. *See id.*

child victims, pointing to the fact that prostitutes, for a variety of reasons, are seldom willing to testify against their pimps.³⁴

Pimping can be difficult to prove. In one case, a vice detective testified that a man accused of pimping told him that he was going to drop off some of "his" girls "to work."³⁵ Later, the officer saw some girls get out of the defendant's car.³⁶ When they approached his vehicle to solicit him, he arrested the defendant.³⁷ A state court judge acquitted the defendant, in part because of the lack of witnesses.³⁸

In a series of articles for the *Atlanta Journal-Constitution*, Jane O. Hansen interviewed a number of people who work with child prostitutes.³⁹ Her interviewees told her numerous stories of police coming to situations clearly involving the prostitution of children and arresting the child—but not the adults.⁴⁰ For example, police on one occasion found a twelve-year-old girl with a history of involvement with drugs and prostitution in the company of a man in his forties who was known to the police as a pimp.⁴¹ The man himself had called the police to report that the girl was a runaway and that she had stolen a handgun and some jewelry from him.⁴² He freely admitted to the police that she had been living with him.⁴³ The child was arrested, but there appears to have been no investigation into the possibility that the man was engaged in illegal conduct.⁴⁴

Cases like this one illustrate the fallacy of treating child prostitution in common with adult prostitution. Statutory rape,⁴⁵ child molestation,⁴⁶ and enticing a child for indecent purposes⁴⁷ are all serious felonies in Georgia. During the Moore trial, the prosecution alleged that the police had protected Moore because he was a homicide informant.⁴⁸

The problem may also be one of perception. Significantly, while eighty-five percent of female judges reported seeing at least one child

34. *See id.*

35. *Id.*

36. *See id.*

37. *See id.*

38. *See id.*

39. *See, e.g., supra* notes 2, 7 and accompanying text.

40. *See Hansen, Middle Man, supra* note 7, at A9.

41. *See id.*

42. *See id.*

43. *See id.*

44. *See id.*

45. *See* O.C.G.A. § 16-6-3 (1999).

46. *See id.* § 16-6-4.

47. *See id.* § 16-6-5.

48. *See Visser, Guilty of Pimping, supra* note 8, at D1.

prostitute a month, only sixty-eight percent of male judges had the same perception.⁴⁹ Although the federal government estimates that there are 300,000 prostituted children in the United States, that number is at best a very rough estimate.⁵⁰

One judge summed up the problem in this way: “[P]eople don’t believe children, particularly if they’re . . . naughty, bad, unpleasant child[ren].”⁵¹ Although most people would unreservedly condemn child prostitution in the abstract, real cases often involve troubled children who do not meet society’s expectations about childhood innocence.⁵² Stories of parents prostituting their children for cocaine, and twelve-year-olds with twenty-three-year-old boyfriends, are so disturbing for many people that it is easier to deny the reality of the problem.⁵³

Several of the judges surveyed suggested that society is becoming more tolerant of child sexual exploitation, and reported that they regularly see pre-teens involved in sexual relationships with men in their early twenties.⁵⁴ The vast majority of judges felt that prostituted children should be treated like victims rather than offenders, and only twenty-four percent of judges thought that their community treated prostituted children like offenders.⁵⁵ Most judges felt, however, that there were not enough services available in their jurisdiction for treatment, particularly residential treatment, of prostituted children.⁵⁶

In the Moore case, the jury acquitted Moore’s twenty-three-year-old co-defendant, Antwann Davis, who had at one time been the “boyfriend” of the twelve-year-old victim.⁵⁷ His acquittal revealed some of the limitations inherent in the use of then-existing felony statutes in child prostitution prosecutions.⁵⁸ The fact that the victim had at one time had a consensual relationship of some sort with Mr. Davis may have led the jury to doubt his guilt on the charges of false imprisonment and aggravated assault.⁵⁹ Mr. Davis was not charged with statutory rape.⁶⁰

49. See Hansen, *Sex Trade Grows*, *supra* note 25, at A1.

50. See *id.*

51. *Id.*

52. See *id.*

53. See *id.*

54. See *id.*

55. See *id.*

56. See *id.*

57. See Visser, *Guilty of Pimping*, *supra* note 8, at D1.

58. See *id.*

59. See *id.*

60. See *id.*

The victim in the Moore case lived with her family in the Capital View neighborhood in south Atlanta.⁶¹ At night, she would sneak off to be with Mr. Davis, who persisted in seeing her despite the fact that her parents threatened to have him prosecuted.⁶² Eventually, Mr. Davis told her to go with Andrew Moore, who held her against her will for four days and prostituted her while her family searched for her.⁶³

According to Judge Hickson, police view prostituted children like Andrew Moore's victim as "consenting participants," despite their age.⁶⁴ They are often runaways, and may be exchanging sex for food and shelter.⁶⁵ They may have initially gone away voluntarily with the person who prostituted them, and they may have even repeatedly run away from home to be with that person.⁶⁶ This conduct may be explained in part by the fact that many of these girls have been abused or neglected at home.⁶⁷ According to one study of adult prostitutes in Atlanta, almost half were sexually abused as children.⁶⁸

One participant in a police program in Las Vegas, where members of a special vice unit make special efforts to communicate to girls why and how they are being manipulated by their pimps, has compared the effort to "deprogramming." Pimps use violence and drugs to control their prostitutes and engage in systematic efforts to destroy their self-esteem, which in many instances is fragile to begin with.⁶⁹

Francine Sherman, a Boston College law professor, has argued that most child prostitutes are runaways who are trying to avoid the juvenile justice and foster care systems, which makes them vulnerable to pimps.⁷⁰ Their vulnerability also makes it difficult to prosecute those who victimize them.⁷¹

While Fulton County does have a fledgling Victims of Prostitution program that attempts to help prostituted children who end up in the

61. See Visser, *Law Bears Down*, *supra* note 11, at B4.

62. See *id.*

63. See *id.*

64. See Jane O. Hansen, *Runaway Girls Lured Into the Sex Trade Are Being Jailed for Crimes While Their Adult Pimps Go Free*, ATLANTA J. CONST., Jan. 7, 2001, at A1 [hereinafter Hansen, *Runaway Girls*].

65. See *id.*

66. See Jane O. Hansen, *Missing Child Found Unharmful in Motel*, ATLANTA J. CONST., Jan. 17, 2001, at B3.

67. See Jane O. Hansen, *Summit Focuses on Solutions to Child Prostitute Problems*, ATLANTA J. CONST., Nov. 15, 2000, at B3.

68. See Hansen, *Lloydia*, *supra* note 2, at A1.

69. See Jane O. Hansen, *Feds, Police Elsewhere Finding Solutions*, ATLANTA J. CONST., Jan. 8, 2001, at A8.

70. See Torpy, *supra* note 20, at C1.

71. See *id.*

Juvenile Court system, the program has neither an emergency shelter nor a hotline.⁷² Between 1972 and January of 2001, 401 women were jailed for prostitution in Georgia.⁷³ During that same period, not a single person went to jail solely for pimping.⁷⁴ Sometimes judges feel they have no choice but to imprison young girls for their own safety.⁷⁵ There is only one emergency shelter for girls in the entire state—in DeKalb County—and it has only sixteen beds.⁷⁶

In addition to the criminal penalties in SB 33, discussed below, the General Assembly has allocated \$250,000 to the Department of Juvenile Justice to help remedy this situation.⁷⁷

SB 33

Introduction in the Senate

On January 11, 2001, Senator Donzella James of the 35th District proposed a bill to make it a felony to pimp a minor in Georgia.⁷⁸ Senator James was the bill's only signatory.⁷⁹ On January 12, 2001, a similar measure signed by Senators Vincent Fort, Greg Hecht, Nadine Thomas, Horacena Tate, and Thomas Price of the 39th, 34th, 10th, 38th, and 56th Districts, respectively, was introduced as SB 35.⁸⁰ A bill to provide for forfeiture of the vehicles of people convicted of pimping a minor was also introduced that day, signed by Senators Greg Hecht, Vincent Fort, Terrell Starr, Rene Kemp, Bill Hamrick, and Billy Ray of the 34th, 39th, 44th, 3rd, 30th, and 48th Districts, respectively. Senator Hecht's bill was numbered SB 34.⁸¹ These bills were all referred to the Senate Judiciary Committee.⁸²

As introduced, Senator James' bill would have amended the penalties provision in subsection (b) of Code Section 16-6-13 to provide for a

72. *See id.*

73. *See Hansen, Runaway Girls, supra* note 64, at A1.

74. *See id.*

75. *See id.*

76. *See id.*

77. *See Ron Martz, Legislature Boosts Funds to Protect Georgia's Children, ATLANTA J. CONST.*, Mar. 27, 2001, at B4.

78. *See* SB 33, as introduced, 2001 Ga. Gen. Assem.

79. *See id.*

80. *See* State of Georgia Final Composite Status Sheet, SB 35, Mar. 21, 2001; SB 35, as introduced, 2001 Ga. Gen. Assem.

81. *See* State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001; SB 34, as introduced, 2001 Ga. Gen. Assem.

82. *See* State of Georgia Final Composite Status Sheet, SB 33, SB 34, SB 35, Mar. 21, 2001.

period of imprisonment of five to twenty years for the crimes of pimping and pandering if the offense involved a person under the age of eighteen.⁸³ The bill as introduced also contained a sliding scale sentencing scheme, with an increase of two years in the five year minimum sentence if the child involved was sixteen, four years if the child was fifteen, and so forth.⁸⁴ The bill provided for an optional fine of \$2500 to \$10,000, plus three times the proceeds of the underlying acts of pimping and pandering.⁸⁵ It would also have amended Code Section 16-6-9, containing the definition of prostitution, to include the exchange of sex for “other items of value.”⁸⁶ Finally, the bill amended gender specific language in these sections and in the definition of pandering by compulsion.⁸⁷ Senator Fort’s bill as introduced was almost identical, except that it would have further expanded the definition of prostitution to include not just sexual intercourse, but any “sexual act, including sexual intercourse.”⁸⁸

Consideration by the Senate Judiciary Committee

On February 1, 2001, the Senate Judiciary Committee, chaired by Senator Rene Kemp of the 3rd District, heard testimony from supporters of SB 33.⁸⁹ The Committee assigned the bill to the Civil and Criminal Practices Subcommittee.⁹⁰

Judge Hickson, a juvenile court judge in Fulton County, testified that she has seen the number of prostituted children in her courtroom double since she took the bench in 1999.⁹¹ Alesia Adams, a Fulton county court-appointed Special Advocate,⁹² also testified.⁹³ Major John Price of

83. See SB 33, as introduced, 2001 Ga. Gen. Assem.

84. See *id.*

85. See *id.*

86. See *id.*

87. See *id.*

88. See SB 35, as introduced, 2001 Ga. Gen. Assem. Senator James and Senator Fort have worked together on the issue of prostitution in the past. See Telephone Interview with Sen. Donzella James, Senate District No. 35 (Apr. 5, 2001) [hereinafter James Interview]. They introduced a bill during the 1999-2000 session that would have made the third and subsequent offense of pimping or pandering a felony, regardless of whether the underlying act of prostitution involved an adult or a child. See SB 326, as introduced, 2000 Ga. Gen. Assem. That bill was favorably reported by Committee but never came to the floor. See State of Georgia Final Composite Status Sheet, SB 326, Mar. 22, 2000.

89. See Ron Martz, *Senate Panel Urged to Toughen Pimp Laws*, ATLANTA J. CONST., Feb. 2, 2001, at C6.

90. See *id.*; State of Georgia Final Composite Status Sheet, SB 33, Mar. 21, 2001.

91. See Martz, *supra* note 89, at C6.

92. See Torpy, *supra* note 20, at C1.

93. See *Lawmakers 2001* (GPTV broadcast, Feb. 1, 2001) (remarks by Alesia Adams) (on file with the

the Atlanta Police Department told the Committee that gangs associated with prostitution were “recruiting at an alarming rate.”⁹⁴ Senator James argued that it was senseless for selling or possessing child pornography to be a felony when the crime for pimping a child was the equivalent of a “parking ticket.”⁹⁵

On February 13, the day after Andrew Moore’s conviction in Fulton County Superior Court for various crimes related to pimping a child, the Senate Judiciary Committee met and merged SB 33 and SB 35.⁹⁶ The Committee substitute to SB 33 went to the Rules Committee along with Senator Hecht’s vehicle forfeiture bill, SB 34,⁹⁷ and was favorably reported to the Senate on February 15, 2001.⁹⁸ Senator James brought her twelve-year-old niece to the meeting to give the attendees a sense of the age of the girls they were talking about, but told her to leave before the discussion of the bill.⁹⁹

The Committee substitute to SB 33 adopted introductory language from SB 35 to the effect that the purpose of the Act was to express the General Assembly’s “abhorrence” for child prostitution and “to better protect children from sexual exploitation.”¹⁰⁰ The Committee also adopted a broader definition of prostitution as involving “a sexual act, including but not limited to sexual intercourse or sodomy.”¹⁰¹ In addition, the Committee substitute added language enhancing the penalty for solicitation of sodomy involving a minor and increasing the age of minority in that section to eighteen for consistency with the other provisions of the bill.¹⁰²

The Senate Committee substitute also removed the graduated sentencing scheme and simply provided for a period of imprisonment from five to ten years and a fine of \$2500 to \$10,000, with no reference to the proceeds of the crime.¹⁰³ Some members of the Committee felt

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94. Martz, *supra* note 89, at C6.

95. *Id.*

96. See Rhonda Cook, *Two Bills on Pimping are Merged in Senate*, ATLANTA J. CONST., Feb. 14, 2001, at C4.

97. *See id.*

98. *See* State of Georgia Final Composite Status Sheet, SB 33, Mar. 21, 2001.

99. *See* Cook, *supra* note 96, at C4.

100. Compare SB 33, as introduced, 2001 Ga. Gen. Assem., and SB 35, as introduced, 2001 Ga. Gen. Assem., with SB 33 (SCS), 2001 Ga. Gen. Assem.

101. Compare SB 33, as introduced, 2001 Ga. Gen. Assem., and SB 35, as introduced, 2001 Ga. Gen. Assem., with SB 33 (SCS), 2001 Ga. Gen. Assem.

102. Compare SB 33, as introduced, 2001 Ga. Gen. Assem., and SB 35, as introduced, 2001 Ga. Gen. Assem., with SB 33 (SCS), 2001 Ga. Gen. Assem.

103. Compare SB 33, as introduced, 2001 Ga. Gen. Assem., and SB 35, as introduced, 2001 Ga. Gen.

that a graduated sentencing scheme would reduce judicial discretion too much.¹⁰⁴ In addition, there would have been administrative burdens associated with ensuring that prostituted children were not lying about their age and also determining fines based on the proceeds of the crime.¹⁰⁵

Adoption of the Senate Committee Substitute in Both the Senate and the House

SB 33 came to the Senate floor on February 20, 2001.¹⁰⁶ Senator Vincent Fort of the 39th District and Senator Donzella James of the 35th District spoke for the bill.¹⁰⁷ Senator Fort emphasized that the problem of child prostitution impacts communities throughout Georgia, not just the Atlanta metropolitan area.¹⁰⁸ Senator James stressed that prostituted children are victims of child abuse, and said, “[t]he adjectives I can think of now that adequately describe these people who attempt to sell the bodies of twelve-year-olds and ten-year-olds cannot be spoken to this august body.”¹⁰⁹ The Senate adopted the Committee substitute and passed the bill unanimously.¹¹⁰

The Senate bill was introduced in the House the next day, where it was referred to the Special Judiciary Committee.¹¹¹ On the House side, it at first seemed likely that the bill would be further amended. After the Senate vote, Representative Martin of the 47th District, who chairs the House Judiciary Committee, told the *Atlanta Journal-Constitution* that some House members were concerned because the bill approved by the Senate provided for the same penalty regardless of the age of the prostituted child, suggesting that they might prefer returning to a graduated sentencing scheme.¹¹²

Assem., with SB 33 (SCS), 2001 Ga. Gen. Assem.

104. See James Interview, *supra* note 88; Telephone Interview with Sen. Greg Hecht, Senate District No. 34 (Apr. 6, 2001) [hereinafter Hecht Interview].

105. See Hecht Interview, *supra* note 104.

106. See State of Georgia Final Composite Status Sheet, SB 33, Mar. 21, 2001.

107. See Audio Recording of Senate Proceedings, Feb. 20, 2001 (remarks by Sens. Vincent Fort and Donzella James), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio].

108. See *id.* (remarks by Sen. Vincent Fort).

109. *Id.* (remarks by Sen. Donzella James).

110. See Georgia Senate Voting Record, SB 33 (Feb. 20, 2001), available at http://www.legis.state.ga.us/Legis/2001_02/votes/sv0092.htm.

111. See State of Georgia Final Composite Status Sheet, SB 33, Mar. 21, 2001.

112. See Kathy Pruitt & David Pendered, *Child Pimping Made Felony in Senate Vote*, ATLANTA J. CONST., Feb. 21, 2001, at B4.

The House also had its own child prostitution bill. Signed by Representatives Georganna Sinkfield of the 57th District, Nan Orrock of the 56th District, Jim Martin of the 47th District, Gail Buckner of the 95th District, JoAnn McClinton of the 68th District, and others, the House bill provided for a fine of \$2500 to \$10,000, a period of imprisonment of one to ten years, or both.¹¹³ It also provided for a shaming penalty in the form of publication of conviction notices in county legal organs.¹¹⁴

The House Special Judiciary Committee favorably reported SB 33 without amendment or substitute.¹¹⁵ The bill was favorably reported to the floor on March 8, 2001, and came up for discussion on March 14, 2001.¹¹⁶ Representative Kasim Reed of the 52nd District handled the bill on the floor.¹¹⁷

Representative Warren Massey of the 86th District expressed support for the bill, but also expressed concern about the fact that the bill provided for a penalty of five to twenty years for pandering a minor, but only one to ten years for pandering by compulsion, which is a felony regardless of the age of the victim.¹¹⁸ Representative Massey was concerned that this might cause problems involving conduct that could be charged under either statute.¹¹⁹

Representative Barbara Bunn of the 74th District suggested that pimping should be a felony regardless of the age of the prostitute.¹²⁰ She introduced an amendment that would have raised the age in the bill to twenty-one.¹²¹ The proposed amendment was defeated by a vote of 64 to 97.¹²² The House adopted and unanimously passed the bill on March 14, 2001.¹²³ Governor Roy Barnes signed the bill into law on March 27, 2001.¹²⁴

113. See HB 343, as introduced, 2001 Ga. Gen. Assem.

114. See *id.*

115. See State of Georgia Final Composite Status Sheet, SB 33, Mar. 21, 2001.

116. See *id.*

117. See Audio Recording of House Proceedings, Mar. 14, 2001 (remarks by Rep. Kasim Reed), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio].

118. See *id.* (remarks by Rep. Warren Massey).

119. See *id.* One potential problem is the question of merger and double jeopardy, discussed *infra*, section entitled *Pandering by Compulsion*.

120. See *id.* (remarks by Rep. Barbara Bunn).

121. See Failed House Floor Amendment to SB 33, introduced by Rep. Barbara Bunn, Mar. 14, 2001.

122. See House Audio, *supra* note 117 (vote on amendment).

123. See Georgia House of Representatives Voting Record, SB 33 (Mar. 14, 2001), available at http://www.legis.state.ga.us/Legis/2001_02/votes/sv0092.htm.

124. See 2001 Ga. Laws 92, § 8, at 94.

The Act

The Act provides for a legislative intent to recognize that “children are increasingly induced, coerced, or compelled to perform sexual acts for the financial benefit of third parties” and to “express abhorrence for these practices and . . . better protect children from sexual exploitation.”¹²⁵

Prostitution

The Act amends Code section 16-6-9, which defines the offense of prostitution.¹²⁶ It removes gender specific language which, ironically, had identified prostitutes using the masculine pronoun.¹²⁷ Previously, the act of prostitution had been defined in Georgia as the performance or offer of sexual intercourse in exchange for money.¹²⁸ The new definition expands the offense to include any sexual act, including sodomy, performed in exchange either for money or some other item of value.¹²⁹ Runaway children often engage in what some experts refer to as “survival sex,” the performance of sexual acts in return for food and shelter.¹³⁰ Young girls may also perform sexual acts in exchange for other items of value, including drugs, for example, or jewelry.¹³¹

Pimping and Pandering

The Act also amends Code section 16-6-13(b), which made pandering a felony punishable by a fine of \$2500 to \$10,000 when the offense involved a person under the age of seventeen.¹³² The new section applies to pimping as well as pandering, and adds a period of imprisonment of five to twenty years.¹³³ The new section also raises the relevant target

125. *See id.*, § 2, at 93.

126. *Compare* 1968 Ga. Laws 1249, § 26-2012, at 1301 (formerly found at O.C.G.A. § 16-6-9 (1999)), with O.C.G.A. § 16-6-9 (Supp. 2001).

127. *Compare* 1968 Ga. Laws 1249, § 26-2012, at 1301 (formerly found at O.C.G.A. § 16-6-9 (1999)), with O.C.G.A. § 16-6-9 (Supp. 2001).

128. *Compare* 1968 Ga. Laws 1249, § 26-2012, at 1301 (formerly found at O.C.G.A. § 16-6-9 (1999)), with O.C.G.A. § 16-6-9 (Supp. 2001).

129. *Compare* 1968 Ga. Laws 1249, § 26-2012, at 1301 (formerly found at O.C.G.A. § 16-6-9 (1999)), with O.C.G.A. § 16-6-9 (Supp. 2001).

130. *See* Hansen, *Runaway Girls*, *supra* note 64, at A1.

131. *See* BARTON CHILD LAW & POLICY CLINIC, PROPOSED LEGISLATION TO ADDRESS THE PROBLEM OF CHILD PROSTITUTION IN GEORGIA: A COLLECTIVE PROPOSAL 2 (2001).

132. *Compare* 1998 Ga. Laws 1301, § 2, at 1302 (formerly found at O.C.G.A. § 16-6-13(b) (1999)), with O.C.G.A. § 16-6-13(b) (Supp. 2001).

133. *Compare* 1998 Ga. Laws 1301, § 2, at 1302 (formerly found at O.C.G.A. § 16-6-13(b) (1999)), with

age from seventeen to eighteen.¹³⁴ The old law was arguably more consistent with the age of consent in Georgia under Code section 16-6-3, which makes it a crime to have sexual intercourse with any person, other than a spouse, under the age of sixteen, but permits consensual sexual relations with persons aged sixteen and seventeen.¹³⁵ The Act is consistent, however, with both Georgia and federal law criminalizing the sexual exploitation of children in pornography.¹³⁶

Many states, such as Arkansas, Florida, Idaho, Montana, and Rhode Island, make it a crime to prostitute anyone under the age of eighteen.¹³⁷ Other states, most notably Alabama, only enhance the penalty for crimes involving persons under the age of sixteen.¹³⁸ In Mississippi, only those children under fourteen are protected.¹³⁹ Finally, some states, such as California, Kentucky, and Minnesota, have bifurcated sentencing schemes, with lesser penalties for prostitution involving sixteen- and seventeen-year-olds.¹⁴⁰

Pandering by Compulsion

The Act amends Code section 16-6-14, defining the offense of pandering by compulsion, to remove gender-specific language.¹⁴¹ It does not, however, distinguish between pandering by compulsion of a minor and pandering by compulsion of adults; the penalty for pandering by compulsion is one to ten years imprisonment, whereas the penalty for pandering a minor is from five to ten years.¹⁴² It is easy to imagine circumstances in which a person might be liable under both statutes for the same conduct, thus raising the issue of potential double jeopardy.

Code section 16-1-7 prohibits multiple convictions for crimes arising out of the same conduct when one crime includes another.¹⁴³ For

O.C.G.A. § 16-6-13(b) (Supp. 2001).

134. Compare 1998 Ga. Laws 1301, § 2, at 1302 (formerly found at O.C.G.A. § 16-6-13(b) (1999)), with O.C.G.A. § 16-6-13(b) (Supp. 2001).

135. See O.C.G.A. § 16-6-3 (1999).

136. See 18 U.S.C. § 2251 (1994); O.C.G.A. § 16-12-100 (1999).

137. See BARTON CHILD LAW & POLICY CLINIC, COMPARISON OF PENDING LEGISLATION ADDRESSING PIMPING AND PANDERING OF MINORS 7-8 (2001).

138. See *id.*

139. See *id.*

140. See *id.*

141. Compare 1968 Ga. Laws 1249, § 26-2017, at 1302 (formerly found at O.C.G.A. § 16-6-14 (1999)), with O.C.G.A. § 16-6-14 (Supp. 2001).

142. Compare 1968 Ga. Laws 1249, § 26-2017, at 1302 (formerly found at O.C.G.A. § 16-6-14 (1999)), with O.C.G.A. § 16-6-14 (Supp. 2001).

143. See O.C.G.A. § 16-1-17 (1999).

example, child molestation is a lesser included offense of rape,¹⁴⁴ but a defendant can be convicted of both child molestation and aggravated sodomy when for example, the conviction is based on underlying conduct involving more than one episode of abuse.¹⁴⁵

Georgia courts are not likely to allow separate convictions for pandering a minor and pandering by compulsion where the underlying conduct is a single transaction. So the ultimate penalty for a single act of pandering a minor will likely be the same regardless of whether the pander employs duress or coercion to obtain the child's compliance in the act of prostitution.

Solicitation of Sodomy

The Act also amends Code section 16-6-15, relating to solicitation of sodomy.¹⁴⁶ The old law provided for fines of \$1000 to \$5000 or a penalty of one to five years imprisonment in cases of solicitation of sodomy involving children under the age of seventeen.¹⁴⁷ The new law covers children under the age of eighteen and increases the penalty to make it consistent with the other provisions of the Act.¹⁴⁸

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144. See *Lamar v. State*, 243 Ga. 401, 254 S.E.2d 353 (1979); *King v. State*, 209 Ga. App. 529, 433 S.E.2d 722 (1993).

145. See *Stames v. State*, 205 Ga. App. 882, 424 S.E.2d 4 (1992); *McCullum v. State*, 177 Ga. App. 40, 338 S.E.2d 460 (1985).

146. Compare 1968 Ga. Laws 1249, § 26-2003, at 1299 (formerly found at O.C.G.A. § 16-6-15 (1999)), with O.C.G.A. § 16-6-15 (Supp. 2001).

147. Compare 1968 Ga. Laws 1249, § 26-2003, at 1299 (formerly found at O.C.G.A. § 16-6-15 (1999)), with O.C.G.A. § 16-6-15 (Supp. 2001).

148. Compare 1968 Ga. Laws 1249, § 26-2003, at 1299 (formerly found at O.C.G.A. § 16-6-15 (1999)), with O.C.G.A. § 16-6-15 (Supp. 2001).