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PENAL INSTITUTIONS Sexual Offender Registry: Provide for the Registration of First Offenders and Those That Plead Nolo Contendre; Require Additional Information with Respect to Such Registration; Insure the Allocation of Federal Funding for Law Enforcement

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PENAL INSTITUTIONS

Sexual Offender Registry: Provide for the Registration of First Offenders and Those That Plead Nolo Contendere; Require Additional Information with Respect to Such Registration; Insure the Allocation of Federal Funding for Law Enforcement

CODE SECTIONS: O.C.G.A. §§ 42-1-12, 42-8-62 (amended)
BILL NUMBER: SB 66
ACT NUMBER: 306
GEORGIA LAWS: 2001 Ga. Laws 1004
SUMMARY: The Act changes the provisions related to sexual offender registration requirements that apply to certain sex offenders, including making registration requirements applicable to persons sentenced pursuant to Article 3 of Chapter 8 of Title 42, relating to first offenders; making registration requirements applicable to persons who plead nolo contendere to certain sex offenses; and changing certain registration requirements and requiring additional information with respect to such registration in order to ensure availability of federal funding for law enforcement.
EFFECTIVE DATE: July 1, 2001

History

SB 66 was originally the inspiration of the Georgia Bureau of Investigation (GBI).¹ The GBI basically sought to craft a bill that would comply with federal requirements that conditioned \$1.4 million in federal funding for law enforcement.² The bill's lead sponsor, Senator Greg Hecht of the 34th District,³ is a former District Attorney of Clayton County, where he gained a great deal of experience relating to matters

1. See Telephone Interview with Rep. Jim Stokes, House District No. 92 (Apr. 6, 2001) [hereinafter Stokes Interview].

2. See *id.*

3. See SB 66, as introduced, 2001 Ga. Gen. Assem.

involving sex offenders.⁴ Based on this experience, and in response to requests from members of his constituency, Senator Hecht added provisions to the bill that would require registration for persons sentenced pursuant to Article 3 of Chapter 8 of Title 42, relating to first offenders and making registration requirements applicable to persons who plead *nolo contendere* to certain sex offenses.⁵ It was in regard to these matters that the bill became a source of debate. The criminal defense bar, and even some prosecutors, were concerned about expanding the reach of the sexual offender registry to first offenders.⁶

SB 66

Introduction

Senators Greg Hecht of the 34th District, Terrell Star of the 44th District, David Scott of the 36th District, Charlie Walker of the 22nd District, and Regina Thomas of the 2nd District sponsored SB 66.⁷ After introduction on the Senate floor on January 26, 2001,⁸ the Senate President assigned the bill to the Judiciary Committee, which favorably reported the bill, as substituted.⁹ The Senate adopted the Committee substitute and passed the bill nearly unanimously, with only one dissenting vote, on February 27, 2001.¹⁰ The bill was introduced in the House on March 1, 2001,¹¹ and the House Speaker assigned the bill to the House Judiciary Committee, which offered its own substitute and favorably reported the bill on March 14, 2001.¹² The House adopted the Judiciary Committee substitute and passed the bill unanimously on

4. See Telephone Interview with Sen. Greg Hecht, Senate District No. 34 (Apr. 6, 2001) [hereinafter Hecht Interview]; Stokes Interview, *supra* note 1.

5. See Hecht Interview, *supra* note 4; Stokes Interview, *supra* note 1.

6. See Stokes Interview, *supra* note 1.

7. See SB 66, as introduced, 2001 Ga. Gen. Assem.

8. See Audio Recording of Senate Proceedings, Jan. 26, 2001, at <http://www.ganet.org/services/leg/audio/2001archive.html> [hereinafter Senate Audio]; State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

9. See State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

10. See Georgia Senate Voting Record, SB 66 (Feb. 27, 2001); State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

11. See Audio Recording of House Proceedings, Mar. 1, 2001, at <http://www.ganet.org/services/leg/audio/2001archive.html> [hereinafter House Audio]; State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

12. See State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

March 21, 2001.¹³ The bill returned to the Senate on March 21, 2001, and the Senate voted unanimously to agree to the House substitute.¹⁴ The General Assembly forwarded the bill to Governor Roy Barnes on April 4, 2001.¹⁵ The Governor signed SB 66 into law on April 27, 2001.¹⁶

Consideration by the Senate Judiciary Committee

As introduced, SB 66 had three basic parts: 1) provisions that would require registration for persons sentenced pursuant to Article 3 of Chapter 8 of Title 42, relating to first offenders; 2) registration requirements applicable to persons who plead nolo contendere to certain sex offenses; and 3) an attempt to comply with the federal requirements in order to obtain a \$1.4 million grant for law enforcement.¹⁷ The federal requirements were, inter alia: a) including the use of the Internet to solicit minors as an offense that would require registration; b) providing for a requirement that certain sexual offenders provide school addresses to the registry while attending institutions of higher learning in the state; and c) including certain convictions in tribal court within the definition of “sexually violent offense” for the purposes of classifying offenses that require registration.¹⁸ Following introduction, the Senate assigned the bill to its Judiciary Committee.¹⁹ The Judiciary Committee favorably reported SB 66 as a substitute which maintained the primary thrusts of the bill, but added a new section 3 stating that in the event any part of the Act should be declared invalid or unconstitutional, the rest of the Act would be unaffected and would remain in force.²⁰

Senate Passage

The Senate adopted the Committee substitute and passed SB 66 with only one dissenting vote on February 27, 2001.²¹

13. See Georgia House of Representatives Voting Record, SB 66 (Mar. 21, 2001); State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

14. See Georgia Senate Voting Record, SB 66 (Mar. 21, 2001); State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

15. See State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

16. See 2001 Ga. Laws 1004, § 3, at 1013.

17. See SB 66, as introduced, 2001 Ga. Gen. Assem.

18. See Hecht Interview, *supra* note 4.

19. See State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

20. Compare SB 66, as introduced, 2001 Ga. Gen. Assem., with SB 66 (SCS), 2001 Ga. Gen. Assem.

21. See Georgia Senate Voting Record, SB 66 (Feb. 27, 2001); State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

Consideration by the House Judiciary Committee

The House Judiciary Committee kept the substance of the bill intact, including the first offender provisions, the nolo contendere provisions, and the federal funding provisions, but removed the section that had been added by the Senate Judiciary Committee, essentially returning it to its previous form, as introduced.²²

House Passage

The House adopted the Committee substitute and unanimously passed SB 66 on March 21, 2001.²³ On the same day, the Senate voted unanimously to agree to the House substitute,²⁴ and the bill was forwarded to Governor Roy Barnes on April 4, 2001.²⁵ The Governor signed SB 66 into law on April 27, 2001.²⁶

The Act

The Act amends Code section 42-1-12, relating to required registration of certain sex offenders, by striking the section in its entirety and inserting a new Code section 42-1-12 that implements a number of modifications.²⁷ The Act adds to Code section 42-1-12(a)(1)(A), broadening the language to include first offenders.²⁸ The Act modifies Code section 42-1-12 (a)(3) to include a plea of nolo contendere in the definition of conviction for the purposes of registration requirements under this Code section.²⁹ Further, the Act adds language to broaden the definition of "criminal offenses against minors" to include the use of the Internet to solicit sexual conduct.³⁰ The Act includes certain convictions

22. Compare SB 66 (SCS), 2001 Ga. Gen. Assem., with SB 66 (HCS), 2001 Ga. Gen. Assem. See also SB 66, as introduced, 2001 Ga. Gen. Assem.

23. See Georgia House of Representatives Voting Record, SB 66 (Mar. 21, 2001); State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

24. See Georgia Senate Voting Record, SB 66 (Mar. 21, 2001); State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

25. State of Georgia Final Composite Status Sheet, SB 66, Mar. 21, 2001.

26. See 2001 Ga. Laws 1004, § 3, at 1013.

27. Compare 1999 Ga. Laws 838, § 1, at 838 (formerly found at O.C.G.A. § 42-1-12(a)(1)(A) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(1)(A) (Supp. 2001).

28. Compare 1999 Ga. Laws 838, § 1, at 838 (formerly found at O.C.G.A. § 42-1-12(a)(1)(A) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(1)(A) (Supp. 2001).

29. Compare 1998 Ga. Laws 831, § 1, at 831-34 (formerly found at O.C.G.A. § 42-1-12(a)(3) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(3) (Supp. 2001).

30. Compare 1999 Ga. Laws 838, § 1, at 838 (formerly found at O.C.G.A. § 42-1-12(a)(4)(A) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(4)(A) (Supp. 2001).

in a tribal court within the definition of a “sexually violent offense,”³¹ and it requires the registration of a school address when certain offenders are enrolled in institutions of higher learning.³² The Act also significantly changes Code section 42-1-12(a)(8) to require registration for individuals who received first offender treatment related to a criminal offense against a minor.³³

The Act also amends Code section 42-8-62, relating to the discharge without adjudication of guilt with respect to first offenders, by striking subsection (a) in its entirety and inserting a new subsection (a),³⁴ which provides that the registration requirements under the state sexual offender registry shall be an exception to the complete exoneration upon fulfillment of the terms of probation with respect to certain first offenders.³⁵

*Gregory Todd Jones*³⁶

31. Compare 1999 Ga. Laws 838, § 1, at 838 (formerly found at O.C.G.A. § 42-1-12(a)(7) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(7) (Supp. 2001); compare 1998 Ga. Laws 831, § 1, at 831-34 (formerly found at O.C.G.A. § 42-1-12(a)(8) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(8) (Supp. 2001).

32. Compare 1998 Ga. Laws 831, § 1, at 831-34 (formerly found at O.C.G.A. § 42-1-12(a)(8) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(8) (Supp. 2001).

33. Compare 1998 Ga. Laws 831, § 1, at 831-34 (formerly found at O.C.G.A. § 42-1-12(a)(8) (Supp. 2000)), with O.C.G.A. § 42-1-12(a)(8) (Supp. 2001).

34. See 2001 Ga. Laws 1004, § 2, at 1012.

35. Compare 1990 Ga. Laws 735, § 1, at 736 (formerly found at O.C.G.A. § 42-8-62(a) (Supp. 2000)), with O.C.G.A. § 42-8-62(a) (Supp. 2001).

36. The author would like to offer particular appreciation to Representative Jim Stokes and Senator Greg Hecht for their extremely candid insight into the political process that shaped this new law.