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CRIMES AND OFFENSES Sexual Offenses

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Crimes and Offenses

Sexual Offenses: Change and Enact Provisions of Law Relating to Sexual Offenses, Classification of Sexual Offenders, Sexual Offender Registration, and Restrictions on Sexual Offenders' Residences, Workplaces, and Activities; Amend Section 35 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, Relating to Appeals Requiring an Application for Appeal, so as to Make Such Code Section Applicable to Appeals from Decisions of Superior Courts Reviewing a Decision of the Sexual Offender Registration Review Board and to Decisions Granting or Denying Petitions for Release from Registration Requirements and Residency and Employment Restrictions; Amend Title 16 of the Official Code of Georgia Annotated, Relating to Crimes and Offenses, so as to Remove a Consent Defense to Sexual Assault on Certain Persons; Reorganize the Code Section Relating to Sexual Assault Against Persons in Custody; Provide for Misdemeanor Punishment Under Certain Circumstances; Provide for Gender Neutrality with Regard to the Offense of Incest; Prohibit Interference with Electronic Monitoring Devices when Worn by a Sexual Offender; Amend Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, Relating to Classification and Registration of Sexual Offenders and Regulation of the Conduct of such Offenders, so as to Revise Provisions Relating to Registration of Sexual Offenders; Change Certain Definitions; Provide for Registration and Reporting by Sexual Offenders Who do not have a Residence Address; Revise Provisions Relative to Classification of Sexual Offenders; Change Provisions Relating to the Sheriff's Obligations Relative to Sexual Offenders; Change Provisions Relative to the Process of Classification by the Sexual Offender Registration Review Board and Review and Repeal of such Classifications; Provide for Procedure and Review; Change Provisions Relating to Residency and Employment Restrictions for Sexual Offenders; Provide a Mechanism for Certain Sexual Offenders to Petition the Superior Court to be Released from Registration Requirements and Residency and Employment Restrictions; Provide for Related Matters; Provide for an effective date; Repeal Conflicting Laws; and for Other Purposes.

Code Sections:	O.C.G.A §§ 5-6-35 (amended); 16-6-5.1, -22 (amended); 16-7-29 (amended); 42-1-12, -14, -15 (amended); 42-1-16, -17, -18, -19 (new)
Bill Number:	HB 571
Act Number:	389
Georgia Laws:	2010 Ga. Laws 168
Summary:	The purpose of this Act is to revise Georgia sex offender laws to promote the isolation of dangerous sexual predators from the public and ensure that they are adequately monitored in a manner that is constitutional. The key focus of the Act is to ensure the law properly directs resources towards protecting society from the sex offenders who pose the greatest threat to others by truly isolating the dangerous sexual predator. The Act narrows some of the previous statutory reporting requirements for sex offenders and aims to lessen some of these requirements by providing for certain exceptions. Additionally, the Act gives superior courts the power to release an individual from the residency requirements if the court finds that the individual does not pose a substantial risk of recidivism, and the offender either resides in a nursing home, is totally or permanently disabled, or is seriously physically incapacitated due to illness or injury. The Act also gives homeless offenders who can provide no residence address specific direction as to how to comply with the statutory requirements. Finally, the Act revises various

	punishment requirements under the affected sections. Specifically, it amends Code section 42-1-12(n) by eliminating a mandatory punishment of imprisonment for life upon a conviction of a second offense for failing to comply with the registration requirements.[1]
Effective Date:	May 20, 2010

HB 571 is substantially the same bill that was originally introduced as SB 157 during the 2009 legislative session. SB 157 was not passed that year. Thus, the bill that was previously known as SB 157 was re-introduced as HB 571 in the 2010 session. The following Peach Sheet is an update of the Peach Sheet originally published in 2009 discussing SB 157 by Meredith H. Carr and Hillary Rightler.[2] This Peach Sheet has been revised to discuss both SB 157 and HB 571.

History

The main purpose of HB 571 is to reform Georgia's sex offender laws to ensure that resources will be aimed at isolating the truly dangerous sexual predator so that the laws provide the proper protection from these offenders and are still constitutional.[3]

In an effort to strengthen Georgia's sex offender laws, the legislature passed HB 1059 in 2006, which imposed strict residency restrictions on convicted sexual offenders in Georgia.[4] The Georgia Supreme Court later found the provisions in Code section 42-1-15 regarding these restrictions "to be unconstitutional to the extent that it

1. For a full summary of the Act, see Meredith H. Carr & Hillary Rightler, *Crimes & Offenses*, 26 GA. ST. U. L. REV. 201 (2009).

2. *Id.*

3. Interview with Sen. Seth Harp (R-29th) (Mar. 23, 2009) [hereinafter Harp Interview].

4. *See generally* Debra Hunter & Paul Sharman, *Review of Selected 2006 Georgia Legislation, Crimes and Offenses*, 23 GA. ST. U. L. REV. 11 (2006).

permits the regulatory taking of appellant's property without just and adequate compensation."[5]

The legislature then responded in 2008 by enacting SB 1, which prohibited offenders from residing, working, or volunteering within 1,000 feet of any child care facility, church, school, or area where minors congregate.[6] SB 1 exempted sexual offenders who could offer sufficient proof of employment or residency established before July 1, 2006, to avoid the regulatory takings issue.[7] The new law went into effect on July 1, 2008, and the constitutionality of SB 1 was then challenged on numerous grounds resulting in various portions being struck down by the Georgia Supreme Court as unconstitutional.[8]

On October 21, 2008, the Georgia Supreme Court, in *Santos v. State*, struck down a portion of Code section 42-1-12 as unconstitutional as applied to homeless sex offenders who had no street or route address for their residence.[9] Code section 42-1-12 required convicted sex offenders to register with the sheriff of the county in which the offenders reside and provide the sheriff the address of their residence and other required registration information.[10] In the event of a change in his or her residence, a sex offender must provide the county sheriff of the old county where the offender was last registered with the new residence address within seventy-two hours before the change and the sheriff of the new county within seventy-two hours after establishing a new residence.[11] The term "address" is defined as "the street or route address of the sexual offender's residence," and the Code specifically provided "the term does not mean a post office box, and homeless does not constitute an address."[12]

Santos was a homeless sex offender who was charged with violating the registration requirements of Code section 42-1-12 when

5. Madison Burnett & Ashley Fuller, *Review of Selected 2008 Georgia Legislation*, *Crimes and Offenses*, 25 GA. ST. U. L. REV. 139 (2008) (quoting Mann v. Ga. Dep't of Corr., 282 Ga. 754, 760–61, 653 S.E.2d 740, 745 (Ga. 2007)).

6. *Id.*

7. *Id.* at 139–50 (providing a thorough discussion of the provisions of SB 1).

8. Santos v. State, 284 Ga. 514, 668 S.E.2d 676 (Ga. 2008); Bradshaw v. State, 284 Ga. 675, 671 S.E.2d 485 (Ga. 2008).

9. *Santos*, 284 Ga. at 517, 668 S.E.2d at 679.

10. O.C.G.A § 42-1-12(a)(16), (f)(2)–(3) (2009).

11. *Id.* § (f)(4).

12. *Id.* § (a)(1).

he failed to register a new address with Hall County where he was homeless after departing from his previously registered address at a homeless shelter in Gainesville.[13] Santos challenged Georgia's reporting requirements on the grounds that Code section 42-1-12 was "unconstitutionally vague" as applied to homeless offenders who have no residence address to report.[14] The court agreed and held the statute did not provide "fair notice" as to what homeless offenders without a residence address must do to comply with the statute.[15] The court criticized the statute for containing no objective standards or guidelines to instruct such offenders as to how to comply with the statutory requirements.[16] Absent any direction or a standard of conduct applicable to homeless offenders who possess no street or route address, the court concluded Code section 42-1-12 was unconstitutionally vague.[17] The court also cited the specific provision in the statute that stated, "homeless does not constitute an address" and pointed to various examples from other jurisdictions that provide more specific guidance to homeless offenders in their sex offender registration statutes in support of its conclusion.[18]

The Georgia Supreme Court's decision in *Santos* was one of the reasons the legislature drafted HB 571: to revise Georgia's sex offender registration requirements so that they would be constitutional.[19]

In November 2008, in *Bradshaw v. State*, the Georgia Supreme Court struck down a provision in the existing law that imposed a mandatory life sentence in prison on sex offenders who were convicted twice of failing to meet the registry requirements.[20] Appellant Bradshaw was convicted twice of violating Code section 42-1-12(f) when he failed to provide his valid current address to authorities within seventy-two hours of changing his address.[21] Pursuant to Code section 42-1-12(n), Bradshaw was given the

13. *Santos*, 284 Ga. at 516, 668 S.E.2d at 678.
14. *Id.* at 514, 668 S.E.2d at 677.
15. *Id.*
16. *Id.* at 514–16, 668 S.E.2d at 678.
17. *Id.*
18. *Id.*
19. *See* Harp Interview, *supra* note 3.
20. Bradshaw v. State, 284 Ga. 675, 682, 671 S.E.2d 485, 492 (Ga. 2008).
21. *Id.* at 675, 671 S.E.2d at 487.

mandatory sentence of life in prison.[22] The Supreme Court held that the mandatory sentence constituted cruel and unusual punishment under the Eighth Amendment to the Constitution of the United States.[23] The Court's reasoning contained an inter-jurisdictional proportionality analysis comparing Georgia's mandatory life imprisonment sentence to the punishments of other states for the same conduct and found a "gross disparity" between Georgia's sentencing scheme and that of other states.[24]

On March 30, 2009, U.S. District Judge Clarence Cooper issued an injunction enjoining the law banning sex offenders from volunteering at churches.[25] Under the law as it existed in 2009, sex offenders were prohibited from the following activities: singing in adult choirs, playing piano or reading in a church service, serving on church committees, preparing food for homeless, attending an adult Bible study, setting up for church events, and speaking to the congregation during services.[26] The March 2009 order was part of a pending case, *Whitaker v. Perdue*, filed on June 20, 2006.[27] The *Whitaker* case was a class action suit that challenged various provisions of the sex offender laws that had not yet been declared unconstitutional.[28] Whitaker, the lead plaintiff in the case, became a convicted sex offender when she was seventeen for engaging in consensual oral sex with a fifteen-year-old.[29]

HB 571[30] was introduced to try to fix the problems with the current law so that the state could have "a law that is enforceable and will protect families and children in Georgia," but that will also "pass constitutional muster" and save the state money and resources that would otherwise be wasted in the courts.[31]

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22. *Id.* at 675, 671 S.E.2d at 487.
23. *Id.* at 682–83, 671 S.E.2d at 492.
24. *Id.* at 680–83, 671 S.E.2d at 491–92.
25. R. Robin McDonald, *Senator Irked at Failure to Fix Sex Offender Law*, FULTON COUNTY DAILY REP., Apr. 8, 2009, at 1.
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* Certain claims in the case were voluntarily dismissed subsequent to the passage of HB 571. Whitaker v. Perdue, No. 4:06-cv-140-CC (dismissed Aug. 13, 2010).
30. HB 571 was previously introduced as SB 157 in 2009; the bill failed to win passage at that time. SB 157, as introduced, 2009 Ga. Gen. Assem.
31. McDonald, *supra* note 25.

Bill Tracking of HB 571

Consideration and Passage by the House

Representatives David Ralston (R-7th), Jerry Keen (R-179th), and Rich Golick (R-34th), respectively, sponsored HB 571.[32] The House read the bill for the first time on February 26, 2009.[33] On March 3, 2009, the House read the bill for the second time and Speaker of the House David Ralston assigned it to the House Judiciary Non-Civil Committee.[34] It was not until March 9, 2010 that the House Judiciary Non-Civil Committee reported favorably upon the bill.[35] The House read the bill for the third time on March 16, 2010, and it passed 165 to 1.[36]

Consideration and Passage by the Senate

The Senate read the bill for the first time on March 17, 2010, and Senate President Pro Tempore Tommie Williams (R-19th) referred the bill to the Senate Judiciary Committee on the same day.[37] The Senate Judiciary Committee made one substantive change to the underlying bill.[38] This change stated that the residency and employment restrictions that would apply to sexual offenders would be those restrictions which were in effect at the time the offense was committed.[39] Further, the Senate Judiciary Committee incorporated two modifications into the bill.[40] The first changed the definition of incest.[41] The new definition used gender neutral terminology to determine when incest has occurred; for example, the new language states that it is between a "[f]ather and a child or stepchild," as

32. HB 571, as introduced, 2009 Ga. Gen. Assem.
33. State of Georgia Final Composite Status Sheet, HB 571, Apr. 29, 2010.
34. *Id.*
35. *Id.*
36. *Id.* Georgia House of Representatives Voting Record, HB 571 (Mar. 16, 2010).
37. State of Georgia Final Composite Status Sheet, HB 571, Apr. 29, 2010.
38. Video Recording of House Proceedings, Apr. 27, 2010 at 12 min., 41 sec. (remarks by Rep. Rich Golick (R-34th)), http://www.gpb.org/general-assembly [hereinafter 2010 House Floor Video].
39. *Id.* at 12 min., 45 sec. (remarks by Rep. Rich Golick (R-34th)).
40. Video Recording of Senate Proceedings, Apr. 21, 2010 at 1 hr., 32 min., 57 sec. (remarks by Sen. Seth Harp (R-29th)), http://www.gpb.org/general-assembly [hereinafter 2010 Senate Floor Video].
41. *Id.*

opposed to between a father and a daughter or stepdaughter.[42] The second addition made it a criminal act subject to prosecution when an actor who has authority over someone else, for example a teacher in a teacher/student relationship, takes sexual advantage of a child.[43] The bill went further to state that consent in this type of relationship is not a defense to prosecution.[44]

On April 20, the Judiciary Committee favorably reported the bill and the Senate read the bill for the second time.[45] On April 21, the Senate read the bill for the third time and voted unanimously to pass it by a vote of 45 to 0.[46]

Reconsideration and Passage by the House

On April 27, the House agreed to the Senate Judiciary Committee substitute on HB 571 with only one dissenting vote.[47] The House then forwarded the bill to the Governor's Office on May 10.[48] Governor Perdue signed the bill into law on May 20, 2010 as Act 389.[49]

The Act

The Act amends Code section 5-6-35 of the Official Code of Georgia Annotated, relating to appeals requiring an application for appeal, so as to make such Code section applicable to appeals from decisions of superior courts reviewing a decision of the Sexual Offender Registration Review Board and to decisions granting or denying petitions for release from registration requirements and residency and employment restrictions.[50]

The Act amends Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to remove a consent

42. HB 571 (SCS), § 3, p. 5, ln. 141, 2010 Ga. Gen. Assem.
43. 2010 Senate Floor Video, *supra* note 40, at 1 hr., 33 min., 28 sec. (remarks by Sen. Seth Harp (R-29th)).
44. *Id.*
45. State of Georgia Final Composite Status Sheet, HB 571, Apr. 29, 2010.
46. *Id.*; Georgia Senate Voting Record, HB 571 (Apr. 21, 2010).
47. State of Georgia Final Composite Status Sheet, HB 571, Apr. 29, 2010.
48. *Id.*
49. *Id.*
50. O.C.G.A. § 5-6-35(5.1)–(5.2) (Supp. 2010).

defense to sexual assault on certain persons; to reorganize the Code section relating to sexual assault against persons in custody, to provide for misdemeanor punishment under certain circumstances, to provide for gender neutrality with regard to the offense of incest, and to prohibit interference with electronic monitoring devices when worn by a sexual offender.[51]

The Act amends Article 12 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to classification and registration of sexual offenders and regulation of the conduct of such offenders, so as to revise provisions relating to registration of sexual offenders.[52]

The Act also amends Code section 42-1-12 to make the requirement to inform the sheriff of the county to which the sex offender is moving within 72 hours prior to moving, provide for registration for homeless persons based on county of sleeping location, and substantially reduce the punishment for failure to comply and providing false information.[53]

The Act amends Code section 42-1-14 and requires that a sex offender convicted on or after the effective date of this Code section have the Sexual Offender Registration Review Board place the offender into a risk-assessment category of Level I, Level II, or sexually dangerous predator based on its determination of the likelihood that the sex offender would engage in another dangerous sexual offense.[54] The Code section also instructs the Board to base its review on a risk assessment profile completed by the Department of Corrections and any evidence introduced by the prosecution and the defense.[55] The Code section further provides that such information becomes a matter of public record.[56]

Additionally, any sex offender who changes residence from another state or territory of the United States to Georgia and was not already designated under Georgia law as a sexually dangerous predator has his or her required information forwarded to Sexual

51. *Id.* § 16-6-5.1.
52. *Id.* § 42-1-12.
53. *Id.* § 42-1-12.
54. *Id.* § 42-1-14.
55. *Id.*
56. O.C.G.A. § 42-1-10(i) (Supp. 2010).

Offender Registration Review Board to be assigned a risk assessment classification under Code section 42-1-14.[57] The amendments to Code section 42-1-14 also provide detailed procedures and timelines for appealing these determinations.[58]

The bill further amends Article 12 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to classification and registration of sexual offenders and regulation of the conduct of such offenders.[59]

First, Code section 42-1-12 is amended by removing the phrase "homeless does not constitute an address" and requiring homeless offenders who do not have a residence address to register with the sheriff in the county in which the offender sleeps.[60] The homeless offender further is required to report weekly to the sheriff to provide the place where he or she sleeps.[61] These requirements bring the law into compliance with the decision of the Georgia Supreme Court in *Santos v. State*.[62]

The Act further amends Code section 42-1-12 to require that specific information be forwarded to the sheriff's office of the county where the sexual offender intends to reside, including the sex offender's fingerprints, photographs, address, and information regarding his crime of conviction.[63]

The Act removes the provision requiring sex offenders to provide e-mail addresses, usernames, and user passwords.[64] In response to the Georgia Supreme Court's *Bradshaw v. State* decision, Code section 42-1-12 was further amended by striking the provision requiring mandatory life imprisonment for a second conviction for failing to comply with the reporting and registration requirements.[65]

Code section 42-1-15 also was amended to relax the requirements regarding where an offender can volunteer.[66] Under HB 571, an

57. *Id.* § 42-1-14.
58. *Id.*
59. *Id.* § 42-1-12.
60. HB 571 (AP), § 5, p. 5, ln. 166, 2010 Ga. Gen. Assem.
61. O.C.G.A. § 42-1-12(e) (Supp. 2010).
62. *See* discussion *supra* notes 8–18 and accompanying text.
63. O.C.G.A. § 42-1-12(a)(16), -12(f) (Supp. 2010)
64. HB 571 (AP), § 5, p. 8, ln. 253, 2010 Ga. Gen. Assem.
65. *See* discussion *supra* notes 1–28 and accompanying text.
66. O.C.G.A. § 42-1-15(a) (Supp. 2010)

offender is not precluded from volunteering in activities limited to persons who are eighteen years of age or older or from participating in worship services or other religious activities that do not include supervising, teaching, directing, or otherwise participating with minors in an unsupervised environment.[67]

The Act also introduces four new Code sections. Section 42-1-16 provides for residency and employment restrictions for individuals who committed acts requiring registration between July 1, 2006 and June 30, 2008.[68] Section 42-1-17 provides residency restrictions for individuals who committed acts requiring registration between June 4, 2003 and June 30, 2006.[69] Section 42-1-18 makes it a misdemeanor of a high and aggravated nature to intentionally photograph a minor without the consent of the minor's parent or guardian.[70] Section 42-1-19 provides a method for a registered individual to petition a superior court for release from registration requirements.[71] To obtain a release order under the new Code section, the court will have to find, by a preponderance of the evidence, that the individual does not pose a substantial risk of perpetrating any future dangerous sex offense and that the individual (1) resides in a hospice, skilled nursing home, or residential care facility; (2) is totally or permanently disabled; or (3) is otherwise seriously physically incapacitated due to illness or injury.[72]

Analysis

This Act is a collective effort by sheriffs' offices, prosecutors, and members of the General Assembly to respond to many of the concerns expressed by the courts, such as the *Bradshaw* and *Santos* cases. The courts and others have criticized the law for being overly broad, unconstitutionally vague, and in certain circumstances imposing cruel and unusual punishment. In addition, this Act attempts to reform the law so that resources can be more accurately allocated to isolate truly dangerous sexual predators.

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67. *Id.*
68. *Id.* § 42-1-16.
69. *Id.* § 42-1-17.
70. *Id.* § 42-1-18.
71. *Id.* § 42-1-19.
72. O.C.G.A. § 42-1-19 (2010).

As Senator Harp (R-29th) lamented, Georgia's law enforcement members had a "devil of a time" attempting to enforce the previous sexual offender law.[73] One main factor contributing to this problem is the fact that Georgia's registry currently overflows with offenders who may not have even committed a crime of a sexual nature.[74] Despite the probable lack of threat by these registrants to society (from a sexual offense standpoint), Georgia's law enforcement teams must still exert precious time and energy towards enforcing the cumbersome law against each and every person named in the registry.[75] Indeed, such over-inclusion has faced wide criticism in the state, with Georgia's newspapers pointing out that if the registry listed only the truly *serious* offenders, it would become a more useful tool to our law enforcement.[76]

One scenario bringing to light the realities of these criticisms is as follows: a person who commits the crime of armed robbery and, in the process of doing so, orders a minor to the ground and so "falsely imprisons" that minor, would, in addition to being convicted for armed robbery, *also* be convicted of a sex crime and thus be labeled a "sexual offender" and entered in the registry.[77] Thus, despite the fact that this person's crime had nothing to do with sex, and the ordering of the minor to the ground was not sexual in nature, this person would now bear the label of sexual offender and be required to comply with all the requirements that accompany such a label, and Georgia's law enforcement would thus be charged with the responsibility of keeping tabs on this offender.[78]

In 2009, Senator Harp was confident that SB 157 would have remedied such problems and ensured that offenders in the above scenario—and other similar scenarios—would not be included in the sexual offender registry. Specifically, section 3 of SB 157 sought to amend subsections (a)(9)(A)(i)–(ii) and subsections (a)(9)(B)(i)–(ii) of Code section 42-1-12 to include the phrase "when the offense by its nature is a sexual offense against a minor or an attempt to commit

73. *See* Harp Interview, *supra* note 3.
74. *Id.*
75. *Id.*
76. Maureen Downey, Editorial, *Registry without Reason*, ATLANTA J.-CONST., Nov. 4, 2007, at 6B.
77. *See* Harp Interview, *supra* note 3.
78. *Id.*

a sexual offense against a minor" to the Code provisions governing kidnapping and false imprisonment.[79] This language was kept consistent in the Act as passed in 2010.[80]

Additionally, HB 571 includes a new "risk assessment classification" system that will help alleviate the problems associated with an over-loaded registry list.[81] Rather than treating all sexual offenders the same, section 12 of HB 571 delineates three risk assessment classifications: Level I, Level II, and sexually dangerous predator.[82] Senator Harp and other supporters of the bill were most concerned with isolating and protecting the public from those offenders classified as sexually dangerous predators.[83] In parsing out different levels of sexual offenders, persons like the lead plaintiff in *Whitaker v. Perdue* would be placed at a lower level and spared from many of the invasive requirements of the law, freeing up law enforcement's time and man power to allow them to focus on tracking the truly dangerous predators who threaten Georgia's children and families.[84] Senator Harp praises the due diligence conducted by the Attorney General's office and others who worked on this bill and the risk assessment classifications specifically, which are based on the federal law concerning sexual offenders.[85]

A third way HB 571 is intended to whittle down the sexual offender registry in Georgia is found in section 15 of the bill. This section adds a new section to the Georgia Code, to be codified at 42-1-19.[86] The section releases from the bill's residency requirement those individuals who are assessed as not posing a substantial risk of perpetrating any future dangerous sexual offense when those individuals reside in a nursing home or hospice facility, are totally and permanently disabled,

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79. SB 157 (SCSFA), § 3, p. 4, ln. 8, 2009 Ga. Gen. Assem.

80. O.C.G.A. § 42-1-12 (Supp. 2010).

81. *Id.* § 42-1-14.

82. *See id.* HB 571 further clarifies a "sexually dangerous predator" as meaning a sexual offender who was designated as a sexually violent predator between the dates of July 1, 1996 and June 30, 2006. *Id.* Further, this classification includes those offenders who were determined by the Sexual Offender Registration Review Board of a court sentencing to be at risk of *perpetrating any future dangerous sexual offense*. *Id.*

83. *See* Harp Interview, *supra* note 3.

84. *Id.*

85. *Id.*; Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587, 645–46.

86. O.C.G.A. § 42-1-19 (2010).

or are otherwise seriously physically incapacitated due to illness or injury.[87] Again, this is an attempt to work toward the goal of isolating only the *truly* dangerous and allowing law enforcement to more properly focus their time and resources, a goal which seems common among most parties. This provision also contributes to the goal of achieving overall constitutionality, because Georgia's courts will likely take issue with the reality of removing elderly and ill offenders from their nursing and hospice homes because of sex offender residency requirements.[88]

The Act differs slightly from the proposed legislation that was SB 157. First, the Act lacks the provision requiring registered offenders to provide e-mail addresses, usernames, and user passwords.[89] This change was made in response to a case "in the U.S. District Court that struck down the requirements to provide email addresses, usernames and passwords as part of the required registration information and entered an injunction prohibiting enforcement of that provision."[90] SB 157 would have removed the requirement to report user passwords, but the requirements to provide e-mail addresses and usernames would have remained.[91]

Further, the Act provides a method for a narrow class of individuals to petition a superior court to seek removal from the registry. Section 15 of the Act provides that those who were convicted of "kidnapping or false imprisonment involving a minor and such offense did not involve a sexual offense against such minor or an attempt to commit a sexual offense against such minor" may petition a superior court for release from registration.[92]

The purpose of the Act can be characterized as intending to achieve two main goals: first, the Act seeks to reshape the law that HB 1059 introduced in 2006 as to meet constitutional scrutiny;[93] and

87. *Id.*

88. As Senator Harp (R-29th) pointedly asks, "What are we supposed to do, roll the bed out in the street? You can't do that. That will never pass constitutional muster." *See* Harp Interview, *supra* note 3.

89. HB 571 (AP), § 5, p. 8, ln. 253, 2010 Ga. Gen. Assem.

90. Video Recording of House Judiciary Non-Civil Committee, Mar. 9, 2010, at 2 min., 26 sec. (remarks by Rep. Rich Golick (R-34th)), http://www.legis.ga.gov/legis/2009_10/house/Committees/judiciaryNonCivil/judyncArchives.htm. *See* Gipson v. Jefferson County Sheriff's Office, 613 F.3d 1054 (11th Cir. 2010).

91. SB 157 (SCSFA), § 1, p. 2, ln. 60, 2009 Ga. Gen. Assem.

92. O.C.G.A. § 42-1-19 (2010).

93. Harp Interview, *supra* note 3.

second, the Act seeks to shape the sex offender registry list in such a way as to identify the truly dangerous sexual predators. Overall, the Act seeks to make Georgia's families and children safer and to allocate resources efficiently to ensure that these offenders will not have the opportunity to strike again.[94]

David Cooper, Donald Prather & Ed Rinderle[95]

94. *Id.*

95. This is an updated version of the Peach Sheet originally published in the Fall 2009 Georgia State University Law Review discussing SB 157. *See* Meredith H. Carr & Hillary Rightler, *Crimes & Offenses*, 26 GA. ST. U. L. REV. 201 (2009).