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CRIMINAL LAW

Controlled Substances: Fines/Forfeiture Fund: Cocaine Task Force

CODE SECTIONS:	O.C.G.A. §§ 16-13-31 (amended), 35-3-9.1 (new) and 35-3-9.2 (new)
BILL NUMBER:	SB 147
ACT NUMBER:	422
EFFECTIVE DATES:	February 12, 1985 and July 1, 1985
SUMMARY:	The Act raises the minimum penalties for conviction of cocaine trafficking. It authorizes the establishment of a Special Cocaine Task Force and a toll free number within the Georgia Bureau of Investigation. It also provides for the purchase, operation and maintenance of a van to educate the public on the dangers of controlled substances.

History

Prior law provided mandatory minimum sentences for cocaine trafficking convictions.[1] The Georgia Supreme Court rejected a challenge to the statute, Ga. Code Ann. § 79A-811(j)(3),[2] which maintained that the statute violated separation of powers by depriving the trial judge of his discretion in imposing a sentence.[3]

O.C.G.A. § 16-13-31 has been interpreted by the courts regarding the meaning of the phrase "cocaine or of any mixture containing cocaine." The Georgia Court of Appeals stated that a specific quantity of cocaine was not required to be present in the mixture to constitute a violation of the Controlled Substances Act as long as the total weight of the mixture containing cocaine was at least twenty-eight grams.[4] In another case the Georgia Supreme Court found that the inclusion of the phrase "cocaine mixtures" in the Act was reasonable because cocaine is usually marketed by mixing it with other substances before it is sold.[5]

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1. O.C.G.A. § 16-13-31(a) (1984).
2. Currently codified at O.C.G.A. § 16-13-30 (Supp. 1985).
3. Paras v. State, 247 Ga. 75, 274 S.E.2d 451, 453 (1981).
4. Belcher v. State, 161 Ga. App. 442, 443, 288 S.E.2d 299, 300 (1982).
5. Lavelle v. State, 250 Ga. 224, 225, 297 S.E.2d 234, 236 (1982).

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SB 147

O.C.G.A. § 16-13-31(a) provides increased minimum penalities for cocaine trafficking. The mandatory minimum term of imprisonment for conviction of trafficking twenty-eight to 199 grams of cocaine is raised from five to ten years and the fine from $50,000 to $100,000. The term for trafficking 200 to 399 grams of cocaine is increased from seven to fifteen years and the fine increased from $100,000 to $250,000. For 400 grams or more, the sentence is raised from fifteen to twenty-five years and the fine from $250,000 to $500,000.

The Act deletes the phrase "or of any mixture containing cocaine."[6] Prosecutors are concerned about possible statutory interpretation requiring a high percentage of cocaine to be present. They are urging the 1986 session of the General Assembly to reinsert the phrase.[7]

O.C.G.A. § 35-3-9.1 authorizes the establishment of a Special Cocaine Task Force within the Georgia Bureau of Investigation (hereinafter GBI) to assist local law enforcement officials in investigating and apprehending those who violate controlled substances laws. It also provides for a toll free telephone number to encourage reporting of suspicious activities, drug trafficking and abuse. This Code section will be repealed on June 30, 1990.

O.C.G.A. § 35-3-9.2 authorizes the GBI to purchase and operate a van to educate the public on the dangers of controlled substances. The van is available for use by schools, organizations and communities free of charge.

6. *Compare* O.C.G.A. § 16-13-31(a) (1984) *with* O.C.G.A. § 16-13-31(a) (Supp. 1985).

7. Interview with Greg Futch, Assistant District Attorney for DeKalb County in Decatur (Sept. 5, 1985).

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