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CRIMES AND OFFENSES

Crimes Against the Person: Increase Penalty for Family Violence Convictions and Reduce the Number of "Free Strikes" for Batterers

CODE SECTIONS:	O.C.G.A. §§ 16-5-23.1, 19-13-32 to -33 (amended)
BILL NUMBER:	SB 610
ACT NUMBER:	746
GEORGIA LAWS:	1996 Ga. Laws 449
SUMMARY:	The Act defines the offense of family violence battery and establishes the punishment for first and subsequent convictions of family violence battery. The Act adds two members to the State Commission on Family Violence and defines the term and authority of its members. The Act also extends the termination date of that Commission.
EFFECTIVE DATE:	July 1, 1996

History

Prior to the enactment of SB 610, the State Commission on Family Violence (Commission) believed that serial batterers were not penalized sufficiently.[1] A batterer could be charged with a felony for battery only if he or she committed the offense of battery against the same person on three occasions.[2] The old law presented a critical problem: it allowed a batterer two "free strikes" against one person, because the batterer faced a felony charge only if he or she battered the same person twice before.[3] The law did not consider that family violence is a pattern of behavior.[4]

Concerned about the growing problem of family violence, the Commission lobbied for tougher penalties against serial batterers.[5] The

1. Interview with Shelley Senterfitt, State Commission on Family Violence, in Atlanta, Ga. (May 1, 1996) [hereinafter Senterfitt Interview].

2. 1987 Ga. Laws 1010, § 1, at 1011 (formerly found at O.C.G.A. § 16-5-23.1(e) (1992)); Senterfitt Interview, *supra* note 1.

3. *Id.* For example, a batterer might abuse one person twice and then abuse a different person later. *Id.* Under this scenario, the batterer could not be charged with a felony, because although it is the third time he or she battered a person, he or she did not batter the same person three times. *Id.*

4. *Id.*

5. *Id.*

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Commission believed that if the state has tough penalties for people found guilty of driving under the influence of alcohol, then it should have equally tough penalties for people found guilty of family violence.[6]

SB 610[7]

Penalties

The primary purpose of the Act is to provide tougher penalties for repeat batterers.[8] Under the previous Code section 16-5-23.1, a batterer was only charged with a felony if he or she committed the offense of battery against the same person three times.[9] The Act, however, allows a felony charge for the second and all subsequent offenses of battery on a family member as defined by Code section 19-13-1.[10] It applies whether the perpetrator commits the battery against the same or different family member.[11]

The Act also amends Code section 16-5-23.1 by providing under subsection (f)(2) that "[i]n no event shall this [section] be applicable to reasonable corporal punishment administered by parent to child."[12] Senator Stokes, sponsor of the bill, explained that the purpose of this provision was to relieve the concern expressed by many parents that they could be held liable for spanking their children.[13] The Act applies only to those instances where a child has black eyes, bruising, swollen limbs, or broken bones as a result of corporal punishment.[14]

State Commission on Family Violence

The Act also amends Code section 19-13-32 by adding two additional members to the Commission.[15] It includes new positions for members

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6. *Id.*

7. SB 610 is a combination of SB 610 and SB 608. Senterfitt Interview, *supra* note 1. SB 610 dealt with charging a batterer with a felony when he or she is convicted of more than one incident of family violence battery. SB 610, as introduced, 1996 Ga. Gen. Assem. SB 608 provided for an additional member to the State Commission, staggered terms for the members, the quorum requirement, and extending the Commission's life. SB 608, as introduced, 1996 Ga. Gen. Assem.

8. Senterfitt Interview, *supra* note 1.

9. 1987 Ga. Laws 1010, § 1, at 1011 (formerly found at O.C.G.A. § 16-5-23.1(d), (e) (1992)).

10. O.C.G.A. § 16-5-23.1(f)(2) (1996).

11. *Id.*

12. *Id.*

13. Telephone Interview with Sen. Connie Stokes, Senate District No. 43 (May 3, 1996) [hereinafter Stokes Interview].

14. *Id.*

15. O.C.G.A. § 19-13-32(a) (Supp. 1996). Senator Stokes pointed out that the original law incorrectly stated the number of commissioners as 36. Stokes Interview, *supra* note 13; *see* 1992 Ga. Laws 1810, § 1, at 1811 (formerly found at O.C.G.A.

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with expertise regarding elder abuse and child abuse.[16] In addition, subsection (c) requires the members of the Commission to have staggered terms.[17] Previously, Commission members held three-year positions, and at the end of their terms, an entirely new Commission was appointed.[18] Under the Act, however, half of the members serve for three years and the other half serve for two years.[19] When the members serving a two-year term leave their positions, the other half of the Commission remains and vice versa.[20]

Section 3 of the Act allows the members of the Commission to determine a quorum for conducting business.[21] This change stemmed from the previous law, which required a majority of the members to be present at the meetings.[22] This requirement proved difficult because many of the members were unable to attend many of the meetings.[23] The Act allows the members to determine quorum requirements.[24]

Finally, Section 4 of the Act extends the Commission's existence until January 1, 2002.[25] This provision gives four more years to a

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§ 19-13-32(a) (Supp. 1995)). When the members on the commission were actually counted, however, there were only 35 members. Stokes Interview, *supra* note 13. Thus, an additional two members totalled 37. *Id.* Additionally, Ms. Senterfitt explained that the law stated that there was to be one judge from each judicial district. Senterfitt Interview, *supra* note 1; *see* 1992 Ga. Laws 1810, § 1, at 1812 (formerly found at O.C.G.A. § 19-13-32(a)(4)(A) (Supp. 1995)). The law provided for eleven judges although there were only ten judicial districts; therefore, the correct number of judges was ten. Senterfitt Interview, *supra* note 1.

16. O.C.G.A. § 19-13-32(a)(4)(C), (D) (Supp. 1996). Ms. Senterfitt explained that it was important to have two more members, one dealing with elder abuse and the other with child abuse, because these problems are components of family violence and there was no member on the Commission qualified to deal with those specific problems. Senterfitt Interview, *supra* note 1.

17. O.C.G.A. § 19-13-32(c) (Supp. 1996).

18. 1992 Ga. Laws 1810, § 1, at 1813 (formerly found at O.C.G.A. § 19-13-32(c) (Supp. 1995)).

19. O.C.G.A. § 19-13-33(c) (Supp. 1996).

20. Senterfitt Interview, *supra* note 1.

21. O.C.G.A. § 19-13-33(b) (Supp. 1996); *see* 1996 Ga. Laws 449, § 3, at 452.

22. 1992 Ga. Laws 1810, § 1, at 1813 (formerly found at O.C.G.A. § 19-13-33(b) (Supp. 1995)).

23. Senterfitt Interview, *supra* note 1.

24. *Id.*

25. 1996 Ga. Laws 449, § 4, at 452. Under the previous law, the Commission was set to expire in 1998. *See* 1992 Ga. Laws 1810, § 2, at 1815.

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commission that "always needs to be in existence, because family violence is not going away anytime soon."[26]

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26. Senterfitt Interview, *supra* note 1. Ms. Senterfitt, however, stated that she can understand why it is given a deadline date, because the General Assembly uses sunset provisions to test the Commission's effectiveness. *Id.*

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