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SOCIAL SERVICES, CRIMES AND OFFENSES

Children and Youth Services: Create Felony Offense of Aiding or Harboring an Escaped Child and Felony Offense of Providing Contraband to a Child Under the Department's Custody; Crimes Against the Person: Include Department of Children and Youth Services Employees Within Definition of Correctional Officer Thereby Increasing Penalties for Aggravated Assault and Aggravated Battery Against Known Employees

CODE SECTIONS:	O.C.G.A. §§ 16-5-21, -24, 49-4A-11 (amended)
BILL NUMBER:	HB 1197
ACT NUMBER:	918
GEORGIA LAWS:	1996 Ga. Laws 988
SUMMARY:	The Act changes the crimes of aiding, assisting, or encouraging a child to escape from the custody of the Department of Children and Youth Services (Department), harboring or sheltering an escaped youth, and hindering the apprehension of an escaped youth from misdemeanors to felonies. It creates the new crime of providing certain illegal and harmful contraband to a child under the custody of the Department and makes it a felony. The Act provides that possession of illegal and harmful contraband by a child in the custody of the Department shall cause the Department to file a delinquency petition and that such possession will be a felony if the youth is seventeen years of age or older. The Act increases the minimum penalties for aggravated assault and aggravated battery on persons known to be employees of the Department by expanding the definition of the term "correctional officer" to include known employees of the Department or those Department employees who have given reasonable identification of their employment.
EFFECTIVE DATE:	July 1, 1996

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History

In recent years, the incidence of crime committed by youths has increased in number and in seriousness.[1] All over the country, state legislators and other officials have responded to their constituents' demands to "get tough on crime."[2] States are increasing the penalties for youths who commit what used to be typically adult crimes.[3]

In 1992, the Department of Children and Youth Services (Department) was created.[4] Prior to the Department's creation, its functions were performed by the Division of Youth Services of the Department of Human Resources (Division).[5] The Code sections providing for the transfer of powers and duties and the establishment of the new state agency did not transfer to the Department all of the laws that were previously applicable to the Division.[6] Specifically, prior to the formation of the Department, it was a crime to provide contraband to a child under the Division's custody.[7] That provision was inadvertently omitted in the Act creating the Department.[8] Thus, there was a need to pass new legislation prohibiting the smuggling of contraband into a Department facility.[9]

Provisions prohibiting aiding and encouraging escape from a Department facility were provided for in the Code sections creating the Department, but the crimes were only misdemeanors.[10] Prior to the Act, Code section 49-4A-11(a) provided that it would be a misdemeanor to knowingly aid, assist, or encourage a child in the custody of the Department to escape or attempt to escape.[11] It also provided that it would be a misdemeanor to harbor, shelter, entertain, encourage, or

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1. Telephone Interview with Rep. Tommy Chambless, House District No. 163 (Apr. 24, 1996) [hereinafter Chambless Interview].

2. *Id.*

3. *Id.*

4. 1992 Ga. Laws 1983, § 24, at 2004 (codified at O.C.G.A. §§ 49-4A-1 to -13 (1994)) (legislation creating the Board of Children and Youth Services and the Department of Children and Youth Services); Telephone Interview with Ron Carter, Office of Law Enforcement Services (Mar. 10, 1996) [hereinafter Carter Interview]; Telephone Interview with Yvonne McBride, Legislative Liaison, Department of Children and Youth Services (June 28, 1996) [hereinafter McBride Interview].

5. Carter Interview, *supra* note 4; McBride Interview, *supra* note 4.

6. 1992 Ga. Laws 1983, § 24, at 2004 (codified at O.C.G.A. §§ 49-4A-1 to -13 (1994)); Carter Interview, *supra* note 4; McBride Interview, *supra* note 4.

7. Carter Interview, *supra* note 4; McBride Interview, *supra* note 4.

8. Carter Interview, *supra* note 4; McBride Interview, *supra* note 4.

9. Carter Interview, *supra* note 4; McBride Interview, *supra* note 4.

10. 1992 Ga. Laws 1983, § 24, at 2020 (formerly found at O.C.G.A. § 49-4A-11 (1994)); McBride Interview, *supra* note 4.

11. 1992 Ga. Laws 1983, § 24, at 2020 (formerly found at O.C.G.A. § 49-4A-11(a) (1994)).

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hinder the apprehension of a child who had escaped custody.[12] As misdemeanors, the penalties for the crimes were not stiff enough to deter many escapees and their accomplices.[13]

Similarly, the penalties for aggravated assault and aggravated battery against Department employees were too lenient to properly deter acts of violence in the Department facilities.[14] Department employees were not given special status as correctional employees, and violent acts committed against them were punished as would be violent acts against ordinary citizens.[15] Formerly, Code sections 16-5-21 and -24, relating to crimes against persons, provided that the definition of "correctional officer" included superintendents, wardens, deputy wardens, guards, and correctional officers of state, county, and municipal penal institutions certified by the Georgia Peace Officer Standards and Training Council.[16] Employees of the Department perform many of the same functions as those performed by persons previously defined as "correctional officers."[17] Thus, the need to deter violence against Department employees required bringing the penalties for attacks by incarcerated juveniles in line with the penalties for attacks against correctional officers by incarcerated adults.[18]

HB 1197

Evolution of the Act

The Act is a combination of two bills, HB 1197 and HB 1593.[19] Both bills were designed to bring penalties in line with those of adult violators.[20] HB 1593 originated when the Commissioner of the Department, Eugene Walker, requested that Representative Tommy Chambless introduce a bill to prohibit the smuggling of contraband to

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12. *Id.* (formerly found at O.C.G.A. § 49-4A-11(b) (1994)).
13. Carter Interview, *supra* note 4; McBride Interview, *supra* note 4.
14. Chambless Interview, *supra* note 1.
15. *Id.*
16. 1985 Ga. Laws 628 (formerly found at O.C.G.A. §§ 16-5-21(e)(1), -24(e)(1) (Supp. 1995)).
17. Chambless Interview, *supra* note 1.
18. *Id.*
19. McBride Interview, *supra* note 4. *Compare* HB 1197, as introduced, 1996 Ga. Gen. Assem. *and* HB 1593, as introduced, 1996 Ga. Gen. Assem. *with* O.C.G.A. §§ 16-5-21, -24 (1996) *and id.* § 49-4A-11 (Supp. 1996).
20. Carter Interview, *supra* note 4; Chambless Interview, *supra* note 1. The bill was fairly uncontroversial. Chambless Interview, *supra* note 1. There were no lobbyists against the bill, and only one representative from the Department spoke in favor of the bill at the Senate Judiciary Committee. *Id.; see* Record of Proceedings in the Senate Judiciary Committee (Mar. 7, 1996) (remarks by Ron Carter, Clayton County Youth Detention Center) [hereinafter Carter Remarks] (available in Georgia State University College of Law Library).

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youths in the Department's custody and stiffen the penalties for aiding and encouraging a youth's escape from Department facilities.[21] These provisions were drafted and introduced as HB 1593.[22] The bill was never called to a vote in the House.[23]

HB 1197's original purpose was to provide stricter penalties for aggravated assault and aggravated battery on a correctional officer working with youths.[24] The need for tougher penalties for youth offenders was brought to the attention of the bill's sponsor, Representative Chambless, at a meeting with juvenile workers in May 1995.[25] The juvenile workers urged Representative Chambless to introduce legislation stiffening the penalties for aggravated assault and aggravated battery against Department employees.[26] HB 1197, as introduced, provided changes to Code sections 16-5-21 and -24 only.[27] It passed in the House and was sent to the Senate, where it was forwarded to the Senate Judiciary Committee.[28]

To expedite both bills' passage, Commissioner Walker submitted to Representative Chambless a substitute bill to HB 1197 that combined the two bills.[29] When the Senate Judiciary Committee discussed HB 1197, Representative Chambless recommended adoption of the substitute version containing the language of HB 1593.[30] The Senate committee accepted the substitute and reported it favorably to the Senate, where it passed and was sent back to the House for concurrence.[31]

Providing Contraband to a Youth in Custody

The Act creates a new felony for knowingly providing to any child under the custody of the Department "a gun, pistol, or any other weapon, any intoxicating liquor," certain controlled substances, any dangerous drug, or any other "harmful, hazardous, or illegal article or item which may be injurious to department personnel."[32] The offense carries a penalty of one to five years imprisonment.[33] The Act also provides that a child at least seventeen years old in the custody of the

21. Chambless Interview, *supra* note 1.
22. HB 1593, as introduced, 1996 Ga. Gen. Assem.
23. Final Composite Status Sheet, Mar. 18, 1996.
24. Chambless Interview, *supra* note 1.
25. *Id.*
26. *Id.*
27. HB 1197, as introduced, 1996 Ga. Gen. Assem.
28. Final Composite Status Sheet, Mar. 18, 1996.
29. Chambless Interview, *supra* note 1.
30. *Id.*
31. Final Composite Status Sheet, Mar. 18, 1996.
32. O.C.G.A. § 49-4A-11(d) (Supp. 1996).
33. *Id.*

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Department found to possess any of these items in violation of the law will be guilty of a felony.[34] A child under seventeen in possession of contraband shall compel the Department to file a delinquency petition in the court.[35]

These provisions regarding contraband were added as a result of an increased problem with youths under Department custody possessing drugs or weapons.[36] The provisions are intended to work in conjunction with the escape provisions in the Act.[37] In one incident at the Clayton County Youth Detention Center, a youth escaped when his girlfriend slipped him a hacksaw.[38] The Department found that no Georgia law penalized the provision of contraband to a youth or the possession of contraband by a youth.[39] The type of contraband "which may be injurious to department personnel" was written to include any item that a youth could use as a weapon, even if it is not a weapon in the traditional sense of the word.[40]

Penalties for Assisting a Youth in Escape from Department Custody

The Act changes the penalties in Code section 49-4A-11 from a misdemeanor to a felony punishable by imprisonment from one to five years for knowingly aiding, assisting, or encouraging a child in the custody of the Department to escape or attempt to escape.[41] It also changes from a misdemeanor to a felony with one to five years imprisonment the offense of harboring, sheltering, or hindering the apprehension of a child who has escaped custody.[42] The penalties were toughened in response to severe problems with youths escaping from the Department.[43]

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34. *Id.* § 49-4A-11(e).
35. *Id.*
36. Chambless Interview, *supra* note 1.
37. Carter Interview, *supra* note 4.
38. Carter Remarks, *supra* note 20.
39. *Id.*; Carter Interview, *supra* note 4.
40. Carter Interview, *supra* note 4; *see* O.C.G.A. § 49-4A-11(d), (e) (Supp. 1996).
41. *Compare* O.C.G.A. § 49-4A-11(a) (Supp. 1996) *with* 1992 Ga. Laws 1983, § 24, at 2020 (formerly found at O.C.G.A. § 49-4A-11(a) (1994)).
42. *Compare* O.C.G.A. § 49-4A-11(b) (Supp. 1996) *with* 1992 Ga. Laws 1983, § 24, at 2020 (formerly found at O.C.G.A. § 49-4A-11(b) (1994)). The phrase "entertain or encourage" a youth who has escaped from the custody of the Department was stricken from the list of prohibited actions in O.C.G.A. § 49-4A-11(b) because the terms were too vague. *Compare* O.C.G.A. § 49-4A-11(b) (Supp. 1996) *with* 1992 Ga. Laws 1983, § 24, at 2020 (formerly found at O.C.G.A. § 49-4A-11(b) (1994)); *see* Chambless Interview, *supra* note 1.
43. Carter Interview, *supra* note 4.

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Department Employees Defined as Correctional Officers

The Act adds employees of the Department to the definition of "correctional officer" in Code sections 16-5-21 and -24.[44] This change effectively increases the penalties for assault and battery on an employee of the Department from misdemeanors to felonies punishable by imprisonment of five to twenty years for aggravated assault and ten to twenty years for aggravated battery.[45]

A House committee substitute limited the increased penalties to situations in which the person assaulted or battered is known to be a Department employee or may be reasonably identified as a Department employee.[46] This knowledge requirement makes it clear that the Act is to protect only Department employees acting in their official capacity and is met if the employee is in uniform or is otherwise identified as a Department employee.[47]

The Act covers all employees, from line officers down to juvenile court officers.[48] It also covers site visitors and youth field workers acting on official Department business.[49] The employee is not required to have regular direct contact with the youths or supervisory responsibilities.[50] For example, if a youth attacked a receptionist, he could be charged with the felony of aggravated assault on a "correctional officer."[51]

Victoria Davis

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44. O.C.G.A. §§ 16-5-21(e)(1), -24(e)(1) (1996).
45. *See id.* §§ 16-5-21(e)(2), -24(e)(2).
46. *Compare* HB 1197 (HCS), 1996 Ga. Gen. Assem. *with* HB 1197, as introduced, 1996 Ga. Gen. Assem.
47. Chambless Interview, *supra* note 1. For example, the Act would not cover an employee that a youth assaulted at the mall on an off-duty Saturday. *Id.*
48. *See* O.C.G.A. §§ 16-5-21(e)(1), -24(e)(1) (1996).
49. *Id.*
50. Chambless Interview, *supra* note 1.
51. *Id.*

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