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SOCIAL SERVICES Public Assistance: Provide Uniform Guidelines for Non-Criminal Disposition of Allegations of Fraud in Obtaining Public Assistance; Provide Lifetime Bar on Receipt of Public Assistance for Those Convicted Twice of Fraud in Obtaining Public Assistance

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SOCIAL SERVICES

Public Assistance: Provide Uniform Guidelines for Non-Criminal Disposition of Allegations of Fraud in Obtaining Public Assistance; Provide Lifetime Bar on Receipt of Public Assistance for Those Convicted Twice of Fraud in Obtaining Public Assistance

CODE SECTION:	O.C.G.A. § 49-4-15 (amended)
BILL NUMBER:	SB 446
ACT NUMBER:	1034
GEORGIA LAWS:	1996 Ga. Laws 1517
SUMMARY:	The Act allows prosecutors to proceed by accusation in cases relating to fraud in obtaining public assistance. It also allows prosecutors to defer prosecution and enter into consent agreements with those accused of such fraud. It further provides that any person who is twice convicted of fraud in obtaining public assistance shall be barred for life from receiving any form of public assistance in Georgia.
EFFECTIVE DATE:	July 1, 1996[1]

History

Prior to the enactment of SB 446, Code section 49-4-15 provided that any person who fraudulently obtained any type of public assistance, food stamps, or Medicaid was guilty of a crime and could be forced to repay the wrongfully obtained benefits to the state.[2] This section, however, did not provide prosecutors with any specific procedural tools to address allegations of welfare fraud.[3] As a result, procedural differences arose between circuits that were prosecuting welfare fraud cases: some district attorneys prosecuted these cases via a grand jury indictment, some prosecuted via accusation,[4] and some used consent

1. Section 3 of the Act provides that the Georgia Department of Human Resources must request any necessary federal waivers to implement the provisions of the Act no later than July 1, 1996 and that for each provision of the Act for which a waiver is both required and received, that provision will become effective 90 days following the receipt of such waiver. The remainder of the Act is effective as of July 1, 1996.

2. 1989 Ga. Laws 466 (formerly found at O.C.G.A. § 49-4-15 (1994)).

3. *See id.*

4. In Georgia, unless a statute specifically permits a prosecutor to proceed via accusation for a certain crime, prosecutors may proceed only via accusation where all parties consent. Telephone Interview with Robert E. Keller, Clayton County District

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decrees.[5] Those district attorneys using consent decrees often did not make clear, either to the accused or on the face of the decree itself, that the consent decree did not constitute a criminal conviction.[6]

In addition, Senator Edward Boshears was concerned that under the previous version of Code section 49-4-14, those persons suspected of welfare fraud were often indicted and a criminal prosecution initiated before they were given notice of and an opportunity to contest the accusation.[7] Under this system, persons who received overpayments due to clerical error, but did not have fraudulent intent, did not learn about the overpayment until they had already been indicted for welfare fraud.[8]

SB 446

SB 446 was originally introduced in the 1995 Session of the General Assembly with substantially different language.[9] The bill passed the Senate in 1995 with only minor revisions.[10] It reflected Senator Boshears' original intent in introducing the bill: allowing those who have unknowingly received welfare overpayments an opportunity to discuss the situation with the district attorney before any indictments

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Attorney (May 2, 1996) [hereinafter Keller Interview].

5. *Id.*

6. *Id.; see also* Telephone Interview with Sen. Edward Boshears, Senate District No. 6 (Apr. 25, 1996) [hereinafter Boshears Interview].

7. Boshears Interview, *supra* note 6. Procedurally, the Department of Human Resources would submit all public assistance payment data to the Office of Fraud and Abuse, which would compile a list of payment discrepancies to be submitted to the appropriate district attorney's office for legal action. *Id.*

8. *Id.*

9. *See* SB 446, as introduced, 1995 Ga. Gen. Assem.

10. *See* SB 446 (HCSFA), 1995 Ga. Gen. Assem. Before its final passage by the Senate in the 1995 Session, five separate amendments to SB 446 were proposed, none of which passed. These amendments, sponsored by Senators Ralson, Newbill, Edge, Clay, Cagle, and Gochenour, would have affected separate sections of title 49 of the Georgia Code and contained provisions that were unrelated to the welfare fraud issues addressed by SB 446. *See* SB 446 (SFA), 1995 Ga. Gen. Assem. The amendments proposed were as follows: (1) to require statistical studies of benefits paid under the Aid to Families with Dependent Children (AFDC) program; (2) to prohibit the denial of AFDC assistance where the principal wage-earner in a home was employed more than 100 hours a month; (3) to change provisions that govern the circumstances under which the birth of an additional child will eliminate the incremental increase in AFDC payments; (4) to require both AFDC recipients and applicants under age eighteen, rather than only applicants under age eighteen, to live with their parents; and (5) to eliminate the money payment portion of AFDC entirely. *Id.* These amendments reflected some Senators' disenchantment with the overall effectiveness of the AFDC program. *See id.*

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are issued.[11] However, the bill remained in the House Special Judiciary Committee until the end of the 1995 Session.[12]

Between the 1995 and 1996 Sessions of the General Assembly, there were discussions among representatives from the Georgia District Attorneys, the Georgia Department of Human Resources, Georgia Legal Aid, and members of the General Assembly.[13] Through these discussions, the Department of Human Resources and the Office of Fraud and Abuse agreed to revise their internal procedures to address Senator Boshears' original concerns in introducing SB 446.[14]

In the 1996 Session, the House Special Judiciary Committee discarded the language of the 1995 version and drafted a committee substitute.[15] The House committee substitute added subsection (d) of the Act, which allows prosecutors to opt out of the standard grand jury indictment method of prosecuting welfare fraud and to proceed by accusation instead.[16] It also added subsection (e), which provides standardized procedures for those accused of welfare fraud to settle the accusation via a consent decree and for restitution of benefits wrongfully obtained.[17] The consent decrees are to be clearly recorded as not constituting criminal convictions.[18] The purpose of these provisions is to provide prosecutors both standardized procedures and greater flexibility in prosecuting welfare fraud claims.[19] Further, by requiring that cases settled by consent decree be clearly marked on the court docket as not being criminal charges, the Act was designed to eliminate any potential misconception among courts, persons signing consent decrees, or other interested parties.[20]

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11. Boshears Interview, *supra* note 6.
12. *Id.*; Final Composite Status Sheet, Mar. 17, 1995.
13. Boshears Interview, *supra* note 6.
14. *Id.; see also* Keller Interview, *supra* note 4. The Department of Human Resources and the Office of Fraud and Abuse, although supportive of Senator Boshears' desire to provide prior notice to welfare fraud suspects, were concerned with the original wording of SB 446. Boshears Interview, *supra* note 6. The original language would have provided limited flexibility for prosecutors to handle welfare fraud claims and would have severely curtailed the powers of the Office of Fraud and Abuse. *Id.; see also* Telephone Interview with Rep. Billy Randall, House District No. 127 (Apr. 29, 1996) [hereinafter Randall Interview].
15. *See* SB 446 (HCS), 1996 Ga. Gen. Assem.
16. O.C.G.A. § 49-4-15(d) (Supp. 1996).
17. *Id.* § 49-4-15(e).
18. *Id.*
19. Keller Interview, *supra* note 4; *see also* Randall Interview, *supra* note 14.
20. Boshears Interview, *supra* note 6; Keller Interview, *supra* note 4.

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Also, the committee substitute provided that after two convictions[21] for welfare fraud, a person is barred for life from receiving any public assistance in Georgia.[22] The provision, known as the "two strikes and you're off" provision, was sponsored by Representative Mike Evans.[23] Its purpose is to save taxpayer dollars lost to welfare fraud and to preserve the pool of welfare dollars for bona-fide recipients.[24]

The Act reflects the language of the House committee substitute and two additional provisions added by House floor amendments. It includes a section requiring the Department of Human Resources to request appropriate federal waivers to implement SB 446 and a section providing for severability of any portion of the Act found unconstitutional.[25] These changes were made to address concerns that the "two strikes and you're off" provision might not receive a required federal waiver, and thus the entire bill would be invalid under the United States Constitution.[26]

Ronald J. Stay

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21. "Conviction" within the meaning of the Act includes only criminal convictions and does not include non-criminal consent decrees entered into under section 1.2 of the Act. *See* SB 446 (HCS), 1996 Ga. Gen. Assem.; O.C.G.A. § 49-4-15(d), (e) (Supp. 1996); Boshears Interview, *supra* note 6.

22. *See* SB 446 (HCS), 1996 Ga. Gen. Assem.

23. Telephone Interview with Rep. Mike A. Evans, House District No. 28 (Apr. 29, 1996).

24. *Id.*

25. O.C.G.A. § 49-4-15 (Supp. 1996); *see* SB 446 (HCS), 1996 Ga. Gen. Assem; SB 446 (HCSFA), 1996 Ga. Gen. Assem.

26. Randall Interview, *supra* note 14. Under federal regulations governing public assistance programs, such as AFDC, any state law that is contrary to the federal regulations must receive a waiver from the appropriate federal agency; otherwise, the state law would be invalid under the Supremacy Clause of the United States Constitution. *Id.*

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