

House Bill 197

By: Representatives Willard of the 40<sup>th</sup>, Oliver of the 56<sup>th</sup>, Post 2, Benfield of the 56<sup>th</sup>, Post 1, Bordeaux of the 125<sup>th</sup>, Campbell of the 39<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and  
2 offenses, so as to state legislative findings; to define criminal negligence; to change the  
3 definition of cruelty to children and to provide for third degree cruelty to children; to provide  
4 for the crime of endangerment of a child under the age of 16; to provide limitations of  
5 criminal liability; to provide for penalties; to provide that the offense is in addition to other  
6 offenses; to provide for related matters; to provide for an effective date and applicability; to  
7 repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA**

9 **SECTION 1.**

10 The General Assembly finds that the State of Georgia is a leader in the nation in its concern  
11 for the protection and well-being of its children. The General Assembly seeks to protect the  
12 well-being of this state's children while preserving the integrity of family discipline. The  
13 General Assembly shares the concern for the protection of victims of domestic violence. The  
14 General Assembly believes that balancing the protection of the health and safety of this  
15 state's children and victims of domestic violence, while preserving a parent's right to  
16 discipline his or her child, is important to all Georgians and vital to the safety of this state's  
17 children.

18 **SECTION 2.**

19 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
20 amended in Code Section 16-2-1, relating to the definition of a crime, by designating the  
21 existing Code section as subsection (a) and adding a new subsection (b) to read as follows:  
22 "(b) Criminal negligence is an act or failure to act which demonstrates a willful, wanton,  
23 or reckless disregard for the safety of others who might reasonably be expected to be  
24 injured thereby."

**SECTION 3.**

Said title is further amended in Code Section 16-5-70, relating to cruelty to children, by striking subsections (c), (d), and (e) and inserting in lieu thereof the following:

"(c) Any person commits the offense of cruelty to children in the second degree when such person with criminal negligence causes a child under the age of 18 cruel or excessive mental or physical pain.

(d) Any person commits the offense of cruelty to children in the third degree when:

(1) Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery;  
or

(2) Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.

~~(d)~~(e)(1) A person convicted of the offense of cruelty to children in the first degree as provided in this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

(2) A person convicted of the offense of cruelty to children in the second degree shall be punished by imprisonment for not less than one nor more than ten years.

(3) A person convicted of the offense of cruelty to children in the third degree shall be punished as for a misdemeanor upon the first or second conviction. Upon conviction of a third or subsequent offense of cruelty to children in the ~~second~~ third degree, the defendant shall be guilty of a felony and shall be sentenced to a fine not less than \$1,000.00 nor more than \$5,000.00 or imprisonment for not less than one year nor more than three years or shall be sentenced to both fine and imprisonment."

**SECTION 4.**

Said title is further amended by adding a new Code Section 16-5-73 to follow Code Section 16-5-72, relating to reckless abandonment, to read as follows:

"16-5-73.

(a) A person having immediate control or custody of a child under the age of 16 commits the offense of endangering a child if the person intentionally or with criminal negligence places the child in imminent danger of:

(1) Death; or

(2) Cruel or excessive physical or mental pain.

(b) A person having immediate control or custody of a child under the age of 16 may not be held criminally liable under this Code section if there was a reasonable apprehension in the mind of the person having immediate control or custody of the child that an act or

1 failure to act was justified because the person having immediate control or custody of the  
2 child has been the victim of an act of family violence as defined in Code Section 19-13-1.

3 (c) Any person who violates subsection (a) of this Code section shall be guilty of a  
4 misdemeanor.

5 (d) Any violation of this Code section shall be in addition to any other offense as provided  
6 by law.

7 (e) Nothing in this Code section shall prohibit the use of the affirmative defense of:

8 (1) Justification where a parent or person in loco parentis conducts reasonable discipline  
9 of a child under the age of 16 as provided in paragraph (3) of Code Section 16-3-20; or

10 (2) Any other affirmative defense as provided by law."

11 **SECTION 5.**

12 This Act shall become effective on July 1, 2003, and shall apply to all crimes which occur  
13 on or after that effective date.

14 **SECTION 6.**

15 All laws and parts of laws in conflict with this Act are repealed.