

The House Committee on Judiciary offers the following substitute to HB 197:

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA

SECTION 1.

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

SECTION 2.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended in Code Section 16-2-1, relating to the definition of a crime, by designating the existing Code section as subsection (a) and adding a new subsection (b) to read as follows:

"(b) Criminal negligence is an act or failure to act which demonstrates a willful disregard or wanton and reckless disregard for the safety of others who might reasonably be expected to be 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) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

1 (c) Any violation of this Code section shall be in addition to any other offense as provided
2 by law.

3 (d) Nothing in this Code section shall prohibit the use of the affirmative defense of:

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

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

7 **SECTION 5.**

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

10 **SECTION 6.**

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