

House Bill 1108

By: Representatives Willard of the 40th, Burkhalter of the 36th, Golick of the 34th, Post 3, O`Neal of the 117th, Williams of the 4th, and Bordeaux of the 125th

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 define criminal negligence; to provide for legislative findings and intent;
3 to change the definition of cruelty to children and to provide for third degree cruelty to
4 children; to provide for penalties; to provide for definitions; to make it unlawful for persons
5 to engage in certain activities associated with manufacturing or possessing methamphetamine
6 in the presence of children; to redefine the term "serious injury" to include sexual abuse of
7 a minor under the age of 16 years; to provide for related matters; to provide for an effective
8 date and applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 The General Assembly seeks to protect the well-being of this state's children while
12 preserving the integrity of family discipline. The General Assembly believes that balancing
13 the protection of the health and safety of this state's children, while preserving a parent's
14 right to discipline his or her child, is important to all Georgians and vital to the safety of this
15 state's children.

16 **SECTION 2.**

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

~~(e)~~(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 to read as follows:

"16-5-73.

(a) As used in this Code section, the term:

(1) 'Chemical substance' means anhydrous ammonia as defined in Code Section 16-11-111, ephedrine, pseudoephedrine, or phenylpropanolamine, as those terms are defined in Code Section 16-13-30.3, or any other chemical used in the manufacture of methamphetamine.

(2) 'Child' means any individual who is under the age of 18 years.

(3) 'Intent to manufacture' means conduct that is demonstrated by the chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture methamphetamine.

1 (4) 'Methamphetamine' means methamphetamine, amphetamine, or any mixture
2 containing either methamphetamine or amphetamine, as described in Code Section
3 16-13-26.

4 (5) 'Serious injury' means an injury involving a broken bone, the loss of a member of the
5 body, the loss of use of a member of the body, or the substantial disfigurement of the
6 body or of a member of the body or an injury which is life threatening.

7 (b)(1) Any person who knowingly causes or permits a child to be present where any
8 person is manufacturing or possessing methamphetamine or a chemical substance with
9 the intent to manufacture methamphetamine shall be guilty of a felony and, upon
10 conviction thereof, shall be punished by imprisonment for not less than two nor more
11 than 15 years.

12 (2) Any person who violates paragraph (1) of this subsection wherein a child receives
13 serious injury as a result of such violation shall be guilty of a felony and, upon conviction
14 thereof, shall be punished by imprisonment for not less than five nor more than 20 years."

16 SECTION 5.

17 Said title is further amended in Code Section 16-12-1, relating to contributing to the
18 delinquency, unruliness, or deprivation of a minor, by striking paragraph (4) of subsection
19 (a) and inserting in lieu thereof the following:

20 "(4) 'Serious injury' means an injury involving a broken bone, the loss of a member of
21 the body, the loss of use of a member of the body, ~~or~~ the substantial disfigurement of the
22 body or of a member of the body, ~~or~~ an injury which is life threatening, or any sexual
23 abuse of a child under 16 years of age by means of an act described in subparagraph
24 (a)(4)(A), (a)(4)(G), or (a)(4)(I) of Code Section 16-12-100."

25 SECTION 6.

26 This Act shall become effective on July 1, 2004, and shall apply to all crimes which occur
27 on or after that date.

28 SECTION 7.

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