

Senate Bill 1

By: Senators Meyer von Bremen of the 12th, Brown of the 26th, Kemp of the 3rd, Butler of the 55th, Jackson of the 50th and others

**AS PASSED SENATE**

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 the crime of endangerment of a child under the age of 16; to provide  
5 limitations of criminal liability; to provide for penalties; to provide that the offense is in  
6 addition to other offenses; to redefine the term "serious injury" to include sexual abuse of a  
7 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 finds that the State of Georgia is a leader in the nation in its concern  
12 for the protection and well-being of its children. The General Assembly seeks to protect the  
13 well-being of this state's children while preserving the integrity of family discipline. The  
14 General Assembly shares the concern for the protection of victims of domestic violence. The  
15 General Assembly believes that balancing the protection of the health and safety of this  
16 state's children and victims of domestic violence, while preserving a parent's right to  
17 discipline his or her child, is important to all Georgians and vital to the safety of this state's  
18 children.

19 **SECTION 2.**

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

23 "(b) Criminal negligence is an act or failure to act which demonstrates a willful, wanton,  
24 or reckless disregard for the safety of others who might reasonably be expected to be  
25 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 in said Code Section 16-5-70 by inserting a new subsection (f) to read as follows:

"(f) The offense of cruelty to children in the third degree shall not be merged with a forcible felony, battery, or family violence battery, nor shall such offense be merged into another violation of cruelty to children in the third degree, and each violation shall be considered a separate offense."

**SECTION 5.**

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:

1 "16-5-73.

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

5 (1) Death; or

6 (2) Cruel or excessive physical or mental pain.

7 (b) A person may not be held criminally liable under this Code section if the person  
8 reasonably believed that the act or failure to act could result in cruel or excessive mental  
9 or physical pain caused by the family violence primary aggressor.

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

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

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

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

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

18 **SECTION 6.**

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

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

27 **SECTION 7.**

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

30 **SECTION 8.**

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