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## CRIMES AND OFFENSES Offenses Against Public Order and Safety: Prohibit Use of Computer or Computer Networks to Facilitate Other Offenses

Mark A. McCarty

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## CRIMES AND OFFENSES

### *Offenses Against Public Order and Safety: Prohibit Use of Computer or Computer Network to Facilitate Other Offenses*

CODE SECTIONS: O.C.G.A. §§ 16-11-37.1 (new), -39 (amended), -39.1 (new), -151 (amended), 16-13-32.3 (amended)

BILL NUMBER: HB 76

ACT NUMBER: 322

GEORGIA LAWS: 1995 Ga. Laws 574

SUMMARY: The Act prohibits the use of a computer or computer network to facilitate the commission of drug-related felonies, to solicit or encourage terroristic acts, or to train individuals in the use of dangerous weapons or instrumentalities for purposes of civil unrest. Additionally, the Act amends the disorderly conduct statute and creates the offense of harassing phone calls.

EFFECTIVE DATE: July 1, 1995

#### *History*

##### *Computer Networks and the Dissemination of Illegal or Dangerous Information*

The advent of wide-area computer networks, such as the Internet and computer bulletin boards, has eased communication between individuals and dramatically increased access to information.<sup>1</sup> However, not all of the consequences of this emerging technology are positive.<sup>2</sup> For example, not long after the April 19, 1995 bombing of the federal building in Oklahoma City, a recipe for a bomb similar to the one used in that incident was posted on the Internet.<sup>3</sup> Moreover, a regular discussion group exists on the Internet for those interested in

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1. Rex S. Heinke & Heather D. Rafter, *Rough Justice in Cyberspace: Liability on the Electronic Frontier*, COMPUTER LAW., July 1994, at 1.

2. *See id.*

3. Dennis Romero, *Are Amateurs Now a Terrorist Threat?*, TORONTO STAR, Apr. 26, 1995, at A17.

manufacturing and handling explosives.<sup>4</sup> Volumes of information contained in publications with names like “The Anarchist’s Cookbook,” “The Terrorist’s Handbook,” and “The Big Book of Mischief” are all available online.<sup>5</sup> In addition, communication forums on computer networks can be, and have been, used to make contacts for the sale of illegal drugs or even to post instructions on how to make or use illegal drugs.<sup>6</sup> No specific regulation of communications via computer or computer network, regardless of content, existed until recently.<sup>7</sup> Although no Georgia criminal statute of general application has been held inapplicable to computer communications, Representative Vinson Wall became concerned about the issue and sought to add express provisions to Georgia statutes that would prohibit use of computer networks to achieve criminal ends.<sup>8</sup>

#### *Georgia Disorderly Conduct Statute Held Unconstitutional*

Code section 16-11-39(3) formerly prohibited engaging in “indecent or disorderly conduct in the presence of another in any public place.”<sup>9</sup> In 1990, however, the Supreme Court of Georgia declared the Code section unconstitutional in *Satterfield v. State*.<sup>10</sup> The court overturned the conviction of Darrel G. Satterfield, who had been charged with violating the statute “by massaging his groin with both hands and gyrating his hips in a sexual manner in the presence of [a police] investigator in a public place.”<sup>11</sup> Satterfield originally pled nolo contendere to that charge but later appealed the prosecution.<sup>12</sup> On review, the

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4. Michelle V. Rafter, *Oklahoma Blast Sets Off Censorship Debate on Internet Group*, REUTER BUS. REP., Apr. 26, 1995.

5. Steve Marlowe, *Cops Get Copies of Napalm Recipe; Kids Had Formula on Computer Disks*, THE RECORD, Apr. 20, 1995, at A1; Rafter, *supra* note 4; Romero, *supra* note 3, at A17.

6. David Hipschman, *Responding to ‘Bad Stuff’ on Internet*, SAN FRAN. CHRON., Apr. 18, 1995, at A15; *Student Aided Spread of Hallucinogen*, CHI. TRIB., Jan. 23, 1995, at M4.

7. Steven Levy, *A Bad Day in Cyberspace*, NEWSWEEK, June 26, 1995, at 47; Heinke, *supra* note 1.

8. Telephone Interview with Rep. Vinson Wall, House District No. 82 (Apr. 27, 1995) [hereinafter Wall Interview].

9. 1968 Ga. Laws 1249 (formerly found at O.C.G.A. § 16-11-39(3) (1992)).

10. *Satterfield v. State*, 395 S.E.2d 816, 817 (Ga. 1990).

11. *Id.* at 817.

12. *Id.*

Supreme Court of Georgia held that Code section 16-11-39(3) was unconstitutional because it did not “provide fair warning to persons of ordinary intelligence as to what it prohibits so that they may act accordingly.”<sup>13</sup>

The court’s decision in *Satterfield* eliminated a useful tool in expediting cases and plea bargains in Georgia courts.<sup>14</sup> Prior to the court’s decision in *Satterfield*, Code section 16-11-39(3) was a popular and easily proved lesser charge to which defendants pled guilty in exchange for dismissal of more serious and difficult to prove charges.<sup>15</sup> Senator David Ralston introduced SB 420 in response to requests from state prosecutors for a valid disorderly conduct statute.<sup>16</sup> When SB 420 failed to win approval, its language was attached to HB 76 by floor amendment.<sup>17</sup>

### HB 76

The Act accomplishes two distinct tasks by adding and amending several separate Code sections.<sup>18</sup> In an attempt to prohibit various forms of conduct involving the use of a computer or computer network, two Code sections were amended and one Code section was added.<sup>19</sup> The Act addresses the need for a disorderly conduct statute by amending Code section 16-11-39 and adding section 16-11-39.1.<sup>20</sup>

The Act first amends Code section 16-13-32.3 by adding computer or computer networks to the definition of “communication facility” in the statute prohibiting the use of a communication facility to aid a drug-related felony.<sup>21</sup> Second, the Act adds Code section 16-11-37.1 prohibiting the distribution through a computer network of pictures or descriptions that would encourage or promote terroristic acts.<sup>22</sup> Third, the Act amends Code section 16-11-151 to prohibit the direct training or

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13. *Id.*

14. Telephone Interview with Sen. David Ralston, Senate District No. 51 (June 8, 1995) [hereinafter Ralston Interview].

15. *Id.*

16. *Id.*

17. *Id.*

18. 1995 Ga. Laws 574.

19. *Id.*

20. *Id.*

21. O.C.G.A. § 16-13-32.3 (Supp. 1995).

22. *Id.* § 16-11-37.1.

demonstration of dangerous weapons or instrumentalities for purposes of civil disorder, and training or demonstration through a writing or computer network.<sup>23</sup>

In an attempt to reestablish a viable disorderly conduct offense, the Act also amends Code section 16-11-39 and creates Code section 16-11-39.1.<sup>24</sup> Code section 16-11-39 outlines four forms<sup>25</sup> of specific conduct which are characterized as disorderly.<sup>26</sup> New Code section 16-11-39.1 establishes the offense of harassing phone calls, which had previously been included in the list of offenses in Code section 16-11-39.<sup>27</sup>

### *Computer or Computer Networks*

Section 1 of the Act adds “computer or computer network” to the illustrative list of communication facilities contained in Code section 16-13-32.3.<sup>28</sup> This Code section prohibits the use of any such communication facility “in committing or in causing or facilitating the commission of any act or acts constituting a felony under this chapter.”<sup>29</sup>

Representative Wall’s initial version of HB 76 included a section making it a misdemeanor for an individual to “knowingly furnish or disseminate through a computer or computer network any . . . visual representation or verbal description of any information relating to the sale or procurement of drugs.”<sup>30</sup> The House Judiciary Committee believed that such a prohibition, as it relates to drugs, was unnecessary and removed the provision in its substitute.<sup>31</sup>

However, when the bill reached the Senate Judiciary Committee, the Committee decided that the provision would be useful and offered a substitute with similar language to the original version, but which moved “knowingly” to a position before the infinitive “to” and changed “sale or procurement of drugs” to “illegal sale or procurement of marijuana or controlled

23. *Id.* § 16-11-151.

24. *Id.* §§ 16-11-39, -39.1.

25. *See infra* notes 47-52 and accompanying text.

26. O.C.G.A. 16-11-39 (Supp. 1995).

27. *Id.* § 16-11-39.1.

28. *Id.* § 16-13-32.3.

29. *Id.*

30. HB 76, as introduced, 1995 Ga. Gen. Assem.

31. Wall Interview, *supra* note 8; *see* HB 76 (HCS), 1995 Ga. Gen. Assem.

substances.”<sup>32</sup> The relocation of the word “knowingly” was intended to ensure that the mens rea element would apply to both the actions of furnishing and disseminating.<sup>33</sup> The replacement of “sale or procurement of drugs” with a specific reference to “illegal drugs” was sparked by concerns of the pharmacy industry that the transmission of prescriptions or drug information via computer could be inadvertently prohibited.<sup>34</sup> The replacement language clarified that only the transmission of information relating to illegal drugs would be prohibited.<sup>35</sup>

When the Senate Judiciary Committee substitute reached the floor of the House for concurrence, Representative Wall added several other related provisions and changed the drug provision to its final form.<sup>36</sup> Although everyone believed that the catch-all phrase defining “communication facility” in Code section 16-13-32.3 included computers or computer networks, the General Assembly wanted to ensure that computers and computer networks were expressly covered.<sup>37</sup> The final form of this provision is narrower than Representative Wall’s original provision, which would have reached any communication relating to the sale of drugs rather than just those made in furtherance of a drug-related felony.<sup>38</sup>

### *Terroristic Acts*

Section 2 of the Act creates Code section 16-11-37.1, which makes it “unlawful for any person knowingly to furnish or disseminate through a computer or computer network any . . . visual representation or verbal description . . . designed to encourage, solicit, or otherwise promote terroristic acts as defined in Code Section 16-11-37.”<sup>39</sup> Although this particular

32. HB 76 (SCS), 1995 Ga. Gen. Assem.

33. Wall Interview, *supra* note 8.

34. Wall Interview, *supra* note 8.

35. Wall Interview, *supra* note 8.

36. Wall Interview, *supra* note 8; compare HB 76, (SCS), 1995 Ga. Gen. Assem. with HB 76 (HFA), 1995 Ga. Gen. Assem.

37. Wall Interview, *supra* note 8.

38. Wall Interview, *supra* note 8.

39. O.C.G.A. § 16-11-37.1 (Supp. 1995). Terroristic acts are defined in Code section 16-11-37(b) and include cross-burning and throwing objects at moving passenger automobiles. 1968 Ga. Laws 1249 (codified at O.C.G.A. § 16-11-37(b)(1) (1992)) (cross burning); 1974 Ga. Laws 1023 (codified at O.C.G.A. § 16-11-37(b)(2) (1992)) (throwing objects at vehicles).

provision was included in HB 76 as introduced, the House Judiciary Committee's substitute removed it.<sup>40</sup> However, Representative Wall's floor amendment reinstated this provision with the single change that "knowingly" was moved to a position before the infinitive "to" in order to clarify the necessary mens rea.<sup>41</sup> Although courts had consistently applied Code section 16-11-37 to cover conduct utilizing computers or computer networks, the addition of Code section 16-11-37.1 codifies this interpretation.<sup>42</sup>

### *Dangerous Weapons and Devices*

Section 4 of the Act amends Code section 16-11-151 by adding express language clarifying that "teach[ing], train[ing] or demonstrat[ing] . . . the use, application, or making of any illegal firearm, dangerous weapon, explosive, or incendiary device capable of causing injury or death [is prohibited] either directly or through a writing or over or through a computer or computer network."<sup>43</sup> The previous version of Code section 16-11-151 had simply prohibited the conduct regardless of the medium through which such conduct was accomplished.<sup>44</sup> Once again, no specific problem existed with the application of the prior law to such conduct involving a computer or computer network, but the express provision was added to avoid such a problem in the future.<sup>45</sup>

### *Disorderly Conduct*

Section 3 of the Act establishes four distinct acts that are prohibited as misdemeanor disorderly conduct in the amended version of Code section 16-11-39.<sup>46</sup> Specifically, the new Code section prohibits (1) "violent or tumultuous" actions that place another person in reasonable fear of life or limb, (2) "violent or tumultuous" actions whereby property of another person is placed

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40. Compare HB 76, as introduced, 1995 Ga. Gen. Assem. with HB 76 (HCS), 1995 Ga. Gen. Assem.

41. O.C.G.A. § 16-11-37.1 (Supp. 1995); Wall Interview, *supra* note 8.

42. Wall Interview, *supra* note 8.

43. O.C.G.A. § 16-11-151 (Supp. 1995).

44. 1987 Ga. Laws 866 (formerly found at O.C.G.A. § 16-11-151 (1992)).

45. Wall Interview, *supra* note 8.

46. O.C.G.A. § 16-11-39 (Supp. 1995).

in danger, (3) the use of "fighting words" in the presence of another, and (4) the use of obscene or vulgar language to a minor that threatens a breach of the peace.<sup>47</sup> The provisions dealing with the use of fighting words and the use of obscene or vulgar language to a minor were in the version of the statute that was declared unconstitutional in *Satterfield*.<sup>48</sup> These provisions had previously been established as constitutional and were not affected by the decision.<sup>49</sup> The provisions dealing with violent and tumultuous actions that place either an individual or an individual's property in jeopardy were added to the statute as a means of including the two types of conduct that were of most concern and that had previously been prosecuted under the unconstitutional portion of the former statute.<sup>50</sup> The particular language used was modeled after several municipal ordinances that had survived constitutional challenges.<sup>51</sup>

Section 3 of the Act also creates Code section 16-11-39.1, which prohibits various types of telephone calls intended to harass the receiving party.<sup>52</sup> The same conduct had been prohibited in the former version of Code section 16-11-39, which the Georgia Supreme Court held unconstitutional.<sup>53</sup> The offense of harassing phone calls is set out in a separate Code section in the Act simply as a means of logically dividing the differing subject matter of the two offenses.<sup>54</sup>

47. *Id.*

48. 1974 Ga. Laws 470 (formerly found at O.C.G.A. § 16-11-39(1) (1992)) (fighting words); 1968 Ga. Laws 1249, 1316 (formerly found at O.C.G.A. § 16-11-39(2) (1992)) (obscene language and minors); see *supra* notes 10-13 and accompanying text.

49. See *Satterfield v. State*, 395 S.E.2d 816 (Ga. 1990); see also *Lamar v. Banks*, 684 F.2d 714 (11th Cir. 1982); *Breaux v. State*, 197 S.E.2d 695 (Ga. 1973).

50. Ralston Interview, *supra* note 14.

51. Ralston Interview, *supra* note 14. One ordinance used as a model was the ordinance currently in effect in the City of Atlanta. Ralston Interview, *supra* note 14.

52. O.C.G.A. § 16-11-39.1 (Supp. 1995).

53. 1968 Ga. Laws 1249 (formerly found at O.C.G.A. § 16-11-39 (1992)). The harassing phone calls provision of O.C.G.A. § 16-11-39(4) was not challenged in *Satterfield* and had itself been declared constitutionally permissible in *Constantino v. State*, 255 S.E.2d 710 (Ga.), *cert. denied*, 390 U.S. 911 (1979).

54. Ralston Interview, *supra* note 14.



The disorderly conduct and harassing phone calls provisions originally appeared in the General Assembly as elements of SB 420, introduced by Senator David Ralston.<sup>55</sup> SB 420 would have prohibited violent or tumultuous actions against individuals who reasonably believed that such actions placed their life, health, or property in danger.<sup>56</sup> Advocates for abused women, however, believed that the bill as drafted might encompass actions taken by abused women in retaliation against, or to deter, their abusers.<sup>57</sup> Responding to those concerns, prior to reintroducing the language as a floor amendment to HB 76, Senator Ralston divided the provisions of the bill into actions that reasonably place an individual in fear of death or bodily harm and actions that place property in danger of being damaged.<sup>58</sup>

*Mark A. McCarty*

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55. SB 420, as introduced, 1995 Ga. Gen. Assem.

56. *Id.*

57. Ralston Interview, *supra* note 14.

58. Ralston Interview, *supra* note 14; O.C.G.A. § 16-11-39 (Supp. 1995).