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CRIMES AND OFFENSES Criminal Attempt, Conspiracy, and Solicitation: Enact "Georgia's Homeland Defense Act;" Define, Prohibit, and Punish the Activity of Domestic Terrorism; Provide That the Commission of Murder in the Course of Domestic Terrorism Be an Aggravating Circumstance for the Purpose of Applying the Death Penalty; Provide That Domestic Terrorism Activity Shall Be Subject to the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act"

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CRIMES AND OFFENSES

Criminal Attempt, Conspiracy, and Solicitation: Enact “Georgia's Homeland Defense Act;” Define, Prohibit, and Punish the Activity of Domestic Terrorism; Provide That the Commission of Murder in the Course of Domestic Terrorism Be an Aggravating Circumstance for the Purpose of Applying the Death Penalty; Provide That Domestic Terrorism Activity Shall Be Subject to the “Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act”

CODE SECTION:	O.C.G.A. §§ 16-4-9 (amended), -10 (new), 16-14-3 (amended)
BILL NUMBER:	SB 320
ACT NUMBER:	956
GEORGIA LAWS:	2002 Ga. Laws 1284
SUMMARY:	The Act defines the crime of domestic terrorism, includes it under crimes covered by Georgia's RICO Act, and provides for the maximum punishment for the crime. Finally, the Act provides that murder committed in the course of domestic terrorism will be considered an aggravating circumstance for the purpose of applying the death penalty.
EFFECTIVE DATE:	May 16, 2002

History

Following the September 11, 2001 terrorist attacks, individual states began to address security and possible future acts of terrorism within their own borders.¹ Even when federal agencies are involved because of a possible federal offense, acts of terrorism that occur on state property may also violate state laws, or make the state liable,

1. Elizabeth Benjamin, *Out of the Heart of Darkness*, 27 ST. LEGIS. 13 (Dec. 1, 2001). For a listing of individual states' responses to the attacks, see National Conference of State Legislatures, State Offices of Homeland Security at www.ncst.org/programs/legman/nlssa/sthomelandoffcs.htm. (last visited May 1, 2002).

and so require state laws.² Thus, Georgia's General Assembly felt the need to enact legislation should such an event occur.³ Among other items, the General Assembly intended to define and establish penalties for the crime of domestic terrorism, so that law enforcement and the courts would be better able to function if faced with similar acts "spurred by politics at the state level [in Georgia], 'whether it [was] abortion, the Northern Arc, a new power plant or the Olympic bombing.'"⁴

SB 320

Introduction

Senators Eric Johnson, Thomas Price, Bill Stephens, Robert Lamutt, Mitch Seabaugh, and Mike Beatty of the 1st, 56th, 51st, 21st, 28th, and 47th Districts, respectively, sponsored SB 320.⁵ The bill was introduced on January 15, 2002.⁶ The Senate assigned the bill to the Judiciary Committee.⁷ The Judiciary Committee favorably reported the bill, as substituted, on March 1, 2002.⁸ Senator Eric Johnson presented the bill to the Senate on March 8, 2002, and the Senate passed the bill on the same day.⁹ SB 320 was introduced in the House on March 18, 2002.¹⁰ The bill was referred to the House Public Safety Committee, which favorably reported the bill, as substituted, on April 2, 2002.¹¹ Representative John Wiles of the

2. Telephone Interview with Professor Robbie Friedmann, Chairman, Georgia State University Criminal Justice Department (June 26, 2002) [hereinafter Friedmann interview]. Professor Friedmann pointed out that Centennial Park, where the Olympic bombing occurred in 1996, is state property as are other possible targets, such as Georgia Tech and Georgia State University. *Id.* Georgia needs laws on the books for law enforcement and the courts to deal with such situations. *Id.*

3. See Add Seymour Jr., *2002 Georgia Legislature: Security Bills High on Lawmakers' Agenda*, ATLANTA J. CONST., Jan. 24, 2002, at 1; Duane D. Stanford, *2002 Georgia Legislature: Homeland Security: Economics Will Limit Safety Measures*, ATLANTA J. CONST., Jan. 13, 2002, at B4. Georgia's responses to the attacks included creating the Georgia Information Sharing and Analysis Center, where state officials will develop information about possible threats to public safety and share the information with local, federal, and international authorities. *Id.*

4. *METRO: General Assembly Notebook*, FL. TIMES-UNION, Mar. 9, 2002, at B4 (quoting Sen. Eric Johnson).

5. HB 320, as introduced, 2002 Ga. Gen. Assem.

6. State of Georgia Final Composite Status Sheet, SB 320, Apr. 12, 2002.

7. *Id.*

8. *Id.*

9. *Id.*; Audio Recording of Senate Proceedings, Mar. 8, 2002 (remarks by Sen. Eric Johnson), at <http://www.state.ga.us/services/leg/audio/2002archive> [hereinafter Senate Audio I].

10. State of Georgia Final Composite Status Sheet, SB 320, Apr. 12, 2002.

11. *Id.*

34th District presented the bill to the House on April 9, 2002, and the House passed the bill on the same day.¹² Governor Roy Barnes signed the bill into law on May 16, 2002.¹³

Consideration by the Senate Judiciary Committee

SB 320 was introduced on January 15, 2002 and was referred to the Senate Judiciary Committee.¹⁴ The Senate Judiciary Committee substituted new Code section 16-4-10 for the originally proposed Code section 16-11-37.¹⁵ As introduced, SB 320 defined domestic terrorism by amending the existing terroristic threats statute, which was related to domestic violence.¹⁶ Instead, the Senate Judiciary Committee decided to define domestic terrorism in a new Code section, in order to preserve the domestic violence Code section.¹⁷ The new Code section, 16-4-10, defined a new crime of domestic terrorism, under Chapter 4 (Criminal Attempt, Conspiracy, and Solicitation) of Title 16 (Crimes and Offenses).¹⁸

Section 3 of SB 320, as introduced, proposed to amend Code section 16-11-44, relating to interception of electronic or oral communications for law enforcement purposes.¹⁹ This section allowed a single warrant for the use of one or more surveillance devices by law enforcement agencies in a suspected domestic terrorism investigation.²⁰ The single warrant also allowed for the observation of one or more activities if probable cause existed that the suspect was engaged in domestic terrorist activities.²¹ The Senate Judiciary Committee removed the entire section from SB 320 because another bill dealt with wiretapping and surveillance issues of domestic terrorism investigations.²²

12. *Id.*; Audio Recording of House Proceedings, Apr. 9, 2002 at <http://www.state.ga.us/services/leg/audio/2002archive>.

13. State of Georgia Final Composite Status Sheet, SB 320, Apr. 12, 2002.

14. *Id.*

15. Compare SB 320, as introduced, 2002 Ga. Gen. Assem., with SB 320 (SCS), 2002 Ga. Gen. Assem.

16. SB 320, as introduced, 2002 Ga. Gen. Assem.

17. Senate Audio I, *supra* note 9.

18. SB 320 (SCS), 2002 Ga. Gen. Assem.

19. SB 320, as introduced, 2002 Ga. Gen. Assem.

20. *Id.*

21. *Id.*

22. Senate Audio I, *supra* note 9. Compare SB 320, as introduced, 2002 Ga. Gen. Assem., with SB 320 (SCS), 2002 Ga. Gen. Assem.

Section 4 of SB 320, as introduced, proposed to add the act of domestic terrorism to the definition of pattern of racketeering activity as the Georgia RICO Act defines it.²³ The Senate Judiciary Committee changed the wording of this section only as it referred to the definition of domestic terrorism, citing to the new proposed Code section 16-4-10, instead of Code section 16-11-37 as originally planned, keeping the new crime of domestic terrorism squarely within the reach of the Georgia RICO Laws.²⁴

Section 5 of SB 320, as introduced, proposed to add the act of domestic terrorism to the enumerated crimes for which the death penalty may be authorized under Code section 17-10-30.²⁵ Instead, the Senate Judiciary Committee proposed incorporating the reference to the death penalty statute into the new definitional Code section 16-4-10(c), so that domestic terrorism could be considered an aggravating circumstance for which the death penalty could be authorized.²⁶

The Senate Judiciary Committee favorably reported the bill, as substituted, on March 1, 2002.²⁷

Consideration in the Senate

Senator Johnson introduced SB 320 on March 8, 2002.²⁸ Senator Ed Harbison of the 15th District questioned the provision regarding the use of the single warrant, but was assured that the section was removed because it was dealt with in another bill.²⁹ Senator Vincent Fort of the 39th District questioned whether a crime, such as the bombing of a gay nightclub, would qualify under the new law as an act of domestic terrorism.³⁰ According to Senator Johnson, if the bombing was intended to kill more than ten people and to intimidate

23. SB 320, as introduced, 2002 Ga. Gen. Assem.

24. *Compare* SB 320, as introduced, 2002 Ga. Gen. Assem., with SB 320 (SCS), 2002 Ga. Gen. Assem.

24. *Compare* SB 320, as introduced, 2002 Ga. Gen. Assem., with SB 320 (SCS), 2002 Ga. Gen. Assem.

25. SB 320, as introduced, 2002 Ga. Gen. Assem.

26. *Compare* SB 320, as introduced, 2002 Ga. Gen. Assem., with SB 320 (SCS), 2002 Ga. Gen. Assem.

27. State of Georgia Final Composite Status Sheet, SB 320, Apr. 12, 2002.

28. Senate Audio I, *supra* note 9.

29. *Id.*

30. *Id.*

the civilian population (here, the gay population), such a crime would be considered domestic terrorism, under the proposed bill.³¹

The Senate passed SB 320 unanimously on March 8, 2002.³²

Consideration in the House

The Senate version was introduced in the House on March 18, 2002.³³ The House Public Safety Committee favorably reported the bill, with one change, on April 2, 2002. The House Public Safety Committee added the phrase “or reasonably likely” to Code section 16-4-10 (a) (1), which defined domestic terrorism.³⁴ Thus, finding one guilty of domestic terrorism would also include situations where it was “reasonably likely” that the act would result in the injury or death of at least ten individuals.³⁵

Representative Wiles introduced SB 320 to the House on April 9, 2002.³⁶ Due to concerns about the breadth of the bill's definition of domestic terrorism, Representative Anne Mueller of the 152nd District moved to postpone the bill for an amendment, but later withdrew the motion.³⁷ The House passed SB 320 by a vote of 149 to 4 on April 9, 2002.³⁸

Senate Approval of the House Amendment

The Senate approved the House Committee substitute on April 12, 2002.³⁹

31. *Id.*

32. Georgia Senate Voting Record, SB 320 (Mar. 8, 2002).

33. State of Georgia Final Composite Stats Sheet, SB 320, Apr. 12, 2002.

34. *Compare* SB 320 (HCS), 2002 Ga. Gen. Assem., *with* SB 320 (SCS), 2002 Ga. Gen. Assem.

35. SB 320 (HCS), 2002 Ga. Gen. Assem.

36. Audio Recording of House Proceedings, Apr. 9, 2002 (remarks by Rep. John Wiles), *at* <http://www.sstate.ga.us/services/leg/audio/2002archive.html> [hereinafter House Audio].

37. *Id.*

38. Georgia House of Representatives Voting Record, SB 320 (Apr. 9, 2002). Rep. Thomas Knox of the 28th District was one of four opposing votes. *Id.* He thought the Homeland Defense Act had a “laudable goal,” but opposed it because the Act didn’t accomplish any additional protection against terrorist attacks, put too much power in the executive branch, and was more likely to create opportunities for abuse than actually protect people. Telephone Interview with Rep. Thomas Knox, House District No. 28 (June 26, 2002).

39. *See* State of Georgia Final Composite Status Sheet, SB 320, Apr. 12, 2002.

The Act

The Act amends Title 16 of the Georgia Code by inserting new Code section 16-4-10.⁴⁰ The Act defines the crime of domestic terrorism as an act or series of acts (1) intended to or reasonably likely to injure or kill at least ten people; and (2) intended to intimidate the civilian population, or to coerce government policy by the use of destructive devices, assassination, or kidnapping.⁴¹

Moreover, the Act imposes the maximum sentence if the death penalty is not sought.⁴² The Act also allows for the imposition of the death penalty as an aggravating circumstance in the penalty phase if convicted of domestic terrorism.⁴³ Finally, the Act includes domestic terrorism as an offense subject to the Georgia RICO Laws, by amending Code section 16-14-3 to include domestic terrorism.⁴⁴

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40. Compare 1968 Ga. Laws § 1, at 1249, with O.C.G.A. § 16-4-10 (Supp. 2002).

41. O.C.G.A. § 16-4-10 (Supp. 2002).

42. *Id.* § 16-4-10 (b).

43. *Id.* § 16-4-10 (c).

44. Compare 2001 Ga. Laws § 1, at 858, with O.C.G.A. 16-14-3 (8) (A) – (B) (Supp. 2002).