

March 2012

## CRIMES AND OFFENSES Offenses Against Public Order and Safety: Make Wearing Bulletproof Vests During Commission or Attempted Commission of Certain Offenses Unlawful

Georgia State University Law Review

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### Recommended Citation

Georgia State University Law Review, *CRIMES AND OFFENSES Offenses Against Public Order and Safety: Make Wearing Bulletproof Vests During Commission or Attempted Commission of Certain Offenses Unlawful*, 20 GA. ST. U. L. REV. (2012).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol20/iss1/33>

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## CRIMES AND OFFENSES

### ***Offenses Against Public Order and Safety: Make Wearing Bulletproof Vests During Commission or Attempted Commission of Certain Offenses Unlawful***

CODE SECTION:	O.C.G.A. § 16-11-160 (amended)
BILL NUMBER:	HB 173
ACT NUMBER:	39
GEORGIA LAWS:	2003 Ga. Laws 256
SUMMARY:	The Act makes it unlawful to wear a bulletproof vest during the commission or attempted commission of certain offenses.
EFFECTIVE DATE:	July 1, 2003

#### *History*

On February 28, 1997, the streets of Los Angeles turned into a war zone when a bank robbery went wrong, causing the robbers to turn “their automatic weapons on police, bystanders, and even television helicopters.”<sup>1</sup> The robbers were “[w]earing body armor and carrying a trunk full of weapons.”<sup>2</sup> They had loaded their guns with armor-piercing bullets.<sup>3</sup> Among the wounded were ten police officers, six of them by gunfire, and one suspect.<sup>4</sup> The only fatalities were two of the suspects, who were taken down by “helmeted police officers who fired [close range] bullets” to the unarmored portions of the assailants’ bodies.<sup>5</sup>

Because the police had a difficult time stopping the robbers and because the robbers had placed “citizens in the area” in grave danger,

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1. See Steve Macko, *Los Angeles Turned into a War Zone . . .*, Mar. 1, 1997, at <http://www.emergency.com/lapdbank.htm>. (last visited Apr. 11, 2003).

2. *Botched L.A. Bank Heist Turns into Bloody Shootout*, CNN.COM, Feb. 28, 1997, at <http://www.cnn.com/US/9702/28/bank.shootout/> [hereinafter *Bank Heist*].

3. See *id.*

4. See Beth Shuster & James Rainey, *Officers Face Barrage of Bullets to Take Comrades Out of Line of Fire*, L.A. TIMES, Mar. 1, 1997, available at <http://www.pulitzer.org/year/1998/breaking-news-reporting/works/barrage.html>.

5. See *Bank Heist*, *supra* note 2.

the Los Angeles incident inspired Representative Victor Hill of the 81st district to introduce HB 173.<sup>6</sup>

Opponents of the bill, such as Representative Robert Franklin of the 17th district noted that the bill, if enacted, would be the first law in Georgia's history to "criminalize possess[ing] something that, in and of itself, [could not] hurt anybody."<sup>7</sup> Representative Franklin argued that a bulletproof vest is defensive in nature and that sometimes "the best intended legislation can have unintended consequences."<sup>8</sup> As an example, Representative Franklin cited the State of Washington's ban on gas masks, which was enacted in 2002 following the riots protesting the World Trade Organization.<sup>9</sup> He asserted that, as a result of this ban, "law-abiding citizens in that state [could no longer] protect themselves" from "the threat of biological and chemical terrorism."<sup>10</sup> Representative Franklin believed HB 173 would set a dangerous precedent in criminalizing possession of an inanimate object incapable of use in an offensive manner.<sup>11</sup>

Moreover, because the bill would only apply when the court imposes a life sentence, Representative Franklin argued that the additional five-years of incarceration would probably not deter a felon.<sup>12</sup> Representative Franklin argued that it is illogical to assume that a felon would abide by this law, especially when the felon considers the benefits versus the consequences of wearing bulletproof vests.<sup>13</sup> However, Representative Hill responded that the bill was not intended to be a deterrent.<sup>14</sup>

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6. See Telephone Interview with Rep. Victor Hill, House District No. 81 (Apr. 9, 2003) [hereinafter Hill Interview]. In Atlanta, similar tragedies have occurred. See Audio Recording of House Proceedings, Mar. 4, 2003 (remarks by Rep. Victor Hill), at <http://www.ganet.org/services/leg/audio/2003archive.html> [hereinafter House Audio]. A recent confrontation occurred in 2002 at South Dekalb Mall, when a felon wearing a bulletproof vest "exchanged gunfire with police." The only way police could "subdue" the felon was with a gunshot to his leg. See Hill Interview.

7. See House Audio, *supra* note 6 (remarks by Rep. Robert Franklin).

8. See *id.*

9. See *id.*

10. See *id.*

11. See *id.*

12. See House Audio, *supra* note 6 (remarks by Rep. Robert Franklin).

13. See *id.*

14. See Hill Interview, *supra* note 6. "Instead, it will remove . . . dangerous people from the street for a longer [period of] time." See *id.*

*HB 173*

Representatives Victor Hill, Mike Snow, Ron Dodson, Al Williams, and Terry Coleman of the 81st, 1st, 84th, 128th, and 118th districts, respectively, sponsored HB 173.<sup>15</sup> Representative Hill, who ultimately played a large role in HB 173's final passage, introduced the bill in the House on January 29, 2003.<sup>16</sup> The Speaker assigned the bill to the House Public Safety Committee, which favorably reported it, without changes, on February 18, 2003.<sup>17</sup> On March 4, 2003, Representative Franklin proposed an amendment that failed by a vote of 50 to 116.<sup>18</sup> Representative Franklin intended this amendment to "make it abundantly clear that no person will be prohibited from using or possessing bulletproof vests if they do so without criminal intent."<sup>19</sup>

Representatives Hill and Stokes proposed a substitute, which made two changes to the original bill.<sup>20</sup> First, the substitute removed the language "possess or use" from the bill and replaced it with "wear."<sup>21</sup> The change resulted from debate about the inclusiveness of the terms "possess or use."<sup>22</sup> Some legislators feared that the police could penalize a person for having a bulletproof vest somewhere other than on his person, such as in the trunk of his car, when the person did not intend to wear the vest during the commission of a felony.<sup>23</sup> The Representatives introduced this substitute to prevent this type of situation and to ensure that the person being charged under this Act had the requisite intent.<sup>24</sup>

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15. See HB 173, as introduced, 2003 Ga. Gen. Assem.

16. See State of Georgia Final Composite Status Sheet, HB 173, Apr. 25, 2003; House Audio, *supra* note 6 (remarks by Rep. Victor Hill).

17. See State of Georgia Final Composite Status Sheet, HB 173, Apr. 25, 2003.

18. See Georgia House of Representatives Voting Record, HB 173 (Mar. 4, 2003).

19. See House Audio, *supra* note 6 (remarks by Rep. Robert Franklin).

20. Compare HB 173, as introduced, 2003 Ga. Gen. Assem., with HB 173 (HFS), 2003 Ga. Gen. Assem.

21. Compare HB 173, as introduced, 2003 Ga. Gen. Assem., with HB 173 (HFS), 2003 Ga. Gen. Assem.

22. See Telephone Interview with Rep. Victor Hill, House District No. 81 (June 26, 2003) [hereinafter Hill Interview Two].

23. See *id.*

24. See *id.*

Second, the substitute narrowed the bill's scope to exclude crimes that are less violent in nature, such as breaking into a motor vehicle.<sup>25</sup> The House adopted and passed HB 173, as substituted, by a vote of 167 to 4 on March 4, 2003.<sup>26</sup>

The bill was read in the Senate and sent to the Judiciary Committee, which favorably reported HB 173 without change on March 5, 2003.<sup>27</sup> The Senate adopted and passed the bill with no further changes on April 17, 2003, by vote of 51 to 0.<sup>28</sup> The General Assembly then forwarded the bill to Governor Sonny Perdue, who signed the bill on May 27, 2003.<sup>29</sup>

### *The Act*

The Act amends Code section 16-11-160, which relates to the use or possession of certain firearms during the commission of certain offenses.<sup>30</sup> The Act further amends Code section 16-11-160 by adding subparagraphs that make wearing a bulletproof vest during the commission or attempted commission of certain offenses unlawful.<sup>31</sup> These offenses include: (1) any crime for which a sentence of life imprisonment may be imposed; (2) “[a]ny felony involving the manufacture, delivery, distribution, administering, or selling of controlled substances or marijuana”; and (3) drug trafficking.<sup>32</sup>

The Act was not intended to be a deterrent; rather, it was intended to “remove dangerous people from the street for a longer [period of] time.”<sup>33</sup> The Act protects police officers and citizens in immediate danger from future acts of violence by keeping felons in prison.<sup>34</sup> “The [felons] who wear bulletproof vests during the commission of a

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25. See Hill Interview Two, *supra* note 22. Compare HB 173, as introduced, 2003 Ga. Gen. Assem., with HB 173 (HFS), 2003 Ga. Gen. Assem.

26. See State of Georgia Final Composite Status Sheet, HB 173, Apr. 25, 2003; Georgia House of Representatives Voting Record, HB 173 (Mar. 4, 2003).

27. See State of Georgia Final Composite Status Sheet, HB 173, Apr. 25, 2003.

28. See *id.*; Georgia Senate Voting Record, HB 173 (Apr. 17, 2003); Audio Recording of Senate Proceedings, Apr. 17, 2003, at <http://www.ganet.org/services/leg/audio/2003archive.html>.

29. See 2003 Ga. Laws 256, § 2, at 257.

30. See O.C.G.A. § 16-11-160 (2003).

31. Compare 1996 Ga. Laws 354, § 1, at 354 (formerly found at O.C.G.A. § 16-11-160 (1999)), with O.C.G.A. § 16-11-160 (2003).

32. O.C.G.A. § 16-11-160 (2003).

33. See Hill Interview, *supra* note 6.

34. See *id.*

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crime are prepared for the worst[,] and the longer they are put away, the less the public is at risk.”<sup>35</sup>

*Joseph Larkin*

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35. *See id.*