

Senate Bill 320

By: Senators Johnson of the 1st, Price of the 56th, Stephens of the 51st, Lamutt of the 21st, Seabaugh of the 28th and others

A BILL TO BE ENTITLED
AN ACT

1 To enact "Georgia's Homeland Defense Act"; to enact and revise provisions of law to guard
2 against, deter, and punish acts of domestic terrorism and related offenses and to provide law
3 enforcement investigatory tools for such purposes; to amend Title 16 of the Official Code of
4 Georgia Annotated, relating to crimes and offenses, so as to define the activity of domestic
5 terrorism; to define, prohibit, and punish terroristic acts and terroristic threats; to revise
6 provisions relating to interception of electronic or oral communications for law enforcement
7 purposes so as to provide for the applicability of such provisions in the case of terroristic acts
8 and terroristic threats and so as to clarify the permissible scope of interception warrants; to
9 provide that domestic terrorism activities shall be subject to the "Georgia RICO (Racketeer
10 Influenced and Corrupt Organizations) Act"; to amend Title 17 of the Official Code of
11 Georgia Annotated, relating to criminal procedure, so as to provide that the commission of
12 murder in the course of domestic terrorism shall be an aggravating circumstance for purposes
13 of application of the death penalty; to provide for other related matters; to provide for an
14 effective date and for applicability; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 This Act shall be known and may be cited as "Georgia's Homeland Defense Act."
18

19 **SECTION 2.**

20 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
21 amended by striking Code Section 16-11-37, relating to terroristic threats, and inserting in
22 its place new Code section to read as follows:

23 "16-11-37.

24 (a) As used in this Code section, the term 'domestic terrorism' means activities which:

25 (1) Involve acts dangerous to human life that are in violation of any criminal law of this
26 state or the United States;

1 (2) Appear to be intended:

2 (A) To intimidate or coerce a civilian population;

3 (B) To influence the policy of a government by intimidation or coercion; or

4 (C) To affect the conduct of a government by mass destruction, assassination, or
 5 kidnapping; and

6 (3) Occur in part or in whole within the territorial jurisdiction of the State of Georgia.

7 (a) (b) A person commits the offense of a terroristic threat when he or she threatens to
 8 commit any act of domestic terrorism or any crime of violence or to burn or damage
 9 property with the purpose of terrorizing another or of causing the evacuation of a building,
 10 place of assembly, or facility of public transportation or otherwise causing serious public
 11 inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.
 12 No person shall be convicted under this subsection on the uncorroborated testimony of the
 13 party to whom the threat is communicated.

14 (b) (c) A person commits the offense of a terroristic act when he or she engages in
 15 domestic terrorism as described in subsection (a) of this Code section or:

16 (1) He or she uses a burning or flaming cross or other burning or flaming symbol or
 17 flambeau with the intent to terrorize another or another's household; or

18 (2) While not in the commission of a lawful act, he or she shoots at or throws an object
 19 at or otherwise commits violence against a conveyance which is being operated or which
 20 is occupied by passengers.

21 (c) (d) A person convicted of the offense of a terroristic threat or act shall be punished by
 22 ~~a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than~~
 23 ~~five~~ ten years, or both. The offenses specified in this Code section shall not merge with
 24 any underlying criminal offense. The provisions of Chapter 4 of this title, relating to
 25 criminal attempt, criminal solicitation, and criminal conspiracy, shall apply fully to the
 26 offenses specified in this Code section.

27 (d) (e) A person who commits or attempts to commit a terroristic threat or act with the
 28 intent to retaliate against any person for:

29 (1) Attending a judicial or administrative proceeding as a witness or party or producing
 30 any record, document, or other object in a judicial or official proceeding; or

31 (2) Providing to a law enforcement officer, adult or juvenile probation officer,
 32 prosecuting attorney, or judge any information relating to the commission or possible
 33 commission of an offense under the laws of this state or of the United States or a
 34 violation of conditions of bail, pretrial release, probation, or parole

35 shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall
 36 be punished by imprisonment for not less than five nor more than ten years or by a fine of
 37 not less than \$50,000.00, or both.

1 (f) Notwithstanding any other provision of law, any person who is convicted for a second
 2 or subsequent offense of a terroristic threat, with the most recent such offense occurring
 3 on or after July 1, 2002, shall be sentenced to imprisonment for life without parole. Any
 4 such sentence of life without parole shall not be suspended, stayed, probated, deferred, or
 5 withheld, and any such person sentenced pursuant to this subsection shall not be eligible
 6 for any form of pardon, parole, or early release administered by the State Board of Pardons
 7 and Paroles or for any earned time, early release, work release, leave, or any other
 8 sentence-reducing measures under programs administered by the Department of
 9 Corrections, the effect of which would be to reduce the sentence of life imprisonment
 10 without possibility of parole, except as may be authorized for a subsequent determination
 11 of innocence or progressively debilitating terminal illness or advanced age under Article
 12 IV, Section II, Paragraph II(e) of the Constitution."

13 SECTION 3.

14 Said Title 16 is further amended by striking subsection (b) of Code Section 16-11-64,
 15 relating to interception of electronic or oral communications for law enforcement purposes,
 16 and inserting in its place a new subsection (b) to read as follows:

17 "(b) *Procedure.* When in the course of his or her official duties, a law enforcement officer
 18 desiring to make use of any device, but only as such term is specifically defined by Code
 19 Section 16-11-60 and such use would otherwise constitute a violation of Code Section
 20 16-11-62, the law enforcement officer shall act in compliance with the procedures provided
 21 for in this part:

22 (1) When there is probable cause to believe that a person is committing or has committed
 23 an act which endangers the national security of the United States or the security of this
 24 state or that such person is committing or has committed the crime of treason, terroristic
 25 acts or terroristic threats, insurrection, rebellion, espionage, sabotage, or any felony
 26 involving bodily harm, or any crimes involving arson, kidnapping, narcotics, dangerous
 27 drugs, or importing, manufacturing, delivering, distributing, dispensing, administering,
 28 selling, or possessing with intent to distribute marijuana or any controlled substance, or
 29 burglary, prostitution, theft, blackmail, extortion, bribery, gambling, racketeering activity,
 30 or any felony involving alcoholic beverage laws or auto thefts, or there is probable cause
 31 to believe that a private place is being utilized or has been utilized for the commission of
 32 any such crime, then, upon written application, under oath, of the district attorney having
 33 jurisdiction over the prosecution of such crime, or the Attorney General, which
 34 application affirms that there is probable cause to believe:

35 (A) That a person is committing or has committed any of the crimes enumerated in this
 36 paragraph; or

1 (B) That a private place is being utilized or has been utilized for the commission of any
2 of the crimes enumerated in this paragraph
3 and sets forth specifically the basis of such probable cause and particularly describes the
4 person or place, the crime or crimes, the device or devices to be used, and the specific
5 conversations and activities to be overheard or observed, as the case may be, any judge
6 of the superior court having jurisdiction of such crime may issue an investigation warrant
7 permitting the use of devices, as defined by Code Section 16-11-60, for the surveillance
8 of such person or place, provided that the warrant specifies with particularity the device
9 or devices the use of which is to be permitted thereby; the purpose, duration, and
10 circumstances of use permitted; the crime or crimes allegedly being committed; and the
11 person or persons and place or places to be subject to such surveillance. A single warrant
12 may authorize the use of one or more devices, apply to the observation of one or more
13 activities, and apply to the overhearing of one or more conversations through one or more
14 types of communication;

15 (2) The judge, before issuing such a warrant, shall satisfy himself or herself that the party
16 initiating the application for the warrant is aware of the facts and circumstances through
17 his or her own personal knowledge which are sufficient to lead a person of reasonable
18 caution to believe that the alleged crime set forth in the application has been committed
19 or is being committed or that such person has been informed of such facts and
20 circumstances by a reasonably trustworthy informational source. The judge shall also
21 satisfy himself or herself that there is set forth in the application exigencies adequately
22 supported by facts and circumstances which overcome and override the need for giving
23 of notice of the surveillance to the parties to be overheard or observed by the use of such
24 devices;

25 (3) Investigation warrants issued under this Code section shall be valid for no more than
26 20 days after issuance, unless renewed for additional 20 day periods for good cause
27 shown at the time of written application for each such renewal. An interception
28 authorized pursuant to this Code section may be conducted in whole or in part by law
29 enforcement personnel or by an individual operating under a contract with a law
30 enforcement agency and acting under the supervision of a law enforcement officer
31 authorized to conduct the interception;

32 (4) The officer executing the warrant must make a return of the warrant to the judge
33 which shall set forth specifically how the warrant was used and employed and what was
34 obtained thereby. The return shall reflect that the investigation or search in pursuance of
35 the warrant was terminated immediately upon the conversation or activities which were
36 authorized to be overheard, intercepted, or observed were in fact obtained. The return

1 shall set forth with particularity the law enforcement officer or officers or their agents
2 who actually employed the devices used in the execution of the warrant;

3 (5) The application for any investigation warrant under this Code section, any supporting
4 evidence in connection therewith, and any entry of the issuance of an investigation
5 warrant as a result thereof shall remain confidential and in the custody of the judge and
6 shall not be released nor information touching same in any manner be disclosed, except
7 upon written order of the judge or except at the time of trial of the case in which such
8 evidence is used or in which evidence derived from such surveillance is used;

9 (6) The applicant for the warrant shall return same and report back to the judge issuing
10 same within 30 days of the issuance of the warrant. In the event no evidence of one of the
11 specific crimes set forth in this Code section has been obtained through the use of such
12 device or devices, it shall be the duty of the applicant physically to destroy all evidence
13 obtained by surveillance and to certify that fact in writing to the judge under oath;

14 (7) In the event evidence of or information concerning the specific crime set forth in the
15 warrant is obtained through the use of such device or devices, the applicant shall so
16 certify in writing under oath in his or her report under paragraph (6) of this subsection.
17 Upon the return of an indictment or filing of an accusation based in whole or in part on
18 such evidence or information or any part thereof, it shall be the duty of the prosecuting
19 attorney promptly to notify the accused of the existence and substance of such evidence
20 or information and, if the same has been reduced to a permanent form, shall make it
21 available to the accused for inspection and copying; and

22 (8) Any publication of the information or evidence obtained under a warrant issued under
23 this Code section other than that necessary and essential to the preparation of and actual
24 prosecution for the crime specified in the warrant shall be an unlawful invasion of privacy
25 under this part and shall cause such evidence and information to be inadmissible in any
26 criminal prosecution."

27 **SECTION 4.**

28 Said Title 16 is further amended by striking paragraph (8) of Code Section 16-14-3, relating
29 to definitions applicable to the "Georgia RICO (Racketeer Influenced and Corrupt
30 Organizations) Act," and inserting in its place a new paragraph to read as follows:

31 "(8) 'Pattern of racketeering activity' means:

32 (A) Engaging ~~engaging~~ in at least two acts of racketeering activity in furtherance of
33 one or more incidents, schemes, or transactions that have the same or similar intents,
34 results, accomplices, victims, or methods of commission or otherwise are interrelated
35 by distinguishing characteristics and are not isolated incidents, provided at least one of
36 such acts occurred after July 1, 1980, and that the last of such acts occurred within four

1 years, excluding any periods of imprisonment, after the commission of a prior act of
 2 racketeering activity; or

3 (B) Engaging in any one or more acts of domestic terrorism as described in subsection
 4 (a) of Code Section 16-11-37 or any criminal attempt, criminal solicitation, or criminal
 5 conspiracy related thereto."

6 SECTION 5.

7 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 8 amended by striking subsection (b) of Code Section 17-10-30, relating to procedure in death
 9 penalty cases, and inserting in its place a new subsection to read as follows:

10 "(b) In all cases of other offenses for which the death penalty may be authorized, the judge
 11 shall consider, or he or she shall include in his or her instructions to the jury for it to
 12 consider, any mitigating circumstances or aggravating circumstances otherwise authorized
 13 by law and any of the following statutory aggravating circumstances which may be
 14 supported by the evidence:

15 (1) The offense of murder, rape, armed robbery, or kidnapping was committed by a
 16 person with a prior record of conviction for a capital felony;

17 (2) The offense of murder, rape, armed robbery, or kidnapping was committed while the
 18 offender was engaged in the commission of another capital felony or aggravated battery,
 19 or the offense of murder was committed while the offender was engaged in the
 20 commission of burglary or arson in the first degree;

21 (3) The offender, by his or her act of murder, armed robbery, or kidnapping, knowingly
 22 created a great risk of death to more than one person in a public place by means of a
 23 weapon or device which would normally be hazardous to the lives of more than one
 24 person;

25 (4) The offender committed the offense of murder for himself or herself or another, for
 26 the purpose of receiving money or any other thing of monetary value;

27 (5) The murder of a judicial officer, former judicial officer, district attorney or
 28 solicitor-general, or former district attorney, solicitor, or solicitor-general was committed
 29 during or because of the exercise of his or her official duties;

30 (6) The offender caused or directed another to commit murder or committed murder as
 31 an agent or employee of another person;

32 (7) The offense of murder, rape, armed robbery, or kidnapping was outrageously or
 33 wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an
 34 aggravated battery to the victim;

1 (8) The offense of murder was committed against any peace officer, corrections
2 employee, or ~~fireman~~ firefighter while engaged in the performance of his or her official
3 duties;

4 (9) The offense of murder was committed by a person in, or who has escaped from, the
5 lawful custody of a peace officer or place of lawful confinement; ~~or~~

6 (10) The murder was committed for the purpose of avoiding, interfering with, or
7 preventing a lawful arrest or custody in a place of lawful confinement; of himself or
8 herself or another; or

9 (11) The offense of murder was committed in the course of domestic terrorism as
10 described in subsection (a) of Code Section 16-11-37."

11 **SECTION 6.**

12 This Act shall become effective upon its approval by the Governor or upon its becoming law
13 without such approval. The provisions of this Act defining, redefining, or changing the
14 punishment for crimes shall apply with respect to acts committed on or after that effective
15 date; and in these respects prior law shall continue to apply with respect to acts committed
16 prior to that effective date.

17 **SECTION 7.**

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