

The House Committee on Judiciary, Non-Civil offers the following substitute to HB 161:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to the Georgia Bureau of Investigation, to provide for
3 authority to issue subpoenas of electronic communication records for purposes of
4 investigating certain crimes relating to cyber enabled threats to life and property; to provide
5 for punishment for failure to obey certain subpoenas; to prohibit disclosure of the issuance
6 of certain subpoenas during the pendency of an investigation; to amend Title 16 and Code
7 Sections 20-3-10, 36-80-23, and 38-3-40 of the Official Code of Georgia Annotated, relating
8 to crimes and offenses, sanctuary policies prohibited and penalty for violation, prohibition
9 on immigration sanctuary policies by local governmental entities, certification of compliance,
10 and punishment, and definitions relative to the Board of Homeland Security, respectively,
11 so as to repeal the definition of 'domestic terrorism'; to establish the crime of domestic
12 terrorism; to make conforming changes; to provide for related matters; to repeal conflicting
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions relative to the Georgia Bureau of Investigation, is amended by revising Code Section 35-3-4.1, relating to subpoena for production of electronic communication service records for computer or electronic device used in furtherance of certain offenses against minors, as follows:

"35-3-4.1.

(a)(1) ~~In any investigation of a violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2 involving the use of a computer or an electronic device in furtherance of an act related to a minor, or any investigation of a violation of Article 8 of Chapter 9 of Title 16, the~~ The director, assistant director of the bureau, or deputy director for investigations of the bureau shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of electronic communication service or remote communication computing service records or other information pertaining to a subscriber or customer of such service, exclusive of contents of communications, in any investigation of a violation of:

(A) Code Section 16-12-100, 16-12-100.1, or 16-12-100.2 involving the use of a computer or an electronic device in furtherance of an act related to a minor;

(B) Article 8 of Chapter 9 of Title 16; or

(C) Code Section 16-9-93, 16-10-28, 16-11-37, 16-11-39.1, or 16-11-221.

(2) A provider of electronic communication service or remote computing service shall disclose to the bureau the following as relative to the subscriber or customer of such service:

(A) Name;

(B) Address;

(C) Local and long distance telephone connection records, or records of session times and durations;

(D) Length of service, including the start date, and types of service utilized;

(E) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) Means and source of payment for such service, including any credit card or bank account number ~~of a subscriber to or customer of such service.~~

(3) A provider of electronic communication service or remote computing service shall not provide notification of the subpoena issued pursuant to paragraph (1) of this subsection to the subscriber or customer of such service.

(b) Upon failure of a person without lawful excuse to obey a subpoena, the director, assistant director of the bureau, or the deputy director for investigations of the bureau, through the Attorney General or district attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court.

(c) The Attorney General may request that a natural person who refuses to produce relevant matter included in a subpoena issued pursuant to this Code section on the ground that the production of such records may incriminate such person be ordered by the court to provide such records. With the exception of a prosecution for perjury, a natural person who complies with the court order to provide such records asserting a privilege against self-incrimination to which he or she is entitled by law shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise.

(d)(1) The issuance of a subpoena pursuant to this Code section shall not be made public during any pending investigation or prosecution of criminal or unlawful activity beyond the extent necessary for the issuance and compliance of the subpoena and compliance with Chapter 16 of Title 17.

(2) Information obtained pursuant to a subpoena enforced by this Code section shall not be made public or, except as authorized in paragraph (2)(3) of this subsection, disclosed by the director of the bureau, assistant director, deputy director for investigations of the bureau, or the director's employees beyond the extent necessary for the enforcement of this Code section.

~~(2)(3) The director, assistant director of the bureau, deputy director for investigations of the bureau, or the director's employees shall be authorized to provide to any federal, state, or local law enforcement agency any information acquired under this Code section in furtherance of a criminal investigation in violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2.~~

(e) As used in this Code section, the terms 'electronic communication service' and 'remote computing service' shall have the same meaning as set forth in Code Section 16-9-92."

PART II

SECTION 2-1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended in Code Section 16-11-220, relating to definitions relative to domestic terrorism, by revising paragraph (2) as follows:

~~"(2) 'Domestic terrorism' means any felony violation of, or attempt to commit a felony violation of the laws of this state which, as part of a single unlawful act or a series of unlawful acts which are interrelated by distinguishing characteristics, is intended to cause serious bodily harm, kill any individual or group of individuals, or disable or destroy~~

~~critical infrastructure, a state or government facility, or a public transportation system
when such disability or destruction results in major economic loss, and is intended to:
(A) Intimidate the civilian population of this state or any of its political subdivisions;
(B) Alter, change, or coerce the policy of the government of this state or any of its
political subdivisions by intimidation or coercion; or
(C) Affect the conduct of the government of this state or any of its political
subdivisions by use of destructive devices, assassination, or kidnapping~~ Reserved."

SECTION 2-2.

Said title is further amended by revising Code Section 16-11-221, relating to penalties for domestic terrorism, as follows:

"16-11-221.

(a) A person commits the crime of domestic terrorism when he or she:

(1) Commits or attempts to commit a felony violation of the laws of this state as a single unlawful act or part of a series of unlawful acts which are interrelated by distinguishing characteristics;

(2) Intends to:

(A) Cause serious bodily harm;

(B) Kill any individual or group of individuals; or

(C) Disable or destroy critical infrastructure, a state or government facility, or a public transportation system when such disability or destruction results in major economic loss; and

(3) Intentionally attempts:

(A) Intimidate the civilian population of this state or any of its political subdivisions;

(B) Alter, change, or coerce the policy of the government of this state or any of its political subdivisions by intimidation or coercion; or

(C) Affect the conduct of the government of this state or any of its political subdivisions by use of destructive devices, assassination, or kidnapping.

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(b) Any person who commits domestic terrorism shall be guilty of a felony and upon conviction thereof shall be punished as follows:

(1) If death results to any individual, by death, by imprisonment for life without parole, or by imprisonment for life;

(2) If kidnapping occurs, by imprisonment for not less than 15 nor more than 35 years, or by imprisonment for life;

(3) If serious bodily harm occurs, by imprisonment for not less than 15 nor more than 35 years; or

(4) If critical infrastructure, a state or government facility, or a public transportation system is disabled or destroyed, by imprisonment for not less than five nor more than 35 years.

(b)(c) No sentence imposed under this Code section shall be suspended, stayed, probated, deferred, or withheld by the sentencing court; provided, however, that in the court's discretion, the court may suspend, stay, probate, defer, or withhold part of such sentence when the prosecuting attorney and the defendant have agreed to such sentence."

SECTION 2-3.

Said title is further amended in Code Section 16-14-3, relating to definitions relative to racketeer influenced and corrupt organizations, by revising subparagraph (B) of paragraph (4) as follows:

"(B) Engaging in any one or more acts of domestic terrorism as described in paragraph (2) of Code Section ~~16-11-220~~ 16-11-221 or any criminal attempt, criminal solicitation, or criminal conspiracy related thereto."

SECTION 2-4.

Code Section 20-3-10 of the Official Code of Georgia Annotated, relating to sanctuary policies prohibited and penalty for violation, by revising paragraph (4) of subsection (a) as follows:

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"(4) 'Status information' means any information, not including any information required by law to be kept confidential but otherwise including, but not limited to, any statement, document, computer generated data, recording, or photograph, which is relevant to the identity or location of an individual who is reasonably believed to be violating state or federal laws, illegally residing within the United States, or who is reasonably believed to be involved in domestic terrorism ~~as that term is defined in Code Section 16-11-220 in~~ violation of Code Section 16-11-221 or a terroristic act as that term is defined by Code Section 35-3-62."

SECTION 2-5.

Code Section 36-80-23 of the Official Code of Georgia Annotated, relating to prohibition on immigration sanctuary policies by local governmental entities, certification of compliance, and punishment, by revising paragraph (3) of subsection (a) as follows:

"(3) 'Immigration status information' means any information, not including any information required by law to be kept confidential but otherwise including, but not limited to, any statement, document, computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism ~~as that term is defined in Code Section 16-11-220 in~~ violation of Code Section 16-11-221 or a terroristic act as that term is defined by Code Section 35-3-62."

SECTION 2-6.

Code Section 38-3-40 of the Official Code of Georgia Annotated, relating to definitions relative to the Board of Homeland Security, by revising paragraph (4) as follows:

"(4) 'Domestic terrorism' ~~shall have the same meaning as set forth in Code Section 16-11-220; means an offense of Code Section 16-11-221.~~

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PART III

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SECTION 3-1.

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