Georgia State University Law Review

Volume 10
Issue 1 *September 1993*

Article 43

3-28-2012

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Georgia State University Law Review

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Recommended Citation
Georgia State University Law Review (1993) "CRIMES AND OFFENSES Offenses Against Minors: Prohibit the Electronic Furnishing of Obscene Material to Minors," *Georgia State University Law Review*: Vol. 10: Iss. 1, Article 43.
Available at: http://digitalarchive.gsu.edu/gsulr/vol10/iss1/43

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CRIMES AND OFFENSES

Offenses Against Minors: Prohibit the Electronic Furnishing of Obscene Material to Minors

CODE SECTION:	O.C.G.A. § 16-12-100.1 (new)
BILL NUMBER:	HB 138
ACT NUMBER:	433
SUMMARY:	The Act prohibits anyone from furnishing obscene materials through electronic means which would be harmful to minors. The Act provides that such obscene materials may include information stored in a computer, on a bulletin board, on floppy disks and other magnetic storage devices, or CD-ROM. A person convicted of violating the Act is guilty of a misdemeanor of a high and aggravated nature.
EFFECTIVE DATE:	July 1, 1993

History

There are now over ten thousand computer bulletin boards in the United States.[1] Many advertise in computer magazines, and some contain pornographic images—much of it hard core, some of it involving children.[2] A computer cannot distinguish who is accessing such information, an adult or a minor.[3] Anyone with a personal computer, a modem, and a telephone line can access graphic sex images over his or her computer any time, no matter what age he or she may be.[4] Therefore, a minor can easily dial into an electronic bulletin board system, lie about his or her age, and access any pornographic image he or she wishes to.[5] The problem has gotten so serious that law enforcement officials recently raided forty locations in the first ever crackdown on computerized pornography.[6] The sting operation, deemed Operation Longarm, involved 300 state, local, and federal agents.[7] The

1. *Parents Fret Over Kids' Access to Computer Porn* (CNN television broadcast, Jan. 17, 1993) [hereinafter *Parents Fret*].
2. *Id.*
3. *Id.*
4. *Id.*
5. *Computer Porn Problem Grows Digitally in the U.S.*, TORONTO STAR, Mar. 15, 1993, at C5.
6. *Crackdown Starts on Computer Porn Ring*, CLEVELAND PLAIN DEALER, Mar. 5, 1993, at 1C.
7. Joe Abernathy, *Worldwide Computer Porn Probe Includes Area Suspect*, HOUS. CHRON., Mar. 6, 1993, at 27.

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agents seized a large amount of data stored on computer equipment which contained child pornography.[8]

There has never before been a statutory provision in Georgia dealing with this issue prior to Georgia's enactment of HB 138. Previously, Florida was the only state to have enacted a law which makes it illegal to sell or loan pornographic pictures and advertisements to minors via computers.[9]

The sponsor of HB 138, Representative Vinson Wall, stated that " [t]here's a big distribution network that's set up, and what is happening is [pornography] is being converted into floppy disks and being sold on school grounds.' "[10] Representative Wall was first made aware of the situation by some constituents who showed him how easy it was to access pornography over their own home computer.[11] Extensive research in the area subsequently revealed that computer pornography was quite prevalent in the Atlanta metro area, and was free of charge.[12] Also, most of the bulletin boards in the metro area did not even attempt to verify whether or not the person accessing the material was a minor.[13] After Representative Wall became aware of this and learned that there was a computer ring operating in Florida, which was dealing with "kiddie porn," he decided to introduce HB 138 to the Georgia General Assembly.[14]

HB 138

The Act amends chapter 12 of title 16 by adding Code section 16-12-100.1.[15] The primary purpose of the Act is to provide a penalty for those who furnish obscene material to minors through electronic means.[16]

The Act includes a number of definitions. "Bulletin board systems" are defined as "computer data and file service that is accessed by telephone line to store and transmit information."[17] "CD-ROM" is defined as "a compact disc with read only memory which has the capacity to store audio, video, and written materials and is used by

8. *Id.*
9. Ben Smith III, *Computer Porn, Foster Bills OK'd in House*, ATLANTA CONST., Feb. 4, 1993, at D3.
10. *Id.*
11. Telephone Interview with Rep. Vinson Wall, House District No. 82 (Apr. 20, 1993) [hereinafter Wall Interview]. Rep. Wall was the sponsor of HB 1523. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. O.C.G.A. § 16-12-100.1 (Supp. 1993).
16. *Id.*
17. *Id.* § 16-12-100.1(a)(1) (Supp. 1993).

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computers to reveal the above-said material."[18] "Electronically furnishes" means "[t]o make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM" or "[t]o make available by allowing access to information stored in a computer, including making material available by operating a computer bulletin board."[19] "Harmful to minors" means:

> that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it;
>
> (A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;
> (B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
> (C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.[20]

"Minor" is defined as "an unmarried person younger than 18 years of age."[21] "Sadomasochist abuse" is defined as "flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed."[22] "Sexual conduct" is defined as:

> human masturbation, sexual intercourse, or any touching of the genitals, pubic areas, or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.[23]

Finally, "sexual excitement" is defined as "the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation."[24]

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18. *Id.* § 16-12-100.1(a)(2) (Supp. 1993).
19. *Id.* § 16-12-100.1(a)(3) (Supp. 1993).
20. *Id.* § 16-12-100.1(a)(4) (Supp. 1993).
21. *Id.* § 16-12-100.1(a)(5) (Supp. 1993).
22. *Id.* § 16-12-100.1(a)(6) (Supp. 1993).
23. *Id.* § 16-12-100.1(a)(7) (Supp. 1993).
24. *Id.* § 16-12-100.1(a)(8) (Supp. 1993).

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The Act does not specify a sentence for convictions. Rather, it merely states that whoever is guilty of violating the Act, will be "guilty of a misdemeanor of a high and aggravated nature."[25]

The Act makes it a crime for a person to furnish to minors material which the person has good reason to know is obscene.[26] This material could be in the form of photographs, drawings, or any other "visual representations" of the human body which contain images harmful to minors.[27] Alternatively, the material may be in written or aural form, containing verbal descriptions of sexual conduct.[28]

The Act provides that the crime is committed only if the offensive portions of the material are "not merely an incidental part of an otherwise nonoffending whole," and if the material, "taken as a whole, lacks serious literary, artistic, political, or scientific value," and "is harmful to minors in that it appeals to and incites prurient interest."[29]

HB 138, as originally introduced in the House, did not contain any of the eight definitions mentioned above.[30] The House Committee on Special Judiciary reported favorably on the bill without change, and it was passed in the House by a vote of 114-0.[31] When the bill got to the Senate, some senators believed there was a need for more and better definitions.[32] They did not want the law to be ambiguous and wanted the Act to explain its scope with more specificity.[33] Hence, the Senate Committee on Special Judiciary offered a substitute to the bill which added the eight definitions.[34] This substitute was passed in the Senate without any further changes, and the House concurred with the Senate amendments.[35]

The Act is the first attempt of the Georgia General Assembly to deal with this issue of computer pornography.[36] Previously, for all intents and purposes, the only persons who could prevent a minor from accessing this obscene material was his or her parents.[37] However, after the enactment of the Act, the responsibility for compliance will be placed on the "purveyors of pornography, not on parents."[38] In

25. *Id.* § 16-12-100.1(c) (Supp. 1993).
26. *Id.* § 16-12-100.1(b)(1) (Supp. 1993).
27. *Id.* § 16-12-100.1(b)(1)(A) (Supp. 1993).
28. *Id.* § 16-12-100.1(b)(1)(B) (Supp. 1993).
29. *Id.* § 16-12-100.1(b)(2)-(4) (Supp. 1993).
30. *See* HB 138, as introduced, 1993 Ga. Gen. Assem.
31. Smith, *supra* note 9, at D3.
32. Wall Interview, *supra* note 11.
33. *Id.*
34. HB 138 (SCS), 1993 Ga. Gen. Assem.
35. *See* O.C.G.A. § 16-12-100.1 (Supp. 1993).
36. Wall Interview, *supra* note 11.
37. *See Parents Fret, supra* note 1.
38. *'93 Georgia Legislature—Session in Brief—Senate Panel OKs Gun-Buyer Checks*, ATLANTA CONST., Feb. 3, 1993, at C3.

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summing up the bill, Representative Wall termed it "an attempt to bring our pornography laws into the modern century.'"[39]

Glenn D. Baker

39. Smith, *supra* note 9, at D3.

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