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CRIMES AND OFFENSES Damage to and Intrusion upon Property: Provide a New Law Regarding Bombs and Explosives; Provide for Jurisdiction in Juvenile Courts; Provide Specific Definitions and a Comprehensive List of Explosives; Provide for Offenses Relating to the Manufacture, Transportation, Distribution, and Possession of Explosives; Prohibit Certain Acts Relating to Hoax Devices; Provide Penalties for Offenses; Provide for the Training of Bomb Technicians, Explosive Ordnance Disposal Technicians, and Animal Handlers

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CRIMES AND OFFENSES

Damage to and Intrusion upon Property: Provide a New Law Regarding Bombs and Explosives; Provide for Jurisdiction in Juvenile Courts; Provide Specific Definitions and a Comprehensive List of Explosives; Provide for Offenses Relating to the Manufacture, Transportation, Distribution, and Possession of Explosives; Prohibit Certain Acts Relating to Hoax Devices; Provide Penalties for Offenses; Provide for the Training of Bomb Technicians, Explosive Ordnance Disposal Technicians, and Animal Handlers

CODE SECTIONS:	O.C.G.A. §§ 15-11-37, 16-7-63 to -64 (amended), 16-7-80 to -97 (new), 16-8-12, 16-10-28, 16-11-130, 16-12-123, 16-14-3, 35-3-4 (amended), 35-8-25 (new)
BILL NUMBER:	SB 636
ACT NUMBER:	741
GEORGIA LAWS:	1996 Ga. Laws 416
SUMMARY:	The Act creates new provisions relating to bombs, explosives, and chemical and biological weapons and provides a comprehensive list of explosive materials. The Act provides for the offenses of manufacturing, transporting, distributing, and possessing with the intent to distribute an explosive device. The Act provides that a violation of certain provisions by minors is a designated felony in juvenile court. The Act provides that it shall be unlawful for a person convicted of or under indictment for a felony to engage in certain activities related to destructive devices, detonators, and hoax devices. The Act provides that it shall be unlawful to provide these devices to anyone under age twenty-one. The Act provides that it shall be unlawful to manufacture, possess, transport, distribute, or use a hoax device or a replica with the intent to make another believe that the hoax device or replica is a destructive device or detonator. Finally, the Act provides for the training and certification of bomb technicians, explosive ordnance technicians, and animal handlers.

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EFFECTIVE DATE: May 1, 1996[1]

History

In 1987, Avery Salter, an army veteran with experience as an explosive ordnance disposal officer who is now legal counsel for the International Association of Bomb Technicians and Investigators (IABTI), began working on this bill.[2] The bill addressed crimes relating to bombs and other explosives, as Mr. Salter and other members of the IABTI recognized that Georgia's laws were inadequate in this area.[3] The existing law relating to explosives was codified in Code sections 16-7-63[4] and -64.[5] Under these Code sections there was no punishment for offenses such as making bomb threats or mailing hoax devices.[6] In fact, these offenses, typically charged as terroristic threats or false public alarm, were treated with the same seriousness as annoying one's neighbor.[7] These Code sections did not define what explosives were, and did not contemplate such materials as "hoax devices" or "bacteriological weapons."[8] Moreover, federal regulations, although providing adequate penalties for large-scale offenses, did not address "minor" situations, such as mail bombs and other small scale catastrophes.[9] Members of the IABTI saw a need for state laws that were more consistent and prescribed more appropriate penalties.[10]

The IABTI enlisted the help of Chuck Olson and other members of the Explosive Ordnance Disposal Subcommittee of the Olympic Security Support Group.[11] This subcommittee, made up of bomb technicians, FBI personnel, military personnel, and prosecutors, extensively rewrote

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1. The Act became effective on the first day of the month following the month in which it was approved by the Governor. The Governor approved the Act on April 2, 1996.

2. Telephone Interview with Avery Salter, Counsel for International Association of Bomb Technicians and Investigators (Apr. 23, 1996) [hereinafter Salter Interview]. Mr. Salter drafted the model law which was later refined by Chuck Olson and the Explosive Ordnance Disposal Sub-Committee of the Olympic Security Support Group. Telephone Interview with Chuck Olson, Staff Attorney for the Prosecuting Attorneys' Council of Georgia (June 4, 1996) [hereinafter Olson Interview].

3. SB 636, as introduced, 1996 Ga. Gen. Assem.; Salter Interview, *supra* note 2.

4. 1968 Ga. Laws 1249, § 1, at 1284 (formerly found at O.C.G.A. § 16-7-63 (1992)).

5. 1991 Ga. Laws 324, § 1, at 325 (formerly found at O.C.G.A. § 16-7-64 (1992)).

6. Salter Interview, *supra* note 2.

7. *Id.*

8. *Compare* 1968 Ga. Laws 1249, § 1, at 1284 (formerly found at O.C.G.A. § 16-7-63 (1992)) *and* 1991 Ga. Laws 324, § 1, at 325 (formerly found at O.C.G.A. § 16-7-64 (1992) *with* O.C.G.A. § 16-7-80 (1996).

9. Salter Interview, *supra* note 2.

10. *Id.*

11. Olson Interview, *supra* note 2.

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the IABTI's model law to integrate it into the Georgia Code.[12] The subcommittee also revised the model law to include chemical and biological weapons and to address juvenile jurisdiction.[13] In refining this bill, the subcommittee used existing language from Florida and federal law.[14]

The bill was sponsored by Senator Starr from the Clayton District.[15] The impetus for this support was the combination of the terrorist attack on the World Trade Center, the Oklahoma City bombing, and Atlanta's hosting of the 1996 Olympics.[16]

SB 636

The Act repeals Code sections 16-7-63 and -64 and inserts Code sections 16-7-80 through -97 at the end of the chapter.[17] These Code sections are a much more comprehensive treatment of criminal behavior regarding explosives.[18] The first major change is the inclusion of a definitions section; its aim is specificity and fair notice.[19] Terms such as "bacteriological weapon," "destructive device," and "hoax device" are defined to prevent confusion as to what types of devices are contemplated by the Act.[20] Next, the Act sets out an exhaustive list of materials that are deemed "explosives."[21] The list is taken from the Federal Register, and is included to comply with Article III, section 1, paragraph 1 of the Georgia Constitution.[22]

Under former Code section 16-7-63,[23] one committed the offense of criminal possession of explosives only if one intended to *use* the explosives in one's possession to commit a felony or knew that another intended to *use* those explosives to commit a felony.[24] No such intent is required under the Act.[25] In addition, under Code section 16-7-85, it is

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12. *Id.*
13. *Id.*
14. *Id.*
15. Telephone Interview with Sen. Terrell Starr, Senate District No. 44 (June 5, 1996).
16. Salter Interview, *supra* note 2.
17. *Compare* 1968 Ga. Laws 1249, § 1, at 1285 (formerly found at O.C.G.A. § 16-7-63 (1992)) *and* 1991 Ga. Laws 324, § 1, at 325 (formerly found at O.C.G.A. § 16-7-64 (1992)) *with* O.C.G.A. §§ 16-7-63, -64 (1996); *see also* O.C.G.A. §§ 16-7-80 to -97 (1996).
18. O.C.G.A. §§ 16-7-80 to -97 (1996).
19. *See id.* § 16-7-80; Salter Interview, *supra* note 2.
20. *See* O.C.G.A. § 16-7-80 (1996); Salter Interview, *supra* note 2.
21. O.C.G.A. § 16-7-81 (1996).
22. Olson Interview, *supra* note 2; *see* Sundberg v. State, 234 Ga. 482, 216 S.E.2d 332 (1975); Howell v. State, 238 Ga. 95, 230 S.E.2d 853 (1976).
23. 1968 Ga. Laws 1249, § 1, at 1284 (formerly found at O.C.G.A. § 16-7-63 (1992)).
24. *Id.*
25. O.C.G.A. § 16-7-82 (1996). Exceptions for fireworks and authorized parties are

a crime merely to "manufacture, possess, transport, distribute, or use a hoax device or replica of a destructive device or detonator with the intent to cause another to *believe* that such hoax device or replica is a destructive device or detonator."[26] For example, sending a gag gift in the form of a fake bomb is now against the law.[27]

The Act provides that it is illegal for a convicted felon or a person who has been indicted for a felony to "possess, manufacture, transport, distribute, possess with the intent to distribute, or offer to distribute a destructive device, detonator, explosive, poison gas, or hoax device."[28] It is also unlawful to distribute any of these materials to a convicted felon,[29] to one who has been adjudicated mentally incompetent or mentally ill,[30] or to anyone under age twenty-one.[31]

The Act provides for the offenses of conspiracy[32] and obstruction,[33] for the offense of "transmitting a false public alarm,"[34] and for the jurisdiction of juvenile courts for offenses under certain Code sections.[35] The Act also brings destructive devices within the definition of racketeering activity by amending Code section 16-14-3.[36] In addition, the Act provides that those employed as bomb technicians, explosive ordnance disposal technicians, and animal handlers trained to detect explosives shall complete an initial training program, an apprenticeship, and annual recertification.[37]

Although very complex, the Act did not spur much controversy during the legislative session, and there were no substantive changes made to the bill.[38] Rather, changes made were either to correct typographical errors or technical errors due to the bill's complexity.[39]

John Howe

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provided in O.C.G.A. § 16-7-93. *Id.* § 16-7-93. Exceptions for fertilizers, pesticides, and certain industrial devices are provided in O.C.G.A. § 16-7-97. *Id.* § 16-7-97.

26. *Id.* § 16-7-85 (emphasis added).

27. Salter Interview, *supra* note 2. Hoax devices must be treated seriously, because of the time and money that is expended by public agencies that must treat the hoax device as if it is real. *Id.*

28. O.C.G.A. § 16-7-83(a) (1996).

29. *Id.* § 16-7-83(b)(1).

30. *Id.* § 16-7-83(b)(2).

31. *Id.* § 16-7-84.

32. *Id.* § 16-7-86.

33. *Id.* § 16-7-87.

34. *Id.* § 16-10-28(b).

35. *Id.* § 15-11-37.

36. *Compare id.* § 16-14-3(9)(A)(vi) *with* 1982 Ga. Laws 1385, § 8, at 1402 (formerly found at O.C.G.A. § 16-14-3(9)(A)(vi) (Supp. 1995)).

37. O.C.G.A. § 35-8-25 (1996).

38. Olson Interview, *supra* note 2.

39. *Id.*

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