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# CRIMES AND OFFENSES Offenses Against Public Health and Morals: Make it Unlawful for Any Person Intentionally or Willfully to Utilize a Computer On-Line Service, Internet Service, or Local Bulletin Board Service to Seduce, Solicit, Lure, or Entice, or Attempt to Seduce, Solicit, Lure, or Entice a Child

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## CRIMES AND OFFENSES

*Offenses Against Public Health and Morals: Make it Unlawful for Any Person Intentionally or Willfully to Utilize a Computer On-Line Service, Internet Service, or Local Bulletin Board Service to Seduce, Solicit, Lure, or Entice, or Attempt to Seduce, Solicit, Lure, or Entice a Child*

<b>CODE SECTIONS:</b>	O.C.G.A. §§ 16-12-1, -100 (amended)
<b>BILL NUMBER:</b>	HB 213
<b>ACT NUMBER:</b>	155
<b>GEORGIA LAWS:</b>	1999 Ga. Laws 232
<b>SUMMARY:</b>	<p>The Act defines the crime of computer pornography and sets the penalty for its violation. The Act defines a "child" as one under sixteen years old and makes it a high misdemeanor for any person to use an on-line service to solicit or attempt to solicit a child, or one that he or she believes is a child, to commit certain sexual offenses. The Act also makes it a high and aggravated misdemeanor for on-line service owners or operators to intentionally or willfully permit a violation of this Code by others.</p> <p>Procedurally, the Act provides that an undercover law enforcement officer's involvement in the detection and investigation of a violation shall not constitute a defense and provides for extraterritorial jurisdiction for violations that involve a resident child or an individual believed to be a resident child. The Act also increases the penalty for the offense of contributing to the delinquency, unruliness, or deprivation of a minor.</p>
<b>EFFECTIVE DATE:</b>	July 1, 1999

*History*

As the Internet and computer on-line services have flourished in the late 1990s, one increasingly disturbing aspect of the information age is the proliferation of on-line pornography.<sup>1</sup> The chilling nexus between a growing on-line pornography market and increasing ease of Internet access for ever-younger and more computer-literate children<sup>2</sup> has given birth to increased efforts to eliminate on-line child pornography and exploitation of minors.<sup>3</sup> As news reports of on-line child pornography and on-line solicitation of sexual activity involving minors continued in early 1999,<sup>4</sup> the Georgia General Assembly sought both to empower law enforcement officials in the detection and prosecution of individuals attempting to solicit such activity<sup>5</sup> and to discourage such activity by increasing the penalties both for on-line solicitation<sup>6</sup> and for contributing to the delinquency of minors in general.<sup>7</sup>

*HB 213**Introduction*

On January 26, 1999, Representative Ralph Twigg of the 8th District introduced HB 213, which was co-sponsored by Representatives Larry Walker of the 141st District, Curtis S. Jenkins

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1. See Ron Martz, *Fingers Do the Stalking: Online Pedophiles Try to Lure Children, Push Kiddie Porn*, ATLANTA J. & CONST., June 28, 1998, at E1.

2. See *State of Georgia Session Archives* (audio recording of Mar. 23, 1999, Senate Proceedings) (remarks by Sen. Greg Hecht) <<http://www.ganet.org/services/leg/audio/99archive/>> [hereinafter Hecht Remarks].

3. See, e.g., The Protection of Children from Sexual Predators Act of 1998, HR 3494, 105th Cong., 2d Sess. (1998) (enacted Oct. 21, 1998) (amending, inter alia, 18 U.S.C. § 117, to provide penalties against interstate transmission or transportation of minors' identifying materials to be used for purposes of child pornography).

4. See *Law and Order: Charged Sergeant Released on Bond*, ATLANTA J. & CONST., Mar. 18, 1999, at D6; *Law and Order: Ex-Teacher Gets Three Years in Net Child Porn Probe*, ATLANTA J. & CONST., Mar. 18, 1999, at D6; *Law and Order: Sexual Exploitation of Minors is Alleged*, ATLANTA J. & CONST., Mar. 4, 1999, at D6.

5. See *State of Georgia Session Archives* (audio recording of Feb. 5, 1999, House Proceedings) (remarks by Rep. Ralph Twigg) <<http://www.ganet.org/services/leg/audio/99archive/>>.

6. See Hecht Remarks, *supra* note 2.

7. See *State of Georgia Session Archives* (audio recording of Mar. 23, 1999, Senate Proceedings) (remarks by Sen. David Scott) <<http://www.ganet.org/services/leg/audio/99archive/>> [hereinafter Scott Remarks].

of the 110th District, Terry Coleman of the 142nd District, Jimmy Skipper of the 137th District, and others.<sup>8</sup>

The bill was introduced to enact the Computer Pornography and Child Exploitation Prevention Act of 1999; it added Code section 16-12-100.2, defining the offense of computer pornography.<sup>9</sup>

As introduced, the bill defined computer pornography in reference to a “minor” in one section<sup>10</sup> and to both a “child” and a “minor” in another section.<sup>11</sup> As introduced, the bill did not define either term, however.<sup>12</sup>

The original version of the bill also would have made it a high misdemeanor for owners or operators of various types of on-line services “knowingly to permit a subscriber” to use the service to violate the proposed new Code section.<sup>13</sup> The bill was read a first time and assigned to the House Committee on Public Safety.<sup>14</sup>

#### *Consideration by House Public Safety Committee*

After receiving the bill, the House Public Safety Committee made several changes. First, the Committee added a definition for the term “child,” as used in the proposed Code section,<sup>15</sup> to describe any person under the age of sixteen years.<sup>16</sup>

After defining “child,” the Committee then replaced the word “minor” with the word “child,” thus making the terminology uniform throughout the Act.<sup>17</sup>

The Committee made two changes that would have substantially lessened the scope of the bill. First, the Committee removed the subsection that would have made it a “misdemeanor of a high and aggravated nature” for “any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to

8. See HB 213, as introduced, 1999 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, May 3, 1999.

9. See HB 213, as introduced, 1999 Ga. Gen. Assem.

10. See *id.* This language would have been in Code section 16-12-100.2(b)(1)(D). See *id.*

11. See *id.* This language would have been in Code section 16-12-100.2(c)(1). See *id.*

12. See *id.*

13. See *id.* This language would have been in Code section 16-12-100.2(d)(1). See *id.*

14. See State of Georgia Final Composite Status Sheet, May 3, 1999.

15. See O.C.G.A. § 16-12-100.2 (1999).

16. Compare HB 213, as introduced, 1999 Ga. Gen. Assem., with HB 213 (HCS), 1999 Ga. Gen. Assem.

17. Compare HB 213, as introduced, 1999 Ga. Gen. Assem., with HB 213 (HCS), 1999 Ga. Gen. Assem.

permit a subscriber to utilize the service to commit a violation” of the Act.<sup>18</sup>

Second, the Committee added a subsection that would have effectively eliminated criminal culpability under the statute for minor violators by providing that “[f]or the purposes of this Code section, conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.”<sup>19</sup>

Finally, the Committee added a subsection stating that any violation of the proposed Act would constitute a separate offense under the law.<sup>20</sup>

### *From House Committee Substitute to House Floor Amendment*

After the House Public Safety Committee favorably reported the bill as substituted,<sup>21</sup> the bill proceeded to the House floor, where the House amended the Committee substitute.<sup>22</sup> The House retained all but one change made by the Committee.<sup>23</sup> The sole amendment,<sup>24</sup> offered by Representative Ben N. Whitaker of the 7th District, restored subsection (e)(1), which had been deleted in Committee.<sup>25</sup> This provision addressed on-line service owners’ and operators’ culpability under the Act.<sup>26</sup> Thus, the amended version again made it a high and aggravated misdemeanor for “any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly

18. Compare HB 213, as introduced, 1999 Ga. Gen. Assem., with HB 213 (HCS), 1999 Ga. Gen. Assem. This would have been in Code section 16-12-100.2(d)(2). See HB 213, as introduced, 1999 Ga. Gen. Assem.

19. Compare HB 213, as introduced, 1999 Ga. Gen. Assem., with HB 213 (HCS), 1999 Ga. Gen. Assem. This language would have been Code section 16-12-100.2(f). See HB 213, as introduced, 1999 Ga. Gen. Assem.

20. Compare HB 213, as introduced, 1999 Ga. Gen. Assem., with HB 213 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 16-12-100.2(h) (1999).

21. See *State of Georgia Session Archives* (audio recording of Feb. 4, 1999, House Proceedings) <<http://www.ganet.org/services/leg/audio/99archive/>>.

22. See State of Georgia Final Composite Status Sheet, May 3, 1999.

23. Compare HB 213 (HCS), 1999 Ga. Gen. Assem., with HB 213 (HCSFA), 1999 Ga. Gen. Assem.

24. See HB 213 (HFA), 1999 Ga. Gen. Assem.; see *State of Georgia Session Archives* (audio recording of Feb. 5, 1999, House Proceedings) <<http://www.ganet.org/services/leg/audio/99archive/>>.

25. See *State of Georgia Session Archives* (audio recording of Feb. 5, 1999, House Proceedings) <<http://www.ganet.org/services/leg/audio/99archive/>>.

26. Compare HB 213 (HCS), 1999 Ga. Gen. Assem., with HB 213 (HCSFA), 1999 Ga. Gen. Assem.

to permit a subscriber to utilize the service to commit a violation of this Code section.”<sup>27</sup> The amendment passed, and the House passed the amended Committee substitute by a 165-0 vote.<sup>28</sup>

*Consideration by Senate Judiciary Committee*

Upon introduction in the Senate on February 8, 1999, the Senate referred the bill to the Judiciary Committee.<sup>29</sup> The Committee offered a substitute that contained few, though significant, changes.<sup>30</sup>

First, and most notably, the Committee substitute changed the scienter requirement throughout the Act from “knowingly” to “intentionally or willfully.”<sup>31</sup> The Committee made the change because some senators “were worried about the idea that someone who was just a provider might—just for providing service—be criminally culpable.”<sup>32</sup>

Therefore, seeking to provide protection for innocent Internet service providers (ISPs),<sup>33</sup> the Committee substitute not only provided that an ISP would be culpable for “intentionally or willfully . . . permit[ting] a subscriber to utilize the service to commit a violation of this Code section,”<sup>34</sup> but also added that the on-line service provider was culpable only if it provided such permission “knowing that such person intended to utilize such service to violate this Code section.”<sup>35</sup>

Moreover, the Committee substitute changed the scienter requirement from “knowing” to “intentionally and willfully” in the proposed Code section’s definition of the substantive crime of computer pornography.<sup>36</sup>

27. Compare HB 213 (HCS), 1999 Ga. Gen. Assem., with HB 213 (HCSFA), 1999 Ga. Gen. Assem.

28. See State of Georgia Final Composite Status Sheets, May 3, 1999; *State of Georgia Session Archives* (audio recording of Feb. 5, 1999, House Proceedings) <<http://www.ganet.org/services/leg/audio/99archive/>>.

29. See State of Georgia Final Composite Status Sheet, May 3, 1999.

30. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCS), 1999 Ga. Gen. Assem.

31. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCS), 1999 Ga. Gen. Assem.

32. Hecht Remarks, *supra* note 2.

33. See *id.*

34. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 16-12-100.2(e)(1) (1999).

35. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 16-12-100.2(e)(1) (1999).

36. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 16-12-100.2(e)(1) (1999).

Further, in its definition of computer pornography and elaboration of acts that would be unlawful under the new Code section, the Committee substitute prohibited only the transmission of descriptive or identifying information “for the purpose of offering or soliciting sexual conduct of or with any child.”<sup>37</sup> This provision somewhat weakened the previous version’s prohibition of transmitting descriptive or identifying information for the purpose of “facilitating, encouraging, offering, or soliciting” such sexual conduct.<sup>38</sup>

Conversely, the Committee substitute strengthened the Act’s reach by removing the subsection that stated “[f]or the purposes of this Code section, conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is eighteen years of age or younger.”<sup>39</sup>

#### *From Senate Committee Substitute to Senate Floor Amendment*

Upon passage by the Senate Judiciary Committee, the Committee substitute was offered to the Senate, where the senators amended it on the floor.<sup>40</sup> While retaining all of the changes made in Committee,<sup>41</sup> the Senate added to the bill a new section 1, which amended Code section 16-12-1, relating to penalties for the offense of contributing to the delinquency, unruliness, or deprivation of a minor.<sup>42</sup>

The amendment, offered by Senator David Scott of the 36th District, made the first or second offense a misdemeanor punishable by not more than \$1000, or imprisonment for not more than twelve months, or both.<sup>43</sup>

This amendment effectively “tacked on” to the bill the provisions of HB 482.<sup>44</sup> HB 482, introduced by Representative Jack Connell, Speaker Pro Tem of the House, passed the House by a unanimous

37. HB 213 (SCS), 1999 Ga. Gen. Assem.

38. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCS), 1999 Ga. Gen. Assem.

39. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCS), 1999 Ga. Gen. Assem.

40. See State of Georgia Final Composite Status Sheet, May 3, 1999.

41. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCSFA), 1999 Ga. Gen. Assem.

42. Compare HB 213 (HCSFA), 1999 Ga. Gen. Assem., with HB 213 (SCSFA), 1999 Ga. Gen. Assem.

43. See Scott Remarks, *supra* note 7.

44. See *State of Georgia Session Archives* (audio recordings of Mar. 24, 1999, House Proceedings) (remarks by Rep. Ralph Twiggs) <<http://www.ganet.org/services/leg/audio/99archives/>>.

vote.<sup>45</sup> In the Senate, however, HB 482 failed to pass the Senate Rules Committee; therefore, Senator Scott effectively combined it with HB 213 by adding its provisions to HB 213 as a floor amendment.<sup>46</sup>

The Senate adopted the floor amendment by a vote of forty-five to zero,<sup>47</sup> adopted the amended Committee substitute by a vote of forty-five to zero,<sup>48</sup> and passed HB 213 by a vote of fifty-two to zero.<sup>49</sup> On March 24, the House approved the Senate amendments by a vote of 144 to one.<sup>50</sup>

### *The Act*

The Act amends Code section 16-12-1 by making the offense of contributing to the delinquency, unruliness, or deprivation of a minor punishable by a fine of not more than \$1000 and/or imprisonment of not more than twelve months for the first and second offenses, which the Act classifies as misdemeanors.<sup>51</sup> Further, the Act punishes the third and subsequent offenses, which it classifies as felonies, by a fine of not less than \$1000 nor more than \$5000 and/or imprisonment for not less than one nor more than three years.<sup>52</sup>

The Act enacts the Computer Pornography and Child Exploitation Prevention Act of 1999 by adding Code section 16-12-100.2.<sup>53</sup> The Act defines "child" as a person under sixteen years of age.<sup>54</sup> The Act defines the crime of computer pornography as the intentional or willful<sup>55</sup> compilation, entering into, or transmission by computer;<sup>56</sup> making, printing, publishing, or reproduction by other computerized

45. *See id.*; State of Georgia Final Composite Status Sheet, May 3, 1999.

46. *See* Scott Remarks, *supra* note 7 ("The Speaker Pro Tem of the House of Representatives, Rep. Connell, has worked on this through the year; we want to give him a helping hand on this and appreciate you all voting for this amendment.").

47. *See id.*

48. *See id.*

49. *See id.*

50. *See State of Georgia Session Archives* (audio recordings of Mar. 24, 1999, House Proceedings) <<http://www.ganet.org/services/leg/audio/99archives/>>; State of Georgia Final Composite Status Sheet, May 3, 1999.

51. *Compare* 1996 Ga. Laws 273, § 1, at 274 (formerly found at O.C.G.A. § 16-12-1(d)(1) (Supp. 1998)), *with* O.C.G.A. § 16-12-1(d)(1) (1999).

52. *Compare* 1996 Ga. Laws 273, § 1, at 274 (formerly found at O.C.G.A. § 16-12-1(d)(2) (Supp. 1998)), *with* O.C.G.A. § 16-12-1(d)(2) (1999).

53. *See* O.C.G.A. § 16-12-100.2(d) (1999) (providing for a short title).

54. *See id.* § 16-12-100.2(b).

55. *See id.* § 16-12-100.2(c)(1).

56. *See id.* § 16-12-100.2(c)(1)(A).



means;<sup>57</sup> causing or allowing to be entered into by means of computer;<sup>58</sup> or buying, selling, receiving, exchanging, or disseminating<sup>59</sup> “any notice, statement, or advertisement, or any child’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with any child or the visual depiction of such conduct.”<sup>60</sup> The Act sets the penalty for violation as a fine of not more than \$10,000 or imprisonment of not less than one nor more than twenty years.<sup>61</sup>

The Act also makes it unlawful for any person “intentionally or willfully to utilize a computer on-line service, Internet service, or local bulletin board service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child, to commit . . . sodomy or aggravated sodomy,<sup>62</sup> . . . child molestation or aggravated child molestation,<sup>63</sup> . . . enticing a child for indecent purposes,<sup>64</sup> . . . public indecency,<sup>65</sup> or to

57. *See id.* § 16-12-100.2(c)(1)(B).

58. *See id.* § 16-12-100.2(c)(1)(C).

59. *See id.* § 16-12-100.2(c)(1)(D).

60. *Id.* § 16-12-100.2(c)(1).

61. *See id.* § 16-12-100.2(c)(2).

62. *Id.* § 16-12-100.2(d)(1). This subsection encompasses sodomy and aggravated sodomy by reference to “any illegal act described in O.C.G.A. § 16-6-2.” *Id.* Code section 16-6-2 states, in part, that

[a] person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person.

1996 Ga. Laws 1115, § 2, at 1116 (codified at O.C.G.A. § 16-6-2 (1999)).

63. O.C.G.A. § 16-12-100.2(d)(1) (1999). This subsection encompasses child molestation and aggravated child molestation by reference to “any illegal act described in O.C.G.A. § 16-6-4.” *Id.* Code section 16-6-4 states, in part, that

[a] person commits the offense of child molestation when he or she does an immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person. . . .

A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves act of sodomy.

1995 Ga. Laws 957, § 4, at 958 (codified at O.C.G.A. § 16-6-4 (1999)).

64. O.C.G.A. § 16-12-100.2(d)(1) (1999). This subsection encompasses enticement of a child for indecent purposes by reference to “any illegal act described in O.C.G.A. § 16-6-5.” *Id.* Code section 16-6-5 states, in part, that

[a] person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years

engage in any conduct that by its nature is an unlawful sexual offense against a child.”<sup>66</sup> This provision explicitly states that if an individual solicits a child for “sexual assault or criminal contact through the Internet, that becomes a crime as well, . . . in addition to the substantive offense.”<sup>67</sup>

In addition, the Act makes culpable “any owner or operator of a computer on-line service, Internet service, or local bulletin board service” who “intentionally or willfully permit[s] . . . a subscriber to utilize the service to commit a violation of [the Act], knowing that such person intended” to violate the Act.<sup>68</sup> The Act provides that a violation of either preceding section is a misdemeanor of a “high and aggravated nature.”<sup>69</sup>

The Act provides that the sole fact that an undercover operative or law enforcement officer plays a role in the detection and investigation of an offense under the Act shall not constitute a defense to prosecution under the Act.<sup>70</sup>

The Act also provides for extraterritorial jurisdiction if the violation of the Act involves a child, or one believed by the violator to be a child, residing in Georgia.<sup>71</sup>

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to any place whatsoever for the purpose of child molestation or indecent acts.

1995 Ga. Laws 957, § 5, at 959 (codified at O.C.G.A. § 16-6-5 (1999)).

65. See O.C.G.A. § 16-12-100.2(d)(1) (1999). This subsection encompasses public indecency by reference to “any illegal act described in O.C.G.A. § 16-6-8.” *Id.* Code section 16-6-8 states, in part, that

[a] person commits the offense of public indecency when he or she performs any of the following acts in a public place: . . . sexual intercourse . . . ; lewd exposure of sexual organs . . . ; lewd appearance in a state of partial or complete nudity . . . ; or a lewd caress or indecent fondling of the body of another person.

1996 Ga. Laws 312, § 1 (codified at O.C.G.A. § 16-6-8 (1999)).

66. See O.C.G.A. § 16-12-100.2(d)(1) (1999).

67. Hecht Remarks, *supra* note 2.

68. O.C.G.A. § 16-12-100.2(e)(1) (1999). As enacted by 1999 Ga. Laws 232, § 2, the Code section contained two subsections (c). Pursuant to Code section 28-9-5, the second subsection (c) was redesignated as subsection (d), and subsections (d) through (g) were redesignated as subsections (e) through (h), respectively. *Id.* § 16-12-100.2 (Code Commission Notes).

69. *Id.* § 16-12-100.2(d)(2), (e)(2).

70. See *id.* § 16-12-100.2(f).

71. See *id.* § 16-12-100.2(g).