

The House Committee on Judiciary Non-civil offers the following substitute to HB 430:

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to search
 2 and seizure, so as to revise and modernize the law relating to search and seizure; to provide
 3 for definitions; to provide for seizure of intangible property; to change provisions relating
 4 to searches without warrants; to authorize the recording of the execution of a search warrant;
 5 to provide for a procedure for sealing and delaying disclosure of search warrants, supporting
 6 documentation thereof, and returns under certain circumstances; to change the standard for
 7 suppressing evidence; to reorganize the use of wiretapping and surveillance into the search
 8 and seizure chapter; to provide for a procedure for the installation and use of tracking
 9 devices, pen registers, and trap and trace devices; to amend Article 3 of Chapter 11 of Title
 10 16 of the Official Code of Georgia Annotated, relating to invasions of privacy, so as to repeal
 11 provisions relating to wiretapping and surveillance now contained in Chapter 5 of Title 17;
 12 to amend Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to
 13 prosecuting attorneys, so as to change provisions relating to investigators in District Attorney
 14 and Solicitor-General Offices; to amend Code Sections 2-2-11, 2-15-14, 12-2-2, 15-18-15,
 15 27-4-263, 49-4-146.3, and Title 16 of the Official Code of Georgia Annotated, relating to
 16 inspection warrants for the Department of Agriculture, inspection warrants for pacific white
 17 shrimp aquaculture; inspection warrants for the environmental protection division, the chief
 18 assistant district attorney, inspection warrants for the Aquaculture Development
 19 Commission, forfeiture of property and proceeds obtained through Medicaid fraud, and
 20 crimes and offenses, respectively, so as to conform cross-references; to provide for related
 21 matters; to provide for an effective date, a delayed effective date, and applicability; to repeal
 22 conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **PART I**
 25 **SEARCH, SEIZURE, WIRETAP**
 26 **SECTION 1-1.**

27 Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to search and
 28 seizure, is amended by revising Article 1, relating to searches without warrants, as follows:

29 "ARTICLE 1

30 17-5-1.

31 As used in this article, the term:

32 (1) 'Another state' means:

33 (A) A state of the United States other than Georgia;

34 (B) The District of Columbia; and

35 (C) Puerto Rico, the United States Virgin Islands, or any territory or insular possession
 36 subject to the jurisdiction of the United States, including an Indian tribe or band or
 37 Alaskan native village, which is recognized by federal law or formally acknowledged
 38 by a state.

39 (2) 'Certified peace officer' means any individual who has been subject to the
 40 requirements of Chapter 8 of Title 35, the 'Georgia Peace Officer Standards and Training
 41 Act,' and has completed the training required by such chapter.

42 (3) 'Contraband' means any item, substance, object, thing, or matter, the possession of
 43 which is unlawful under the laws of this state or of the United States.

44 (4) 'Judicial officer' means:

45 (A) Any judge of a court of this state;

46 (B) Any other official authorized to hold a court of inquiry to examine into an arrest
 47 of an offender for a violation of the criminal laws of this state; or

48 (C) Any retired or senior judge or judge emeritus of a court of record when an active
 49 judge of a court of record in the jurisdiction wherein a search warrant is sought
 50 authorizes such judge, in writing, to issue search warrants or conduct hearings provided
 51 for in Article 1 or 2 of this chapter.

52 (5) 'Peace officer' shall have the same meaning as set forth in Code Section 35-8-2 and
 53 shall also mean:

54 (A) A certified peace officer employed by a university, college, or school pursuant to
 55 Code Section 20-3-72 or Chapter 8 of Title 20;

56 (B) A certified peace officer employed by a district attorney or solicitor-general; or

57 (C) A probation supervisor or probation officer employed by the Department of
 58 Corrections, the Department of Juvenile Justice, or any political subdivision of this
 59 state.

60 (6) 'Property' means instruments, articles or things, any information or data, and anything
 61 that is tangible or intangible, corporeal or incorporeal, visible or invisible.

62 (7) 'Stolen property' means any property unlawfully taken, converted, embezzled, or
 63 otherwise obtained without permission or right, in violation of the laws of this state,
 64 another state, the United States, or any foreign nation.

65 17-5-2.

66 (a) ~~A~~ When a lawful arrest is effected a peace officer may reasonably search the person
 67 an individual lawfully arrested and the area within ~~the~~ such person's immediate presence
 68 for the purpose of:

69 (1) Protecting the peace officer from attack;

70 (2) Preventing the ~~person~~ individual from escaping;

71 (3) Discovering or seizing the fruits of the crime for which the person has been arrested;
 72 or

73 (4) Discovering or seizing any ~~instruments, articles, or things~~ property which ~~are~~ is being
 74 used or which may have been used in the commission of the crime for which the person
 75 has been arrested.

76 (b) ~~Nothing~~ When the peace officer is in the process of effecting a lawful search, nothing
 77 in this Code section shall be construed to preclude him a peace officer, in the course of a
 78 lawful search, from discovering or seizing any ~~stolen or embezzled~~ property, any ~~item,~~
 79 ~~substance, object, thing, or matter, the possession of which is unlawful, or any item,~~
 80 ~~substance, object, thing, or matter, other than the private papers of any person, which is~~
 81 tangible contraband, or any other property that is evidence of the commission of a crime
 82 against the laws of this state, the United States, or another state.

83 ~~17-5-2.~~ 17-5-3.

84 An inventory of all ~~instruments, articles, or things~~ property that is seized in a search
 85 without a search warrant shall be given to the ~~person~~ individual arrested and a copy thereof
 86 delivered to the judicial officer before whom the ~~person~~ individual arrested is taken. If the
 87 ~~person~~ individual arrested is released without a charge being preferred against ~~him,~~ all
 88 ~~instruments, articles, or things~~ such individual, all property seized, other than contraband
 89 or stolen property, shall be returned to ~~him~~ such individual upon release."

90 **SECTION 1-2.**

91 Said chapter is further amended by revising Article 2, relating to searches with warrants, as
 92 follows:

93 **"ARTICLE 2**94 **Part 1**

95 17-5-20.

96 As used in this article, the term:97 (1) 'Another state' shall have the same meaning as set forth in Code Section 17-5-1.98 (2) 'Contraband' shall have the same meaning as set forth in Code Section 17-5-1.

99 (3) 'Device' means an instrument or apparatus used for overhearing, recording,
 100 intercepting, or transmitting sounds or for observing, photographing, videotaping,
 101 recording, or transmitting visual images and which involves in its operation electricity,
 102 electronics, or infrared, laser, or similar beams. Without limiting the generality of the
 103 foregoing, the term 'device' shall specifically include any camera, photographic
 104 equipment, video equipment, or other similar equipment or any electronic, mechanical,
 105 or other apparatus which can be used to intercept a wire communication, oral
 106 communication, or electronic communication other than:

107 (A) Any telephone or telegraph instrument, equipment, or facility or any component
 108 thereof:

109 (i) Furnished to the subscriber or user by a provider of electronic communication
 110 service in the ordinary course of its business and being used by the subscriber or user
 111 in the ordinary course of its business or furnished by such subscriber or user for
 112 connection to the facilities of such service and used in the ordinary course of its
 113 business; or

114 (ii) Being used by a provider of electronic communication service in the ordinary
 115 course of its business or by an investigative or peace officer in the ordinary course of
 116 his or her duties; or

117 (B) A hearing aid or similar device being used to correct subnormal hearing to not
 118 better than normal;

119 (C) Focusing, lighting, or illuminating equipment or optical magnifying equipment;
 120 and

121 (D) A pen register or trap and trace device.

122 (4) 'Electronic communication' means any transfer of signs, signals, writing, images,
 123 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,

124 electromagnetic, photoelectronic, or photo-optical system that affects interstate or foreign
125 commerce, but shall not include:

126 (A) Any wire communication or oral communication;

127 (B) Any communication made through a tone-only paging device;

128 (C) Any communication from a tracking device; or

129 (D) Electronic funds transfer information stored by a financial institution in a
130 communications system used for the electronic storage and transfer of funds.

131 (5) 'Electronic communication service' means any service which provides to users
132 thereof the ability to send or receive wire communications or electronic communications.

133 (6) 'Judicial officer' shall have the same meaning as set forth in Code Section 17-5-1.

134 (7) 'Oral communication' means any oral communication uttered by an individual
135 exhibiting an expectation that such communication is not subject to interception under
136 circumstances justifying such expectation, but such term shall not include any electronic
137 communication.

138 (8) 'Peace officer' shall have the same meaning as set forth in Code Section 17-5-1.

139 (9) 'Pen register' means a device or process that records or decodes dialing, routing,
140 addressing, or signaling information transmitted by an instrument or facility from which
141 an electronic communication or wire communication is transmitted; provided, however,
142 that such information shall not include the contents of any communication. Such term
143 shall not include any device or process used by a provider or customer of an electronic
144 communication service for billing, or recording as an incident to billing, for
145 communications services provided by such provider nor any device or process used by
146 a provider or customer of an electronic communication service for cost accounting or
147 similar purposes in the ordinary course of its business.

148 (10) 'Property' shall have the same meaning as set forth in Code Section 17-5-1.

149 (11) 'Remote computing service' means the provision to the public of computer storage
150 or processing services by means of an electronic communications system.

151 (12) 'Stolen property' shall have the same meaning as set forth in Code Section 17-5-1.

152 (13) 'Tracking device' means any device that permits the tracking of the movement of an
153 individual or physical object.

154 (14) 'Trap and trace device' means a device or process that captures the incoming
155 electronic or other impulses which identify the originating number or other dialing,
156 routing, addressing, and signaling information reasonably likely to identify the source of
157 a wire communication or electronic communication; provided, however, that such
158 information shall not include the contents of any communication.

159 (15) 'Wire communication' means any aural transfer made in whole or in part through the
160 use of facilities for the transmission of communications by the aid of wire, cable, or other

161 like connection between the point of origin and the point of reception, including the use
 162 of such connection in a switching station, furnished or operated by persons engaged in
 163 providing or operating such facilities for the transmission of interstate or foreign
 164 communications or communications affecting interstate or foreign commerce.

165 17-5-21.

166 (a) A search warrant ~~may~~ shall be issued only upon the ~~application of an officer of this~~
 167 ~~state or its political subdivisions charged with the duty of enforcing the criminal laws or~~
 168 ~~a currently certified~~ request of a peace officer engaged in the course of official duty;
 169 ~~whether said officer is employed by a law enforcement unit of:~~

170 (1) ~~The state or a political subdivision of the state; or~~

171 (2) ~~A university, college, or school.~~

172 (b) A search warrant shall not be issued upon the application of a private citizen or for ~~his~~
 173 a private citizen's aid in the enforcement of personal, civil, or property rights.

174 ~~17-5-21.~~ 17-5-22.

175 (a) Any peace officer seeking a search warrant while engaged in the course of official duty
 176 shall submit a written request for such warrant. ~~Upon the written complaint of any certified~~
 177 ~~peace officer of this state or its political subdivisions charged with the duty of enforcing~~
 178 ~~the criminal laws and otherwise as authorized in Code Section 17-5-20 under oath or~~
 179 ~~affirmation, which states facts sufficient to show probable cause that a crime is being~~
 180 ~~committed, or has been committed, or is about to be committed~~ and which particularly
 181 describes the place or person, or both, to be searched and ~~things~~ the individuals or property
 182 to be seized; any. Such request for a search warrant may include related documents and
 183 oral testimony. Any judicial officer authorized to hold a court of inquiry to examine into
 184 an arrest of an offender against the penal laws, referred to in this Code section as 'judicial
 185 officer,' may issue a search warrant for the search or seizure of the following:

186 (1) ~~Any instruments, articles, or things, including the private papers of any person, which~~
 187 ~~are property that is~~ designed, intended for use, or which ~~have~~ has been used in the
 188 commission of the offense ~~in connection with~~ for which the search warrant is issued;

189 (2) Any ~~person~~ individual who has been kidnapped or unlawfully restrained in violation
 190 of the laws of this state, who has been kidnapped in another ~~jurisdiction~~ state and is now
 191 concealed within this state, or any human fetus or human corpse;

192 (3) ~~Stolen or embezzled~~ property;

193 (4) ~~Any item, substance, object, thing, or matter, the possession of which is unlawful~~
 194 contraband; or

195 ~~(5) Any item, substance, object, thing, or matter, other than the private papers of any~~
 196 ~~person, which is tangible property that is~~ evidence of the commission of the crime for
 197 which probable cause is shown; or

198 (6) Another person's property when an arrest warrant has been issued for an individual
 199 who is located within such other person's property.

200 (b) When the peace officer is in the process of effecting a lawful search, nothing in this
 201 Code section shall ~~be construed to preclude him~~ preclude such officer from discovering or
 202 seizing any stolen or embezzled property, ~~any item, substance, object, thing, or matter, the~~
 203 ~~possession of which is unlawful, or any item, substance, object, thing, or matter, other than~~
 204 ~~the private papers of any person, which is tangible~~ contraband, or any other property that
 205 is evidence of the commission of a crime against the laws of this state, the United States,
 206 or another state.

207 (c) Other personnel, sworn or unsworn, acting under the direction of a peace officer
 208 executing a search warrant may assist in the execution of such warrant. While in the
 209 process of effecting a lawful arrest or search, nothing in this Code section nor in Code
 210 Section 16-11-62 shall be construed to preclude the use of any device by the peace officer
 211 executing the search warrant or other personnel assisting in the execution of such warrant.
 212 ~~Any retired judge or judge emeritus of a state court may issue search warrants as authorized~~
 213 ~~by this Code section if authorized in writing to do so by an active judge of the state court~~
 214 ~~of the county wherein the warrants are to be issued.~~

215 (d) Notwithstanding any provisions of Code Section ~~17-5-20~~ 17-5-21 or other provisions
 216 of this Code section to the contrary, with respect to the execution of a search warrant by
 217 a ~~certified~~ peace officer employed by a university, college, or school, which search warrant
 218 will be executed beyond the arrest jurisdiction of a campus ~~policeman~~ police officer
 219 pursuant to Code Section 20-3-72, the execution of such search warrant shall be made
 220 jointly by the ~~certified~~ peace officer employed by a university, college, or school and a
 221 ~~certified~~ peace officer of a law enforcement unit of the political subdivision wherein the
 222 search will be conducted.

223 ~~17-5-21.1.~~ 17-5-23.

224 (a) A ~~judge of any court in this state~~ judicial officer authorized to issue search warrants
 225 may, in lieu of receiving a written request pursuant to Code Section ~~17-5-21~~ 17-5-22 may,
 226 ~~as an alternative to other laws relating to the issuance of search warrants,~~ receive and
 227 conduct such applications requests for the issuance of search warrants by video conference.
 228 The issuance of a search warrant by video conference shall be valid irrespective of the
 229 physical location of the ~~judge~~ judicial officer at the time of the video conference, provided
 230 that the ~~judge~~ judicial officer issuing the search warrant is authorized by law to issue such

231 warrant, and, at the time such warrant is issued, he or she is physically located within this
232 state.

233 (b) Search warrant ~~applications~~ requests heard by video conference shall be conducted in
234 a manner to ensure that the ~~judge~~ judicial officer conducting the hearing has visual and
235 audible contact with all affiants and witnesses giving testimony.

236 (c) The affiant participating in a search warrant ~~application~~ request by video conference
237 shall sign the affidavit for a search warrant and any related documents by any reasonable
238 means which identifies the affiant, including, but not limited to, his or her typewritten
239 name, signature affixed by electronic stylus, or any other reasonable means ~~which that~~
240 identifies the ~~person~~ individual signing the affidavit and any related documents. The ~~judge~~
241 judicial officer participating in a search warrant ~~application~~ request by video conference
242 shall sign the affidavit for a search warrant, the search warrant, and any related documents
243 by any reasonable means which identifies the ~~judge~~ judicial officer, including, but not
244 limited to, his or her typewritten name, signature affixed by electronic stylus, or any other
245 reasonable means ~~which that~~ identifies the judicial officer signing the affidavit and warrant
246 and any related documents. Such ~~applications~~ requests shall be deemed to be written
247 within the meaning of Code Section ~~17-5-21~~ 17-5-22. Such authorization shall be deemed
248 to comply with the issuance requirements provided for in Code Section ~~17-5-22~~ 17-5-24.

249 (d) A ~~judge~~ judicial officer hearing matters pursuant to this Code section shall administer
250 an oath to any ~~person~~ individual testifying by means of a video conference.

251 (e) A video recording of the ~~application~~ search warrant request hearing and any documents
252 submitted in conjunction with ~~the application~~ such request shall be maintained as part of
253 the record.

254 ~~17-5-22.~~ 17-5-24.

255 (a) All search warrants shall state the time and date of issuance and are the warrants of the
256 judicial officer issuing the same and not the warrants of the court in which ~~he~~ such officer
257 is then sitting. Such warrants need not bear the seal of the court or clerk thereof. Until the
258 search warrant has been executed or has been returned as not executed, the search warrant
259 and all supporting documents, recordings, and transcripts shall not be subject to public
260 inspection. The search warrant, ~~the complaint on which the warrant is issued,~~ the affidavit
261 ~~or affidavits~~ and all supporting ~~the~~ documentation for such warrant, and the returns shall
262 be filed with the clerk of the court of the judicial officer issuing the same, or with the court
263 if there is no clerk, ~~at the time the~~ within a reasonable time after the search warrant has
264 been ~~executed or has been~~ returned or has been returned 'not executed'; provided, however,
265 that the judicial officer shall keep a docket record of all search warrants issued ~~by him,~~ and

266 upon issuing any warrant ~~he~~ shall immediately record the same, within a reasonable time,
267 on the docket.

268 (b)(1) The prosecuting attorney may petition the court ex parte for a search warrant and
269 all supporting documentation therefor, including recordings or transcripts supporting such
270 warrant, to be filed under seal with the clerk when the prosecuting attorney can show
271 reasonable cause to believe that disclosure of the search warrant and supporting
272 documentation therefor may:

273 (A) Endanger the life or physical safety of an individual;

274 (B) Result in the flight of an individual from prosecution;

275 (C) Lead to the destruction of or tampering with evidence;

276 (D) Cause the intimidation of potential witnesses;

277 (E) Seriously jeopardize an investigation; or

278 (F) Unduly delay a trial.

279 (2) A judicial officer may order that a search warrant and all supporting documentation
280 therefor, including recordings or transcripts supporting such warrant, the return for such
281 warrant, and the petition of the prosecuting attorney requesting sealing be filed under seal
282 with the clerk until such time as the judicial officer may direct, up to an initial period of
283 60 days. Upon application by the prosecuting attorney, the judicial officer may extend
284 the initial sealing for additional periods not to exceed 60 days; provided, however, that
285 such sealing shall not extend beyond the return of the indictment or the filing of an
286 accusation in which property or evidence seized may be admitted into evidence.

287 ~~17-5-23. 17-5-25.~~

288 A ~~The~~ search warrant shall command the peace officer directed to execute the same to
289 search the place or person particularly described in the warrant and to seize ~~the instruments,~~
290 ~~articles, or things~~ individuals or property particularly described in the search warrant. A
291 search warrant may be executed at any reasonable time.

292 ~~17-5-24. 17-5-26.~~

293 (a) A ~~The~~ search warrant shall be issued in duplicate and shall be directed for execution
294 to all peace officers ~~of this state. However,;~~ provided, however, that the judicial officer
295 may direct the search warrant to be executed by any peace officer named specially therein.

296 ~~17-5-25.~~

297 (b) A ~~The~~ search warrant shall be executed within ten days from the time of issuance. If
298 the search warrant is executed, the duplicate copy shall be left with any person from whom
299 any ~~instruments, articles, or things~~ individual or property was seized; or, if no person

300 individual is available, the copy shall be left in a conspicuous place on the premises from
 301 which the ~~instruments, articles, or things were seized~~ individual or property was seized;
 302 provided, however, that no copy shall be left in a conspicuous place if the judicial officer
 303 issuing such warrant has ordered the search warrant to be sealed pursuant to Code Section
 304 17-5-24.

305 (c) Any search warrant not executed within ten days from the time of issuance shall be
 306 void and shall be returned to the court of the judicial officer issuing the same as 'not
 307 executed.'

308 ~~17-5-26.~~

309 ~~The search warrant may be executed at any reasonable time.~~

310 17-5-27.

311 (a) All necessary and reasonable force may be used to effect an entry into any building or
 312 property place to be searched or part thereof to execute a search warrant if, after verbal
 313 notice or an attempt in good faith to give verbal notice by the peace officer directed to
 314 execute the same of ~~his~~ the peace officer's authority and purpose:

- 315 (1) The peace officer ~~He~~ is refused admittance;
 316 (2) The ~~person or persons~~ individuals within the building or property place to be
 317 searched or part thereof refuse to acknowledge and answer the verbal notice or the
 318 presence of the ~~person or persons~~ individuals therein is unknown to the peace officer; or
 319 (3) The building or property place to be searched or part thereof is not then occupied by
 320 any person.

321 ~~17-5-28.~~

322 (b) In the execution of the search warrant the peace officer executing the same may
 323 reasonably detain or search any ~~person~~ individual in the place at the time:

- 324 (1) To protect ~~himself~~ the peace officer and any other individual assisting in the
 325 execution of such warrant from attack; or
 326 (2) To prevent the disposal or concealment of any ~~instruments, articles, or things~~
 327 particularly described in the search warrant property or contraband.

328 ~~17-5-29.~~ 17-5-28.

329 A written return of all ~~instruments, articles, or things~~ property seized shall be made without
 330 unnecessary delay before the any judicial officer ~~named in the warrant or before any court~~
 331 of competent jurisdiction of the same court as the judicial officer that issued the search
 332 warrant. An inventory of any ~~instruments, articles, or things seized~~ property seized shall

333 be filed with the return and signed under oath by the peace officer executing the warrant.
 334 If the return has been sealed pursuant to Code Section 17-5-24, the inventory shall also be
 335 sealed. Unless the return has been sealed, the ~~The~~ judicial officer or court shall, upon
 336 request, deliver a copy of the inventory to the persons from whom or from whose premises
 337 the ~~instruments, articles, or things were~~ property was taken and to the applicant for the
 338 search warrant.

339 ~~17-5-30.~~ 17-5-29.

340 (a) A defendant aggrieved by an unlawful search and seizure may move the court for the
 341 return of property, the possession of which is not otherwise unlawful, and to suppress as
 342 evidence anything so obtained on the grounds that:

343 (1) The search and seizure without a warrant was illegal; or

344 (2) The search and seizure with a warrant was illegal because the warrant is insufficient
 345 on its face, there was not probable cause for the issuance of the warrant, or the warrant
 346 was illegally executed.

347 (b) The motion shall be in writing and state facts showing that the search and seizure ~~were~~
 348 was unlawful. Such motion shall be filed within ten days after arraignment, unless the time
 349 for filing such motion is extended by the court. The ~~judge~~ court shall conduct and receive
 350 evidence ~~out of the presence at a hearing on such motion prior to the empaneling~~ of the jury
 351 on any issue of fact necessary to determine ~~the motion; and the~~ such motion. The burden
 352 of proving that the search and seizure ~~were~~ was lawful shall be on the state. If the motion
 353 is granted, the state may appeal as provided in Code Section 5-7-1. The property shall be
 354 restored; if the state does not appeal or if the order is affirmed on appeal unless such
 355 property is otherwise subject to lawful detention; and it shall not be admissible in evidence
 356 against the movant in any trial except as impeachment or rebuttal evidence.

357 (c) The motion shall be made only before a court with jurisdiction to try the offense. If a
 358 criminal accusation is filed or if an indictment or special presentment is returned by a grand
 359 jury, the motion shall be made only before the court in which the accusation, indictment,
 360 or special presentment is filed and pending.

361 ~~17-5-31.~~

362 (d) ~~No search warrant shall be quashed or evidence shall be suppressed or property~~
 363 returned because of a technical irregularity not affecting the substantial rights of the
 364 accused.

365 ~~17-5-32.~~ 17-5-30.

366 (a) As used in this Code section, the term 'documentary evidence' includes but ~~is~~ shall not
367 be limited to writings, documents, blueprints, drawings, photographs, computer printouts,
368 microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, and
369 papers of any type or description.

370 (b) Notwithstanding any other provision of law, no search and seizure without a search
371 warrant shall be conducted and no search warrant shall be issued for any documentary
372 evidence in the possession of an attorney who is not a criminal suspect, unless the
373 ~~application request~~ request for the search warrant specifies that the place to be searched is in the
374 possession or custody of an attorney and also shows that there is probable cause to believe
375 that the documentary evidence will be destroyed or secreted in the event a search warrant
376 is not issued. This Code section shall not impair the ability to serve search warrants in
377 cases in which the search is directed against an attorney if there is probable cause to
378 suspect such attorney has committed a crime. This Code section shall not impair the ability
379 to serve subpoenas on nonsuspect attorneys.

380 (c) In any case in which there is probable cause to believe that documentary evidence will
381 be destroyed or secreted if a search warrant is not issued, no search warrant shall be issued
382 or be executed for any documentary evidence in the possession or custody of an attorney
383 who is not a criminal suspect, unless:

384 ~~(1) At~~ at the time the search warrant is issued, the ~~court shall appoint~~ judicial officer
385 appoints a special master to accompany the person ~~peace officer~~ who will serve the search
386 warrant. The special master shall be an attorney who is a member in good standing of the
387 State Bar of Georgia and who has been selected from a list of qualified attorneys
388 maintained by the State Bar of Georgia. An attorney shall not be appointed as a special
389 master if there is a significant risk that his or her own interests or duties to another client,
390 former client, or a third person will be materially and adversely affected by such
391 appointment. Upon service of the search warrant, the special master shall inform the party
392 person served of the ~~specific items~~ property being sought and that the party person shall
393 have the opportunity to provide the ~~items~~ property requested. If the party person, in the
394 judgment of the special master, fails to provide the ~~items~~ property requested, the special
395 master shall conduct a search for the ~~items~~ property in the areas indicated in the search
396 warrant;

397 ~~(2)(d)~~ If the party person who has been served with a search warrant states that ~~an item or~~
398 ~~items~~ property should not be disclosed, such ~~item or items~~ property shall be sealed by the
399 special master and taken to the superior court in which the accusation, indictment, or
400 special presentment is filed and pending for a hearing in such court. At the hearing the
401 party person whose premises has been searched shall be entitled to raise any issues which

402 may be raised pursuant to Code Section ~~17-5-30~~ 17-5-29 as well as claims that the ~~item or~~
 403 ~~items are~~ property is privileged or claims that the ~~item or items are~~ property is inadmissible
 404 because ~~they were~~ it was obtained in violation of this Code section. ~~Any such hearing shall~~
 405 ~~be held in the superior court;~~

406 ~~(3)(e) A search warrant issued pursuant to this Code section shall: Any such warrant must,~~
 407 ~~whenever~~

408 ~~(1) Whenever~~ practicable, be served during normal business hours. The ~~law enforcement~~
 409 ~~officer or prosecutor~~ peace officer serving the search warrant shall not participate in the
 410 search but may accompany the special master when the special master is conducting the
 411 search. The prosecuting attorney may designate an attorney or investigator employed by
 412 such prosecuting attorney to observe the execution of such search warrant;

413 ~~(4)(2) Be~~ ~~Any such warrant must be~~ served upon a party person who appears to have
 414 possession or control of the ~~items~~ property sought. If, after reasonable efforts, the party
 415 person serving the warrant is unable to locate any such person, the special master shall
 416 seal and return to the court for determination by the court any ~~items~~ property which
 417 ~~appear~~ appears to be privileged; and

418 ~~(5)(3) Be~~ ~~Any such warrant shall be~~ issued only by ~~the~~ a state or superior court judge.
 419 At the time of applying for such a warrant, the ~~law enforcement officer or prosecutor~~
 420 peace officer or prosecuting attorney shall submit a written search plan designed to
 421 minimize the intrusiveness of the search.

422 ~~(f) When~~ a search warrant is executed pursuant to this Code section, the special master
 423 carrying out the search shall have a duty to make reasonable efforts to minimize the
 424 intrusiveness of the search.

425 ~~(d)(g) Notwithstanding~~ subsection (b) of Code Section 17-5-29 or any provision of law to
 426 the contrary, evidence obtained in violation of this Code section shall be excluded and
 427 suppressed from the prosecution's case-in-chief or in rebuttal, and such evidence shall not
 428 be admissible either as substantive evidence or for impeachment purposes.

429 Part 2

430 17-5-40.

431 (a) The General Assembly recognizes that the rights of citizens of this state to be secure
 432 in their persons, homes, papers, and effects from unreasonable searches conducted by
 433 government agents is essential to the concepts of personal liberty and privacy.

434 (b) The General Assembly further recognizes that electronic communication devices,
 435 including, but not limited to, mobile telephones, e-mail, social media, and other evolving

436 forms of communication, are used and exploited with increasing frequency and
437 sophistication to conduct criminal activity in this state.

438 (c) It is the intent of the General Assembly in enacting this part to provide peace officers
439 and prosecuting attorneys with the means to conduct legitimate investigations of criminal
440 activity in which electronic communications are being used under appropriate judicial
441 supervision in order to protect the rights of the citizens of this state.

442 17-5-41.

443 As used in this part, the term 'district attorney' includes an acting district attorney or a chief
444 assistant district attorney designated to act for the district attorney during the temporary
445 absence of such district attorney pursuant to Code Section 15-18-15.

446 17-5-42.

447 (a) A peace officer, a prosecuting attorney, or the Attorney General may require the
448 disclosure of stored wire communications or electronic communications, as well as
449 transactional records pertaining thereto by subpoena, court order, or search warrant as
450 provided by the laws of the United States.

451 (b) A provider of electronic communication service or remote computing service shall
452 provide the contents of, and transactional records pertaining to, wire communications and
453 electronic communications in its possession or reasonably accessible thereto when a
454 requesting peace officer, a prosecuting attorney, or the Attorney General complies with the
455 provisions for access thereto set forth by the laws of the United States.

456 (c) Search warrants for production of stored wire communications or electronic
457 communications and transactional records pertaining thereto shall have state-wide
458 application or application as provided by the laws of the United States when issued by a
459 judicial officer with jurisdiction over the criminal offense under investigation and to which
460 such records relate.

461 (d) A judicial officer with jurisdiction over the criminal offense under investigation and
462 to which transactional records relate may issue an order requiring the disclosure of stored
463 wire communications or electronic communications, as well as transactional records
464 pertaining thereto, to the extent and under the procedures and conditions provided for by
465 the laws of the United States. Such orders for production of stored wire communications
466 or electronic communications and transactional records pertaining thereto shall have
467 state-wide application or application as provided by the laws of the United States when
468 issued by a judicial officer with jurisdiction over the criminal offense under investigation
469 and to which such records relate.

470 (e) A subpoena for the production of stored wire communications or electronic
471 communications and transactional records pertaining thereto may be issued at any time
472 upon a showing by a peace officer, a prosecuting attorney, or the Attorney General that the
473 subpoenaed material relates to a pending criminal investigation.

474 (f) A violation of this Code section shall be punishable as contempt.

475 17-5-43.

476 (a) A search warrant issued by a judge of the superior court having jurisdiction over the
477 crime under investigation or a full-time judge of a state court having jurisdiction over the
478 crime under investigation may authorize the installation or monitoring of a tracking device,
479 provided that such warrant identifies the individual or physical object to be tracked and
480 specifies a reasonable length of time that the tracking device is to be used, which time shall
481 not exceed 45 days from the date such warrant was issued. The court may, for good cause,
482 grant one or more extensions for a reasonable length of time not to exceed 45 days each.

483 (b) Any required installation of a tracking device shall take place in any county within the
484 jurisdiction of such judge, but such device may be monitored from any location within the
485 jurisdiction of this state. Unless otherwise prohibited by federal law, such device may be
486 monitored from within this state even if such device is transported outside this state.

487 (c) A tracking device search warrant shall command a peace officer to:

488 (1) Complete any installation or activation authorized by such warrant within ten days
489 from the date such warrant was issued; and

490 (2) Make a written return of such warrant before the judicial officer named in such
491 warrant or before any court of competent jurisdiction to the judge designated in such
492 warrant.

493 (d) A peace officer executing a tracking device search warrant shall enter on the return the
494 exact date and time the tracking device was installed, or monitoring commenced if no
495 installation was required, and dates and times during which it was used.

496 (e) Within ten days after use of the tracking device has ended, the peace officer executing
497 the tracking device search warrant shall return it to the judicial officer named in such
498 warrant or to any court of competent jurisdiction. A peace officer may make such return
499 by reliable electronic means.

500 (f)(1) Within ten days after use of the tracking device has ended, the peace officer
501 executing a tracking device search warrant shall serve a copy of such warrant on the
502 person who was tracked or whose physical object was tracked. Service may be
503 accomplished by:

504 (A) Personally delivering a copy of such warrant to the person who, or whose physical
505 object, was tracked;

506 (B) Leaving a copy of such warrant at the person's residence or usual place of abode
 507 with an individual of suitable age and discretion who resides at that location; or

508 (C) Mailing a copy of such warrant to the person's last known address.

509 (2) Upon request of the prosecuting attorney, the judge to whom the return of the
 510 tracking device search warrant is made may delay service of a copy of such warrant as
 511 provided in subsection (g) of this Code section.

512 (g) The judge to whom the return of the tracking device search warrant is made may order
 513 a delay of service of a copy of such warrant on the person who was tracked or whose
 514 physical object was tracked. The judge shall enter such an order if the judge determines
 515 that there is reason to believe that notification of the tracking device search warrant may:

516 (1) Endanger the life or physical safety of an individual;

517 (2) Result in the flight of an individual from prosecution;

518 (3) Lead to the destruction of or tampering with evidence;

519 (4) Cause the intimidation of potential witnesses;

520 (5) Seriously jeopardize an investigation; or

521 (6) Unduly delay a trial.

522 17-5-44.

523 Any district attorney having jurisdiction over the prosecution of a crime under investigation
 524 or the Attorney General is authorized to make application for an order or an extension of
 525 an order authorizing or approving the installation and use of a pen register or a trap and
 526 trace device to a judge of the superior court of the same judicial circuit as the district
 527 attorney, or in the case of the Attorney General, in any judicial circuit; and such court shall
 528 be authorized to enter an order approving the use of a pen register or a trap and trace
 529 device, to the extent the same is consistent with and permitted by the laws of the United
 530 States. Such order shall have state-wide application and the monitoring of a pen register
 531 or trap and trace device shall be permitted in any location in this state.

532 17-5-45.

533 Any peace officer, specially designated in writing for such purpose by the Attorney
 534 General or by a district attorney, who requires the installation and use of a pen register or
 535 a trap and trace device, before an order authorizing such installation and use can, with due
 536 diligence, be obtained, may have installed and use a pen register or trap and trace device
 537 if he or she reasonably determines that there are grounds upon which an order could be
 538 entered under the laws of the United States to authorize such installation and use if, within
 539 48 hours of the time the pen register or trap and trace device is installed, an order

540 approving the installation and use is issued in accordance with Code Section 17-5-44 and
 541 he or she reasonably determines that a situation exists that involves:

542 (1) Immediate danger of death or serious bodily injury to any individual; or

543 (2) Conspiratorial activities characteristic of organized crime.

544 17-5-46.

545 (a) Except only as provided in subsection (b) of this Code section, nothing in this part or
 546 Part 1 of Article 3 of Chapter 11 of Title 16 shall apply to a duly constituted peace officer
 547 in the performance of his or her official duties in ferreting out offenders or suspected
 548 offenders of the law or in secretly watching an individual suspected of violating the laws
 549 of this state, another state, or the United States, or any subdivision thereof, for the purpose
 550 of apprehending such suspected violator.

551 (b) When in the course of his or her official duties, a peace officer who uses any device,
 552 when such use would otherwise constitute a violation of Code Section 16-11-62, shall act
 553 in compliance with the provisions provided for in this part.

554 (c) Upon written application, under oath, of the district attorney having jurisdiction over
 555 prosecution of a crime under investigation or the Attorney General made before a judge of
 556 superior court having jurisdiction over prosecution of a crime under investigation, such
 557 court may issue an investigation warrant permitting the use of a device for the surveillance
 558 of an individual or place to the extent the same is consistent with and subject to the terms,
 559 conditions, and procedures provided for under the laws of the United States. Such warrant
 560 shall have state-wide application and monitoring of communications shall be permitted in
 561 any location in this state.

562 (d) Evidence obtained in conformity with this part shall be admissible only in the courts
 563 of this state having felony and misdemeanor jurisdiction.

564 (e) A good faith reliance on a court order or legislative authorization shall constitute a
 565 complete defense to any civil or criminal action brought under this part or under any other
 566 law.

567 17-5-47.

568 (a) As used in this Code section, the term 'emergency situation' means a situation that
 569 involves the immediate danger of death or serious bodily injury to any individual.

570 (b) Notwithstanding any other provision of this part, in the event that the Attorney General
 571 or a district attorney of the judicial circuit having jurisdiction over an emergency situation
 572 determines that such emergency situation requires the immediate interception of wire
 573 communications, oral communications, or electronic communications or the immediate
 574 observation, monitoring, or recording of the activities of any individual involved in such

575 emergency situation in violation of the provisions of Code Section 16-11-62 before an
576 order authorizing such surveillance or monitoring can, with due diligence, be obtained, then
577 any peace officer specifically designated by the individual making such determination may
578 utilize any device to intercept the wire communications, oral communications, or electronic
579 communications or to observe, monitor, or record the activities of the person or persons
580 involved in such emergency situation, provided that grounds exist upon which an
581 investigation warrant pursuant to Code Section 17-5-46 could be issued and that an
582 application for such warrant is made within 48 hours after such surveillance or monitoring
583 commences.

584 (c) In the event that an application for an investigation warrant made pursuant to this Code
585 section is granted, then the surveillance or monitoring shall be conducted in accordance
586 with Code Section 17-5-46, except that such surveillance or monitoring shall continue only
587 so long as the emergency situation exists.

588 (d) In the event that an application for an investigation warrant made pursuant to this Code
589 section is denied or in any event where the surveillance or monitoring is terminated without
590 an investigation warrant having been issued, the contents of any intercepted
591 communications or other surveillance effected pursuant to this Code section shall be
592 confidential and shall not be disclosed or admissible in any court of this state except to
593 prove violations of this part.

594 17-5-48.

595 (a) Nothing in Code Section 16-11-62 shall prohibit an individual from intercepting a wire
596 communication, oral communication, or electronic communication when such individual
597 is a party to the communication or one of the parties to the communication has given prior
598 consent to such interception.

599 (b) In accordance with subsection (c) or (d) of this Code section, the wire communication,
600 oral communication, or electronic communication to which a child under the age of 18
601 years is a party may be recorded and divulged, and such recording and dissemination may
602 be done by a private citizen, law enforcement agency, or prosecuting attorney's office.
603 Nothing in this subsection shall be construed to require that the recording device be
604 activated by such child. The authorization for the recording or divulging of the
605 conversations of a child under the age of 18 years conducted by wire communication, oral
606 communication, or electronic communication shall be given only by order of a judge of a
607 superior court upon written application, as provided in subsection (c) of this Code section,
608 or by a parent, guardian, or legal custodian of such child as provided in subsection (d) of
609 this Code section. Such recording shall not be used in any prosecution of the child in any
610 delinquency or criminal proceeding. An application to a judge of the superior court made

611 pursuant to this Code section need not comply with the procedures set forth in Code
612 Section 17-5-46.

613 (c)(1) A judge to whom a written application has been made shall issue the order
614 provided by subsection (b) of this Code section only upon:

615 (A) Finding probable cause that a crime has been committed;

616 (B) Finding that the child understands that the conversation is to be recorded and that
617 such child agrees to participate; and

618 (C) Determining that participation is not harmful to such child.

619 (2) A true and correct copy of the recording provided for in subsection (b) of this Code
620 section shall be returned to the superior court judge who issued the order, and such copy
621 of the recording shall be kept under seal until further order of the court.

622 (d) The provisions of this article shall not be construed to prohibit a parent, guardian, or
623 legal custodian of a child under 18 years of age, with or without the consent of such child,
624 from monitoring or intercepting wire communications, oral communications, or electronic
625 communications of such minor child with another person by use of an extension phone
626 located within the family home, or electronic or other communications of such minor child
627 from within the family home, for the purpose of ensuring the welfare of such minor child.
628 If the parent, guardian, or legal custodian has a reasonable or good faith belief that such
629 communication is evidence of criminal conduct involving such child as a victim or an
630 attempt, conspiracy, or solicitation to involve such child in criminal activity affecting the
631 welfare or best interest of such child, the parent, guardian, or legal custodian may disclose
632 the contents of such communications to the district attorney or a peace officer. A recording
633 or other record of any such communication made by a parent, guardian, or legal custodian
634 in accordance with this subsection that contains evidence of criminal conduct involving
635 such child as a victim or an attempt, conspiracy, or solicitation to involve such child in
636 criminal activity shall be admissible in a judicial proceeding except as otherwise provided
637 in subsection (b) of this Code section.

638 17-5-49.

639 (a) No evidence obtained in a manner that violates this part shall be admissible in any
640 court of this state except to prove violations of this part.

641 (b) Nothing contained in this part shall permit the introduction into evidence of any
642 communication which is privileged by the laws of this state or by the decisions of the
643 appellate courts thereof.

644 (c) Except as otherwise provided in subsection (f) of Code Section 17-5-42, any person
645 violating this part shall be guilty of a felony and, upon conviction thereof, shall be punished

646 by imprisonment for not less than one nor more than five years or a fine not to exceed
 647 \$10,000.00, or both."

648 **PART II**
 649 **WIRETAP CORRECTIONS**
 650 **SECTION 2-1.**

651 Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
 652 invasions of privacy, is amended by revising Part 1, relating to wiretapping, eavesdropping,
 653 surveillance, and related offenses, as follows:

654 "Part 1

655 16-11-60.

656 As used ~~within~~ in this part, the term:

657 (1) 'Device' means an instrument or apparatus used for overhearing, recording,
 658 intercepting, or transmitting sounds or for observing, photographing, videotaping,
 659 recording, or transmitting visual images and which involves in its operation electricity,
 660 electronics, or infrared, laser, or similar beams. Without limiting the generality of the
 661 foregoing, the term 'device' shall specifically include any camera, photographic
 662 equipment, video equipment, or other similar equipment or any electronic, mechanical,
 663 or other apparatus which can be used to intercept a wire communication, oral
 664 communication, or electronic communication other than:

665 (A) Any telephone or telegraph instrument, equipment, or facility or any component
 666 thereof:

667 (i) Furnished to the subscriber or user by a provider of ~~wire~~ or electronic
 668 communication service in the ordinary course of its business and being used by the
 669 subscriber or user in the ordinary course of its business or furnished by such
 670 subscriber or user for connection to the facilities of such service and used in the
 671 ordinary course of its business; or

672 (ii) Being used by a provider of ~~wire~~ or electronic communication service in the
 673 ordinary course of its business or by an investigative or law enforcement officer in the
 674 ordinary course of his or her duties; or

675 (B) A hearing aid or similar device being used to correct subnormal hearing to not
 676 better than normal; and

677 (C) Focusing, lighting, or illuminating equipment; or optical magnifying equipment;
 678 and

679 ~~(D) A 'pen register' or 'trap and trace device' as defined in this Code section.~~

680 ~~(2) 'Pen register' means a device or process which records or decodes dialing, routing,~~
 681 ~~addressing, or signaling information transmitted by an instrument or facility from which~~
 682 ~~a wire or electronic communication is transmitted; provided, however, that such~~
 683 ~~information shall not include the contents of any communication; but such term does not~~
 684 ~~include any device or process used by a provider or customer of a wire or electronic~~
 685 ~~communication service for billing, or recording as an incident to billing, for~~
 686 ~~communications services provided by such provider or any device or process used by a~~
 687 ~~provider or customer of a wire communication service for cost accounting or other like~~
 688 ~~purposes in the ordinary course its business.~~

689 ~~(2) 'Electronic communication' shall have the same meaning as set forth in Code Section~~
 690 ~~17-5-20.~~

691 ~~(3) 'Electronic communication service' shall have the same meaning as set forth in Code~~
 692 ~~Section 17-5-20.~~

693 ~~(4) 'Oral communication' shall have the same meaning as set forth in Code Section~~
 694 ~~17-5-20.~~

695 ~~(3)(5) 'Private place' means a place where one is entitled reasonably to expect to be safe~~
 696 ~~from casual or hostile intrusion or surveillance there is a reasonable expectation of~~
 697 ~~privacy.~~

698 ~~(4) 'Trap and trace device' means a device or process which captures the incoming~~
 699 ~~electronic or other impulses which identify the originating number or other dialing,~~
 700 ~~routing, addressing, and signaling information reasonably likely to identify the source of~~
 701 ~~a wire or electronic communication; provided, however, that such information shall not~~
 702 ~~include the contents of any communication.~~

703 ~~(6) 'Wire communication' shall have the same meaning as set forth in Code Section~~
 704 ~~17-5-20.~~

705 16-11-61.

706 (a) It shall be unlawful for any person to be a 'peeping Tom' on or about the premises of
 707 another or to go about or upon the premises of another for the purpose of becoming a
 708 'peeping Tom.'

709 (b) As used in this Code section, the term 'peeping Tom' means a person who peeps
 710 through windows or doors, or other like places, on or about the premises of another for the
 711 purpose of spying upon or invading the privacy of the persons spied upon and the doing of
 712 any other acts of a similar nature which invade the privacy of such persons.

713 16-11-62.

714 It shall be unlawful for:

715 (1) Any person in a clandestine manner intentionally to overhear, transmit, or record or
716 attempt to overhear, transmit, or record the private conversation of another which shall
717 originate in any private place;

718 (2) Any person, through the use of any device, without the consent of all persons
719 observed, to observe, photograph, or record the activities of another which occur in any
720 private place and out of public view; provided, however, that it shall not be unlawful:

721 (A) To use any device to observe, photograph, or record the activities of persons
722 incarcerated in any jail, correctional institution, or any other facility in which persons
723 who are charged with or who have been convicted of the commission of a crime are
724 incarcerated, provided that such equipment shall not be used while the prisoner is
725 discussing his or her case with his or her attorney;

726 (B) For an owner or occupier of real property to use for security purposes, crime
727 prevention, or crime detection any device to observe, photograph, or record the
728 activities of persons who are on the property or an approach thereto in areas where there
729 is no reasonable expectation of privacy; ~~or~~

730 (C) To use for security purposes, crime prevention, or crime detection any device to
731 observe, photograph, or record the activities of persons who are within the curtilage of
732 the residence of the person using such device. A photograph, videotape, or record made
733 in accordance with this subparagraph, or a copy thereof, may be disclosed by such
734 resident to the district attorney or a law enforcement officer and shall be admissible in
735 a judicial proceeding, without the consent of any person observed, photographed, or
736 recorded; or

737 (D) For a law enforcement officer or his or her agent to use a device in the lawful
738 performance of his or her official duties to observe, photograph, videotape, or record
739 the activities of persons that occur in the presence of such officer or his or her agent;

740 (3) Any person to go on or about the premises of another or any private place, except as
741 otherwise provided by law, for the purpose of invading the privacy of others by
742 eavesdropping upon their conversations or secretly observing their activities;

743 (4) Any person intentionally and secretly to intercept by the use of any device,
744 instrument, or apparatus the contents of a message sent by telephone, telegraph, letter, or
745 by any other means of private communication;

746 (5) Any person to divulge to any unauthorized person or authority the content or
747 substance of any private message intercepted lawfully in the manner provided for in Code
748 Section ~~16-11-65~~ 16-11-64 or 17-5-46;

749 (6) Any person to sell, give, or distribute, without legal authority, to any person or entity
 750 any photograph, videotape, or record, or copies thereof, of the activities of another which
 751 occur in any private place and out of public view without the consent of all persons
 752 observed; or

753 (7) Any person to commit any other acts of a nature similar to those set out in
 754 paragraphs (1) through (6) of this Code section which invade the privacy of another.

755 16-11-63.

756 (a) Other than law enforcement officers permitted by this part to employ such devices, it
 757 shall be unlawful for any person to possess, sell, offer for sale, or distribute any
 758 eavesdropping device.

759 (b) An 'eavesdropping device' shall mean any instrument or apparatus which by virtue of
 760 its size, design, and method of operation has no normal or customary function or purpose
 761 other than to permit the user thereof secretly to intercept, transmit, listen to, or record
 762 private conversations of others.

763 ~~16-11-64.~~

764 ~~(a) **Application of part to law enforcement officers.** Except only as provided in~~
 765 ~~subsection (b) of this Code section, nothing in this part shall apply to a duly constituted law~~
 766 ~~enforcement officer in the performance of his official duties in ferreting out offenders or~~
 767 ~~suspected offenders of the law or in secretly watching a person suspected of violating the~~
 768 ~~laws of the United States or of this state, or any subdivision thereof, for the purpose of~~
 769 ~~apprehending such suspected violator.~~

770 ~~(b) When in the course of his or her official duties, a law enforcement officer desiring to~~
 771 ~~make use of any device, but only as such term is defined in Code Section 16-11-60, and~~
 772 ~~such use would otherwise constitute a violation of Code Section 16-11-62, the law~~
 773 ~~enforcement official shall act in compliance with the provisions provided for in this part.~~

774 ~~(c) Upon written application, under oath, of the district attorney having jurisdiction over~~
 775 ~~prosecution of the crime under investigation or the Attorney General made before a judge~~
 776 ~~of superior court having jurisdiction over the crime under investigation, such court may~~
 777 ~~issue an investigation warrant permitting the use of a device for the surveillance of a person~~
 778 ~~or place to the extent the same is consistent with and subject to the terms, conditions, and~~
 779 ~~procedures provided for by 18 U.S.C. Chapter 119. Such warrant shall have state-wide~~
 780 ~~application and interception of communications shall be permitted in any location in this~~
 781 ~~state.~~

782 ~~(d) Evidence obtained in conformity with this part shall be admissible only in the courts~~
 783 ~~of this state having felony and misdemeanor jurisdiction.~~

784 ~~(e) **Defenses.** A good faith reliance on a court order or legislative authorization shall~~
 785 ~~constitute a complete defense to any civil or criminal action brought under this part or~~
 786 ~~under any other law.~~

787 ~~16-11-64.1.~~

788 ~~Any district attorney having jurisdiction over the prosecution of the crime under~~
 789 ~~investigation or the Attorney General is authorized to make application for an order or an~~
 790 ~~extension of an order authorizing or approving the installation and use of a pen register or~~
 791 ~~a trap and trace device to a judge of the superior court of the same judicial circuit as the~~
 792 ~~district attorney, or, in the case of the Attorney General, in any judicial circuit; and such~~
 793 ~~court shall be authorized to enter an order authorizing the use of a pen register or a trap and~~
 794 ~~trace device, to the extent the same is consistent with and permitted by the laws of the~~
 795 ~~United States. Such order shall have state-wide application and the interception by use of~~
 796 ~~a pen register or trap and trace device shall be permitted in any location in this state.~~

797 ~~16-11-64.2.~~

798 ~~Any investigative or law enforcement officer, specially designated in writing for such~~
 799 ~~purpose by the Attorney General or by a district attorney, who reasonably determines that:~~

800 ~~(1) An emergency situation exists that involves:~~

801 ~~(A) Immediate danger of death or serious bodily injury to any person; or~~

802 ~~(B) Conspiratorial activities characteristic of organized crime~~

803 ~~that requires the installation and use of a pen register or a trap and trace device before an~~
 804 ~~order authorizing such installation and use can, with due diligence, be obtained; and~~

805 ~~(2) There are grounds upon which an order could be entered under the laws of the United~~
 806 ~~States to authorize such installation and use~~

807 ~~may have installed and use a pen register or trap and trace device if, within 48 hours of the~~
 808 ~~time the pen register or trap and trace device is installed, an order approving the installation~~
 809 ~~or use is issued in accordance with Code Section 16-11-64.1.~~

810 ~~16-11-64.3.~~

811 ~~(a) Notwithstanding any other provision of this part, in the event that the Attorney General~~
 812 ~~or a district attorney of the judicial circuit having jurisdiction over the emergency situation~~
 813 ~~described herein or where the observation, monitoring, or recording of the activities of any~~
 814 ~~person may occur as provided in this subsection determines that:~~

815 ~~(1) An emergency situation exists involving the immediate danger of death or serious~~
 816 ~~physical injury to any person;~~

817 ~~(2) The said emergency situation requires the immediate interception of a wire, oral, or~~
 818 ~~electronic communications or the immediate observation, monitoring, or recording of the~~
 819 ~~activities of any person involved in said emergency situation in violation of the~~
 820 ~~provisions of Code Section 16-11-62 before an order authorizing such interception or~~
 821 ~~surveillance can, with due diligence, be obtained; and~~

822 ~~(3) There are grounds upon which an investigation warrant pursuant to Code Section~~
 823 ~~16-11-64 could be issued,~~

824 ~~then any investigative or law enforcement officer specifically designated by the prosecuting~~
 825 ~~official making such determination may utilize any device as defined in Code Section~~
 826 ~~16-11-60 to intercept the wire, oral, or electronic communications or to observe, monitor,~~
 827 ~~or record the activities of the person or persons involved in said emergency situation,~~
 828 ~~provided that an application for an investigation warrant is made pursuant to Code Section~~
 829 ~~16-11-64 within 48 hours after said interception or surveillance commences.~~

830 ~~(b) In the event that an application for an investigation warrant made pursuant to this Code~~
 831 ~~section is granted, then the interception or surveillance shall be conducted in accordance~~
 832 ~~with the provisions of Code Section 16-11-64, except that said interception or surveillance~~
 833 ~~shall continue only so long as the emergency situation exists.~~

834 ~~(c) In the event that an application for an investigation warrant made pursuant to this Code~~
 835 ~~section is denied or in any event where the interception or surveillance is terminated~~
 836 ~~without an investigation warrant having been issued, the contents of any intercepted~~
 837 ~~communications or other surveillance effected pursuant to this Code section shall not be~~
 838 ~~admissible in any court of this state except to prove violations of this part. The contents~~
 839 ~~of any such intercepted communications or other surveillance effected pursuant to this~~
 840 ~~Code section without an investigation warrant having been issued shall be confidential and~~
 841 ~~shall not be disclosed except to prove violations of this part.~~

842 ~~16-11-65; 16-11-64.~~

843 (a) Nothing contained within Code Section 16-11-62 shall prohibit the employment and
 844 use of any equipment or device which is owned by any person or is furnished by any
 845 telephone company authorized to do business in this state under proper tariffs filed with
 846 and approved by the Georgia Public Service Commission which may be attached to any
 847 telephonic equipment of any user of or subscriber to such equipment which permits the
 848 interception of telephonic communications solely for the purposes of business service
 849 improvement when the user of or subscriber to such facilities and equipment has duly
 850 applied for and obtained from the Georgia Public Service Commission a license for the
 851 employment and installation of the equipment. No license shall be issued until the
 852 applicant has demonstrated to the commission a clear, apparent, and logically reasonable

853 need for the use of the equipment in connection with a legitimate business activity of the
854 user or subscriber and demonstrated to the satisfaction of the commission that it will be
855 operated by persons of good moral character and that the equipment will be used in a
856 lawful manner and in conformity with the tariffs filed for the equipment. The commission
857 is authorized to establish the necessary procedures to be employed and followed in
858 applying for such permits and to require from the user or subscriber of such equipment the
859 furnishing of any reasonable information required by the commission in regard to the
860 intended and actual use of the equipment.

861 (b) The Georgia Public Service Commission is authorized to revoke any license and to
862 order any owner of such equipment or any telephone company supplying such equipment
863 to remove from the premises of the licensee the equipment when it is established to the
864 satisfaction of the commission that the equipment is being used in an unlawful manner
865 contrary to the tariff applicable to the equipment or in a manner contrary to the purposes
866 and uses for which the license had been issued. Such licenses may also be revoked by the
867 commission if it is subsequently discovered that a material misrepresentation of fact has
868 been made in applying for the license. The commission is authorized to promulgate such
869 rules and regulations in connection with the licensing and revocation thereof of such users
870 of such equipment as will enable it to carry out the purposes, duties, and responsibilities
871 imposed upon the commission by this Code section. Such rules and regulations shall afford
872 to any aggrieved licensee an opportunity to a full and impartial hearing before the
873 commission. The commission shall further have the authority to adopt any and all
874 appropriate rules and regulations of any sort to ensure the privacy of telephonic and
875 telegraphic communications. A violation of such rules and regulations shall be a violation
876 of this part.

877 (c) All telephone companies shall have printed in a conspicuously accessible location
878 within their directories a notice to the public that there is available without cost at the
879 business office of the telephone company served by the directory a list of subscribers of
880 such equipment which will be made available to any member of the general public
881 requesting the same from such companies.

882 (d) The provisions of this part shall not apply to acts by duly authorized employees of any
883 telephone company regulated by the Georgia Public Service Commission, with regard to
884 the reasonable and limited intercepting of telephone communications under circumstances
885 reasonably calculated to assure the privacy of telephone communications when such
886 interception is accomplished solely for the purpose of maintaining the quality of service
887 furnished to the public or for the purpose of preventing the unlawful use of telephone
888 service. All such telephone companies shall adopt regulations and procedures consistent
889 with the requirements of this Code section governing the use of equipment which permits

890 the interception of telephone messages by their employees and file the same with the
 891 commission. After being filed with the commission, such regulations and procedures shall
 892 be public records.

893 ~~16-11-66.~~

894 ~~(a) Nothing in Code Section 16-11-62 shall prohibit a person from intercepting a wire,~~
 895 ~~oral, or electronic communication where such person is a party to the communication or~~
 896 ~~one of the parties to the communication has given prior consent to such interception.~~

897 ~~(b) After obtaining the consent required by this subsection, the telephonic conversations~~
 898 ~~or electronic communications to which a child under the age of 18 years is a party may be~~
 899 ~~recorded and divulged, and such recording and dissemination may be done by a private~~
 900 ~~citizen, law enforcement agency, or prosecutor's office. Nothing in this subsection shall~~
 901 ~~be construed to require that the recording device be activated by the child. Consent for the~~
 902 ~~recording or divulging of the conversations of a child under the age of 18 years conducted~~
 903 ~~by telephone or electronic communication shall be given only by order of a judge of a~~
 904 ~~superior court upon written application, as provided in subsection (c) of this Code section,~~
 905 ~~or by a parent or guardian of said child as provided in subsection (d) of this Code section.~~
 906 ~~Said recording shall not be used in any prosecution of the child in any delinquency or~~
 907 ~~criminal proceeding. An application to a judge of the superior court made pursuant to this~~
 908 ~~Code section need not comply with the procedures set out in Code Section 16-11-64.~~

909 ~~(c) A judge to whom a written application has been made shall issue the order provided~~
 910 ~~by subsection (b) of this Code section only:~~

911 ~~(1) Upon finding probable cause that a crime has been committed;~~

912 ~~(2) Upon finding that the child understands that the conversation is to be recorded and~~
 913 ~~that such child agrees to participate; and~~

914 ~~(3) Upon determining that participation is not harmful to such child.~~

915 ~~A true and correct copy of the recording provided for in subsection (b) of this Code section~~
 916 ~~shall be returned to the superior court judge who issued the order and such copy of the~~
 917 ~~recording shall be kept under seal until further order of the court.~~

918 ~~(d) The provisions of this article shall not be construed to prohibit a parent or guardian of~~
 919 ~~a child under 18 years of age, with or without the consent of such minor child, from~~
 920 ~~monitoring or intercepting telephonic conversations of such minor child with another~~
 921 ~~person by use of an extension phone located within the family home, or electronic or other~~
 922 ~~communications of such minor child from within the family home, for the purpose of~~
 923 ~~ensuring the welfare of such minor child. If the parent or guardian has a reasonable or~~
 924 ~~good faith belief that such conversation or communication is evidence of criminal conduct~~
 925 ~~involving such child as a victim or an attempt, conspiracy, or solicitation to involve such~~

926 ~~child in criminal activity affecting the welfare or best interest of such child, the parent or~~
 927 ~~guardian may disclose the content of such telephonic conversation or electronic~~
 928 ~~communication to the district attorney or a law enforcement officer. A recording or other~~
 929 ~~record of any such conversation or communication made by a parent or guardian in~~
 930 ~~accordance with this subsection that contains evidence of criminal conduct involving such~~
 931 ~~child as a victim or an attempt, conspiracy, or solicitation to involve such child in criminal~~
 932 ~~activity shall be admissible in a judicial proceeding except as otherwise provided in~~
 933 ~~subsection (b) of this Code section.~~

934 ~~16-11-66.1.~~

935 ~~(a) A law enforcement officer, a prosecuting attorney, or the Attorney General may require~~
 936 ~~the disclosure of stored wire or electronic communications, as well as transactional records~~
 937 ~~pertaining thereto, to the extent and under the procedures and conditions provided for by~~
 938 ~~the laws of the United States.~~

939 ~~(b) A provider of electronic communication service or remote computing service shall~~
 940 ~~provide the contents of, and transactional records pertaining to, wire and electronic~~
 941 ~~communications in its possession or reasonably accessible thereto when a requesting law~~
 942 ~~enforcement officer, a prosecuting attorney, or the Attorney General complies with the~~
 943 ~~provisions for access thereto set forth by the laws of the United States.~~

944 ~~(c) Search warrants for production of stored wire or electronic communications and~~
 945 ~~transactional records pertaining thereto shall have state-wide application or application as~~
 946 ~~provided by the laws of the United States when issued by a judge with jurisdiction over the~~
 947 ~~criminal offense under investigation and to which such records relate.~~

948 ~~(d) A subpoena for the production of stored wire or electronic communications and~~
 949 ~~transactional records pertaining thereto may be issued at any time upon a showing by a law~~
 950 ~~enforcement official, a prosecuting attorney, or the Attorney General that the subpoenaed~~
 951 ~~material relates to a pending criminal investigation.~~

952 ~~(e) Violation of this Code section shall be punishable as contempt.~~

953 ~~16-11-67. 16-11-65.~~

954 ~~(a) No evidence obtained in a manner which violates this part shall be admissible in any~~
 955 ~~court of this state except to prove violations of this part.~~

956 ~~16-11-68.~~

957 ~~(b) Nothing contained in this part shall permit the introduction into evidence of any~~
 958 ~~communication which is privileged by the laws of this state or by the decisions of the~~
 959 ~~appellate courts thereof.~~

960 ~~16-11-69.~~ 16-11-66.

961 Except as otherwise provided in ~~subsection (d) of Code Section 16-11-66.~~ 16-11-67, any
 962 person violating this part shall be guilty of a felony and, upon conviction thereof, shall be
 963 punished by imprisonment for not less than one nor more than five years or a fine not to
 964 exceed \$10,000.00, or both.

965 ~~16-11-70.~~ 16-11-67.

966 (a) As used in this Code section, the term:

967 ~~(1) 'End user' means any person, corporation, partnership, firm, municipality,~~
 968 ~~cooperative, organization, governmental agency, building owner, or other entity provided~~
 969 ~~with a telecommunications service for its own consumption and not for resale.~~

970 ~~(2)~~(1) 'Telephone record' means information retained by a telecommunications company
 971 that relates to the telephone number dialed by the customer, the number of telephone calls
 972 directed to a customer, or other data related to the telephone calls typically contained on
 973 a customer telephone bill, such as the time the calls started and ended, the duration of the
 974 calls, the time of day the calls were made, and any charges applied. For purposes of this
 975 Code section, any information collected and retained by, or on behalf of, customers
 976 utilizing caller identification or other similar technology does not constitute a telephone
 977 record.

978 ~~(3)~~(2) 'Telephone records broker' means any person or organization that is neither a
 979 telecommunications company nor a vendor or supplier for a telecommunications
 980 company obligated by contract to protect the confidentiality of telephone records and that
 981 purchases, acquires, sells, or releases the telephone record of any third party with whom
 982 it has no prior or existing business relationship or that attempts to purchase, acquire, sell,
 983 or release the telephone record of any party with whom it has no prior or existing
 984 business relationship.

985 (b) It ~~is~~ shall be unlawful for any telephone records broker to purchase, acquire, sell, or
 986 release the telephone records of any person who is a Georgia resident or to attempt to
 987 purchase, acquire, sell, or release the telephone record of any third party who is a Georgia
 988 resident. This Code section ~~applies~~ shall apply whether the customer's telephone record
 989 is obtained by the telephone records broker directly from a telecommunications company
 990 or from any other third-party source. For purposes of this Code section, a person is a
 991 Georgia resident if the individual has a Georgia billing address.

992 (c) A violation of any provision of this Code section shall be punishable by a civil fine in
 993 an amount not to exceed \$10,000.00 for each violation. The prosecuting attorney or the
 994 Attorney General shall be authorized to prosecute the civil case. Each telephone record

995 purchased, acquired, sold, or released and each attempt to purchase, acquire, sell, or release
996 a telephone record constitutes a separate violation of this Code section.

997 (d) Any violation of this Code section shall constitute a tort and shall create a right of
998 action in the person or entity whose telephone records have been purchased, acquired, sold,
999 or released for which damages may be recovered. Special damages may be inferred by the
1000 violation. Reasonable attorney's fees shall be awarded to the plaintiff ~~where~~ when the
1001 plaintiff has prevailed in the underlying action.

1002 (e) No provision of this Code section shall be construed to prevent any action by a law
1003 enforcement agency or any officer, employee, or agent of a law enforcement agency to
1004 obtain the telephone records or personal identifying information of any third party who is
1005 a Georgia resident in connection with the performance of the official duties of the agency,
1006 officer, employee, or agent."

1007 PART III

1008 ARREST POWER OF INVESTIGATORS IN

1009 DISTRICT ATTORNEY AND SOLICITOR-GENERAL OFFICES

1010 SECTION 3-1.

1011 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting
1012 attorneys, is amended by revising subsection (c) of Code Section 15-18-21, relating to
1013 qualifications of attorneys and investigators employed by the district attorney, as follows:

1014 "(c) Any investigator employed by the district attorney's office ~~and~~ may, when authorized
1015 by the district attorney ~~to~~ and Article 4 of Chapter 11 of Title 16, carry weapons ~~or to~~ and
1016 exercise ~~any of~~ the powers of a peace officer of this state. Such investigator shall meet the
1017 requirements of Chapter 8 of Title 35 and shall serve at the pleasure of the district
1018 attorney."

1019 SECTION 3-2.

1020 Said chapter is further amended by revising subsection (b) of Code Section 15-18-72, relating
1021 to qualifications of personnel, as follows:

1022 "(b) Any investigator employed by the solicitor-general's office who is authorized by the
1023 solicitor-general and by Article 4 of Chapter 11 of Title 16, relating to firearms, to carry
1024 weapons ~~or authorized by local law to~~ may exercise ~~any of~~ the powers of a peace officer
1025 of this state. Such investigator shall meet the requirements of Chapter 8 of Title 35 and
1026 shall serve at the pleasure of the solicitor-general."

1027 **PART IV**

1028 **CROSS-REFERENCES**

1029 **SECTION 4-1.**

1030 Code Section 2-2-11 of the Official Code of Georgia Annotated, relating to inspection
1031 warrants, is amended by revising paragraph (1) as follows:

1032 "(1) The ~~Commissioner~~ commissioner or any person authorized to make inspections for
1033 the ~~Commissioner~~ commissioner shall make application for an inspection warrant to a
1034 person who is a judicial officer ~~within the meaning of Code Section 17-5-21~~ as such term
1035 is defined in Code Section 17-5-1."

1036 **SECTION 4-2.**

1037 Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to the
1038 environmental protection division, is amended by revising paragraph (1) of subsection (d)
1039 as follows:

1040 "(1) The director or any person authorized to make inspections for the division shall
1041 make application for an inspection warrant to a person who is a judicial officer ~~within the~~
1042 ~~meaning of Code Section 17-5-21~~ as such term is defined in Code Section 17-5-1."

1043 **SECTION 4-3.**

1044 Code Section 15-18-15 of the Official Code of Georgia Annotated, relating to the chief
1045 assistant district attorney, is amended by revising paragraph (2) of subsection (b) as follows:

1046 "(2) If the district attorney will be temporarily absent from the judicial circuit such that
1047 he or she is not available to perform the duties of his or her office, the district attorney
1048 may authorize, in writing, the chief assistant district attorney to exercise any of the
1049 powers, duties, and responsibilities of the district attorney during such absence, including
1050 but not limited to such powers and duties as the district attorney may have pursuant to
1051 this title, Code ~~Section 16-11-64, and Code Section~~ Sections 17-5-46 and 24-5-507, and
1052 the laws of this state relating to the validation of bonds."

1053 **SECTION 4-4.**

1054 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
1055 amended by revising subparagraph (b)(1)(A) of Code Section 16-9-109, relating to disclosure
1056 by service providers pursuant to investigation, as follows:

1057 "(A) Obtains a search warrant as provided in Part 1 of Article 2 of Chapter 5 of Title
1058 17;"

SECTION 4-5.

1059
1060 Said title is further amended by revising paragraph (1) of subsection (s) of Code Section
1061 16-13-49, relating to forfeitures, as follows:

1062 "(1) The court may receive and consider, in making any determination of probable cause
1063 or reasonable cause, all evidence admissible in determining probable cause at a
1064 preliminary hearing ~~or by a magistrate~~ pursuant to ~~Article 1~~ Part 1 of Article 2 of Chapter
1065 5 of Title 17, together with inferences therefrom;"

SECTION 4-6.

1066
1067 Said title is further amended by revising paragraph (3) of subsection (c) of Code Section
1068 16-13-60, relating to privacy and confidentiality, as follows:

1069 "(3) To local, state, or federal law enforcement or prosecutorial officials pursuant to the
1070 issuance of a search warrant pursuant to Part 1 of Article 2 of Chapter 5 of Title 17; and"

SECTION 4-7.

1071
1072 Code Section 27-4-263 of the Official Code of Georgia Annotated, relating to inspections,
1073 is amended by revising paragraph (1) of subsection (b) as follows:

1074 "(1) Any application for an inspection warrant shall be made to a person who is a judicial
1075 officer ~~within the meaning of Code Section 17-5-21~~ as such term is defined in Code
1076 Section 17-5-1;"

SECTION 4-8.

1077
1078 Code Section 49-4-146.3 of the Official Code of Georgia Annotated, relating to forfeiture
1079 of property and proceeds obtained through Medicaid fraud, is amended by revising paragraph
1080 (1) of subsection (s), as follow:

1081 "(1) The court may receive and consider, in making any determination of probable cause
1082 or reasonable cause, all evidence admissible in determining probable cause at a
1083 preliminary hearing ~~or by a magistrate~~ pursuant to ~~Article 1~~ Part 1 of Article 2 of Chapter
1084 5 of Title 17, together with inferences therefrom; and"

PART V**CROSS-REFERENCE AND DELAYED EFFECTIVE DATE****SECTION 5-1.**

1085
1086
1087
1088 Code Section 2-15-14 of the Official Code of Georgia Annotated, relating to inspection of
1089 premises and warrant for inspection, is amended by revising paragraph (1) of subsection (b),
1090 as follows:

1091 "(1) Any application for an inspection warrant shall be made to a person who is a judicial
1092 officer ~~within the meaning of Code Section 17-5-21~~ as such term is defined in Code
1093 Section 17-5-1;"

1094

PART VI

1095

EFFECTIVE DATE, APPLICABILITY, AND REPEALER

1096

SECTION 6-1.

1097 (a) Except as provided in subsection (b) of this section, this Act shall become effective on
1098 July 1, 2015, and shall apply to all offenses that occur on and after that date. This Act shall
1099 not affect any investigation or prosecution for acts occurring before July 1, 2015, and shall
1100 not act as an abatement of any such prosecutions. Any evidence obtained in accordance with
1101 the former provisions of Articles 1 and 2 of Chapter 5 of Title 17 and Part 1 of Article 3 of
1102 Chapter 11 of Title 16 shall be admissible in any civil or criminal proceeding commenced
1103 on or after July 1, 2015.

1104 (b) Part V of this Act shall become effective only upon the effective date of a specific
1105 appropriation of funds for purposes of Chapter 15 of Title 2 as expressed in a line item of an
1106 appropriations Act enacted by the General Assembly.

1107

SECTION 6-2.

1108 All laws and parts of laws in conflict with this Act are repealed.