

The House Committee on Judiciary Non-civil offers the following substitute to SB 154:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 1 of Article 3 of Chapter 11 of Title 16 and Code Section 17-5-21 of the  
2 Official Code of Georgia Annotated, relating to wiretapping, eavesdropping, surveillance,  
3 and related offenses and grounds for issuance of search warrant and scope of search pursuant  
4 to a search warrant, respectively, so as to provide for law enforcement officials to record  
5 matters occurring in private places or during the execution of a search warrant; to revise a  
6 definition; to amend Code Section 50-18-72 of the Official Code of Georgia Annotated,  
7 relating to when public disclosure of agency records is not required, so as to change certain  
8 provisions relating to the release of certain audio and video recordings; to provide for related  
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,  
13 relating to wiretapping, eavesdropping, surveillance, and related offenses, is amended by  
14 revising paragraph (3) of Code Section 16-11-60, relating to definitions, as follows:

15 "(3) 'Private place' means a place where ~~one is entitled reasonably to expect to be safe~~  
16 ~~from casual or hostile intrusion or surveillance~~ there is a reasonable expectation of  
17 privacy."

18 style="text-align:center">**SECTION 2.**

19 Said part is further amended by revising paragraph (2) of Code Section 16-11-62, relating  
20 to eavesdropping, surveillance, or intercepting communication which invades privacy of  
21 another, as follows:

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

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

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

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

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

44 **SECTION 3.**

45 Code Section 17-5-21 of the Official Code of Georgia Annotated, relating to grounds for  
 46 issuance of search warrant and scope of search pursuant to a search warrant, is amended by  
 47 revising subsection (b) as follows:

48 "(b) When the peace officer is in the process of effecting a lawful search, nothing in this  
 49 Code section shall ~~be construed to preclude him~~ such officer from discovering or seizing  
 50 any stolen or embezzled property, any item, substance, object, thing, or matter, the  
 51 possession of which is unlawful, or any item, substance, object, thing, or matter, other than  
 52 the private papers of any person, which is tangible evidence of the commission of a crime  
 53 against the laws of this state, the United States, or another state. Other personnel, sworn  
 54 or unsworn, acting under the direction of a peace officer executing a search warrant may  
 55 assist in the execution of such warrant. While in the process of effecting a lawful arrest or  
 56 lawful search, nothing in this Code section nor in Code Section 16-11-62 shall be construed  
 57 to preclude the use of any device, as such term is defined in Code Section 16-11-60, by the  
 58 peace officer executing the search warrant or other personnel assisting in the execution of  
 59 such warrant."

60 **SECTION 3A.**

61 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public  
62 disclosure of agency records is not required, is amended in subsection (a) by adding a new  
63 paragraph to read as follows:

64 "(26.2) Audio and video recordings from devices used by law enforcement officers in a  
65 place where there is a reasonable expectation of privacy when there is no pending  
66 investigation, except to the following, provided that the person seeking the audio or video  
67 recording submits a sworn affidavit that attests to the facts necessary to establish  
68 eligibility under this paragraph:

69 (A) A duly appointed representative of a deceased's estate when the decedent was  
70 depicted or heard on such recording;

71 (B) A parent or legal guardian of a minor depicted or heard on such recording;

72 (C) An accused in a criminal case when, in the good faith belief of the accused, such  
73 recording is relevant to his or her criminal proceeding;

74 (D) A party to a civil action when, in the good faith belief of such party, such recording  
75 is relevant to the civil action;

76 (E) An attorney for any of the persons identified in subparagraphs (A) through (D) of  
77 this paragraph; or

78 (F) An attorney for a person who may pursue a civil action when, in the good faith  
79 belief of such attorney, such recording is relevant to the potential civil action;"

80 **SECTION 4.**

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