

AN ACT

To amend Part 1 of Article 3 of Chapter 11 of Title 16, Title 17, and Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to wiretapping, eavesdropping, surveillance, and related offenses, criminal procedure, and when public disclosure of agency records is not required, respectively, so as to provide improved processes and procedure for law enforcement during the execution of their official duties and for the release of information to the public; to provide for law enforcement officials to record matters occurring in private places or during the execution of a search warrant; to require a procedure for enhancing witness identification accuracy; to provide for definitions; to provide for written policies relating to witness identification protocol; to provide for policy requirements; to prohibit suppression of evidence under certain circumstances; to change certain provisions relating to the release of certain audio and video recordings; to provide for related matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

"(3) 'Private place' means a place where there is a reasonable expectation of privacy."

**SECTION 2.**

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

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

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

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

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

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

### **SECTION 3.**

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

"(5) Any instruments, articles or things, any information or data, and anything that is tangible or intangible, corporeal or incorporeal, visible or invisible evidence of the commission of the crime for which probable cause is shown, other than the private papers of any person."

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

## SECTION 4.

Said title is further amended by adding a new chapter to read as follows:

### "CHAPTER 20

17-20-1.

As used in this chapter, the term:

- (1) 'Fillers' means individuals who are not suspects.
- (2) 'Law enforcement agency' means a governmental unit of one or more individuals employed full time or part time by the state, a state agency or department, or a political subdivision which performs as its principal function activities relating to preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.
- (3) 'Live lineup' means an identification procedure in which a suspect and fillers are displayed in person to a witness.
- (4) 'Photo lineup' means an identification procedure in which a photograph of a suspect and photographs of fillers are displayed to a witness, either in hard copy form or via computer.
- (5) 'Showup' means an identification procedure in which a witness is presented with a single individual.
- (6) 'Suspect' means the individual believed by law enforcement to be the possible perpetrator of an alleged crime.
- (7) 'Witness' means an individual who observes an alleged crime.

17-20-2.

- (a) Not later than July 1, 2016, any law enforcement agency that conducts live lineups, photo lineups, or showups shall adopt written policies for using such procedures for the purpose of determining whether a witness identifies someone as the perpetrator of an alleged crime.
- (b) Live lineup, photo lineup, and showup policies shall include the following:
  - (1) With respect to a live lineup, having an individual who does not know the identity of the suspect conduct the live procedure;
  - (2) With respect to a photo lineup, having an individual:
    - (A) Who does not know the identity of the suspect conduct the photo lineup; or
    - (B) Who knows the identity of the suspect use a procedure in which photographs are placed in folders, randomly shuffled, and then presented to the witness so that the

individual conducting such procedure cannot physically see which photograph is being viewed by the witness until the procedure is complete;

(3) Providing the witness with instruction that the perpetrator of the alleged crime may or may not be present in the live lineup or photo lineup;

(4) Composing a live lineup or photo lineup so that the fillers generally resemble the witness's description of the perpetrator of the alleged crime;

(5) Using a minimum of four fillers in a live lineup and a minimum of five fillers in a photo lineup; and

(6) Having the individual conducting a live lineup, photo lineup, or showup seek and document, at the time that an identification of an individual or photograph is made, and in the witness's own words without necessarily referencing a numeric or percentage standard, a clear statement from the witness as to the witness's confidence level that the individual or photograph identified is the individual or photograph of the individual who committed the alleged crime.

(c) All law enforcement agency written policies adopted pursuant to this Code section shall be subject to public disclosure and inspection notwithstanding any provision to the contrary in Article 4 of Chapter 18 of Title 50.

17-20-3.

The court may consider the failure to comply with the requirements of this chapter with respect to any challenge to an identification; provided, however, that such failure shall not mandate the exclusion of identification evidence."

## **SECTION 5.**

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

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

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

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

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

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

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

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

#### **SECTION 6.**

(a) Except as provided in subsection (b) of this section, this Act shall become effective on July 1, 2015.

(b) Section 4 of this Act shall become effective on July 1, 2016.

#### **SECTION 7.**

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