

House Bill 1130

By: Representative Poag of the 6th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to define the types of communications for which interception may be allowed;
3 to revise provisions relating to interception of electronic or oral communications for law
4 enforcement purposes so as to provide for the applicability of such provisions in the case of
5 terroristic acts and terroristic threats and to clarify the permissible scope of interception
6 warrants; to provide for interception warrants where the place of interception is unknown;
7 to provide for other related matters; to provide for an effective date and for applicability; to
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
12 amended by striking Code Section 16-11-60, relating to definitions regarding wiretapping,
13 eavesdropping, surveillance, and related offenses, and inserting in its place new Code
14 section to read as follows:

15 "16-11-60.

16 As used within this part, the term:

17 (1) 'Aural transfer' means a transfer containing the human voice at any point between and
18 including the point of origin and the point of reception.

19 ~~(1)~~(2) 'Device' means an instrument or apparatus used for overhearing, recording,
20 intercepting, or transmitting sounds or for observing, photographing, videotaping,
21 recording, or transmitting visual images and which involves in its operation electricity,
22 electronics, or infrared, laser, or similar beams. Without limiting the generality of the
23 foregoing, the term 'device' shall specifically include any camera, photographic
24 equipment, video equipment, or other similar equipment but shall not include merely
25 focusing, lighting, or illuminating equipment, optical magnifying equipment, or a device

1 commonly referred to as an 'individual hearing aid,' and not including a 'pen register' or
2 'trap and trace device' as defined in this Code section.

3 (3) 'Electronic communication' means any transfer of signs, signals, writing, images,
4 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
5 electromagnetic, photoelectronic, or photo-optical system.

6 (4) 'Oral communication' means any oral communication uttered by a person exhibiting
7 an expectation that such communication is not subject to interception under
8 circumstances justifying such expectation, but such term does not include any electronic
9 communication.

10 ~~(2)~~(5) 'Pen register' means an instrument or apparatus which records or decodes
11 electronic or other impulses which identify the numbers dialed or otherwise transmitted
12 on the telephone line to which such device is attached, but such term does not include any
13 instrument or apparatus used by a provider or customer of a wire or electronic
14 communication service for billing, or recording as an incident to billing, for
15 communications services provided by such provider or any instrument or apparatus used
16 by a provider or customer of a wire communication service for cost accounting or other
17 like purposes in the ordinary course of its business.

18 ~~(3)~~(6) 'Private place' means a place where one is entitled reasonably to expect to be safe
19 from casual or hostile intrusion or surveillance.

20 ~~(4)~~(7) 'Trap and trace device' means an instrument or apparatus which captures the
21 incoming electronic or other impulses which identify the originating number of an
22 instrument or apparatus from which a wire or electronic communication was transmitted.

23 (8) 'Wire communication' means any aural transfer made in whole or in part through the
24 use of facilities for the transmission of communications by the aid of wire, cable, or other
25 like connection between the point of origin and the point of reception, including the use
26 of such connection in a switching station, furnished or operated by any person engaged
27 in providing or operating such facilities for the transmission of interstate or foreign
28 communications or communications affecting interstate or foreign commerce."

29 SECTION 2.

30 Said Title 16 is further amended by striking subsection (b) of Code Section 16-11-64,
31 relating to interception of electronic or oral communications for law enforcement purposes,
32 and inserting in its place a new subsection (b) to read as follows:

33 "(b) *Procedure.* When in the course of his or her official duties, a law enforcement officer
34 desiring to make use of any device for the interception of electronic, oral, or wire
35 communication or otherwise, but only as ~~such~~ the term device is specifically defined by
36 Code Section 16-11-60 and such use would otherwise constitute a violation of Code

1 Section 16-11-62, the law enforcement officer shall act in compliance with the procedures
2 provided for in this part:

3 (1) When there is probable cause to believe that a person is committing or has committed
4 an act which endangers the national security of the United States or the security of this
5 state or that such person is committing or has committed the crime of treason, terroristic
6 acts or terroristic threats as defined by Code Section 16-11-37, insurrection, rebellion,
7 espionage, sabotage, or any felony involving bodily harm, or any crimes involving arson,
8 kidnapping, narcotics, dangerous drugs, or importing, manufacturing, delivering,
9 distributing, dispensing, administering, selling, or possessing with intent to distribute
10 marijuana or any controlled substance, or burglary, prostitution, theft, blackmail,
11 extortion, bribery, gambling, racketeering activity, or any felony involving alcoholic
12 beverage laws or auto thefts, or there is probable cause to believe that a private place is
13 being utilized or has been utilized for the commission of any such crime, then, upon
14 written application, under oath, of the district attorney having jurisdiction over the
15 prosecution of such crime, or the Attorney General, which application affirms that there
16 is probable cause to believe:

17 (A) That a person is committing or has committed any of the crimes enumerated in this
18 paragraph; or

19 (B) That a private place is being utilized or has been utilized for the commission of any
20 of the crimes enumerated in this paragraph

21 and sets forth specifically the basis of such probable cause and particularly describes the
22 person or place, the crime or crimes, the device or devices to be used, and the specific
23 conversations and activities to be overheard or observed, as the case may be, any judge
24 of the superior court having jurisdiction of such crime may issue an investigation warrant
25 permitting the use of devices, as defined by Code Section 16-11-60, for the surveillance
26 of such person or place, provided that the warrant specifies with particularity the device
27 or devices the use of which is to be permitted thereby; the purpose, duration, and
28 circumstances of use permitted; the crime or crimes allegedly being committed; and the
29 person or persons and place or places to be subject to such surveillance;

30 (1.1) If there is clear and convincing evidence to believe that a person is committing, has
31 committed, or is about to commit an offense specified in paragraph (1) of this subsection,
32 then the requirements of paragraph (1) of this subsection relating to the specification of
33 the place where the communication is to be intercepted do not apply in the following
34 circumstances:

35 (A) In the case of an application with respect to the interception of an oral
36 communication, when both of the following are true:

1 (i) The application contains a full and complete statement as to why such specification
 2 is not practical and identifies the person committing the offense and whose
 3 communications are to be intercepted; and

4 (ii) The judge finds that such specification is not practical;

5 (B) In the case of an application with respect to a wire or electronic communication,
 6 when all of the following are true:

7 (i) The application identifies the person believed to be committing the offense and
 8 whose communications are to be intercepted, and the applicant makes a showing that
 9 there is probable cause to believe that the person's actions could have the effect of
 10 thwarting interception from a specified facility;

11 (ii) The judge finds that such showing has been adequately made; and

12 (iii) The warrant authorizing or approving the interception is limited to interception
 13 only for such time as it is reasonable to presume that the person identified in the
 14 application is or was reasonably proximate to the instrument through which such
 15 communication will be or was transmitted;

16 (2) The judge, before issuing such a warrant, shall satisfy himself or herself that the party
 17 initiating the application for the warrant is aware of the facts and circumstances through
 18 his or her own personal knowledge which are sufficient to lead a person of reasonable
 19 caution to believe that the alleged crime set forth in the application has been committed
 20 or is being committed or that such person has been informed of such facts and
 21 circumstances by a reasonably trustworthy informational source. The judge shall also
 22 satisfy himself or herself that there is set forth in the application exigencies adequately
 23 supported by facts and circumstances which overcome and override the need for giving
 24 of notice of the surveillance to the parties to be overheard or observed by the use of such
 25 devices;

26 (3) Investigation warrants issued under this Code section shall be valid for no more than
 27 20 days after issuance, unless renewed for additional 20 day periods for good cause
 28 shown at the time of written application for each such renewal. An interception
 29 authorized pursuant to this Code section may be conducted in whole or in part by law
 30 enforcement personnel or by an individual operating under a contract with a law
 31 enforcement agency and acting under the supervision of a law enforcement officer
 32 authorized to conduct the interception;

33 (4) The officer executing the warrant must make a return of the warrant to the judge
 34 which shall set forth specifically how the warrant was used and employed and what was
 35 obtained thereby. The return shall reflect that the investigation or search in pursuance of
 36 the warrant was terminated immediately upon the conversation or activities which were
 37 authorized to be overheard, intercepted, or observed were in fact obtained. The return

1 shall set forth with particularity the law enforcement officer or officers or their agents
2 who actually employed the devices used in the execution of the warrant;

3 (5) The application for any investigation warrant under this Code section, any supporting
4 evidence in connection therewith, and any entry of the issuance of an investigation
5 warrant as a result thereof shall remain confidential and in the custody of the judge and
6 shall not be released nor information touching same in any manner be disclosed, except
7 upon written order of the judge or except at the time of trial of the case in which such
8 evidence is used or in which evidence derived from such surveillance is used;

9 (6) The applicant for the warrant shall return same and report back to the judge issuing
10 same within 30 days of the issuance of the warrant. In the event no evidence of one of the
11 specific crimes set forth in this Code section has been obtained through the use of such
12 device or devices, it shall be the duty of the applicant physically to destroy all evidence
13 obtained by surveillance and to certify that fact in writing to the judge under oath;

14 (7) In the event evidence of or information concerning the specific crime set forth in the
15 warrant is obtained through the use of such device or devices, the applicant shall so
16 certify in writing under oath in his or her report under paragraph (6) of this subsection.
17 Upon the return of an indictment or filing of an accusation based in whole or in part on
18 such evidence or information or any part thereof, it shall be the duty of the prosecuting
19 attorney promptly to notify the accused of the existence and substance of such evidence
20 or information and, if the same has been reduced to a permanent form, shall make it
21 available to the accused for inspection and copying; and

22 (8) Any publication of the information or evidence obtained under a warrant issued under
23 this Code section other than that necessary and essential to the preparation of and actual
24 prosecution for the crime specified in the warrant shall be an unlawful invasion of privacy
25 under this part and shall cause such evidence and information to be inadmissible in any
26 criminal prosecution."

27 **SECTION 3.**

28 This Act shall become effective upon its approval by the Governor or upon its becoming law
29 without such approval. The provisions of this Act defining, redefining, or changing the
30 punishment for crimes shall apply with respect to acts committed on or after that effective
31 date; and in these respects prior law shall continue to apply with respect to acts committed
32 prior to that effective date.

33 **SECTION 4.**

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