

Senate Bill 459

By: Senators Hamrick of the 30th and Kemp of the 3rd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia
2 Annotated, relating to wiretapping, eavesdropping, surveillance, and related offenses, so as
3 to revise definitions; to provide for the procedure for an investigative warrant; to provide for
4 access to stored wire and electronic communications and transactional records; to provide
5 for a short title; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 This Act shall be known and may be cited as "Georgia's Support of the War on Terrorism
10 Act of 2002."

11 **SECTION 2.**

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 striking Code Section 16-11-60, relating to definitions, and inserting in lieu thereof the
15 following:

16 "16-11-60.

17 As used within this part, the term:

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

1 (A) Any telephone or telegraph instrument, equipment, or facility or any component
 2 thereof:

3 (i) Furnished to the subscriber or user by a provider of wire or electronic
 4 communication service in the ordinary course of its business and being used by the
 5 subscriber or user in the ordinary course of its business or furnished by such
 6 subscriber or user for connection to the facilities of such service and used in the
 7 ordinary course of its business; or

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

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

13 but shall not include merely

14 (C) Focusing, focusing, lighting, or illuminating equipment, optical magnifying
 15 equipment, or a device commonly referred to as an 'individual hearing aid,'; and

16 (D) A not including a 'pen register' or 'trap and trace device' as defined in this Code
 17 section.

18 ~~(2) 'Pen register' means an instrument or apparatus~~ a device or process which records
 19 or decodes ~~electronic or other impulses~~ dialing, routing, addressing, or signaling
 20 information transmitted by an instrument or facility from which identify the numbers
 21 ~~dialed or otherwise transmitted on the telephone line to which such device is attached; a~~
 22 wire or electronic communication is transmitted; provided, however, that such
 23 information shall not include the contents of any communication; but such term does not
 24 include any ~~instrument or apparatus~~ device or process used by a provider or customer of
 25 a wire or electronic communication service for billing, or recording as an incident to
 26 billing, for communications services provided by such provider or any ~~instrument or~~
 27 ~~apparatus~~ device or process used by a provider or customer of a wire communication
 28 service for cost accounting or other like purposes in the ordinary course its business.

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

31 (4) 'Trap and trace device' means ~~an instrument or apparatus~~ a device or process which
 32 captures the incoming electronic or other impulses which identify the originating number
 33 ~~of an instrument or apparatus~~ or other dialing, routing, addressing, and signaling
 34 information reasonably likely to identify the source of from which a wire or electronic
 35 communication was transmitted; provided, however, that such information shall not
 36 include the contents of any communication."

SECTION 3.

Said part is further amended in Code Section 16-11-64, relating to interception of wire or oral transmissions by law enforcement officers, striking in their entirety subsections (b), (c), and (d) and inserting new subsections (b), (c), and (d) to read as follows:

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

(c) Upon written application, under oath, of the prosecuting attorney having jurisdiction over prosecution of the crime under investigation, or the Attorney General, made before a judge of superior court, said court may issue an investigation warrant permitting the use of such device, as defined in Code Section 16-11-60, for the surveillance of such person or place to the extent the same is consistent with and subject to the terms, conditions, and procedures provided for by Chapter 119 of Title 18 of the United States Code Annotated, as amended.

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

SECTION 4.

Said part is further amended by striking Code Section 16-11-66.1, relating to interception of cellular radio telephone communications, and inserting in lieu thereof a new Code section to read as follows:

"16-11-66.1.

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

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

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

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

5 (e) Violation of this Code section shall be punishable by contempt."

6 **SECTION 5.**

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