

Senate Bill 98

By: Senators Hamrick of the 30th, Mullis of the 53rd, Thomas of the 54th, Heath of the 31st, Staton of the 18th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and 35 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses and law enforcement officers and agencies, respectively, so as to provide the
3 Georgia Bureau of Investigation with the authority to investigate certain offenses against
4 minors, including subpoena power; to change provisions relating to the "Computer
5 Pornography and Child Exploitation Act of 1999"; to provide for a definition; to provide for
6 an effective date; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

10 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
11 amended by revising Code Section 16-9-109, relating to disclosure by service providers
12 pursuant to investigations, as follows:

13 "16-9-109.

14 (a) Any law enforcement unit, the Attorney General, or any district attorney who is
15 conducting an investigation of a violation of this article or an investigation of a violation
16 of Code Section 16-12-100, 16-12-100.1, 16-12-100.2, or 16-5-90; or Article 8 of ~~Chapter~~
17 ~~9 of Title 16~~ this chapter involving the use of a computer, cellular telephone, or any other
18 electronic device used in furtherance of the act may require the disclosure by a provider of
19 electronic communication service or remote computing service of the contents of a wire
20 or electronic communication that is in electronic storage in an electronic communications
21 system for 180 days or less pursuant to a search warrant issued under the provisions of
22 Article 2 of Chapter 5 of Title 17 by a court with jurisdiction over the offense under
23 investigation. Such court may require the disclosure by a provider of electronic
24 communication service or remote computing service of the contents of a wire or electronic
25 communication that has been in electronic storage in an electronic communications system
26 for more than 180 days as set forth in subsection (b) of this Code section.

1 (b)(1) Any law enforcement unit, the Attorney General, or any district attorney may
2 require a provider of electronic communication service or remote computing service to
3 disclose a record or other information pertaining to a subscriber to or customer of such
4 service, exclusive of the contents of communications, only when any law enforcement
5 unit, the Attorney General, or any district attorney:

6 (A) Obtains a search warrant as provided in Article 2 of Chapter 5 of Title 17;

7 (B) Obtains a court order for such disclosure under subsection (c) of this Code section;

8 or

9 (C) Has the consent of the subscriber or customer to such disclosure.

10 (2) A provider of electronic communication service or remote computing service shall
11 disclose to any law enforcement unit, the Attorney General, or any district attorney the:

12 (A) Name;

13 (B) Address;

14 (C) Local and long distance telephone connection records, or records of session times
15 and durations;

16 (D) Length of service, including the start date, and types of service utilized;

17 (E) Telephone or instrument number or other subscriber number or identity, including
18 any temporarily assigned network address; and

19 (F) Means and source of payment for such service, including any credit card or bank
20 account number of a subscriber to or customer of such service when any law
21 enforcement unit, the Attorney General, or any district attorney uses a subpoena
22 authorized by Code Section 16-9-108, 35-3-4.1, or 45-15-17 or a grand jury or trial
23 subpoena when any law enforcement unit, the Attorney General, or any district attorney
24 complies with paragraph (1) of this subsection.

25 (3) Any law enforcement unit, the Attorney General, or any district attorney receiving
26 records or information under this subsection shall not be required to provide notice to a
27 subscriber or customer. A provider of electronic communication service or remote
28 computing service shall not disclose to a subscriber or customer the existence of any
29 search warrant or subpoena issued pursuant to this article nor shall a provider of
30 electronic communication service or remote computing service disclose to a subscriber
31 or customer that any records have been requested by or disclosed to any law enforcement
32 unit, the Attorney General, or any district attorney pursuant to this article.

33 (c) A court order for disclosure issued pursuant to subsection (b) of this Code section may
34 be issued by any superior court with jurisdiction over the offense under investigation and
35 shall only issue such court order for disclosure if any law enforcement unit, the Attorney
36 General, or any district attorney offers specific and articulable facts showing that there are
37 reasonable grounds to believe that the contents of an electronic communication, or the

1 records or other information sought, are relevant and material to an ongoing criminal
 2 investigation. A court issuing an order pursuant to this Code section, on a motion made
 3 promptly by a provider of electronic communication service or remote computing service,
 4 may quash or modify such order, if compliance with such order would be unduly
 5 burdensome or oppressive on such provider.

6 (d)(1) Any records supplied pursuant to this part shall be accompanied by the affidavit
 7 of the custodian or other qualified witness, stating in substance each of the following:

8 (A) The affiant is the duly authorized custodian of the records or other qualified
 9 witness and has authority to certify the records;

10 (B) The copy is a true copy of all the records described in the subpoena, court order,
 11 or search warrant and the records were delivered to the attorney, or the attorney's
 12 representative, or the director of the Georgia Bureau of Investigation or the director's
 13 designee;

14 (C) The records were prepared by the personnel of the business in the ordinary course
 15 of business at or near the time of the act, condition, or event;

16 (D) The sources of information and method and time of preparation were such as to
 17 indicate its trustworthiness;

18 (E) The identity of the records; and

19 (F) A description of the mode of preparation of the records.

20 (2) If the business has none or only part of the records described, the custodian or other
 21 qualified witness shall so state in the affidavit.

22 (3) If the original records would be admissible in evidence if the custodian or other
 23 qualified witness had been present and testified to the matters stated in the affidavit, the
 24 copy of the records shall be admissible in evidence. When more than one person has
 25 knowledge of the facts, more than one affidavit shall be attached to the records produced.

26 (4) No later than 30 days prior to trial, a party intending to offer such evidence produced
 27 in compliance with this subsection shall provide written notice of such intentions to the
 28 opposing party or parties. A motion opposing the admission of such evidence shall be
 29 filed within ten days of the filing of such notice, and the court shall hold a hearing and
 30 rule on such motion no later than ten days prior to trial. Failure of a party to file such
 31 motion opposing admission prior to trial shall constitute a waiver of objection to such
 32 records and affidavit. However, the court, for good cause shown, may grant relief from
 33 such waiver."

34 SECTION 2.

35 Said title is further amended by revising Code Section 16-12-100.2, relating to computer
 36 pornography and child exploitation prevention, as follows:

1 "16-12-100.2.

2 (a) This Code section shall be known and may be cited as the 'Computer or Electronic
3 Pornography and Child Exploitation Prevention Act of ~~1999~~ 2007.'

4 (b) As used in this Code section, the term:

5 (1) 'Child' means any person under the age of 16 years.

6 (2) 'Electronic device' means any device used for the purpose of communicating with a
7 child for sexual purposes or any device used to visually depict a child engaged in sexually
8 explicit conduct, store any image or audio of a child engaged in sexually explicit conduct,
9 or transmit any audio or visual image of a child for sexual purposes. Such term may
10 include, but shall not be limited to, a computer, cellular phone, thumb drive, video game
11 system, or any other electronic device that can be used in furtherance of exploiting a child
12 for sexual purposes;

13 ~~(2)~~(3) 'Identifiable child' means a person:

14 (A) Who was a child at the time the visual depiction was created, adapted, or modified
15 or whose image as a child was used in creating, adapting, or modifying the visual
16 depiction; and

17 (B) Who is recognizable as an actual person by the person's face, likeness, or other
18 distinguishing characteristic, such as a unique birthmark or other recognizable feature
19 or by electronic or scientific means as may be available.

20 The term shall not be construed to require proof of the actual identity of the child.

21 ~~(3)~~(4) 'Sadomasochistic abuse' has the same meaning as provided in Code Section
22 16-12-100.1.

23 ~~(4)~~(5) 'Sexual conduct' has the same meaning as provided in Code Section 16-12-100.1.

24 ~~(5)~~(6) 'Sexual excitement' has the same meaning as provided in Code Section
25 16-12-100.1.

26 ~~(6)~~(7) 'Sexually explicit nudity' has the same meaning as provided in Code Section
27 16-12-102.

28 ~~(7)~~(8) 'Visual depiction' means any image and includes undeveloped film and video tape
29 and data stored on computer disk or by electronic means which is capable of conversion
30 into a visual image or which has been created, adapted, or modified to show an
31 identifiable child engaged in sexually explicit conduct.

32 (c)(1) A person commits the offense of computer or electronic pornography if such
33 person intentionally or willfully:

34 (A) Compiles, enters into, or transmits by ~~means of computer~~ or other electronic
35 device;

36 (B) Makes, prints, publishes, or reproduces by ~~other computerized means~~ computer or
37 other electronic device;

1 (C) Causes or allows to be entered into or transmitted by ~~means of computer~~ or other
 2 electronic device; or

3 (D) Buys, sells, receives, exchanges, or disseminates
 4 any notice, statement, or advertisement, or any child's name, telephone number, place of
 5 residence, physical characteristics, or other descriptive or identifying information for the
 6 purpose of offering or soliciting sexual conduct of or with an identifiable child or the
 7 visual depiction of such conduct.

8 (2) Any person convicted of violating paragraph (1) of this subsection shall be punished
 9 by a fine of not more than \$10,000.00 and by imprisonment for not less than one nor
 10 more than 20 years.

11 (d)(1) It shall be unlawful for any person intentionally or willfully to utilize a computer
 12 on-line service or Internet service, including but not limited to a local bulletin board
 13 service, Internet chat room, e-mail, ~~or on-line messaging service,~~ or other electronic
 14 device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a
 15 child or another person believed by such person to be a child to commit any illegal act
 16 described in Code Section 16-6-2, relating to the offense of sodomy or aggravated
 17 sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated
 18 child molestation; Code Section 16-6-5, relating to the offense of enticing a child for
 19 indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency or
 20 to engage in any conduct that by its nature is an unlawful sexual offense against a child.

21 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
 22 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
 23 more than 20 years and by a fine of not more than \$25,000.00; provided, however, that,
 24 if at the time of the offense the victim was 14 or 15 years of age and the defendant was
 25 no more than three years older than the victim, then the defendant shall be guilty of a
 26 misdemeanor of a high and aggravated nature.

27 (e)(1) A person commits the offense of obscene Internet contact with a child if he or she
 28 has contact with someone he or she knows to be a child or with someone he or she
 29 believes to be a child via a computer on-line service or Internet service, including but not
 30 limited to a local bulletin board service, Internet chat room, e-mail, or on-line messaging
 31 service, and the contact involves any matter containing explicit verbal descriptions or
 32 narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or
 33 sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the
 34 child or the person, provided that no conviction shall be had for a violation of this
 35 subsection on the unsupported testimony of a child.

36 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
 37 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor

1 more than ten years or by a fine of not more than \$10,000.00; provided, however, that,
 2 if at the time of the offense the victim was 14 or 15 years of age and the defendant was
 3 no more than three years older than the victim, then the defendant shall be guilty of a
 4 misdemeanor of a high and aggravated nature.

5 (f)(1) It shall be unlawful for any owner or operator of a computer on-line service,
 6 Internet service, ~~or local bulletin board service,~~ or other electronic device that is in the
 7 business of providing a service that may be used to sexually exploit a child to
 8 intentionally or willfully to permit a subscriber to utilize the service to commit a violation
 9 of this Code section, knowing that such person intended to utilize such service to violate
 10 this Code section. No owner or operator of a public computer on-line service, Internet
 11 service, ~~or local bulletin board service,~~ or other electronic device that is in the business
 12 of providing a service that may be used to sexually exploit a child shall be held liable on
 13 account of any action taken in good faith in providing the aforementioned services.

14 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a
 15 misdemeanor of a high and aggravated nature.

16 (g) The sole fact that an undercover operative or law enforcement officer was involved in
 17 the detection and investigation of an offense under this Code section shall not constitute
 18 a defense to prosecution under this Code section.

19 (h) A person is subject to prosecution in this state pursuant to Code Section 17-2-1,
 20 relating to jurisdiction over crimes and persons charged with commission of crimes
 21 generally, for any conduct made unlawful by this Code section which the person engages
 22 in while:

23 (1) Either ~~either~~ within or outside of this state if, by such conduct, the person commits
 24 a violation of this Code section which involves a child who resides in this state or another
 25 person believed by such person to be a child residing in this state; or

26 (2) Within this state if, by such conduct, the person commits a violation of this Code
 27 section which involves a child who resides within or outside this state or another person
 28 believed by such person to be a child residing within or outside this state.

29 (i) Any violation of this Code section shall constitute a separate offense."

30 SECTION 3.

31 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 32 agencies, is amended in subsection (a) of Code Section 35-3-4, relating to powers and duties
 33 of the Georgia Bureau of Investigation, by striking "and" at the end of paragraph (8), by
 34 replacing the period with "; or" at the end of paragraph (9), and by adding a new paragraph
 35 to read as follows:

1 “(10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16,
 2 relating to offenses related to minors.”

3 **SECTION 4.**

4 Said title is further amended by revising Article 1 of Chapter 3, relating to general provisions
 5 relating to the Georgia Bureau of Investigation, by adding a new Code section to read as
 6 follows:

7 “35-3-4.1.

8 (a)(1) In any investigation of a violation of Code Section 16-12-100, 16-12-100.1, or
 9 16-12-100.2 involving the use of a computer or an electronic device in furtherance of an
 10 act related to a minor, the director, assistant director, or deputy director for investigations
 11 shall be authorized to issue a subpoena, with the consent of the Attorney General, to
 12 compel the production of electronic communication service or remote communication
 13 service records or other information pertaining to a subscriber or customer of such
 14 service, exclusive of contents of communications.

15 (2) A provider of electronic communication service or remote computing service shall
 16 disclose to the bureau the:

17 (A) Name;

18 (B) Address;

19 (C) Local and long distance telephone connection records, or records of session times
 20 and durations;

21 (D) Length of service, including the start date, and types of service utilized;

22 (E) Telephone or instrument number or other subscriber number or identity, including
 23 any temporarily assigned network address; and

24 (F) Means and source of payment for such service, including any credit card or bank
 25 account number of a subscriber to or customer of such service.

26 (b) Upon failure of a person without lawful excuse to obey a subpoena, the director,
 27 assistant director, or the deputy director for investigations, through the Attorney General
 28 or district attorney, may apply to a superior court having jurisdiction for an order
 29 compelling compliance. Such person may object to the subpoena on grounds that it fails
 30 to comply with this Code section or upon any constitutional or other legal right or privilege
 31 of such person. The court may issue an order modifying or setting aside such subpoena or
 32 directing compliance with the original subpoena.

33 (c) The Attorney General may request that a natural person who refuses to produce
 34 relevant matter on the ground that the production of records may incriminate such person
 35 be ordered by the court to provide such records. With the exception of a prosecution for
 36 perjury, a natural person who complies with the court order to provide such records

1 asserting a privilege against self-incrimination to which he or she is entitled by law shall
2 not be prosecuted or subjected to any penalty or forfeiture for or on account of any
3 transaction, matter, or thing concerning which he or she may testify or produce evidence,
4 documentary or otherwise.

5 (d)(1) Information obtained pursuant to a subpoena enforced by this Code section shall
6 not be made public or, except as authorized in paragraph (2) of this subsection, disclosed
7 by the director, assistant director, deputy director for investigations, or the director's
8 employees beyond the extent necessary for the enforcement of this Code section.

9 (2) The director, assistant director, deputy director for investigations, or the director's
10 employees shall be authorized to provide to any federal, state, or local law enforcement
11 agency any information acquired under this Code section in furtherance of a criminal
12 investigation in violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2.

13 (e) As used in this Code section, the terms 'electronic communication service' and 'remote
14 communication service' shall have the same meaning as set forth in Code Section 16-9-92."

15 **SECTION 5.**

16 This Act shall become effective upon its approval by the Governor or upon its becoming law
17 without such approval.

18 **SECTION 6.**

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