

The Senate Special Judiciary Committee offered the following substitute to HB 16:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and 17 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses and criminal procedure, respectively, so as to regulate the use of tracking devices;
3 to prohibit the tracking of the location or movement of another person without such other
4 person's consent; to provide for exceptions; to provide for punishment; to provide for the
5 issuance of search warrants authorizing the installation, use, and removal of tracking devices
6 subject to certain conditions; to provide for a definition; to provide for installation and use
7 of tracking devices in emergency situations; to provide for related matters; to provide for an
8 effective date and applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
12 amended by adding a new Code section to read as follows:

13 "16-11-62.1.

14 (a) As used in this Code section, the term 'tracking device' means any device that reveals
15 its location or movement by the transmission of electronic signals.

16 (b) Except as otherwise provided in this Code section, no person shall use a tracking
17 device to determine the location or movement of another person without such other
18 person's consent.

19 (c) Official law enforcement agencies shall be specifically authorized to use tracking
20 devices pursuant to Code Section 17-5-22.1.

21 (d) This Code section shall not apply:

22 (1) When the owner or lienholder of a vehicle has consented to the use of a tracking
23 device with respect to such vehicle;

24 (2) When the lessor or lessee of a vehicle and the person operating such vehicle have
25 consented to the use of a tracking device with respect to such vehicle;

- 26 (3) To official actions of an official law enforcement agency acting in a law enforcement
 27 capacity;
- 28 (4) To actions of United States military law enforcement personnel in the performance
 29 of their official duties;
- 30 (5) To actions of a parent, legal guardian, or person in loco parentis with respect to
 31 determining the location or movement of a child or other person with whom such parent,
 32 legal guardian, or person in loco parentis has such legal relationship;
- 33 (6) To actions of a family member or caregiver with respect to determining the location
 34 or movement of a patient or family member with a diagnosis by a licensed physician of
 35 Alzheimer's disease, vascular dementia, Pick's disease, Creutzfeldt-Jakob disease,
 36 Parkinson's disease, or Lewy body dementia;
- 37 (7) To actions of a facility licensed pursuant to Title 31 with respect to determining the
 38 location or movement of a patient when such device is deemed medically necessary by
 39 the patient's physician;
- 40 (8) To actions of a private detective who is licensed pursuant to Chapter 38 of Title 43
 41 while in the performance of duties that are authorized for such detective; or
- 42 (9) To the provision of a commercial service, such as mobile telephone service or vehicle
 43 safety or security service, which allows the provider of such service to determine the
 44 location or movement of a device provided to a customer of such commercial service for
 45 the purpose of providing such commercial service.
- 46 (e) Notwithstanding subsection (d) of this Code section, no person shall be required to be
 47 implanted with a tracking device pursuant to this Code section.
- 48 (f) Any person violating this Code section shall upon conviction be guilty of a
 49 misdemeanor; provided, however, that it shall not be a violation of this Code section to use
 50 a tracking device to determine the location or movement of another person without such
 51 other person's consent if such person is an occupant of a vehicle where use of such
 52 tracking device is permissible according to the provisions of subsection (d) of this Code
 53 section."

54 **SECTION 2.**

55 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 56 amended by adding a new Code section to read as follows:

57 "17-5-22.1.

- 58 (a) As used in this Code section, the term 'tracking device' means an electronic or
 59 mechanical device which, when placed or installed upon a person or object, permits other
 60 persons to remotely determine or track the position and movement of such person or object,
 61 but the term shall not include:

62 (1) Devices, such as a cellular telephone or other personal electronic device, which
63 include as an incidental feature the capability of determining the location of such devices
64 by utilizing a global positioning satellite system; or

65 (2) Devices which are installed or utilized with the knowledge and consent of the owner
66 or user of the device or, in the case of a minor, with the knowledge and consent of his or
67 her parent or guardian.

68 (b) Upon the written application of any certified peace officer of this state or its political
69 subdivisions charged with the duty of enforcing the criminal laws and otherwise as
70 authorized in Code Section 17-5-20 under oath or affirmation, a judge of any court in this
71 state authorized to issue search warrants pursuant to Code Section 17-5-21 may issue a
72 search warrant authorizing the installation, use, and removal of a tracking device subject
73 to the following conditions:

74 (1) The application shall be made before a judge of the superior court with the authority
75 to issue warrants within the geographic jurisdiction where such tracking device is to be
76 installed;

77 (2) The application shall set forth facts sufficient to establish probable cause to believe
78 that a particular crime has been committed, is being committed, or will be committed and
79 that the person or object to be tracked is involved, was involved, or will be involved in
80 the commission or facilitation of such crime;

81 (3) The application shall set forth facts sufficient to establish probable cause to believe
82 that the use of a tracking device will result in the prevention of a criminal offense under
83 investigation, the seizure of evidence relevant to the investigation or prosecution of a
84 criminal offense, or the whereabouts of a fugitive from justice or a suspect, victim, or
85 witness relating to a criminal offense;

86 (4) The application shall particularly describe the person or object upon which a tracking
87 device is to be installed;

88 (5) A tracking device authorized by this Code section shall be installed within ten days
89 after the issuance of the warrant and shall be installed within the geographic jurisdiction
90 of the issuing judge. If the tracking device is not installed within that time, the warrant
91 shall be returned to the issuing judge as unserved. The date and time of installation shall
92 be recorded and included in the return made to the issuing judge;

93 (6)(A) A search warrant issued pursuant to this Code section shall authorize the use of
94 a tracking device for a reasonable period of time, not to exceed 45 days, except as
95 provided in subparagraph (B) of this paragraph, measured from the date such tracking
96 device is installed upon the person or object to be tracked.

97 (B) Upon written application for extension and upon a finding of good cause, the
98 issuing judge may authorize one or more extensions for a reasonable period of time, not
99 to exceed 45 days each;

100 (7) When the period of time authorized for the use of a tracking device or the last
101 extension thereof has expired, monitoring of such tracking device shall be discontinued
102 immediately;

103 (8) Within ten days after the period of time authorized for the use of a tracking device
104 or the last extension thereof has expired, the officer executing the warrant shall make a
105 return thereof to the issuing judge. The return shall specify the date and time such
106 tracking device was installed and the address or location of installation of such tracking
107 device, the date and time that monitoring was discontinued, and a general summary of the
108 movements of the object or person tracked during the duration of the surveillance;

109 (9) Within ten days after the period of time authorized for the use of a tracking device
110 or the last extension thereof has expired, the officer executing a search warrant issued
111 pursuant to this Code section shall serve a copy of such warrant on the person who was
112 tracked or whose property was tracked. Service shall be accomplished by delivering a
113 copy to such person or by leaving a copy at such person's residence or usual place of
114 abode with an individual of suitable age and discretion who resides at that location or by
115 mailing a copy to such person's last known address. Upon the request of the state or the
116 officer executing the warrant, the issuing judge may delay notice for a reasonable time;
117 provided, however, that where such notice is delayed, such notice shall be served no later
118 than ten days after issuance of an arrest warrant, indictment, or accusation based wholly
119 or in part upon information derived from the use of a tracking device;

120 (10) A tracking device installed and used under the authority of a warrant issued
121 pursuant to this Code section may be used within the jurisdiction of the issuing court as
122 well as outside such jurisdiction if such tracking device was installed within the
123 jurisdiction of the issuing court; and

124 (11) The warrant and any extension thereof, the application upon which the warrant and
125 extensions, if any, were issued, the affidavit supporting the warrant and extensions, if
126 any, the return, and any request for and order granting a delay in the serving of notice
127 shall be filed with the clerk of the court of the issuing judge, or with the court if so
128 ordered, at the time the return is made or when the warrant has been returned not
129 executed; provided, however, that the issuing judge may order that such documents be
130 sealed while an investigation remains ongoing until such time that an arrest warrant,
131 indictment, or accusation based wholly or in part upon information derived from the use
132 of the tracking device is issued.

133 (c)(1) Any investigative or law enforcement officer, specially designated in writing for
 134 such purpose by the Attorney General or by a district attorney, who reasonably
 135 determines that:

136 (A) An emergency situation exists that involves:

137 (i) Immediate danger of death or serious bodily injury to any person; or

138 (ii) Conspiratorial activities characteristic of organized crime.

139 that requires the installation and use of a tracking device before an order authorizing
 140 such installation and use can, with due diligence, be obtained; and

141 (B) There are grounds upon which a search warrant pursuant to subsection (b) of this
 142 Code section could be issued to authorize such installation and use,

143 may have installed and use a tracking device if, within 48 hours of the time the tracking
 144 device is installed, an order approving the installation or use is issued in accordance with
 145 subsection (b) of this Code section.

146 (2) In the event that an application for a search warrant made pursuant to this subsection
 147 is granted, then the tracking device shall be installed and used in accordance with the
 148 provisions of subsection (b) of this Code section.

149 (3) In the event that an application for a search warrant made pursuant to this subsection
 150 is denied or in any event where the installation or use of the tracking device is terminated
 151 without a search warrant having been issued, any tracking information or other surveillance
 152 effected pursuant to this subsection shall be confidential and shall not be disclosed or be
 153 admissible in any court of this state except to prove violations of this Code section."

154 **SECTION 3.**

155 This Act shall become effective upon its approval by the Governor or upon its becoming law
 156 without such approval and shall apply with respect to conduct on and after that date.

157 **SECTION 4.**

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