

House Bill 430

By: Representatives Efstration of the 104<sup>th</sup>, Atwood of the 179<sup>th</sup>, Reeves of the 34<sup>th</sup>, Lumsden of the 12<sup>th</sup>, Ballinger of the 23<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to search  
2 and seizure, so as to revise and modernize the law relating to search and seizure; to provide  
3 for definitions; to provide for seizure of intangible property; to change provisions relating  
4 to searches without warrants; to authorize the recording of the execution of a search warrant;  
5 to provide for a procedure for sealing and delaying disclosure of search warrants, supporting  
6 documentation thereof, and returns under certain circumstances; to change the standard for  
7 suppressing evidence; to provide a procedure for out-of-state law enforcement officers to  
8 apply for and execute a search warrant in this state; to reorganize the use of wiretapping and  
9 surveillance into the search and seizure chapter; to provide for a procedure for the installation  
10 and use of tracking devices, pen registers, and trap and trace devices; to amend Article 3 of  
11 Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to invasions of  
12 privacy, so as to repeal provisions relating to wiretapping and surveillance now contained in  
13 Chapter 5 of Title 17; to amend Chapter 18 of Title 15 of the Official Code of Georgia  
14 Annotated, relating to prosecuting attorneys, so as to provide for the arrest powers of  
15 investigators in District Attorney and Solicitor-General Offices; to amend Code Sections  
16 2-2-11, 2-15-14, 12-2-2, 15-18-15, 27-4-263, 49-4-146.3, and Title 16 of the Official Code  
17 of Georgia Annotated, relating to inspection warrants for the Department of Agriculture,  
18 inspection warrants for pacific white shrimp aquaculture; inspection warrants for the  
19 environmental protection division, the chief assistant district attorney, inspection warrants  
20 for the Aquaculture Development Commission, forfeiture of property and proceeds obtained  
21 through Medicaid fraud, and crimes and offenses, respectively, so as to conform  
22 cross-references; to provide for related matters; to provide for an effective date, a delayed  
23 effective date, and applicability; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

25 **PART I**  
 26 **SEARCH, SEIZURE, WIRETAP**  
 27 **SECTION 1-1.**

28 Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to search and  
 29 seizure, is amended by revising Article 1, relating to searches without warrants, as follows:

30 "ARTICLE 1

31 17-5-1.

32 As used in this article, the term:

33 (1) 'Another state' means:

34 (A) A state of the United States other than Georgia;

35 (B) The District of Columbia; and

36 (C) Puerto Rico, the United States Virgin Islands, or any territory or insular possession  
 37 subject to the jurisdiction of the United States, including an Indian tribe or band or  
 38 Alaskan native village, which is recognized by federal law or formally acknowledged  
 39 by a state.

40 (2) 'Certified peace officer' means any individual who has been subject to the  
 41 requirements of Chapter 8 of Title 35, the 'Georgia Peace Officer Standards and Training  
 42 Act,' and has completed the training required by such chapter.

43 (3) 'Contraband' means any item, substance, object, thing, or matter, the possession of  
 44 which is unlawful under the laws of this state or of the United States.

45 (4) 'Judicial officer' means:

46 (A) Any judge of a court of this state;

47 (B) Any other official authorized to hold a court of inquiry to examine into an arrest  
 48 of an offender for a violation of the criminal laws of this state; or

49 (C) Any retired or senior judge or judge emeritus of a court of record when an active  
 50 judge of a court of record in the jurisdiction wherein a search warrant is sought  
 51 authorizes such judge, in writing, to issue search warrants or conduct hearings provided  
 52 for in Article 1 or 2 of this chapter.

53 (5) 'Peace officer' shall have the same meaning as set forth in Code Section 35-8-2 and  
 54 shall also mean:

55 (A) A certified peace officer employed by a university, college, or school pursuant to  
 56 Code Section 20-3-72 or Chapter 8 of Title 20;

57 (B) A certified peace officer employed by a district attorney or solicitor-general; or

58 (C) A probation supervisor or probation officer employed by the Department of  
 59 Corrections, the Department of Juvenile Justice, or any political subdivision of this  
 60 state.

61 (6) 'Property' means instruments, articles or things, any information or data, and anything  
 62 that is tangible or intangible, corporeal or incorporeal, visible or invisible.

63 (7) 'Stolen property' means any property unlawfully taken, converted, embezzled, or  
 64 otherwise obtained without permission or right, in violation of the laws of this state,  
 65 another state, the United States, or any foreign nation.

66 17-5-2.

67 (a) ~~A~~ When a lawful arrest is effected a peace officer may reasonably search the person  
 68 an individual lawfully arrested and the area within ~~the~~ such person's immediate presence  
 69 for the purpose of:

70 (1) Protecting the peace officer from attack;

71 (2) Preventing the ~~person~~ individual from escaping;

72 (3) Discovering or seizing the fruits of the crime for which the person has been arrested;  
 73 or

74 (4) Discovering or seizing any ~~instruments, articles, or things~~ property which ~~are~~ is being  
 75 used or which may have been used in the commission of the crime for which the person  
 76 has been arrested.

77 (b) ~~Nothing~~ When the peace officer is in the process of effecting a lawful search, nothing  
 78 in this Code section shall be construed to preclude him a peace officer, in the course of a  
 79 constitutional search, from discovering or seizing any stolen ~~or embezzled~~ property, any  
 80 ~~item, substance, object, thing, or matter, the possession of which is unlawful, or any item,~~  
 81 ~~substance, object, thing, or matter, other than the private papers of any person, which is~~  
 82 tangible contraband, or any other property that is evidence of the commission of a crime  
 83 against the laws of this state, the United States, or another state.

84 ~~17-5-2.~~ 17-5-3.

85 An inventory of all ~~instruments, articles, or things~~ property that is seized in a search  
 86 without a search warrant shall be given to the ~~person~~ individual arrested and a copy thereof  
 87 delivered to the judicial officer before whom the ~~person~~ individual arrested is taken. If the  
 88 ~~person~~ individual arrested is released without a charge being preferred against ~~him,~~ all  
 89 ~~instruments, articles, or things~~ such individual, all property seized, other than contraband  
 90 or stolen property, shall be returned to ~~him~~ such individual upon release."

91 **SECTION 1-2.**

92 Said chapter is further amended by revising Article 2, relating to searches with warrants, as  
 93 follows:

94 **"ARTICLE 2**95 **Part 1**

96 17-5-20.

97 As used in this article, the term:98 (1) 'Another state' shall have the same meaning as set forth in Code Section 17-5-1.99 (2) 'Contraband' shall have the same meaning as set forth in Code Section 17-5-1.

100 (3) 'Device' means an instrument or apparatus used for overhearing, recording,  
 101 intercepting, or transmitting sounds or for observing, photographing, videotaping,  
 102 recording, or transmitting visual images and which involves in its operation electricity,  
 103 electronics, or infrared, laser, or similar beams. Without limiting the generality of the  
 104 foregoing, the term 'device' shall specifically include any camera, photographic  
 105 equipment, video equipment, or other similar equipment or any electronic, mechanical,  
 106 or other apparatus which can be used to intercept a wire communication, oral  
 107 communication, or electronic communication other than:

108 (A) Any telephone or telegraph instrument, equipment, or facility or any component  
 109 thereof:

110 (i) Furnished to the subscriber or user by a provider of electronic communication  
 111 service in the ordinary course of its business and being used by the subscriber or user  
 112 in the ordinary course of its business or furnished by such subscriber or user for  
 113 connection to the facilities of such service and used in the ordinary course of its  
 114 business; or

115 (ii) Being used by a provider of electronic communication service in the ordinary  
 116 course of its business or by an investigative or peace officer in the ordinary course of  
 117 his or her duties; or

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

120 (C) Focusing, lighting, or illuminating equipment or optical magnifying equipment;  
 121 and

122 (D) A pen register or trap and trace device.

123 (4) 'Electronic communication' means any transfer of signs, signals, writing, images,  
 124 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,

- 125 electromagnetic, photoelectronic, or photo-optical system that affects interstate or foreign  
126 commerce, but shall not include:
- 127 (A) Any wire communication or oral communication;  
128 (B) Any communication made through a tone-only paging device;  
129 (C) Any communication from a tracking device; or  
130 (D) Electronic funds transfer information stored by a financial institution in a  
131 communications system used for the electronic storage and transfer of funds.
- 132 (5) 'Electronic communication service' means any service which provides to users  
133 thereof the ability to send or receive wire communications or electronic communications.
- 134 (6) 'Judicial officer' shall have the same meaning as set forth in Code Section 17-5-1.
- 135 (7) 'Oral communication' means any oral communication uttered by an individual  
136 exhibiting an expectation that such communication is not subject to interception under  
137 circumstances justifying such expectation, but such term shall not include any electronic  
138 communication.
- 139 (8) 'Peace officer' shall have the same meaning as set forth in Code Section 17-5-1.
- 140 (9) 'Pen register' means a device or process that records or decodes dialing, routing,  
141 addressing, or signaling information transmitted by an instrument or facility from which  
142 an electronic communication or wire communication is transmitted; provided, however,  
143 that such information shall not include the contents of any communication. Such term  
144 shall not include any device or process used by a provider or customer of an electronic  
145 communication service for billing, or recording as an incident to billing, for  
146 communications services provided by such provider nor any device or process used by  
147 a provider or customer of an electronic communication service for cost accounting or  
148 similar purposes in the ordinary course of its business.
- 149 (10) 'Property' shall have the same meaning as set forth in Code Section 17-5-1.
- 150 (11) 'Remote computing service' means the provision to the public of computer storage  
151 or processing services by means of an electronic communications system.
- 152 (12) 'Stolen property' shall have the same meaning as set forth in Code Section 17-5-1.
- 153 (13) 'Tracking device' means any device that permits the tracking of the movement of an  
154 individual or physical object.
- 155 (14) 'Trap and trace device' means a device or process that captures the incoming  
156 electronic or other impulses which identify the originating number or other dialing,  
157 routing, addressing, and signaling information reasonably likely to identify the source of  
158 a wire communication or electronic communication; provided, however, that such  
159 information shall not include the contents of any communication.
- 160 (15) 'Wire communication' means any aural transfer made in whole or in part through the  
161 use of facilities for the transmission of communications by the aid of wire, cable, or other

162 like connection between the point of origin and the point of reception, including the use  
 163 of such connection in a switching station, furnished or operated by persons engaged in  
 164 providing or operating such facilities for the transmission of interstate or foreign  
 165 communications or communications affecting interstate or foreign commerce.

166 17-5-21.

167 (a) A search warrant ~~may~~ shall be issued only upon the ~~application of an officer of this~~  
 168 ~~state or its political subdivisions charged with the duty of enforcing the criminal laws or~~  
 169 ~~a currently certified~~ request of a peace officer engaged in the course of official duty;  
 170 ~~whether said officer is employed by a law enforcement unit of:~~

171 (1) ~~The state or a political subdivision of the state; or~~

172 (2) ~~A university, college, or school.~~

173 (b) A search warrant shall not be issued upon the application of a private citizen or for ~~his~~  
 174 a private citizen's aid in the enforcement of personal, civil, or property rights.

175 ~~17-5-21.~~ 17-5-22.

176 (a) Any peace officer seeking a search warrant while engaged in the course of official duty  
 177 shall submit a written request for such warrant. ~~Upon the written complaint of any certified~~  
 178 ~~peace officer of this state or its political subdivisions charged with the duty of enforcing~~  
 179 ~~the criminal laws and otherwise as authorized in Code Section 17-5-20~~ under oath or  
 180 affirmation, which states facts sufficient to show probable cause that a crime is being  
 181 committed, ~~or has been committed,~~ or is about to be committed and which particularly  
 182 describes the place or person, or both, to be searched and ~~things~~ the individuals or property  
 183 to be seized; any. Such request for a search warrant may include related documents and  
 184 oral testimony. Any judicial officer authorized to hold a court of inquiry to examine into  
 185 an arrest of an offender against the penal laws, referred to in this Code section as 'judicial  
 186 officer,' may issue a search warrant for the search or seizure of the following:

187 (1) ~~Any instruments, articles, or things, including the private papers of any person, which~~  
 188 ~~are~~ property that is designed, intended for use, or which ~~have~~ has been used in the  
 189 commission of the offense ~~in connection with~~ for which the search warrant is issued;

190 (2) Any ~~person~~ individual who has been kidnapped ~~or unlawfully restrained~~ in violation  
 191 of the laws of this state, who has been kidnapped in another ~~jurisdiction~~ state and is now  
 192 concealed within this state, or any human fetus or human corpse;

193 (3) ~~Stolen or embezzled~~ property;

194 (4) Any ~~item, substance, object, thing, or matter, the possession of which is unlawful~~  
 195 contraband; or

196 (5) ~~Any item, substance, object, thing, or matter, other than the private papers of any~~  
 197 ~~person, which is tangible property that is~~ evidence of the commission of the crime for  
 198 which probable cause is shown; or

199 (6) Another person's property when an arrest warrant has been issued for an individual  
 200 who is located within such other person's property.

201 (b) When the peace officer is in the process of effecting a ~~lawful~~ constitutionally  
 202 authorized search, nothing in this Code section shall ~~be construed to preclude him~~ preclude  
 203 such officer from discovering or seizing any stolen ~~or embezzled~~ property, ~~any item,~~  
 204 ~~substance, object, thing, or matter, the possession of which is unlawful, or any item,~~  
 205 ~~substance, object, thing, or matter, other than the private papers of any person, which is~~  
 206 ~~tangible~~ contraband, or any other property that is evidence of the commission of a crime  
 207 against the laws of this state, the United States, or another state.

208 (c) Other personnel, sworn or unsworn, acting under the direction of a peace officer  
 209 executing a search warrant may assist in the execution of such warrant. While in the  
 210 process of effecting a lawful arrest or constitutional search, nothing in this Code section  
 211 nor in Code Section 16-11-62 shall be construed to preclude the use of any device by the  
 212 peace officer executing the search warrant or other personnel assisting in the execution of  
 213 such warrant. Any retired judge or judge emeritus of a state court may issue search  
 214 warrants as authorized by this Code section if authorized in writing to do so by an active  
 215 judge of the state court of the county wherein the warrants are to be issued.

216 (d) Notwithstanding any provisions of Code Section ~~17-5-20~~ 17-5-21 or other provisions  
 217 of this Code section to the contrary, with respect to the execution of a search warrant by  
 218 a ~~certified~~ peace officer employed by a university, college, or school, which search warrant  
 219 will be executed beyond the arrest jurisdiction of a campus ~~policeman~~ police officer  
 220 pursuant to Code Section 20-3-72, the execution of such search warrant shall be made  
 221 jointly by the ~~certified~~ peace officer employed by a university, college, or school and a  
 222 ~~certified~~ peace officer of a law enforcement unit of the political subdivision wherein the  
 223 search will be conducted.

224 ~~17-5-21.1.~~ 17-5-23.

225 (a) A ~~judge of any court in this state~~ judicial officer authorized to issue search warrants  
 226 may, in lieu of receiving a written request pursuant to Code Section ~~17-5-21~~ 17-5-22 may,  
 227 as an alternative to other laws relating to the issuance of search warrants, receive and  
 228 conduct such applications requests for the issuance of search warrants by video conference.  
 229 The issuance of a search warrant by video conference shall be valid irrespective of the  
 230 physical location of the ~~judge~~ judicial officer at the time of the video conference, provided  
 231 that the ~~judge~~ judicial officer issuing the search warrant is authorized by law to issue such

232 warrant, and, at the time such warrant is issued, he or she is physically located within this  
233 state.

234 (b) Search warrant ~~applications~~ requests heard by video conference shall be conducted in  
235 a manner to ensure that the ~~judge~~ judicial officer conducting the hearing has visual and  
236 audible contact with all affiants and witnesses giving testimony.

237 (c) The affiant participating in a search warrant ~~application~~ request by video conference  
238 shall sign the affidavit for a search warrant and any related documents by any reasonable  
239 means which identifies the affiant, including, but not limited to, his or her typewritten  
240 name, signature affixed by electronic stylus, or any other reasonable means ~~which that~~  
241 identifies the ~~person~~ individual signing the affidavit and any related documents. The ~~judge~~  
242 judicial officer participating in a search warrant ~~application~~ request by video conference  
243 shall sign the affidavit for a search warrant, the search warrant, and any related documents  
244 by any reasonable means which identifies the ~~judge~~ judicial officer, including, but not  
245 limited to, his or her typewritten name, signature affixed by electronic stylus, or any other  
246 reasonable means ~~which that~~ identifies the judicial officer signing the affidavit and warrant  
247 and any related documents. Such ~~applications~~ requests shall be deemed to be written  
248 within the meaning of Code Section ~~17-5-21~~ 17-5-22. Such authorization shall be deemed  
249 to comply with the issuance requirements provided for in Code Section ~~17-5-22~~ 17-5-24.

250 (d) A ~~judge~~ judicial officer hearing matters pursuant to this Code section shall administer  
251 an oath to any ~~person~~ individual testifying by means of a video conference.

252 (e) A video recording of the ~~application~~ search warrant request hearing and any documents  
253 submitted in conjunction with ~~the application~~ such request shall be maintained as part of  
254 the record.

255 ~~17-5-22.~~ 17-5-24.

256 (a) All search warrants shall state the time and date of issuance and are the warrants of the  
257 judicial officer issuing the same and not the warrants of the court in which ~~he~~ such officer  
258 is then sitting. Such warrants need not bear the seal of the court or clerk thereof. Until the  
259 search warrant has been executed or has been returned as 'not executed,' the search warrant  
260 and all supporting documents, recordings, and transcripts shall not be subject to public  
261 inspection. The search warrant, ~~the complaint on which the warrant is issued,~~ the affidavit  
262 ~~or affidavits~~ and all supporting the documentation for such warrant, and the returns shall  
263 be filed with the clerk of the court of the judicial officer issuing the same, or with the court  
264 if there is no clerk, at the time the search warrant has been executed or has been returned  
265 'not executed'; provided, however, that the judicial officer shall keep a docket record of all  
266 search warrants issued ~~by him,~~ and upon issuing any warrant ~~he~~ shall immediately record  
267 the same, within a reasonable time, on the docket.



268 (b)(1) The prosecuting attorney may petition the court ex parte for a search warrant and  
 269 all supporting documentation therefor, including recordings or transcripts supporting such  
 270 warrant, to be filed under seal with the clerk when the prosecuting attorney can show  
 271 reasonable cause to believe that disclosure of the search warrant and supporting  
 272 documentation therefor may:

- 273 (A) Endanger the life or physical safety of an individual;
- 274 (B) Result in the flight of an individual from prosecution;
- 275 (C) Lead to the destruction of or tampering with evidence;
- 276 (D) Cause the intimidation of potential witnesses;
- 277 (E) Seriously jeopardize an investigation; or
- 278 (F) Unduly delay a trial.

279 (2) A judicial officer may order that a search warrant and all supporting documentation  
 280 therefor, including recordings or transcripts supporting such warrant, the return for such  
 281 warrant, and the petition of the prosecuting attorney requesting sealing be filed under seal  
 282 with the clerk until such time as the judicial officer may direct, up to an initial period of  
 283 180 days. Upon application by the prosecuting attorney, the judicial officer may extend  
 284 the initial sealing for additional periods not to exceed 180 days; provided, however, that  
 285 such sealing shall not extend beyond the return of the indictment or the filing of an  
 286 accusation in which property or evidence seized may be admitted into evidence.

287 ~~17-5-23.~~ 17-5-25.

288 ~~A The~~ search warrant shall command the peace officer directed to execute the same to  
 289 search the place or person particularly described in the warrant and to seize ~~the instruments,~~  
 290 ~~articles, or things~~ individuals or property particularly described in the search warrant. A  
 291 search warrant may be executed at any reasonable time.

292 ~~17-5-24.~~ 17-5-26.

293 ~~(a) A The~~ search warrant shall be issued in duplicate and shall be directed for execution  
 294 to all peace officers ~~of this state.~~ However,; provided, however, that the judicial officer  
 295 may direct the search warrant to be executed by any peace officer named specially therein.

296 ~~17-5-25.~~

297 ~~(b) A The~~ search warrant shall be executed within ten days from the time of issuance. If  
 298 the search warrant is executed, the duplicate copy shall be left with any person from whom  
 299 any ~~instruments, articles, or things~~ are individual or property was seized; or, if no person  
 300 individual is available, the copy shall be left in a conspicuous place on the premises from  
 301 which the ~~instruments, articles, or things were seized~~ individual or property was seized;

302 provided, however, that no copy shall be left in a conspicuous place if the judicial officer  
 303 issuing such warrant has ordered the search warrant to be sealed pursuant to Code Section  
 304 17-5-24.

305 (c) Any search warrant not executed within ten days from the time of issuance shall be  
 306 void and shall be returned to the court of the judicial officer issuing the same as 'not  
 307 executed.'

308 ~~17-5-26.~~

309 ~~The search warrant may be executed at any reasonable time.~~

310 17-5-27.

311 (a) All necessary and reasonable force may be used to effect an entry into any building or  
 312 property place to be searched or part thereof to execute a search warrant if, after verbal  
 313 notice or an attempt in good faith to give verbal notice by the peace officer directed to  
 314 execute the same of ~~his~~ the peace officer's authority and purpose:

315 (1) The peace officer ~~He~~ is refused admittance;

316 (2) The ~~person or persons~~ individuals within the building or property place to be  
 317 searched or part thereof refuse to acknowledge and answer the verbal notice or the  
 318 presence of the ~~person or persons~~ individuals therein is unknown to the peace officer; or

319 (3) The building or property place to be searched or part thereof is not then occupied by  
 320 any person.

321 ~~17-5-28.~~

322 (b) In the execution of the search warrant the peace officer executing the same may  
 323 reasonably detain or search any person individual in the place at the time:

324 (1) To protect ~~himself~~ the peace officer and any other individual assisting in the  
 325 execution of such warrant from attack; or

326 (2) To prevent the disposal or concealment of any ~~instruments, articles, or things~~  
 327 particularly described in the search warrant property or contraband.

328 ~~17-5-29.~~ 17-5-28.

329 A written return of all ~~instruments, articles, or things~~ property seized shall be made without  
 330 unnecessary delay before ~~the any~~ judicial officer named in the warrant or before any court  
 331 of competent jurisdiction of the same court as the judicial officer that issued the search  
 332 warrant. An inventory of any ~~instruments, articles, or things seized~~ property seized shall  
 333 be filed with the return and signed under oath by the peace officer executing the warrant.  
 334 If the return has been sealed pursuant to Code Section 17-5-24, the inventory shall also be

335 ~~sealed. Unless the return has been sealed, the~~ The judicial officer or court shall, upon  
 336 request, deliver a copy of the inventory to the persons from whom or from whose premises  
 337 the instruments, articles, or things were property was taken and to the applicant for the  
 338 search warrant.

339 ~~17-5-30: 17-5-29.~~

340 (a) A defendant aggrieved by ~~an unlawful~~ a search and seizure which violated the Fourth  
 341 Amendment to the Constitution of the United States or Article I, Section I, Paragraph XIII  
 342 of the Georgia Constitution may move the court for the return of property, the possession  
 343 of which is not otherwise unlawful, and to suppress as evidence anything so obtained ~~on~~  
 344 ~~the grounds that:~~

345 (1) ~~The search and seizure without a warrant was illegal; or~~

346 (2) ~~The search and seizure with a warrant was illegal because the warrant is insufficient~~  
 347 ~~on its face, there was not probable cause for the issuance of the warrant, or the warrant~~  
 348 ~~was illegally executed.~~

349 (b) The motion shall be in writing and state facts showing that the search and seizure ~~were~~  
 350 ~~unlawful~~ was unconstitutional. Such motion shall be filed within ten days after  
 351 arraignment, unless the time for filing such motion is extended by the court. The judge  
 352 court shall conduct and receive evidence ~~out of the presence at a hearing on such motion~~  
 353 prior to the empaneling of the jury on any issue of fact necessary to determine ~~the motion;~~  
 354 ~~and the~~ such motion. The burden of proving that the search and seizure ~~were lawful was~~  
 355 constitutional shall be on the state. If the motion is granted, the property shall be restored,  
 356 unless otherwise subject to lawful detention; and it shall not be admissible in evidence  
 357 against the movant in any trial except as impeachment or rebuttal evidence.

358 (c) The motion shall be made only before a court with jurisdiction to try the offense. If a  
 359 criminal accusation is filed or if an indictment or special presentment is returned by a grand  
 360 jury, the motion shall be made only before the court in which the accusation, indictment,  
 361 or special presentment is filed and pending.

362 ~~17-5-31.~~

363 (d) No ~~search warrant shall be quashed or~~ evidence shall be suppressed or property  
 364 returned because of a technical irregularity not affecting the substantial rights of the  
 365 accused.

366 ~~17-5-32: 17-5-30.~~

367 (a) As used in this Code section, the term 'documentary evidence' includes but ~~is~~ shall not  
 368 be limited to writings, documents, blueprints, drawings, photographs, computer printouts,

369 microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, and  
370 papers of any type or description.

371 (b) Notwithstanding any other provision of law, no search and seizure without a search  
372 warrant shall be conducted and no search warrant shall be issued for any documentary  
373 evidence in the possession of an attorney who is not a criminal suspect, unless the  
374 application request for the search warrant specifies that the place to be searched is in the  
375 possession or custody of an attorney and also shows that there is probable cause to believe  
376 that the documentary evidence will be destroyed or secreted in the event a search warrant  
377 is not issued. This Code section shall not impair the ability to serve search warrants in  
378 cases in which the search is directed against an attorney if there is probable cause to  
379 suspect such attorney has committed a crime. This Code section shall not impair the ability  
380 to serve subpoenas on nonsuspect attorneys.

381 (c) In any case in which there is probable cause to believe that documentary evidence will  
382 be destroyed or secreted if a search warrant is not issued, no search warrant shall be issued  
383 or be executed for any documentary evidence in the possession or custody of an attorney  
384 who is not a criminal suspect, unless:

385 ~~(1)~~ At at the time the search warrant is issued, the ~~court shall appoint~~ judicial officer  
386 appoints a special master to accompany the ~~person~~ peace officer who will serve the search  
387 warrant. The special master shall be an attorney who is a member in good standing of the  
388 State Bar of Georgia and who has been selected from a list of qualified attorneys  
389 maintained by the State Bar of Georgia. An attorney shall not be appointed as a special  
390 master if there is a significant risk that his or her own interests or duties to another client,  
391 former client, or a third person will be materially and adversely affected by such  
392 appointment. Upon service of the search warrant, the special master shall inform the party  
393 person served of the ~~specific items~~ property being sought and that the party person shall  
394 have the opportunity to provide the items property requested. If the party person, in the  
395 judgment of the special master, fails to provide the items property requested, the special  
396 master shall conduct a search for the items property in the areas indicated in the search  
397 warrant.

398 ~~(2)~~(d) If the party person who has been served with a search warrant states that ~~an item or~~  
399 ~~items~~ property should not be disclosed, such ~~item or items~~ property shall be sealed by the  
400 special master and taken to the superior court in which the accusation, indictment, or  
401 special presentment is filed and pending for a hearing in such court. At the hearing the  
402 party person whose premises has been searched shall be entitled to raise any issues which  
403 may be raised pursuant to Code Section ~~17-5-30~~ 17-5-29 as well as claims that the ~~item or~~  
404 ~~items are~~ property is privileged or claims that the ~~item or items are~~ property is inadmissible

405 because ~~they were~~ it was obtained in violation of this Code section. ~~Any such hearing shall~~  
 406 ~~be held in the superior court;~~

407 ~~(3)(e) A search warrant issued pursuant to this Code section shall: Any such warrant must,~~  
 408 ~~whenever~~

409 (1) Whenever practicable, be served during normal business hours. The law enforcement  
 410 officer or prosecutor peace officer serving the search warrant shall not participate in the  
 411 search but may accompany the special master when the special master is conducting the  
 412 search. The prosecuting attorney may designate an attorney or investigator employed by  
 413 such prosecuting attorney to observe the execution of such search warrant;

414 ~~(4)(2) Be~~ Any such warrant must be served upon a party person who appears to have  
 415 possession or control of the items property sought. If, after reasonable efforts, the party  
 416 person serving the warrant is unable to locate any such person, the special master shall  
 417 seal and return to the court for determination by the court any items property which  
 418 appear appears to be privileged; and

419 ~~(5)(3) Be~~ Any such warrant shall be issued only by the a state or superior court judge.  
 420 At the time of applying for such a warrant, the ~~law enforcement officer or prosecutor~~  
 421 peace officer or prosecuting attorney shall submit a written search plan designed to  
 422 minimize the intrusiveness of the search.

423 (f) When the a search warrant is executed pursuant to this Code section, the special master  
 424 carrying out the search shall have a duty to make reasonable efforts to minimize the  
 425 intrusiveness of the search.

426 ~~(d)(g)~~ Notwithstanding subsection (b) of Code Section 17-5-29 or any provision of law to  
 427 the contrary, evidence obtained in violation of this Code section shall be excluded and  
 428 suppressed from the prosecution's case-in-chief or in rebuttal, and such evidence shall not  
 429 be admissible either as substantive evidence or for impeachment purposes.

430 17-5-31.

431 (a)(1) A law enforcement officer of another state, who is authorized under the laws of  
 432 such state to apply for and execute a search warrant, may make a request to a judicial  
 433 officer for a search warrant for the seizure of property located in this state which is  
 434 evidence of a crime in violation of the laws of such state. Such request shall be under  
 435 oath or affirmation and shall:

436 (A) State facts sufficient to show probable cause that a crime is being committed, is  
 437 about to be committed, or has been committed in violation of the laws of such state; and

438 (B) Particularly describe the person or place, or both, to be searched and the property  
 439 to be seized that is located in this state.

440 (2) A request for a search warrant submitted pursuant to this Code section may include  
441 related documents and oral testimony. Such request shall be made in writing or may be  
442 made by video conference as provided in Code Section 17-5-23.

443 (b) In lieu of appearing before a judicial officer as provided in subsection (a) of this Code  
444 section, a law enforcement officer of another state, who is authorized under the laws of  
445 such state to apply for and execute a search warrant, may make a written request before a  
446 judge of a court of record of such law enforcement officer's state who is authorized to issue  
447 a search warrant under the laws of such state in which the crime is being committed, is  
448 about to be committed, or has been committed. If such judge of such state finds that  
449 probable cause would exist to issue a search warrant if the person or place to be searched  
450 and the property to be seized were located in such state, and that the person or place to be  
451 searched and the property to be seized are located in this state, such judge may certify such  
452 request to a judicial officer where the person or place to be searched and property to be  
453 seized are located. Such certified request shall be presented to the judicial officer by a  
454 peace officer of this state in the same manner as a request for a search warrant under  
455 subsection (a) of this Code section.

456 (c) Upon receipt of a request for a search warrant submitted in accordance with subsection  
457 (a) or (b) of this Code section, a judicial officer may issue a search warrant for the search  
458 of any person or place and the seizure of any property which may be seized under the laws  
459 of this state. Such warrant shall be directed for execution to a peace officer of this state and  
460 shall be executed as provided by this article. The law enforcement officer of such other  
461 state may assist in the execution of the search warrant.

462 (d) If a search warrant is issued pursuant to subsection (b) of this Code section, upon  
463 receipt of the written return required by Code Section 17-5-28, any judicial officer of the  
464 same court as the judicial officer who issued the warrant shall certify a copy of such return  
465 and cause it to be filed with a judge of the court which certified such request.

466 (e)(1) Upon execution of a search warrant pursuant to this Code section, a peace officer  
467 shall leave a copy of such warrant together with a notice that the seized property may be  
468 removed from this state 14 days after the date of seizure unless a written petition to  
469 prevent property removal is filed in the court of the issuing judicial officer. Such petition  
470 shall be filed within ten days of the date of seizure and shall state facts, under oath,  
471 establishing that the petitioner would be unduly aggrieved by removal of such property.

472 (2) If a petition to prevent removal is filed, the court of the issuing judicial officer shall  
473 issue an order to the peace officer having custody of the property to retain custody of the  
474 property seized or directing such officer to:

475 (A) Remove the property to a place designated by such court pursuant to this  
476 paragraph:

477 (B) Remove the property to a storage area within the jurisdiction of the court for  
478 safekeeping, or if the property is a negotiable instrument or money and is not needed  
479 for evidentiary purposes, the court may authorize its deposit into an interest-bearing  
480 account in a financial institution in this state. Any accrued interest shall follow the  
481 principal in any judgment with respect thereto; or

482 (C) Provide for another governmental agency, a receiver appointed by the court  
483 pursuant to Chapter 8 of Title 9, an owner, or an interest holder to take custody of the  
484 property and remove it to an appropriate location within the county where the property  
485 was seized.

486 (3) After notice to the petitioner and the prosecuting attorney, the court of the issuing  
487 judicial officer shall conduct a hearing on the petition to prevent removal within 30 days  
488 of the date of the seizure, which hearing may be continued for a period not to exceed 30  
489 days for good cause shown by either the petitioner or the prosecuting attorney. At such  
490 hearing, the petitioner shall have the burden of proof but the prosecuting attorney may  
491 introduce evidence in opposition or rebuttal. The rules of evidence shall apply except  
492 that hearsay shall be admissible. The court shall order the removal of the property to the  
493 requesting state unless the petitioner establishes by a preponderance of the evidence that  
494 the property seized could not be material and relevant to a criminal investigation under  
495 the laws of the requesting state.

496 (f) Except as otherwise specifically provided in this Code section, the provisions of this  
497 article regarding the contents, executions, and written returns of search warrants shall apply  
498 to a search warrant issued pursuant to this Code section.

499 Part 2

500 17-5-40.

501 (a) The General Assembly recognizes that the rights of citizens of this state to be secure  
502 in their persons, homes, papers, and effects from unreasonable searches conducted by  
503 government agents is essential to the concepts of personal liberty and privacy.

504 (b) The General Assembly further recognizes that electronic communication devices,  
505 including, but not limited to, mobile telephones, e-mail, social media, and other evolving  
506 forms of communication, are used and exploited with increasing frequency and  
507 sophistication to conduct criminal activity in this state.

508 (c) It is the intent of the General Assembly in enacting this part to provide peace officers  
509 and prosecuting attorneys with the means to conduct legitimate investigations of criminal  
510 activity in which electronic communications are being used under appropriate judicial  
511 supervision in order to protect the rights of the citizens of this state.

512 17-5-41.

513 As used in this part, the term 'district attorney' includes an acting district attorney or a chief  
514 assistant district attorney designated to act for the district attorney during the temporary  
515 absence of such district attorney pursuant to Code Section 15-18-15.

516 17-5-42.

517 (a) A peace officer, a prosecuting attorney, or the Attorney General may require the  
518 disclosure of stored wire communications or electronic communications, as well as  
519 transactional records pertaining thereto by subpoena, court order, or search warrant as  
520 provided by the laws of the United States.

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

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

531 (d) A judicial officer with jurisdiction over the criminal offense under investigation and  
532 to which transactional records relate may issue an order requiring the disclosure of stored  
533 wire communications or electronic communications, as well as transactional records  
534 pertaining thereto, to the extent and under the procedures and conditions provided for by  
535 the laws of the United States. Such orders for production of stored wire communications  
536 or electronic communications and transactional records pertaining thereto shall have  
537 state-wide application or application as provided by the laws of the United States when  
538 issued by a judicial officer with jurisdiction over the criminal offense under investigation  
539 and to which such records relate.

540 (e) A subpoena for the production of stored wire communications or electronic  
541 communications and transactional records pertaining thereto may be issued at any time  
542 upon a showing by a peace officer, a prosecuting attorney, or the Attorney General that the  
543 subpoenaed material relates to a pending criminal investigation.

544 (f) A violation of this Code section shall be punishable as contempt.



545 17-5-43.

546 (a) A search warrant issued by a judge of the superior court having jurisdiction over the  
547 crime under investigation or a full-time judge of a state court having jurisdiction over the  
548 crime under investigation may authorize the installation or monitoring of a tracking device,  
549 provided that such warrant identifies the individual or physical object to be tracked and  
550 specifies a reasonable length of time that the tracking device is to be used, which time shall  
551 not exceed 45 days from the date such warrant was issued. The court may, for good cause,  
552 grant one or more extensions for a reasonable length of time not to exceed 45 days each.

553 (b) Any required installation of a tracking device shall take place in any county within the  
554 jurisdiction of such judge, but such device may be monitored from any location within the  
555 jurisdiction of this state. Unless otherwise prohibited by federal law, such device may be  
556 monitored from within this state even if such device is transported outside this state.

557 (c) A tracking device search warrant shall command a peace officer to:

558 (1) Complete any installation or activation authorized by such warrant within ten days  
559 from the date such warrant was issued; and

560 (2) Make a written return of such warrant before the judicial officer named in such  
561 warrant or before any court of competent jurisdiction to the judge designated in such  
562 warrant.

563 (d) A peace officer executing a tracking device search warrant shall enter on the return the  
564 exact date and time the tracking device was installed, or monitoring commenced if no  
565 installation was required, and dates and times during which it was used.

566 (e) Within ten days after use of the tracking device has ended, the peace officer executing  
567 the tracking device search warrant shall return it to the judicial officer named in such  
568 warrant or to any court of competent jurisdiction. A peace officer may make such return  
569 by reliable electronic means.

570 (f)(1) Within ten days after use of the tracking device has ended, the peace officer  
571 executing a tracking device search warrant shall serve a copy of such warrant on the  
572 person who was tracked or whose physical object was tracked. Service may be  
573 accomplished by:

574 (A) Personally delivering a copy of such warrant to the person who, or whose physical  
575 object, was tracked;

576 (B) Leaving a copy of such warrant at the person's residence or usual place of abode  
577 with an individual of suitable age and discretion who resides at that location; or

578 (C) Mailing a copy of such warrant to the person's last known address.

579 (2) Upon request of the prosecuting attorney, the judge to whom the return of the  
580 tracking device search warrant is made may delay service of a copy of such warrant as  
581 provided in subsection (g) of this Code section.

582 (g) The judge to whom the return of the tracking device search warrant is made may order  
583 a delay of service of a copy of such warrant on the person who was tracked or whose  
584 physical object was tracked. The judge shall enter such an order if the judge determines  
585 that there is reason to believe that notification of the tracking device search warrant may:

- 586 (1) Endanger the life or physical safety of an individual;  
587 (2) Result in the flight of an individual from prosecution;  
588 (3) Lead to the destruction of or tampering with evidence;  
589 (4) Cause the intimidation of potential witnesses;  
590 (5) Seriously jeopardize an investigation; or  
591 (6) Unduly delay a trial.

592 17-5-44.

593 Any district attorney having jurisdiction over the prosecution of a crime under investigation  
594 or the Attorney General is authorized to make application for an order or an extension of  
595 an order authorizing or approving the installation and use of a pen register or a trap and  
596 trace device to a judge of the superior court of the same judicial circuit as the district  
597 attorney, or in the case of the Attorney General, in any judicial circuit; and such court shall  
598 be authorized to enter an order approving the use of a pen register or a trap and trace  
599 device, to the extent the same is consistent with and permitted by the laws of the United  
600 States. Such order shall have state-wide application and the monitoring of a pen register  
601 or trap and trace device shall be permitted in any location in this state.

602 17-5-45.

603 Any peace officer, specially designated in writing for such purpose by the Attorney  
604 General or by a district attorney, who requires the installation and use of a pen register or  
605 a trap and trace device, before an order authorizing such installation and use can, with due  
606 diligence, be obtained, may have installed and use a pen register or trap and trace device  
607 if he or she reasonably determines that there are grounds upon which an order could be  
608 entered under the laws of the United States to authorize such installation and use if, within  
609 48 hours of the time the pen register or trap and trace device is installed, an order  
610 approving the installation and use is issued in accordance with Code Section 17-5-44 and  
611 he or she reasonably determines that a situation exists that involves:

- 612 (1) Immediate danger of death or serious bodily injury to any individual; or  
613 (2) Conspiratorial activities characteristic of organized crime.

614 17-5-46.

615 (a) Except only as provided in subsection (b) of this Code section, nothing in this part or  
616 Part 1 of Article 3 of Chapter 11 of Title 16 shall apply to a duly constituted peace officer  
617 in the performance of his or her official duties in ferreting out offenders or suspected  
618 offenders of the law or in secretly watching an individual suspected of violating the laws  
619 of this state, another state, or the United States, or any subdivision thereof, for the purpose  
620 of apprehending such suspected violator.

621 (b) When in the course of his or her official duties, a peace officer who uses any device,  
622 when such use would otherwise constitute a violation of Code Section 16-11-62, shall act  
623 in compliance with the provisions provided for in this part.

624 (c) Upon written application, under oath, of the district attorney having jurisdiction over  
625 prosecution of a crime under investigation or the Attorney General made before a judge of  
626 superior court having jurisdiction over prosecution of a crime under investigation, such  
627 court may issue an investigation warrant permitting the use of a device for the surveillance  
628 of an individual or place to the extent the same is consistent with and subject to the terms,  
629 conditions, and procedures provided for under the laws of the United States. Such warrant  
630 shall have state-wide application and monitoring of communications shall be permitted in  
631 any location in this state.

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

634 (e) A good faith reliance on a court order or legislative authorization shall constitute a  
635 complete defense to any civil or criminal action brought under this part or under any other  
636 law.

637 17-5-47.

638 (a) As used in this Code section, the term 'emergency situation' means a situation that  
639 involves the immediate danger of death or serious bodily injury to any individual.

640 (b) Notwithstanding any other provision of this part, in the event that the Attorney General  
641 or a district attorney of the judicial circuit having jurisdiction over an emergency situation  
642 determines that such emergency situation requires the immediate interception of wire  
643 communications, oral communications, or electronic communications or the immediate  
644 observation, monitoring, or recording of the activities of any individual involved in such  
645 emergency situation in violation of the provisions of Code Section 16-11-62 before an  
646 order authorizing such surveillance or monitoring can, with due diligence, be obtained, then  
647 any peace officer specifically designated by the individual making such determination may  
648 utilize any device to intercept the wire communications, oral communications, or electronic  
649 communications or to observe, monitor, or record the activities of the person or persons

650 involved in such emergency situation, provided that grounds exist upon which an  
651 investigation warrant pursuant to Code Section 17-5-46 could be issued and that an  
652 application for such warrant is made within 48 hours after such surveillance or monitoring  
653 commences.

654 (c) In the event that an application for an investigation warrant made pursuant to this Code  
655 section is granted, then the surveillance or monitoring shall be conducted in accordance  
656 with Code Section 17-5-46, except that such surveillance or monitoring shall continue only  
657 so long as the emergency situation exists.

658 (d) In the event that an application for an investigation warrant made pursuant to this Code  
659 section is denied or in any event where the surveillance or monitoring is terminated without  
660 an investigation warrant having been issued, the contents of any intercepted  
661 communications or other surveillance effected pursuant to this Code section shall be  
662 confidential and shall not be disclosed or admissible in any court of this state except to  
663 prove violations of this part.

664 17-5-48.

665 (a) Nothing in Code Section 16-11-62 shall prohibit an individual from intercepting a wire  
666 communication, oral communication, or electronic communication when such individual  
667 is a party to the communication or one of the parties to the communication has given prior  
668 consent to such interception.

669 (b) In accordance with subsection (c) or (d) of this Code section, the wire communication,  
670 oral communication, or electronic communication to which a child under the age of 18  
671 years is a party may be recorded and divulged, and such recording and dissemination may  
672 be done by a private citizen, law enforcement agency, or prosecuting attorney's office.  
673 Nothing in this subsection shall be construed to require that the recording device be  
674 activated by such child. The authorization for the recording or divulging of the  
675 conversations of a child under the age of 18 years conducted by wire communication, oral  
676 communication, or electronic communication shall be given only by order of a judge of a  
677 superior court upon written application, as provided in subsection (c) of this Code section,  
678 or by a parent, guardian, or legal custodian of such child as provided in subsection (d) of  
679 this Code section. Such recording shall not be used in any prosecution of the child in any  
680 delinquency or criminal proceeding. An application to a judge of the superior court made  
681 pursuant to this Code section need not comply with the procedures set forth in Code  
682 Section 17-5-46.

683 (c)(1) A judge to whom a written application has been made shall issue the order  
684 provided by subsection (b) of this Code section only upon:

685 (A) Finding probable cause that a crime has been committed;

686 (B) Finding that the child understands that the conversation is to be recorded and that  
687 such child agrees to participate; and

688 (C) Determining that participation is not harmful to such child.

689 (2) A true and correct copy of the recording provided for in subsection (b) of this Code  
690 section shall be returned to the superior court judge who issued the order, and such copy  
691 of the recording shall be kept under seal until further order of the court.

692 (d) The provisions of this article shall not be construed to prohibit a parent, guardian, or  
693 legal custodian of a child under 18 years of age, with or without the consent of such child,  
694 from monitoring or intercepting wire communications, oral communications, or electronic  
695 communications of such minor child with another person by use of an extension phone  
696 located within the family home, or electronic or other communications of such minor child  
697 from within the family home, for the purpose of ensuring the welfare of such minor child.  
698 If the parent, guardian, or legal custodian has a reasonable or good faith belief that such  
699 communication is evidence of criminal conduct involving such child as a victim or an  
700 attempt, conspiracy, or solicitation to involve such child in criminal activity affecting the  
701 welfare or best interest of such child, the parent, guardian, or legal custodian may disclose  
702 the contents of such communications to the district attorney or a peace officer. A recording  
703 or other record of any such communication made by a parent, guardian, or legal custodian  
704 in accordance with this subsection that contains evidence of criminal conduct involving  
705 such child as a victim or an attempt, conspiracy, or solicitation to involve such child in  
706 criminal activity shall be admissible in a judicial proceeding except as otherwise provided  
707 in subsection (b) of this Code section.

708 17-5-49.

709 (a) No evidence obtained in a manner that violates this part shall be admissible in any  
710 court of this state except to prove violations of this part.

711 (b) Nothing contained in this part shall permit the introduction into evidence of any  
712 communication which is privileged by the laws of this state or by the decisions of the  
713 appellate courts thereof.

714 (c) Except as otherwise provided in subsection (f) of Code Section 17-5-42, any person  
715 violating this part shall be guilty of a felony and, upon conviction thereof, shall be punished  
716 by imprisonment for not less than one nor more than five years or a fine not to exceed  
717 \$10,000.00, or both."

718  
719  
720

**PART II**  
**WIRETAP CORRECTIONS**  
**SECTION 2-1.**

721 Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to  
722 invasions of privacy, is amended by revising Part 1, relating to wiretapping, eavesdropping,  
723 surveillance, and related offenses, as follows:

724

"Part 1

725 16-11-60.

726 As used ~~within~~ in this part, the term:

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

735 (A) Any telephone or telegraph instrument, equipment, or facility or any component  
736 thereof:

737 (i) Furnished to the subscriber or user by a provider of ~~wire~~ or electronic  
738 communication service in the ordinary course of its business and being used by the  
739 subscriber or user in the ordinary course of its business or furnished by such  
740 subscriber or user for connection to the facilities of such service and used in the  
741 ordinary course of its business; or

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

745 (B) A hearing aid or similar device being used to correct subnormal hearing to not  
746 better than normal; and

747 (C) Focusing, lighting, or illuminating equipment; or optical magnifying equipment;  
748 and

749 (D) ~~A 'pen register' or 'trap and trace device' as defined in this Code section.~~

750 (2) ~~'Pen register' means a device or process which records or decodes dialing, routing,~~  
751 ~~addressing, or signaling information transmitted by an instrument or facility from which~~

752 ~~a wire or electronic communication is transmitted; provided, however, that such~~  
 753 ~~information shall not include the contents of any communication; but such term does not~~  
 754 ~~include any device or process used by a provider or customer of a wire or electronic~~  
 755 ~~communication service for billing, or recording as an incident to billing, for~~  
 756 ~~communications services provided by such provider or any device or process used by a~~  
 757 ~~provider or customer of a wire communication service for cost accounting or other like~~  
 758 ~~purposes in the ordinary course its business.~~

759 (2) 'Electronic communication' shall have the same meaning as set forth in Code Section  
 760 17-5-20.

761 (3) 'Electronic communication service' shall have the same meaning as set forth in Code  
 762 Section 17-5-20.

763 (4) 'Oral communication' shall have the same meaning as set forth in Code Section  
 764 17-5-20.

765 ~~(3)~~(5) 'Private place' means a place where one is entitled reasonably to expect to be safe  
 766 ~~from casual or hostile intrusion or surveillance~~ there is a reasonable expectation of  
 767 privacy.

768 ~~(4) 'Trap and trace device' means a device or process which captures the incoming~~  
 769 ~~electronic or other impulses which identify the originating number or other dialing,~~  
 770 ~~routing, addressing, and signaling information reasonably likely to identify the source of~~  
 771 ~~a wire or electronic communication; provided, however, that such information shall not~~  
 772 ~~include the contents of any communication.~~

773 (6) 'Wire communication' shall have the same meaning as set forth in Code Section  
 774 17-5-20.

775 16-11-61.

776 (a) It shall be unlawful for any person to be a 'peeping Tom' on or about the premises of  
 777 another or to go about or upon the premises of another for the purpose of becoming a  
 778 'peeping Tom.'

779 (b) As used in this Code section, the term 'peeping Tom' means a person who peeps  
 780 through windows or doors, or other like places, on or about the premises of another for the  
 781 purpose of spying upon or invading the privacy of the persons spied upon and the doing of  
 782 any other acts of a similar nature which invade the privacy of such persons.

783 16-11-62.

784 It shall be unlawful for:

- 785 (1) Any person in a clandestine manner intentionally to overhear, transmit, or record or  
 786 attempt to overhear, transmit, or record the private conversation of another which shall  
 787 originate in any private place;
- 788 (2) Any person, through the use of any device, without the consent of all persons  
 789 observed, to observe, photograph, or record the activities of another which occur in any  
 790 private place and out of public view; provided, however, that it shall not be unlawful:
- 791 (A) To use any device to observe, photograph, or record the activities of persons  
 792 incarcerated in any jail, correctional institution, or any other facility in which persons  
 793 who are charged with or who have been convicted of the commission of a crime are  
 794 incarcerated, provided that such equipment shall not be used while the prisoner is  
 795 discussing his or her case with his or her attorney;
- 796 (B) For an owner or occupier of real property to use for security purposes, crime  
 797 prevention, or crime detection any device to observe, photograph, or record the  
 798 activities of persons who are on the property or an approach thereto in areas where there  
 799 is no reasonable expectation of privacy; or
- 800 (C) To use for security purposes, crime prevention, or crime detection any device to  
 801 observe, photograph, or record the activities of persons who are within the curtilage of  
 802 the residence of the person using such device. A photograph, videotape, or record made  
 803 in accordance with this subparagraph, or a copy thereof, may be disclosed by such  
 804 resident to the district attorney or a law enforcement officer and shall be admissible in  
 805 a judicial proceeding, without the consent of any person observed, photographed, or  
 806 recorded; or
- 807 (D) For a law enforcement officer or his or her agent to use a device in the lawful  
 808 performance of his or her official duties to observe, photograph, videotape, or record  
 809 the activities of persons that occur in the presence of such officer or his or her agent;
- 810 (3) Any person to go on or about the premises of another or any private place, except as  
 811 otherwise provided by law, for the purpose of invading the privacy of others by  
 812 eavesdropping upon their conversations or secretly observing their activities;
- 813 (4) Any person intentionally and secretly to intercept by the use of any device,  
 814 instrument, or apparatus the contents of a message sent by telephone, telegraph, letter, or  
 815 by any other means of private communication;
- 816 (5) Any person to divulge to any unauthorized person or authority the content or  
 817 substance of any private message intercepted lawfully in the manner provided for in Code  
 818 Section ~~16-11-65~~ 16-11-64 or 17-5-46;
- 819 (6) Any person to sell, give, or distribute, without legal authority, to any person or entity  
 820 any photograph, videotape, or record, or copies thereof, of the activities of another which



821 occur in any private place and out of public view without the consent of all persons  
 822 observed; or  
 823 (7) Any person to commit any other acts of a nature similar to those set out in  
 824 paragraphs (1) through (6) of this Code section which invade the privacy of another.

825 16-11-63.

826 (a) Other than law enforcement officers permitted by this part to employ such devices, it  
 827 shall be unlawful for any person to possess, sell, offer for sale, or distribute any  
 828 eavesdropping device.

829 (b) An 'eavesdropping device' shall mean any instrument or apparatus which by virtue of  
 830 its size, design, and method of operation has no normal or customary function or purpose  
 831 other than to permit the user thereof secretly to intercept, transmit, listen to, or record  
 832 private conversations of others.

833 ~~16-11-64.~~

834 ~~(a) **Application of part to law enforcement officers.** Except only as provided in~~  
 835 ~~subsection (b) of this Code section, nothing in this part shall apply to a duly constituted law~~  
 836 ~~enforcement officer in the performance of his official duties in ferreting out offenders or~~  
 837 ~~suspected offenders of the law or in secretly watching a person suspected of violating the~~  
 838 ~~laws of the United States or of this state, or any subdivision thereof, for the purpose of~~  
 839 ~~apprehending such suspected violator.~~

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

844 ~~(c) Upon written application, under oath, of the district attorney having jurisdiction over~~  
 845 ~~prosecution of the crime under investigation or the Attorney General made before a judge~~  
 846 ~~of superior court having jurisdiction over the crime under investigation, such court may~~  
 847 ~~issue an investigation warrant permitting the use of a device for the surveillance of a person~~  
 848 ~~or place to the extent the same is consistent with and subject to the terms, conditions, and~~  
 849 ~~procedures provided for by 18 U.S.C. Chapter 119. Such warrant shall have state-wide~~  
 850 ~~application and interception of communications shall be permitted in any location in this~~  
 851 ~~state.~~

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

854 ~~(e) **Defenses.** A good faith reliance on a court order or legislative authorization shall~~  
 855 ~~constitute a complete defense to any civil or criminal action brought under this part or~~  
 856 ~~under any other law.~~

857 ~~16-11-64.1.~~

858 ~~Any district attorney having jurisdiction over the prosecution of the crime under~~  
 859 ~~investigation or the Attorney General is authorized to make application for an order or an~~  
 860 ~~extension of an order authorizing or approving the installation and use of a pen register or~~  
 861 ~~a trap and trace device to a judge of the superior court of the same judicial circuit as the~~  
 862 ~~district attorney, or, in the case of the Attorney General, in any judicial circuit; and such~~  
 863 ~~court shall be authorized to enter an order authorizing the use of a pen register or a trap and~~  
 864 ~~trace device, to the extent the same is consistent with and permitted by the laws of the~~  
 865 ~~United States. Such order shall have state-wide application and the interception by use of~~  
 866 ~~a pen register or trap and trace device shall be permitted in any location in this state.~~

867 ~~16-11-64.2.~~

868 ~~Any investigative or law enforcement officer, specially designated in writing for such~~  
 869 ~~purpose by the Attorney General or by a district attorney, who reasonably determines that:~~

870 ~~(1) An emergency situation exists that involves:~~

871 ~~(A) Immediate danger of death or serious bodily injury to any person; or~~

872 ~~(B) Conspiratorial activities characteristic of organized crime~~

873 ~~that requires the installation and use of a pen register or a trap and trace device before an~~  
 874 ~~order authorizing such installation and use can, with due diligence, be obtained; and~~

875 ~~(2) There are grounds upon which an order could be entered under the laws of the United~~  
 876 ~~States to authorize such installation and use~~

877 ~~may have installed and use a pen register or trap and trace device if, within 48 hours of the~~  
 878 ~~time the pen register or trap and trace device is installed, an order approving the installation~~  
 879 ~~or use is issued in accordance with Code Section 16-11-64.1.~~

880 ~~16-11-64.3.~~

881 ~~(a) Notwithstanding any other provision of this part, in the event that the Attorney General~~  
 882 ~~or a district attorney of the judicial circuit having jurisdiction over the emergency situation~~  
 883 ~~described herein or where the observation, monitoring, or recording of the activities of any~~  
 884 ~~person may occur as provided in this subsection determines that:~~

885 ~~(1) An emergency situation exists involving the immediate danger of death or serious~~  
 886 ~~physical injury to any person;~~

887 ~~(2) The said emergency situation requires the immediate interception of a wire, oral, or~~  
 888 ~~electronic communications or the immediate observation, monitoring, or recording of the~~  
 889 ~~activities of any person involved in said emergency situation in violation of the~~  
 890 ~~provisions of Code Section 16-11-62 before an order authorizing such interception or~~  
 891 ~~surveillance can, with due diligence, be obtained; and~~

892 ~~(3) There are grounds upon which an investigation warrant pursuant to Code Section~~  
 893 ~~16-11-64 could be issued,~~

894 ~~then any investigative or law enforcement officer specifically designated by the prosecuting~~  
 895 ~~official making such determination may utilize any device as defined in Code Section~~  
 896 ~~16-11-60 to intercept the wire, oral, or electronic communications or to observe, monitor,~~  
 897 ~~or record the activities of the person or persons involved in said emergency situation,~~  
 898 ~~provided that an application for an investigation warrant is made pursuant to Code Section~~  
 899 ~~16-11-64 within 48 hours after said interception or surveillance commences.~~

900 ~~(b) In the event that an application for an investigation warrant made pursuant to this Code~~  
 901 ~~section is granted, then the interception or surveillance shall be conducted in accordance~~  
 902 ~~with the provisions of Code Section 16-11-64, except that said interception or surveillance~~  
 903 ~~shall continue only so long as the emergency situation exists.~~

904 ~~(c) In the event that an application for an investigation warrant made pursuant to this Code~~  
 905 ~~section is denied or in any event where the interception or surveillance is terminated~~  
 906 ~~without an investigation warrant having been issued, the contents of any intercepted~~  
 907 ~~communications or other surveillance effected pursuant to this Code section shall not be~~  
 908 ~~admissible in any court of this state except to prove violations of this part. The contents~~  
 909 ~~of any such intercepted communications or other surveillance effected pursuant to this~~  
 910 ~~Code section without an investigation warrant having been issued shall be confidential and~~  
 911 ~~shall not be disclosed except to prove violations of this part.~~

912 ~~16-11-65: 16-11-64.~~

913 (a) Nothing contained within Code Section 16-11-62 shall prohibit the employment and  
 914 use of any equipment or device which is owned by any person or is furnished by any  
 915 telephone company authorized to do business in this state under proper tariffs filed with  
 916 and approved by the Georgia Public Service Commission which may be attached to any  
 917 telephonic equipment of any user of or subscriber to such equipment which permits the  
 918 interception of telephonic communications solely for the purposes of business service  
 919 improvement when the user of or subscriber to such facilities and equipment has duly  
 920 applied for and obtained from the Georgia Public Service Commission a license for the  
 921 employment and installation of the equipment. No license shall be issued until the  
 922 applicant has demonstrated to the commission a clear, apparent, and logically reasonable

923 need for the use of the equipment in connection with a legitimate business activity of the  
924 user or subscriber and demonstrated to the satisfaction of the commission that it will be  
925 operated by persons of good moral character and that the equipment will be used in a  
926 lawful manner and in conformity with the tariffs filed for the equipment. The commission  
927 is authorized to establish the necessary procedures to be employed and followed in  
928 applying for such permits and to require from the user or subscriber of such equipment the  
929 furnishing of any reasonable information required by the commission in regard to the  
930 intended and actual use of the equipment.

931 (b) The Georgia Public Service Commission is authorized to revoke any license and to  
932 order any owner of such equipment or any telephone company supplying such equipment  
933 to remove from the premises of the licensee the equipment when it is established to the  
934 satisfaction of the commission that the equipment is being used in an unlawful manner  
935 contrary to the tariff applicable to the equipment or in a manner contrary to the purposes  
936 and uses for which the license had been issued. Such licenses may also be revoked by the  
937 commission if it is subsequently discovered that a material misrepresentation of fact has  
938 been made in applying for the license. The commission is authorized to promulgate such  
939 rules and regulations in connection with the licensing and revocation thereof of such users  
940 of such equipment as will enable it to carry out the purposes, duties, and responsibilities  
941 imposed upon the commission by this Code section. Such rules and regulations shall afford  
942 to any aggrieved licensee an opportunity to a full and impartial hearing before the  
943 commission. The commission shall further have the authority to adopt any and all  
944 appropriate rules and regulations of any sort to ensure the privacy of telephonic and  
945 telegraphic communications. A violation of such rules and regulations shall be a violation  
946 of this part.

947 (c) All telephone companies shall have printed in a conspicuously accessible location  
948 within their directories a notice to the public that there is available without cost at the  
949 business office of the telephone company served by the directory a list of subscribers of  
950 such equipment which will be made available to any member of the general public  
951 requesting the same from such companies.

952 (d) The provisions of this part shall not apply to acts by duly authorized employees of any  
953 telephone company regulated by the Georgia Public Service Commission, with regard to  
954 the reasonable and limited intercepting of telephone communications under circumstances  
955 reasonably calculated to assure the privacy of telephone communications when such  
956 interception is accomplished solely for the purpose of maintaining the quality of service  
957 furnished to the public or for the purpose of preventing the unlawful use of telephone  
958 service. All such telephone companies shall adopt regulations and procedures consistent  
959 with the requirements of this Code section governing the use of equipment which permits

960 the interception of telephone messages by their employees and file the same with the  
 961 commission. After being filed with the commission, such regulations and procedures shall  
 962 be public records.

963 ~~16-11-66.~~

964 ~~(a) Nothing in Code Section 16-11-62 shall prohibit a person from intercepting a wire,~~  
 965 ~~oral, or electronic communication where such person is a party to the communication or~~  
 966 ~~one of the parties to the communication has given prior consent to such interception.~~

967 ~~(b) After obtaining the consent required by this subsection, the telephonic conversations~~  
 968 ~~or electronic communications to which a child under the age of 18 years is a party may be~~  
 969 ~~recorded and divulged, and such recording and dissemination may be done by a private~~  
 970 ~~citizen, law enforcement agency, or prosecutor's office. Nothing in this subsection shall~~  
 971 ~~be construed to require that the recording device be activated by the child. Consent for the~~  
 972 ~~recording or divulging of the conversations of a child under the age of 18 years conducted~~  
 973 ~~by telephone or electronic communication shall be given only by order of a judge of a~~  
 974 ~~superior court upon written application, as provided in subsection (c) of this Code section,~~  
 975 ~~or by a parent or guardian of said child as provided in subsection (d) of this Code section.~~  
 976 ~~Said recording shall not be used in any prosecution of the child in any delinquency or~~  
 977 ~~criminal proceeding. An application to a judge of the superior court made pursuant to this~~  
 978 ~~Code section need not comply with the procedures set out in Code Section 16-11-64.~~

979 ~~(c) A judge to whom a written application has been made shall issue the order provided~~  
 980 ~~by subsection (b) of this Code section only:~~

981 ~~(1) Upon finding probable cause that a crime has been committed;~~

982 ~~(2) Upon finding that the child understands that the conversation is to be recorded and~~  
 983 ~~that such child agrees to participate; and~~

984 ~~(3) Upon determining that participation is not harmful to such child.~~

985 ~~A true and correct copy of the recording provided for in subsection (b) of this Code section~~  
 986 ~~shall be returned to the superior court judge who issued the order and such copy of the~~  
 987 ~~recording shall be kept under seal until further order of the court.~~

988 ~~(d) The provisions of this article shall not be construed to prohibit a parent or guardian of~~  
 989 ~~a child under 18 years of age, with or without the consent of such minor child, from~~  
 990 ~~monitoring or intercepting telephonic conversations of such minor child with another~~  
 991 ~~person by use of an extension phone located within the family home, or electronic or other~~  
 992 ~~communications of such minor child from within the family home, for the purpose of~~  
 993 ~~ensuring the welfare of such minor child. If the parent or guardian has a reasonable or~~  
 994 ~~good faith belief that such conversation or communication is evidence of criminal conduct~~  
 995 ~~involving such child as a victim or an attempt, conspiracy, or solicitation to involve such~~

996 ~~child in criminal activity affecting the welfare or best interest of such child, the parent or~~  
 997 ~~guardian may disclose the content of such telephonic conversation or electronic~~  
 998 ~~communication to the district attorney or a law enforcement officer. A recording or other~~  
 999 ~~record of any such conversation or communication made by a parent or guardian in~~  
 1000 ~~accordance with this subsection that contains evidence of criminal conduct involving such~~  
 1001 ~~child as a victim or an attempt, conspiracy, or solicitation to involve such child in criminal~~  
 1002 ~~activity shall be admissible in a judicial proceeding except as otherwise provided in~~  
 1003 ~~subsection (b) of this Code section.~~

1004 ~~16-11-66.1.~~

1005 ~~(a) A law enforcement officer, a prosecuting attorney, or the Attorney General may require~~  
 1006 ~~the disclosure of stored wire or electronic communications, as well as transactional records~~  
 1007 ~~pertaining thereto, to the extent and under the procedures and conditions provided for by~~  
 1008 ~~the laws of the United States.~~

1009 ~~(b) A provider of electronic communication service or remote computing service shall~~  
 1010 ~~provide the contents of, and transactional records pertaining to, wire and electronic~~  
 1011 ~~communications in its possession or reasonably accessible thereto when a requesting law~~  
 1012 ~~enforcement officer, a prosecuting attorney, or the Attorney General complies with the~~  
 1013 ~~provisions for access thereto set forth by the laws of the United States.~~

1014 ~~(c) Search warrants for production of stored wire or electronic communications and~~  
 1015 ~~transactional records pertaining thereto shall have state-wide application or application as~~  
 1016 ~~provided by the laws of the United States when issued by a judge with jurisdiction over the~~  
 1017 ~~criminal offense under investigation and to which such records relate.~~

1018 ~~(d) A subpoena for the production of stored wire or electronic communications and~~  
 1019 ~~transactional records pertaining thereto may be issued at any time upon a showing by a law~~  
 1020 ~~enforcement official, a prosecuting attorney, or the Attorney General that the subpoenaed~~  
 1021 ~~material relates to a pending criminal investigation.~~

1022 ~~(e) Violation of this Code section shall be punishable as contempt.~~

1023 ~~16-11-67. 16-11-65.~~

1024 ~~(a) No evidence obtained in a manner which violates this part shall be admissible in any~~  
 1025 ~~court of this state except to prove violations of this part.~~

1026 ~~16-11-68.~~

1027 ~~(b) Nothing contained in this part shall permit the introduction into evidence of any~~  
 1028 ~~communication which is privileged by the laws of this state or by the decisions of the~~  
 1029 ~~appellate courts thereof.~~

1030 ~~16-11-69.~~ 16-11-66.

1031 Except as otherwise provided in ~~subsection (d) of Code Section 16-11-66.~~ 16-11-67, any  
 1032 person violating this part shall be guilty of a felony and, upon conviction thereof, shall be  
 1033 punished by imprisonment for not less than one nor more than five years or a fine not to  
 1034 exceed \$10,000.00, or both.

1035 ~~16-11-70.~~ 16-11-67.

1036 (a) As used in this Code section, the term:

1037 ~~(1) 'End user' means any person, corporation, partnership, firm, municipality,~~  
 1038 ~~cooperative, organization, governmental agency, building owner, or other entity provided~~  
 1039 ~~with a telecommunications service for its own consumption and not for resale.~~

1040 ~~(2)~~(1) 'Telephone record' means information retained by a telecommunications company  
 1041 that relates to the telephone number dialed by the customer, the number of telephone calls  
 1042 directed to a customer, or other data related to the telephone calls typically contained on  
 1043 a customer telephone bill, such as the time the calls started and ended, the duration of the  
 1044 calls, the time of day the calls were made, and any charges applied. For purposes of this  
 1045 Code section, any information collected and retained by, or on behalf of, customers  
 1046 utilizing caller identification or other similar technology does not constitute a telephone  
 1047 record.

1048 ~~(3)~~(2) 'Telephone records broker' means any person or organization that is neither a  
 1049 telecommunications company nor a vendor or supplier for a telecommunications  
 1050 company obligated by contract to protect the confidentiality of telephone records and that  
 1051 purchases, acquires, sells, or releases the telephone record of any third party with whom  
 1052 it has no prior or existing business relationship or that attempts to purchase, acquire, sell,  
 1053 or release the telephone record of any party with whom it has no prior or existing  
 1054 business relationship.

1055 (b) It ~~is~~ shall be unlawful for any telephone records broker to purchase, acquire, sell, or  
 1056 release the telephone records of any person who is a Georgia resident or to attempt to  
 1057 purchase, acquire, sell, or release the telephone record of any third party who is a Georgia  
 1058 resident. This Code section ~~applies~~ shall apply whether the customer's telephone record  
 1059 is obtained by the telephone records broker directly from a telecommunications company  
 1060 or from any other third-party source. For purposes of this Code section, a person is a  
 1061 Georgia resident if the individual has a Georgia billing address.

1062 (c) A violation of any provision of this Code section shall be punishable by a civil fine in  
 1063 an amount not to exceed \$10,000.00 for each violation. The prosecuting attorney or the  
 1064 Attorney General shall be authorized to prosecute the civil case. Each telephone record

1065 purchased, acquired, sold, or released and each attempt to purchase, acquire, sell, or release  
1066 a telephone record constitutes a separate violation of this Code section.

1067 (d) Any violation of this Code section shall constitute a tort and shall create a right of  
1068 action in the person or entity whose telephone records have been purchased, acquired, sold,  
1069 or released for which damages may be recovered. Special damages may be inferred by the  
1070 violation. Reasonable attorney's fees shall be awarded to the plaintiff ~~where~~ when the  
1071 plaintiff has prevailed in the underlying action.

1072 (e) No provision of this Code section shall be construed to prevent any action by a law  
1073 enforcement agency or any officer, employee, or agent of a law enforcement agency to  
1074 obtain the telephone records or personal identifying information of any third party who is  
1075 a Georgia resident in connection with the performance of the official duties of the agency,  
1076 officer, employee, or agent."

### 1077 PART III

#### 1078 ARREST POWER OF INVESTIGATORS IN

#### 1079 DISTRICT ATTORNEY AND SOLICITOR-GENERAL OFFICES

#### 1080 SECTION 3-1.

1081 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting  
1082 attorneys, is amended by revising subsection (c) of Code Section 15-18-21, relating to  
1083 qualifications of attorneys and investigators employed by the district attorney, as follows:

1084 "(c) Any investigator employed by the district attorney's office ~~and~~ may, when authorized  
1085 by the district attorney ~~to~~ and Article 4 of Chapter 11 of Title 16, carry weapons ~~or to~~ and  
1086 exercise ~~any of~~ the powers of a peace officer of this state, including the power of arrest.  
1087 Such investigator shall meet the requirements of Chapter 8 of Title 35 and shall serve at the  
1088 pleasure of the district attorney."

#### 1089 SECTION 3-2.

1090 Said chapter is further amended by revising subsection (b) of Code Section 15-18-72, relating  
1091 to qualifications of personnel, as follows:

1092 "(b) Any investigator employed by the solicitor-general's office who is authorized by the  
1093 solicitor-general and by Article 4 of Chapter 11 of Title 16, relating to firearms, to carry  
1094 weapons ~~or authorized by local law to~~ may exercise ~~any of~~ the powers of a peace officer  
1095 of this state, including the power of arrest. Such investigator shall meet the requirements  
1096 of Chapter 8 of Title 35 and shall serve at the pleasure of the solicitor-general."



1097 **PART IV**

1098 **CROSS-REFERENCES**

1099 **SECTION 4-1.**

1100 Code Section 2-2-11 of the Official Code of Georgia Annotated, relating to inspection  
1101 warrants, is amended by revising paragraph (1) as follows:

1102 "(1) The ~~Commissioner~~ commissioner or any person authorized to make inspections for  
1103 the ~~Commissioner~~ commissioner shall make application for an inspection warrant to a  
1104 person who is a judicial officer ~~within the meaning of Code Section 17-5-21~~ as such term  
1105 is defined in Code Section 17-5-1."

1106 **SECTION 4-2.**

1107 Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to the  
1108 environmental protection division, is amended by revising paragraph (1) of subsection (d)  
1109 as follows:

1110 "(1) The director or any person authorized to make inspections for the division shall  
1111 make application for an inspection warrant to a person who is a judicial officer ~~within the~~  
1112 ~~meaning of Code Section 17-5-21~~ as such term is defined in Code Section 17-5-1."

1113 **SECTION 4-3.**

1114 Code Section 15-18-15 of the Official Code of Georgia Annotated, relating to the chief  
1115 assistant district attorney, is amended by revising paragraph (2) of subsection (b) as follows:

1116 "(2) If the district attorney will be temporarily absent from the judicial circuit such that  
1117 he or she is not available to perform the duties of his or her office, the district attorney  
1118 may authorize, in writing, the chief assistant district attorney to exercise any of the  
1119 powers, duties, and responsibilities of the district attorney during such absence, including  
1120 but not limited to such powers and duties as the district attorney may have pursuant to  
1121 this title, ~~Code Section 16-11-64, and Code Section~~ Sections 17-5-46 and 24-5-507, and  
1122 the laws of this state relating to the validation of bonds."

1123 **SECTION 4-4.**

1124 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
1125 amended by revising subparagraph (b)(1)(A) of Code Section 16-9-109, relating to disclosure  
1126 by service providers pursuant to investigation, as follows:

1127 "(A) Obtains a search warrant as provided in Part 1 of Article 2 of Chapter 5 of Title  
1128 17;"

**SECTION 4-5.**

1129  
1130 Said title is further amended by revising paragraph (1) of subsection (s) of Code Section  
1131 16-13-49, relating to forfeitures, as follows:

1132 "(1) The court may receive and consider, in making any determination of probable cause  
1133 or reasonable cause, all evidence admissible in determining probable cause at a  
1134 preliminary hearing ~~or by a magistrate~~ pursuant to ~~Article 1~~ Part 1 of Article 2 of Chapter  
1135 5 of Title 17, together with inferences therefrom;"

**SECTION 4-6.**

1136  
1137 Said title is further amended by revising paragraph (3) of subsection (c) of Code Section  
1138 16-13-60, relating to privacy and confidentiality, as follows:

1139 "(3) To local, state, or federal law enforcement or prosecutorial officials pursuant to the  
1140 issuance of a search warrant pursuant to Part 1 of Article 2 of Chapter 5 of Title 17; and"

**SECTION 4-7.**

1141  
1142 Code Section 27-4-263 of the Official Code of Georgia Annotated, relating to inspections,  
1143 is amended by revising paragraph (1) of subsection (b) as follows:

1144 "(1) Any application for an inspection warrant shall be made to a person who is a judicial  
1145 officer ~~within the meaning of Code Section 17-5-21~~ as such term is defined in Code  
1146 Section 17-5-1;"

**SECTION 4-8.**

1147  
1148 Code Section 49-4-146.3 of the Official Code of Georgia Annotated, relating to forfeiture  
1149 of property and proceeds obtained through Medicaid fraud, is amended by revising paragraph  
1150 (1) of subsection (s), as follow:

1151 "(1) The court may receive and consider, in making any determination of probable cause  
1152 or reasonable cause, all evidence admissible in determining probable cause at a  
1153 preliminary hearing ~~or by a magistrate~~ pursuant to ~~Article 1~~ Part 1 of Article 2 of Chapter  
1154 5 of Title 17, together with inferences therefrom; and"

**PART V****CROSS-REFERENCE AND DELAYED EFFECTIVE DATE****SECTION 5-1.**

1155  
1156  
1157  
1158 Code Section 2-15-14 of the Official Code of Georgia Annotated, relating to inspection of  
1159 premises and warrant for inspection, is amended by revising paragraph (1) of subsection (b),  
1160 as follows:

1161 "(1) Any application for an inspection warrant shall be made to a person who is a judicial  
1162 officer ~~within the meaning of Code Section 17-5-21~~ as such term is defined in Code  
1163 Section 17-5-1;"

1164 **PART VI**

1165 **EFFECTIVE DATE, APPLICABILITY, AND REPEALER**

1166 **SECTION 6-1.**

1167 (a) Except as provided in subsection (b) of this section, this Act shall become effective on  
1168 July 1, 2015, and shall apply to all offenses that occur on and after that date. This Act shall  
1169 not affect any investigation or prosecution for acts occurring before July 1, 2015, and shall  
1170 not act as an abatement of any such prosecutions. Any evidence obtained in accordance with  
1171 the former provisions of Articles 1 and 2 of Chapter 5 of Title 17 and Part 1 of Article 3 of  
1172 Chapter 11 of Title 16 shall be admissible in any civil or criminal proceeding commenced  
1173 on or after July 1, 2015.

1174 (b) Part V of this Act shall become effective only upon the effective date of a specific  
1175 appropriation of funds for purposes of Chapter 15 of Title 2 as expressed in a line item of an  
1176 appropriations Act enacted by the General Assembly.

1177 **SECTION 6-2.**

1178 All laws and parts of laws in conflict with this Act are repealed.