

Senate Bill 177

By: Senators James of the 35th and Rhett of the 33rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia
2 Annotated, relating to wiretapping, eavesdropping, surveillance, and related offenses, so as
3 to clarify that it shall be lawful under certain circumstances for peace officers to use law
4 enforcement agency issued devices to observe, photograph, or record the activities of another
5 which occur in any private place and out of public view; to amend Chapter 1 of Title 35 of
6 the Official Code of Georgia Annotated, relating to general provisions relative to law
7 enforcement officers and agencies, so as to allow for certain peace officers to be equipped
8 with an audio and video recording device attached to their persons for recording audio and
9 video of activities performed while on patrol; to provide for definitions; to provide for public
10 disclosure exceptions; to amend Article 4 of Chapter 18 of Title 50 of the Official Code of
11 Georgia Annotated, relating to the inspection of public records, so as to provide for the
12 release and nonrelease of certain audio and video recordings from devices attached to the
13 persons of peace officers; to provide for related matters; to repeal conflicting laws; and for
14 other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
18 relating to wiretapping, eavesdropping, surveillance, and related offenses, is amended in
19 paragraph (2) of Code Section 16-11-62, relating to eavesdropping, surveillance, or
20 intercepting communication which invades the privacy of another, by deleting "or" at the end
21 of subparagraph (B), by adding "or" at the end of subparagraph (C), and by adding a new
22 subparagraph to read as follows:

23 "(D) For a law enforcement officer to use a device as provided for in Code Section
24 35-1-20 in the performance of his or her official duties pursuant to conducting a traffic
25 stop or responding to an emergency call or situation;"

26 **SECTION 2.**

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27 Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general
 28 provisions relative to law enforcement officers and agencies, is amended by adding a new
 29 Code section to read as follows:

30 "35-1-20.

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

32 (1) 'Encounter for a law enforcement purpose' means any stop, detention, or response to
 33 an emergency call by a peace officer.

34 (2) 'Immediate Family' means a spouse, child, sibling, parent, grandparent, grandchild,
 35 nephew, niece, aunt, uncle, or cousin who is the next of kin, or guardian.

36 (3) 'Peace officer' shall have the same meaning as provided for in paragraph (8) of Code
 37 Section 35-8-2.

38 (b) Any state, county, municipal, public transit, local school system, college, or university
 39 law enforcement agency or department may equip a peace officer who conducts traffic
 40 stops or responds to emergency dispatch calls as his or her primary duty with an audio and
 41 video recording device attached to his or her person which shall record audio and video of
 42 activities while he or she is on patrol pursuant to the policy of such law enforcement
 43 agency or department. Such recording device shall depict such activities from at least the
 44 point of view of such peace officer's body front or line of sight.

45 (c)(1) The audio and video recordings provided for in subsection (b) of this Code section
 46 which depict an encounter for a law enforcement purpose, including but not limited to all
 47 relevant depictions occurring prior to and after such encounter for a law enforcement
 48 purpose, shall be public records pursuant to Code Section 50-18-71 upon the filing or
 49 delivery of a written complaint of any nature to the law enforcement agency or review
 50 board for such law enforcement agency by:

51 (A) A person who has been the subject of an encounter for a law enforcement purpose;

52 (B) A person who was a witness to an encounter for a law enforcement purpose; or

53 (C) The immediate family or estate of such person identified in subparagraph (A) or

54 (B) who is unable to speak for himself or herself or is deceased

55 for activities arising out of a depicted encounter for a law enforcement purpose.

56 (2) Any party identified in paragraph (1) of this subsection or the law enforcement
 57 agency may seek leave of any superior court of competent jurisdiction to conceal
 58 identifying characteristics, nudity of persons, or such other depictions contained within
 59 such audio and video recordings prior to public release. The judge of the superior court
 60 may grant such leave in his or her discretion for good cause, including but not limited to
 61 the protection of the dignity of a deceased or critically wounded individual; provided,
 62 however, that such leave is exercised upon the depiction only to the extent necessary to
 63 accomplish the purposes of the leave. The court may hold a hearing to hear argument

64 from the parties involved; provided, however, that any hearing and a decision from the
 65 court shall be conducted and rendered in an expedited manner. The time involved with
 66 seeking leave of the court shall toll the timing provided for in Code Section 50-18-71.

67 (3) Except for portions depicting an encounter for a law enforcement purpose as
 68 provided for under this subsection, the audio and video recordings provided for in
 69 subsection (b) of this Code section shall not be publicly disclosed.

70 (d) Any state, county, or local law enforcement agency which equips a peace officer with
 71 an audio and video recording device pursuant to subsection (b) of this Code section shall
 72 develop and maintain policies for the use of such audio and video recording devices,
 73 including but not limited to the terms upon which such devices shall be activated and
 74 deactivated.

75 (e) Audio and video recordings provided for in subsection (b) of this Code section shall
 76 be retained for a period of three years from the date in which such recordings are created."

77 **SECTION 3.**

78 Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to the
 79 inspection of public records, is amended by revising paragraph (4) of subsection (a) of Code
 80 Section 50-18-72, relating to when public disclosure is not required, as follows:

81 "(4) Records of law enforcement, prosecution, or regulatory agencies in any pending
 82 investigation or prosecution of criminal or unlawful activity, other than initial police
 83 arrest reports and initial incident reports; provided, however, that an investigation or
 84 prosecution shall no longer be deemed to be pending when all direct litigation involving
 85 such investigation and prosecution has become final or otherwise terminated; and
 86 provided, further, that this paragraph shall not apply to records in the possession of an
 87 agency that is the subject of the pending investigation or prosecution; and provided,
 88 further, that the release of booking photographs shall only be permissible in accordance
 89 with Code Section 35-1-18; and provided, further, that the release of audio and video
 90 recordings from devices attached to the persons of peace officers shall be in accordance
 91 with Code Section 35-1-20;"

92 **SECTION 4.**

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