

## HOUSE SUBSTITUTE TO SENATE BILL 94

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 reorganize the use of wiretapping and surveillance into the search  
 8 and seizure chapter; to provide for a procedure for the installation and use of tracking  
 9 devices, pen registers, and trap and trace devices; to amend Article 3 of Chapter 11 of Title  
 10 16 of the Official Code of Georgia Annotated, relating to invasions of privacy, so as to repeal  
 11 provisions relating to wiretapping and surveillance now contained in Chapter 5 of Title 17;  
 12 to amend Code Sections 2-2-11, 2-15-14, 12-2-2, 15-18-15, 27-4-263, 49-4-146.3, and Title  
 13 16 of the Official Code of Georgia Annotated, relating to inspection warrants for the  
 14 Department of Agriculture, inspection warrants for pacific white shrimp aquaculture;  
 15 inspection warrants for the environmental protection division, the chief assistant district  
 16 attorney, inspection warrants for the Aquaculture Development Commission, forfeiture of  
 17 property and proceeds obtained through Medicaid fraud, and crimes and offenses,  
 18 respectively, so as to conform cross-references; to amend Title 17 of the Official Code of  
 19 Georgia Annotated, relating to criminal procedure, so as to require a procedure for enhancing  
 20 witness identification accuracy; to provide for definitions; to provide for written policies  
 21 relating to witness identification protocol; to provide for policy requirements; to prohibit  
 22 suppression of evidence under certain circumstances; to provide for related matters; to  
 23 provide for an effective date, a delayed effective date, and applicability; to repeal conflicting  
 24 laws; and for other purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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28

**PART I**  
**SEARCH, SEIZURE, WIRETAP**  
**SECTION 1-1.**

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

31

"ARTICLE 1

32 17-5-1.

33 As used in this article, the term:

34 (1) 'Another state' means:

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

36 (B) The District of Columbia; and

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

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

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

46 (4) 'Judicial officer' means:

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

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

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

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

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

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

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

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

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

67 17-5-2.

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

71 (1) Protecting the peace officer from attack;

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

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

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

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

85 ~~17-5-2.~~ 17-5-3.

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

92 **SECTION 1-2.**

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

95 **"ARTICLE 2**96 **Part 1**

97 17-5-20.

98 As used in this article, the term:99 (1) 'Another state' shall have the same meaning as set forth in Code Section 17-5-1.100 (2) 'Contraband' shall have the same meaning as set forth in Code Section 17-5-1.

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

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

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

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

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

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

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

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

126 electromagnetic, photoelectronic, or photo-optical system that affects interstate or foreign  
127 commerce, but shall not include:

128 (A) Any wire communication or oral communication;

129 (B) Any communication made through a tone-only paging device;

130 (C) Any communication from a tracking device; or

131 (D) Electronic funds transfer information stored by a financial institution in a  
132 communications system used for the electronic storage and transfer of funds.

133 (5) 'Electronic communication service' means any service which provides to users  
134 thereof the ability to send or receive wire communications or electronic communications.

135 (6) 'Judicial officer' shall have the same meaning as set forth in Code Section 17-5-1.

136 (7) 'Oral communication' means any oral communication uttered by an individual  
137 exhibiting an expectation that such communication is not subject to interception under  
138 circumstances justifying such expectation, but such term shall not include any electronic  
139 communication.

140 (8) 'Peace officer' shall have the same meaning as set forth in Code Section 17-5-1.

141 (9) 'Pen register' means a device or process that records or decodes dialing, routing,  
142 addressing, or signaling information transmitted by an instrument or facility from which  
143 an electronic communication or wire communication is transmitted; provided, however,  
144 that such information shall not include the contents of any communication. Such term  
145 shall not include any device or process used by a provider or customer of an electronic  
146 communication service for billing, or recording as an incident to billing, for  
147 communications services provided by such provider nor any device or process used by  
148 a provider or customer of an electronic communication service for cost accounting or  
149 similar purposes in the ordinary course of its business.

150 (10) 'Property' shall have the same meaning as set forth in Code Section 17-5-1.

151 (11) 'Remote computing service' means the provision to the public of computer storage  
152 or processing services by means of an electronic communications system.

153 (12) 'Stolen property' shall have the same meaning as set forth in Code Section 17-5-1.

154 (13) 'Tracking device' means any device that permits the tracking of the movement of an  
155 individual or physical object.

156 (14) 'Trap and trace device' means a device or process that captures the incoming  
157 electronic or other impulses which identify the originating number or other dialing,  
158 routing, addressing, and signaling information reasonably likely to identify the source of  
159 a wire communication or electronic communication; provided, however, that such  
160 information shall not include the contents of any communication.

161 (15) 'Wire communication' means any aural transfer made in whole or in part through the  
162 use of facilities for the transmission of communications by the aid of wire, cable, or other

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

167 17-5-21.

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

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

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

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

176 ~~17-5-21.~~ 17-5-22.

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

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

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

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

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

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

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

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

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

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

225 ~~17-5-21.1.~~ 17-5-23.

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

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

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

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

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

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

256 ~~17-5-22.~~ 17-5-24.

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

268 upon issuing any warrant ~~he~~ shall immediately record the same, within a reasonable time,  
 269 on the docket.

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

275 (A) Endanger the life or physical safety of an individual;

276 (B) Result in the flight of an individual from prosecution;

277 (C) Lead to the destruction of or tampering with evidence;

278 (D) Cause the intimidation of potential witnesses;

279 (E) Seriously jeopardize an investigation; or

280 (F) Unduly delay a trial.

281 (2) A judicial officer may order that a search warrant and all supporting documentation  
 282 therefor, including recordings or transcripts supporting such warrant, the return for such  
 283 warrant, and the petition of the prosecuting attorney requesting sealing be filed under seal  
 284 with the clerk until such time as the judicial officer may direct, up to an initial period of  
 285 60 days. Upon application by the prosecuting attorney, the judicial officer may extend  
 286 the initial sealing for additional periods not to exceed 60 days; provided, however, that  
 287 such sealing shall not extend beyond the return of the indictment or the filing of an  
 288 accusation in which property or evidence seized may be admitted into evidence.

289 ~~17-5-23.~~ 17-5-25.

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

294 ~~17-5-24.~~ 17-5-26.

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

298 ~~17-5-25.~~

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

302 individual is available, the copy shall be left in a conspicuous place on the premises from  
 303 which the ~~instruments, articles, or things were seized~~ individual or property was seized;  
 304 provided, however, that no copy shall be left in a conspicuous place if the judicial officer  
 305 issuing such warrant has ordered the search warrant to be sealed pursuant to Code Section  
 306 17-5-24.

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

310 ~~17-5-26.~~

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

312 17-5-27.

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

- 317 (1) The peace officer ~~He~~ is refused admittance;
- 318 (2) ~~The person or persons~~ individuals within the building or property place to be  
 319 searched or part thereof refuse to acknowledge and answer the verbal notice or the  
 320 presence of the ~~person or persons~~ individuals therein is unknown to the peace officer; or  
 321 (3) The building or property place to be searched or part thereof is not then occupied by  
 322 any person.

323 ~~17-5-28.~~

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

- 326 (1) To protect ~~himself~~ the peace officer and any other individual assisting in the  
 327 execution of such warrant from attack; or  
 328 (2) To prevent the disposal or concealment of any ~~instruments, articles, or things~~  
 329 particularly described in the search warrant property or contraband.

330 ~~17-5-29.~~ 17-5-28.

331 A written return of all ~~instruments, articles, or things~~ property seized shall be made without  
 332 unnecessary delay before ~~the any~~ judicial officer named in the warrant or before any court  
 333 of competent jurisdiction of the same court as the judicial officer that issued the search  
 334 warrant. An inventory of any ~~instruments, articles, or things seized~~ property seized shall

335 be filed with the return and signed under oath by the peace officer executing the warrant.  
 336 If the return has been sealed pursuant to Code Section 17-5-24, the inventory shall also be  
 337 sealed. Unless the return has been sealed, the ~~The~~ judicial officer or court shall, upon  
 338 request, deliver a copy of the inventory to the persons from whom or from whose premises  
 339 the ~~instruments, articles, or things were~~ property was taken and to the applicant for the  
 340 search warrant.

341 ~~17-5-30.~~ 17-5-29.

342 (a) A defendant aggrieved by an unlawful search and seizure may move the court for the  
 343 return of property, the possession of which is not otherwise unlawful, and to suppress as  
 344 evidence anything so obtained on 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 was unlawful. Such motion shall be filed within ten days after arraignment, unless the time  
 351 for filing such motion is extended by the court. The ~~judge~~ court shall conduct and receive  
 352 evidence ~~out of the presence at a hearing on such motion prior to the empaneling~~ of the jury  
 353 on any issue of fact necessary to determine ~~the motion; and the~~ such motion. The burden  
 354 of proving that the search and seizure ~~were~~ was lawful shall be on the state. If the motion  
 355 is granted, the state may appeal as provided in Code Section 5-7-1. The property shall be  
 356 restored; if the state does not appeal or if the order is affirmed on appeal unless such  
 357 property is otherwise subject to lawful detention; and it shall not be admissible in evidence  
 358 against the movant in any trial except as impeachment or rebuttal evidence.

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

363 ~~17-5-31.~~

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

367 ~~17-5-32.~~ 17-5-30.

368 (a) As used in this Code section, the term 'documentary evidence' includes but ~~is~~ shall not  
369 be limited to writings, documents, blueprints, drawings, photographs, computer printouts,  
370 microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, and  
371 papers of any type or description.

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

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

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

399 ~~(2)(d)~~ If the ~~party~~ person who has been served with a search warrant states that ~~an item or~~  
400 ~~items~~ property should not be disclosed, such ~~item or items~~ property shall be sealed by the  
401 special master and taken to the ~~superior~~ court in which the accusation, indictment, or  
402 special presentment is filed and pending for a hearing in such court. At the hearing the  
403 ~~party~~ person whose premises has been searched shall be entitled to raise any issues which

404 may be raised pursuant to Code Section ~~17-5-30~~ 17-5-29 as well as claims that the ~~item or~~  
 405 ~~items are~~ property is privileged or claims that the ~~item or items are~~ property is inadmissible  
 406 because ~~they were~~ it was obtained in violation of this Code section. ~~Any such hearing shall~~  
 407 ~~be held in the superior court;~~

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

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

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

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

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

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

431 Part 2

432 17-5-40.

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

436 (b) The General Assembly further recognizes that electronic communication devices,  
 437 including, but not limited to, mobile telephones, e-mail, social media, and other evolving

438 forms of communication, are used and exploited with increasing frequency and  
439 sophistication to conduct criminal activity in this state.

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

444 17-5-41.

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

448 17-5-42.

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

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

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

463 (d) A judicial officer with jurisdiction over the criminal offense under investigation and  
464 to which transactional records relate may issue an order requiring the disclosure of stored  
465 wire communications or electronic communications, as well as transactional records  
466 pertaining thereto, to the extent and under the procedures and conditions provided for by  
467 the laws of the United States. Such orders for production of stored wire communications  
468 or electronic communications and transactional records pertaining thereto shall have  
469 state-wide application or application as provided by the laws of the United States when  
470 issued by a judicial officer with jurisdiction over the criminal offense under investigation  
471 and to which such records relate.

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

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

477 17-5-43.

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

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

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

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

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

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

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

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

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

508 (B) Leaving a copy of such warrant at the person's residence or usual place of abode  
 509 with an individual of suitable age and discretion who resides at that location; or  
 510 (C) Mailing a copy of such warrant to the person's last known address.

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

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

518 (1) Endanger the life or physical safety of an individual;

519 (2) Result in the flight of an individual from prosecution;

520 (3) Lead to the destruction of or tampering with evidence;

521 (4) Cause the intimidation of potential witnesses;

522 (5) Seriously jeopardize an investigation; or

523 (6) Unduly delay a trial.

524 17-5-44.

525 Any district attorney having jurisdiction over the prosecution of a crime under investigation  
 526 or the Attorney General is authorized to make application for an order or an extension of  
 527 an order authorizing or approving the installation and use of a pen register or a trap and  
 528 trace device to a judge of the superior court of the same judicial circuit as the district  
 529 attorney, or in the case of the Attorney General, in any judicial circuit; and such court shall  
 530 be authorized to enter an order approving the use of a pen register or a trap and trace  
 531 device, to the extent the same is consistent with and permitted by the laws of the United  
 532 States. Such order shall have state-wide application and the monitoring of a pen register  
 533 or trap and trace device shall be permitted in any location in this state.

534 17-5-45.

535 Any peace officer, specially designated in writing for such purpose by the Attorney  
 536 General or by a district attorney, who requires the installation and use of a pen register or  
 537 a trap and trace device, before an order authorizing such installation and use can, with due  
 538 diligence, be obtained, may have installed and use a pen register or trap and trace device  
 539 if he or she reasonably determines that there are grounds upon which an order could be  
 540 entered under the laws of the United States to authorize such installation and use if, within  
 541 48 hours of the time the pen register or trap and trace device is installed, an order

542 approving the installation and use is issued in accordance with Code Section 17-5-44 and  
543 he or she reasonably determines that a situation exists that involves:

544 (1) Immediate danger of death or serious bodily injury to any individual; or

545 (2) Conspiratorial activities characteristic of organized crime.

546 17-5-46.

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

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

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

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

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

569 17-5-47.

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

572 (b) Notwithstanding any other provision of this part, in the event that the Attorney General  
573 or a district attorney of the judicial circuit having jurisdiction over an emergency situation  
574 determines that such emergency situation requires the immediate interception of wire  
575 communications, oral communications, or electronic communications or the immediate  
576 observation, monitoring, or recording of the activities of any individual involved in such

577 emergency situation in violation of the provisions of Code Section 16-11-62 before an  
578 order authorizing such surveillance or monitoring can, with due diligence, be obtained, then  
579 any peace officer specifically designated by the individual making such determination may  
580 utilize any device to intercept the wire communications, oral communications, or electronic  
581 communications or to observe, monitor, or record the activities of the person or persons  
582 involved in such emergency situation, provided that grounds exist upon which an  
583 investigation warrant pursuant to Code Section 17-5-46 could be issued and that an  
584 application for such warrant is made within 48 hours after such surveillance or monitoring  
585 commences.

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

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

596 17-5-48.

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

601 (b) In accordance with subsection (c) or (d) of this Code section, the wire communication,  
602 oral communication, or electronic communication to which a child under the age of 18  
603 years is a party may be recorded and divulged, and such recording and dissemination may  
604 be done by a private citizen, law enforcement agency, or prosecuting attorney's office.  
605 Nothing in this subsection shall be construed to require that the recording device be  
606 activated by such child. The authorization for the recording or divulging of the  
607 conversations of a child under the age of 18 years conducted by wire communication, oral  
608 communication, or electronic communication shall be given only by order of a judge of a  
609 superior court upon written application, as provided in subsection (c) of this Code section,  
610 or by a parent, guardian, or legal custodian of such child as provided in subsection (d) of  
611 this Code section. Such recording shall not be used in any prosecution of the child in any  
612 delinquency or criminal proceeding. An application to a judge of the superior court made

613 pursuant to this Code section need not comply with the procedures set forth in Code  
 614 Section 17-5-46.

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

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

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

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

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

624 (d) The provisions of this article shall not be construed to prohibit a parent, guardian, or  
 625 legal custodian of a child under 18 years of age, with or without the consent of such child,  
 626 from monitoring or intercepting wire communications, oral communications, or electronic  
 627 communications of such minor child with another person by use of an extension phone  
 628 located within the family home, or electronic or other communications of such minor child  
 629 from within the family home, for the purpose of ensuring the welfare of such minor child.  
 630 If the parent, guardian, or legal custodian has a reasonable or good faith belief that such  
 631 communication is evidence of criminal conduct involving such child as a victim or an  
 632 attempt, conspiracy, or solicitation to involve such child in criminal activity affecting the  
 633 welfare or best interest of such child, the parent, guardian, or legal custodian may disclose  
 634 the contents of such communications to the district attorney or a peace officer. A recording  
 635 or other record of any such communication made by a parent, guardian, or legal custodian  
 636 in accordance with this subsection that contains evidence of criminal conduct involving  
 637 such child as a victim or an attempt, conspiracy, or solicitation to involve such child in  
 638 criminal activity shall be admissible in a judicial proceeding except as otherwise provided  
 639 in subsection (b) of this Code section.

640 17-5-49.

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

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

646 (c) Except as otherwise provided in subsection (f) of Code Section 17-5-42, any person  
 647 violating this part shall be guilty of a felony and, upon conviction thereof, shall be punished

648 by imprisonment for not less than one nor more than five years or a fine not to exceed  
 649 \$10,000.00, or both."

650 **PART II**  
 651 **WIRETAP CORRECTIONS**  
 652 **SECTION 2-1.**

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

656 "Part 1

657 16-11-60.

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

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

667 (A) Any telephone or telegraph instrument, equipment, or facility or any component  
 668 thereof:

669 (i) Furnished to the subscriber or user by a provider of ~~wire~~ or electronic  
 670 communication service in the ordinary course of its business and being used by the  
 671 subscriber or user in the ordinary course of its business or furnished by such  
 672 subscriber or user for connection to the facilities of such service and used in the  
 673 ordinary course of its business; or

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

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

679 (C) Focusing, lighting, or illuminating equipment; or optical magnifying equipment;  
 680 and

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

682 ~~(2) 'Pen register' means a device or process which records or decodes dialing, routing,~~  
 683 ~~addressing, or signaling information transmitted by an instrument or facility from which~~  
 684 ~~a wire or electronic communication is transmitted; provided, however, that such~~  
 685 ~~information shall not include the contents of any communication; but such term does not~~  
 686 ~~include any device or process used by a provider or customer of a wire or electronic~~  
 687 ~~communication service for billing, or recording as an incident to billing, for~~  
 688 ~~communications services provided by such provider or any device or process used by a~~  
 689 ~~provider or customer of a wire communication service for cost accounting or other like~~  
 690 ~~purposes in the ordinary course its business.~~

691 (2) 'Electronic communication' shall have the same meaning as set forth in Code Section  
 692 17-5-20.

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

695 (4) 'Oral communication' shall have the same meaning as set forth in Code Section  
 696 17-5-20.

697 ~~(3)(5) 'Private place' means a place where one is entitled reasonably to expect to be safe~~  
 698 ~~from casual or hostile intrusion or surveillance~~ there is a reasonable expectation of  
 699 privacy.

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

705 (6) 'Wire communication' shall have the same meaning as set forth in Code Section  
 706 17-5-20.

707 16-11-61.

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

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

715 16-11-62.

716 It shall be unlawful for:

717 (1) Any person in a clandestine manner intentionally to overhear, transmit, or record or  
 718 attempt to overhear, transmit, or record the private conversation of another which shall  
 719 originate in any private place;

720 (2) Any person, through the use of any device, without the consent of all persons  
 721 observed, to observe, photograph, or record the activities of another which occur in any  
 722 private place and out of public view; provided, however, that it shall not be unlawful:

723 (A) To use any device to observe, photograph, or record the activities of persons  
 724 incarcerated in any jail, correctional institution, or any other facility in which persons  
 725 who are charged with or who have been convicted of the commission of a crime are  
 726 incarcerated, provided that such equipment shall not be used while the prisoner is  
 727 discussing his or her case with his or her attorney;

728 (B) For an owner or occupier of real property to use for security purposes, crime  
 729 prevention, or crime detection any device to observe, photograph, or record the  
 730 activities of persons who are on the property or an approach thereto in areas where there  
 731 is no reasonable expectation of privacy; ~~or~~

732 (C) To use for security purposes, crime prevention, or crime detection any device to  
 733 observe, photograph, or record the activities of persons who are within the curtilage of  
 734 the residence of the person using such device. A photograph, videotape, or record made  
 735 in accordance with this subparagraph, or a copy thereof, may be disclosed by such  
 736 resident to the district attorney or a law enforcement officer and shall be admissible in  
 737 a judicial proceeding, without the consent of any person observed, photographed, or  
 738 recorded; or

739 (D) For a law enforcement officer or his or her agent to use a device in the lawful  
 740 performance of his or her official duties to observe, photograph, videotape, or record  
 741 the activities of persons that occur in the presence of such officer or his or her agent;

742 (3) Any person to go on or about the premises of another or any private place, except as  
 743 otherwise provided by law, for the purpose of invading the privacy of others by  
 744 eavesdropping upon their conversations or secretly observing their activities;

745 (4) Any person intentionally and secretly to intercept by the use of any device,  
 746 instrument, or apparatus the contents of a message sent by telephone, telegraph, letter, or  
 747 by any other means of private communication;

748 (5) Any person to divulge to any unauthorized person or authority the content or  
 749 substance of any private message intercepted lawfully in the manner provided for in Code  
 750 Section ~~16-11-65~~ 16-11-64 or 17-5-46;

751 (6) Any person to sell, give, or distribute, without legal authority, to any person or entity  
 752 any photograph, videotape, or record, or copies thereof, of the activities of another which  
 753 occur in any private place and out of public view without the consent of all persons  
 754 observed; or

755 (7) Any person to commit any other acts of a nature similar to those set out in  
 756 paragraphs (1) through (6) of this Code section which invade the privacy of another.

757 16-11-63.

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

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

765 ~~16-11-64.~~

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

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

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

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

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

789 ~~16-11-64.1.~~

790 ~~Any district attorney having jurisdiction over the prosecution of the crime under~~  
 791 ~~investigation or the Attorney General is authorized to make application for an order or an~~  
 792 ~~extension of an order authorizing or approving the installation and use of a pen register or~~  
 793 ~~a trap and trace device to a judge of the superior court of the same judicial circuit as the~~  
 794 ~~district attorney, or, in the case of the Attorney General, in any judicial circuit; and such~~  
 795 ~~court shall be authorized to enter an order authorizing the use of a pen register or a trap and~~  
 796 ~~trace device, to the extent the same is consistent with and permitted by the laws of the~~  
 797 ~~United States. Such order shall have state-wide application and the interception by use of~~  
 798 ~~a pen register or trap and trace device shall be permitted in any location in this state.~~

799 ~~16-11-64.2.~~

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

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

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

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

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

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

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

812 ~~16-11-64.3.~~

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

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

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

824 ~~(3) There are grounds upon which an investigation warrant pursuant to Code Section~~  
 825 ~~16-11-64 could be issued,~~

826 ~~then any investigative or law enforcement officer specifically designated by the prosecuting~~  
 827 ~~official making such determination may utilize any device as defined in Code Section~~  
 828 ~~16-11-60 to intercept the wire, oral, or electronic communications or to observe, monitor,~~  
 829 ~~or record the activities of the person or persons involved in said emergency situation,~~  
 830 ~~provided that an application for an investigation warrant is made pursuant to Code Section~~  
 831 ~~16-11-64 within 48 hours after said interception or surveillance commences.~~

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

836 ~~(c) In the event that an application for an investigation warrant made pursuant to this Code~~  
 837 ~~section is denied or in any event where the interception or surveillance is terminated~~  
 838 ~~without an investigation warrant having been issued, the contents of any intercepted~~  
 839 ~~communications or other surveillance effected pursuant to this Code section shall not be~~  
 840 ~~admissible in any court of this state except to prove violations of this part. The contents~~  
 841 ~~of any such intercepted communications or other surveillance effected pursuant to this~~  
 842 ~~Code section without an investigation warrant having been issued shall be confidential and~~  
 843 ~~shall not be disclosed except to prove violations of this part.~~

844 ~~16-11-65: 16-11-64.~~

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

855 need for the use of the equipment in connection with a legitimate business activity of the  
856 user or subscriber and demonstrated to the satisfaction of the commission that it will be  
857 operated by persons of good moral character and that the equipment will be used in a  
858 lawful manner and in conformity with the tariffs filed for the equipment. The commission  
859 is authorized to establish the necessary procedures to be employed and followed in  
860 applying for such permits and to require from the user or subscriber of such equipment the  
861 furnishing of any reasonable information required by the commission in regard to the  
862 intended and actual use of the equipment.

863 (b) The Georgia Public Service Commission is authorized to revoke any license and to  
864 order any owner of such equipment or any telephone company supplying such equipment  
865 to remove from the premises of the licensee the equipment when it is established to the  
866 satisfaction of the commission that the equipment is being used in an unlawful manner  
867 contrary to the tariff applicable to the equipment or in a manner contrary to the purposes  
868 and uses for which the license had been issued. Such licenses may also be revoked by the  
869 commission if it is subsequently discovered that a material misrepresentation of fact has  
870 been made in applying for the license. The commission is authorized to promulgate such  
871 rules and regulations in connection with the licensing and revocation thereof of such users  
872 of such equipment as will enable it to carry out the purposes, duties, and responsibilities  
873 imposed upon the commission by this Code section. Such rules and regulations shall afford  
874 to any aggrieved licensee an opportunity to a full and impartial hearing before the  
875 commission. The commission shall further have the authority to adopt any and all  
876 appropriate rules and regulations of any sort to ensure the privacy of telephonic and  
877 telegraphic communications. A violation of such rules and regulations shall be a violation  
878 of this part.

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

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

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

895 ~~16-11-66.~~

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

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

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

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

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

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

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

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

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

936 ~~16-11-66.1.~~

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

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

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

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

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

955 ~~16-11-67. 16-11-65.~~

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

958 ~~16-11-68.~~

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

962 ~~16-11-69.~~ 16-11-66.

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

967 ~~16-11-70.~~ 16-11-67.

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

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

972 ~~(2)~~(1) 'Telephone record' means information retained by a telecommunications company  
 973 that relates to the telephone number dialed by the customer, the number of telephone calls  
 974 directed to a customer, or other data related to the telephone calls typically contained on  
 975 a customer telephone bill, such as the time the calls started and ended, the duration of the  
 976 calls, the time of day the calls were made, and any charges applied. For purposes of this  
 977 Code section, any information collected and retained by, or on behalf of, customers  
 978 utilizing caller identification or other similar technology does not constitute a telephone  
 979 record.

980 ~~(3)~~(2) 'Telephone records broker' means any person or organization that is neither a  
 981 telecommunications company nor a vendor or supplier for a telecommunications  
 982 company obligated by contract to protect the confidentiality of telephone records and that  
 983 purchases, acquires, sells, or releases the telephone record of any third party with whom  
 984 it has no prior or existing business relationship or that attempts to purchase, acquire, sell,  
 985 or release the telephone record of any party with whom it has no prior or existing  
 986 business relationship.

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

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

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

999 (d) Any violation of this Code section shall constitute a tort and shall create a right of  
1000 action in the person or entity whose telephone records have been purchased, acquired, sold,  
1001 or released for which damages may be recovered. Special damages may be inferred by the  
1002 violation. Reasonable attorney's fees shall be awarded to the plaintiff ~~where~~ when the  
1003 plaintiff has prevailed in the underlying action.

1004 (e) No provision of this Code section shall be construed to prevent any action by a law  
1005 enforcement agency or any officer, employee, or agent of a law enforcement agency to  
1006 obtain the telephone records or personal identifying information of any third party who is  
1007 a Georgia resident in connection with the performance of the official duties of the agency,  
1008 officer, employee, or agent."

### 1009 PART III

### 1010 CROSS-REFERENCES

#### 1011 SECTION 3-1.

1012 Code Section 2-2-11 of the Official Code of Georgia Annotated, relating to inspection  
1013 warrants, is amended by revising paragraph (1) as follows:

1014 "(1) The ~~Commissioner~~ commissioner or any person authorized to make inspections for  
1015 the ~~Commissioner~~ commissioner shall make application for an inspection warrant to a  
1016 person who is a judicial officer ~~within the meaning of Code Section 17-5-21~~ as such term  
1017 is defined in Code Section 17-5-1."

#### 1018 SECTION 3-2.

1019 Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to the  
1020 environmental protection division, is amended by revising paragraph (1) of subsection (d)  
1021 as follows:

1022 "(1) The director or any person authorized to make inspections for the division shall  
1023 make application for an inspection warrant to a person who is a judicial officer ~~within the~~  
1024 ~~meaning of Code Section 17-5-21~~ as such term is defined in Code Section 17-5-1."

#### 1025 SECTION 3-3.

1026 Code Section 15-18-15 of the Official Code of Georgia Annotated, relating to the chief  
1027 assistant district attorney, is amended by revising paragraph (2) of subsection (b) as follows:

1028 "(2) If the district attorney will be temporarily absent from the judicial circuit such that  
1029 he or she is not available to perform the duties of his or her office, the district attorney

1030 may authorize, in writing, the chief assistant district attorney to exercise any of the  
 1031 powers, duties, and responsibilities of the district attorney during such absence, including  
 1032 but not limited to such powers and duties as the district attorney may have pursuant to  
 1033 this title, Code ~~Section 16-11-64~~, and Code ~~Section~~ Sections 17-5-46 and 24-5-507, and  
 1034 the laws of this state relating to the validation of bonds."

1035 **SECTION 3-4.**

1036 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 1037 amended by revising subparagraph (b)(1)(A) of Code Section 16-9-109, relating to disclosure  
 1038 by service providers pursuant to investigation, as follows:

1039 "(A) Obtains a search warrant as provided in Part 1 of Article 2 of Chapter 5 of Title  
 1040 17;"

1041 **SECTION 3-5.**

1042 Said title is further amended by revising paragraph (1) of subsection (s) of Code Section  
 1043 16-13-49, relating to forfeitures, as follows:

1044 "(1) The court may receive and consider, in making any determination of probable cause  
 1045 or reasonable cause, all evidence admissible in determining probable cause at a  
 1046 preliminary hearing ~~or by a magistrate~~ pursuant to ~~Article 1~~ Part 1 of Article 2 of Chapter  
 1047 5 of Title 17, together with inferences therefrom;"

1048 **SECTION 3-6.**

1049 Said title is further amended by revising paragraph (3) of subsection (c) of Code Section  
 1050 16-13-60, relating to privacy and confidentiality, as follows:

1051 "(3) To local, state, or federal law enforcement or prosecutorial officials pursuant to the  
 1052 issuance of a search warrant pursuant to Part 1 of Article 2 of Chapter 5 of Title 17; and"

1053 **SECTION 3-7.**

1054 Code Section 27-4-263 of the Official Code of Georgia Annotated, relating to inspections,  
 1055 is amended by revising paragraph (1) of subsection (b) as follows:

1056 "(1) Any application for an inspection warrant shall be made to a person who is a judicial  
 1057 officer ~~within the meaning of Code Section 17-5-21~~ as such term is defined in Code  
 1058 Section 17-5-1;"

1059 **SECTION 3-8.**

1060 Code Section 49-4-146.3 of the Official Code of Georgia Annotated, relating to forfeiture  
1061 of property and proceeds obtained through Medicaid fraud, is amended by revising paragraph  
1062 (1) of subsection (s), as follow:

1063 "(1) The court may receive and consider, in making any determination of probable cause  
1064 or reasonable cause, all evidence admissible in determining probable cause at a  
1065 preliminary hearing ~~or by a magistrate~~ pursuant to ~~Article 1~~ Part 1 of Article 2 of Chapter  
1066 5 of Title 17, together with inferences therefrom; and"

1067 **PART IV**

1068 **CROSS-REFERENCE AND DELAYED EFFECTIVE DATE**

1069 **SECTION 5-2.**

1070 Code Section 2-15-14 of the Official Code of Georgia Annotated, relating to inspection of  
1071 premises and warrant for inspection, is amended by revising paragraph (1) of subsection (b),  
1072 as follows:

1073 "(1) Any application for an inspection warrant shall be made to a person who is a judicial  
1074 officer ~~within the meaning of Code Section 17-5-21~~ as such term is defined in Code  
1075 Section 17-5-1;"

1076 **PART V**

1077 **ENHANCING WITNESS IDENTIFICATION ACCURACY**

1078 **SECTION 5-1.**

1079 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
1080 amended by adding a new chapter to read as follows:

1081 "CHAPTER 20

1082 17-20-1.

1083 As used in this chapter, the term:

1084 (1) 'Fillers' means individuals who are not suspects.

1085 (2) 'Law enforcement agency' means a governmental unit of one or more individuals  
1086 employed full time or part time by the state, a state agency or department, or a political  
1087 subdivision which performs as its principal function activities relating to preventing and  
1088 detecting crime and enforcing state laws or local ordinances, employees of which unit are  
1089 authorized to make arrests for crimes while acting within the scope of their authority.

1090 (3) 'Live lineup' means an identification procedure in which a suspect and fillers are  
 1091 displayed in person to a witness.

1092 (4) 'Photo lineup' means an identification procedure in which a photograph of a suspect  
 1093 and photographs of fillers are displayed to a witness, either in hard copy form or via  
 1094 computer.

1095 (5) 'Showup' means an identification procedure in which a witness is presented with a  
 1096 single individual.

1097 (6) 'Suspect' means the individual believed by law enforcement to be the possible  
 1098 perpetrator of an alleged crime.

1099 (7) 'Witness' means an individual who observes an alleged crime.

1100 17-20-2.

1101 (a) Not later than July 1, 2016, any law enforcement agency that conducts live lineups,  
 1102 photo lineups, or showups shall adopt written policies for using such procedures for the  
 1103 purpose of determining whether a witness identifies someone as the perpetrator of an  
 1104 alleged crime.

1105 (b) Live lineup, photo lineup, and showup policies shall include the following:

1106 (1) With respect to a live lineup, having an individual who does not know the identity  
 1107 of the suspect conduct the live procedure;

1108 (2) With respect to a photo lineup, having an individual:

1109 (A) Who does not know the identity of the suspect conduct the photo lineup; or

1110 (B) Who knows the identity of the suspect use a procedure in which photographs are  
 1111 placed in folders, randomly shuffled, and then presented to the witness so that the  
 1112 individual conducting such procedure cannot physically see which photograph is being  
 1113 viewed by the witness until the procedure is complete;

1114 (3) Providing the witness with instruction that the perpetrator of the alleged crime may  
 1115 or may not be present in the live lineup or photo lineup;

1116 (4) Composing a live lineup or photo lineup so that the fillers generally resemble the  
 1117 witness's description of the perpetrator of the alleged crime;

1118 (5) Using a minimum of four fillers in a live lineup and a minimum of five fillers in a  
 1119 photo lineup; and

1120 (6) Having the individual conducting a live lineup, photo lineup, or showup seek and  
 1121 document, at the time that an identification of an individual or photograph is made, and  
 1122 in the witness's own words without necessarily referencing a numeric or percentage  
 1123 standard, a clear statement from the witness as to the witness's confidence level that the  
 1124 individual or photograph identified is the individual or photograph of the individual who  
 1125 committed the alleged crime.

1126 (c) All law enforcement agency written policies adopted pursuant to this Code section  
 1127 shall be subject to public disclosure and inspection notwithstanding any provision to the  
 1128 contrary in Article 4 of Chapter 18 of Title 50.

1129 17-20-3.

1130 The court may consider the failure to comply with the requirements of this chapter with  
 1131 respect to any challenge to an identification; provided, however, that such failure shall not  
 1132 mandate the exclusion of identification evidence."

1133 **PART VI**

1134 **EFFECTIVE DATE, APPLICABILITY, AND REPEALER**

1135 **SECTION 6-1.**

1136 (a) Except as provided in subsections (b) and (c) of this section, this Act shall become  
 1137 effective on July 1, 2015, and shall apply to all offenses that occur on and after that date.  
 1138 This Act shall not affect any investigation or prosecution for acts occurring before July 1,  
 1139 2015, and shall not act as an abatement of any such prosecutions. Any evidence obtained in  
 1140 accordance with the former provisions of Articles 1 and 2 of Chapter 5 of Title 17 and Part  
 1141 1 of Article 3 of Chapter 11 of Title 16 shall be admissible in any civil or criminal  
 1142 proceeding commenced on or after July 1, 2015.

1143 (b) Part IV of this Act shall become effective only upon the effective date of a specific  
 1144 appropriation of funds for purposes of Chapter 15 of Title 2 as expressed in a line item of an  
 1145 appropriations Act enacted by the General Assembly.

1146 (c) Part V of this Act shall become effective on July 1, 2016.

1147 **SECTION 6-2.**

1148 All laws and parts of laws in conflict with this Act are repealed.