

Senators Bethel of the 54th and Stone of the 23rd offers the following amendment:

1 *Amend the House substitute to SB 94 (SB 94/HCSFA) by replacing lines 1 through 1079 with*  
 2 *the following:*

3 To amend Part 1 of Article 3 of Chapter 11 of Title 16, Title 17, and Code Section 50-18-72  
 4 of the Official Code of Georgia Annotated, relating to wiretapping, eavesdropping,  
 5 surveillance, and related offenses, criminal procedure, and when public disclosure of agency  
 6 records is not required, respectively, so as to provide improved processes and procedure for  
 7 law enforcement during the execution of their official duties and for the release of  
 8 information to the public; to provide for law enforcement officials to record matters  
 9 occurring in private places or during the execution of a search warrant; to require a procedure  
 10 for enhancing witness identification accuracy; to provide for definitions; to provide for  
 11 written policies relating to witness identification protocol; to provide for policy requirements;  
 12 to prohibit suppression of evidence under certain circumstances; to change certain provisions  
 13 relating to the release of certain audio and video recordings; to provide for related matters;  
 14 to provide for effective dates; to repeal conflicting laws; and for other purposes.

15 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

16 **SECTION 1.**

17 Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,  
 18 relating to wiretapping, eavesdropping, surveillance, and related offenses, is amended by  
 19 revising paragraph (3) of Code Section 16-11-60, relating to definitions, as follows:

20 "(3) 'Private place' means a place where ~~one is entitled reasonably to expect to be safe~~  
 21 ~~from casual or hostile intrusion or surveillance~~ there is a reasonable expectation of  
 22 privacy."

23 **SECTION 2.**

24 Said part is further amended by revising paragraph (2) of Code Section 16-11-62, relating  
 25 to eavesdropping, surveillance, or intercepting communication which invades privacy of  
 26 another, as follows:

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

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

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

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

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

49 **SECTION 3.**

50 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedures is  
 51 amended by revising paragraph (5) of subsection (a) and subsection (b) of Code Section  
 52 17-5-21, relating to grounds for issuance of search warrant and scope of search warrant, as  
 53 follows:

54 ~~"(5) Any item, substance, object, thing, or matter, other than the private papers of any~~  
 55 ~~person, which is tangible instruments, articles or things, any information or data, and~~  
 56 ~~anything that is tangible or intangible, corporeal or incorporeal, visible or invisible~~  
 57 ~~evidence of the commission of the crime for which probable cause is shown, other than~~  
 58 ~~the private papers of any person."~~

59 "(b) When the peace officer is in the process of effecting a lawful search, nothing in this  
 60 Code section shall ~~be construed to preclude him~~ such officer from discovering or seizing  
 61 any stolen or embezzled property, any item, substance, object, thing, or matter, the  
 62 possession of which is unlawful, or any item, substance, object, thing, or matter, other than  
 63 the private papers of any person, which is tangible evidence of the commission of a crime  
 64 against the laws of this state, the United States, or another state. Other personnel, sworn  
 65 or unsworn, acting under the direction of a peace officer executing a search warrant may

66 assist in the execution of such warrant. While in the process of effecting a lawful arrest or  
 67 lawful search, nothing in this Code section nor in Code Section 16-11-62 shall be construed  
 68 to preclude the use of any device, as such term is defined in Code Section 16-11-60, by the  
 69 peace officer executing the search warrant or other personnel assisting in the execution of  
 70 such warrant."

71 **SECTION 4.**

72 Said title is further

73 *By replacing lines 1133 through 1147 with the following:*

74 **SECTION 5.**

75 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public  
 76 disclosure of agency records is not required, is amended in subsection (a) by adding a new  
 77 paragraph to read as follows:

78 "(26.2) Audio and video recordings from devices used by law enforcement officers in a  
 79 place where there is a reasonable expectation of privacy when there is no pending  
 80 investigation, except to the following, provided that the person seeking the audio or video  
 81 recording submits a sworn affidavit that attests to the facts necessary to establish  
 82 eligibility under this paragraph:

83 (A) A duly appointed representative of a deceased's estate when the decedent was  
 84 depicted or heard on such recording;

85 (B) A parent or legal guardian of a minor depicted or heard on such recording;

86 (C) An accused in a criminal case when, in the good faith belief of the accused, such  
 87 recording is relevant to his or her criminal proceeding;

88 (D) A party to a civil action when, in the good faith belief of such party, such recording  
 89 is relevant to the civil action;

90 (E) An attorney for any of the persons identified in subparagraphs (A) through (D) of  
 91 this paragraph; or

92 (F) An attorney for a person who may pursue a civil action when, in the good faith  
 93 belief of such attorney, such recording is relevant to the potential civil action;"

94 **SECTION 6.**

95 (a) Except as provided in subsection (b) of this section, this Act shall become effective on  
 96 July 1, 2015.

97 (b) Section 4 of this Act shall become effective on July 1, 2016.

98 **SECTION 7.**