

Senate Bill 94

By: Senators Bethel of the 54th and Cowser of the 46th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

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

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

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

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

21 style="text-align:center">**SECTION 2.**

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

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

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

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

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

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

47 **SECTION 3.**

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

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

57 "(b) When the peace officer is in the process of effecting a lawful search, nothing in this  
 58 Code section shall ~~be construed to preclude him~~ such officer from discovering or seizing  
 59 any stolen or embezzled property, any item, substance, object, thing, or matter, the  
 60 possession of which is unlawful, or any item, substance, object, thing, or matter, other than

61 the private papers of any person, which is tangible evidence of the commission of a crime  
 62 against the laws of this state, the United States, or another state. Other personnel, sworn  
 63 or unsworn, acting under the direction of a peace officer executing a search warrant may  
 64 assist in the execution of such warrant. While in the process of effecting a lawful arrest or  
 65 lawful search, nothing in this Code section nor in Code Section 16-11-62 shall be construed  
 66 to preclude the use of any device, as such term is defined in Code Section 16-11-60, by the  
 67 peace officer executing the search warrant or other personnel assisting in the execution of  
 68 such warrant."

69 **SECTION 4.**

70 Said title is further amended by adding a new chapter to read as follows:

71 "CHAPTER 20

72 17-20-1.

73 As used in this chapter, the term:

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

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

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

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

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

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

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

90 17-20-2.

91 (a) Not later than July 1, 2016, any law enforcement agency that conducts live lineups,  
 92 photo lineups, or showups shall adopt written policies for using such procedures for the

93 purpose of determining whether a witness identifies someone as the perpetrator of an  
 94 alleged crime.

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

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

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

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

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

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

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

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

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

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

119 17-20-3.

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

123 **SECTION 5.**

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

127 “(26.2) Audio and video recordings from devices used by law enforcement officers in a  
128 place where there is a reasonable expectation of privacy when there is no pending  
129 investigation, except to the following, provided that the person seeking the audio or video  
130 recording submits a sworn affidavit that attests to the facts necessary to establish  
131 eligibility under this paragraph:  
132 (A) A duly appointed representative of a deceased's estate when the decedent was  
133 depicted or heard on such recording;  
134 (B) A parent or legal guardian of a minor depicted or heard on such recording;  
135 (C) An accused in a criminal case when, in the good faith belief of the accused, such  
136 recording is relevant to his or her criminal proceeding;  
137 (D) A party to a civil action when, in the good faith belief of such party, such recording  
138 is relevant to the civil action;  
139 (E) An attorney for any of the persons identified in subparagraphs (A) through (D) of  
140 this paragraph; or  
141 (F) An attorney for a person who may pursue a civil action when, in the good faith  
142 belief of such attorney, such recording is relevant to the potential civil action;”

143 **SECTION 6.**

- 144 (a) Except as provided in subsection (b) of this section, this Act shall become effective on  
145 July 1, 2015.  
146 (b) Section 4 of this Act shall become effective on July 1, 2016.

147 **SECTION 7.**

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