

The Senate Committee on Health and Human Services offered the following substitute to SB 539:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia
2 Annotated, relating to wiretapping, eavesdropping, surveillance, and related offenses, so as
3 to provide that the use of any device to photograph or record patients in a facility operated
4 by a county board of health shall be unlawful; to provide for exceptions; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
9 relating to wiretapping, eavesdropping, surveillance, and related offenses, is amended by
10 revising Code Section 16-11-62, relating to eavesdropping, surveillance, or intercepting
11 communication which invades privacy of another, and divulging private message, as follows:
12 "16-11-62.

13 It shall be unlawful for:

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

- 17 (2) Any person, through the use of any device, without the consent of all persons
18 observed, to observe, photograph, or record the activities of another which occur in any
19 private place and out of public view; provided, however, that it shall not be unlawful:
- 20 (A) To use any device to observe, photograph, or record the activities of persons
21 incarcerated in any jail, correctional institution, or other facility in which persons who
22 are charged with or who have been convicted of the commission of a crime are
23 incarcerated, provided that such equipment shall not be used while the prisoner is
24 discussing his or her case with his or her attorney;
- 25 (B) For an owner or occupier of real property to use for security purposes, crime
26 prevention, or crime detection any device to observe, photograph, or record the
27 activities of persons who are on the property or an approach thereto in areas where there
28 is no reasonable expectation of privacy;
- 29 (C) To use for security purposes, crime prevention, or crime detection any device to
30 observe, photograph, or record the activities of persons who are within the curtilage of
31 the residence of the person using such device. A photograph, videotape, or record made
32 in accordance with this subparagraph, or a copy thereof, may be disclosed by such
33 resident to the district attorney or a law enforcement officer and shall be admissible in
34 a judicial proceeding, without the consent of any person observed, photographed, or
35 recorded; or
- 36 (D) For a law enforcement officer or his or her agent to use a device in the lawful
37 performance of his or her official duties to observe, photograph, videotape, or record
38 the activities of persons that occur in the presence of such officer or his or her agent;
- 39 (3) Any person to go on or about the premises of another or any private place, except as
40 otherwise provided by law, for the purpose of invading the privacy of others by
41 eavesdropping upon their conversations or secretly observing their activities;

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

45 (5) Any person to divulge to any unauthorized person or authority the content or
46 substance of any private message intercepted lawfully in the manner provided for in Code
47 Section 16-11-65;

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

52 (7) Any person, through the use of any device, without the consent of all patients
53 observed, to knowingly photograph or record the activities of patients which occur in a
54 facility that is operated by a county board of health created pursuant to Code Section
55 31-3-1, except that such acts shall not be unlawful as provided in subparagraphs (2)(A)
56 through (2)(D) of this Code section; or

57 ~~(7)~~(8) Any person to commit any other acts of a nature similar to those set out in
58 paragraphs (1) through ~~(6)~~(7) of this Code section which invade the privacy of another."

59

SECTION 2.

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