

Senate Bill 97

By: Senator Setzler of the 37th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-11-62 of the Official Code of Georgia Annotated, relating to
2 eavesdropping, surveillance, or intercepting communication which invades privacy of
3 another, and divulging private message, so as to provide for limitations regarding the use of
4 electronic monitoring devices; to provide for related matters; to repeal conflicting laws; and
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 16-11-62 of the Official Code of Georgia Annotated, relating to eavesdropping,
9 surveillance, or intercepting communication which invades privacy of another, and divulging
10 private message, is amended as follows:

11 "16-11-62.

12 (a) It shall be unlawful for:

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

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

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

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

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

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

56 (8) Any person to intentionally and in a clandestine manner place, or direct someone else
57 to place, a global positioning system monitoring device, or any other electronic
58 monitoring device, on a motor vehicle owned or leased by another person without the
59 consent of such person when such person has a protective order pursuant to Code
60 Section 17-17-16, 19-13-4, or 19-13A-4, or a protective order from another jurisdiction,
61 against the person who places, or directs another to place, the global positioning system
62 monitoring device or other electronic device. Nothing in this paragraph shall be
63 construed to limit electronic monitoring as provided in Code Sections 31-7-12, 31-7-12.1,
64 and 31-6-2; or

65 (9) Any person to intentionally and in a clandestine manner place, or direct someone else
66 to place, any electronic monitoring device to track the physical location of any person

67 without the lawful consent of such person; provided, however, that this paragraph shall
68 not apply:

69 (A) When the owner, lessor, lessee, or lienholder of a motor vehicle or aircraft has
70 consented to the use of such device with respect to such motor vehicle or aircraft;

71 (B) To the actions of United States military personnel in the performance of their
72 official duties with respect to motor vehicles or aircraft;

73 (C) To the actions of a parent, legal guardian, or individual in loco parentis with
74 respect to determining the location or movement of a child or other individual with
75 whom such parent, legal guardian, or individual in loco parentis has such legal
76 relationship; provided, however, that such child is under the age of 21 years or is
77 incapacitated;

78 (D) To the provision of mobile telephone or data service to the operator of or a
79 passenger located within a motor vehicle or aircraft, with respect to determining the
80 location or movement of such operator, passenger, motor vehicle, or aircraft; or

81 (E) To electronic monitoring devices placed in a motor vehicle or aircraft by the
82 manufacturer; or

83 ~~(9)~~(10) Any person to commit any other acts of a nature similar to those set out in
84 paragraphs (1) through ~~(8)~~ (9) of this Code section which invade the privacy of another.

85 (b) Nothing in this Code section shall apply to an automated license plate recognition
86 system as defined in Code Section 35-1-22."

87 **SECTION 2.**

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