

Senate Bill 398

By: Senators Hatchett of the 50th, Anavitarte of the 31st, Strickland of the 42nd, Robertson of the 29th, Bearden of the 30th and others

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 establish criminal offenses of virtual peeping; to prohibit the use of a generative artificial
4 intelligence system to generate images of individuals with the knowledge that such
5 generation was without authorization or consent; to provide for penalties; to provide for an
6 exception; to provide for definitions; to provide for related matters; to provide for an
7 effective date and applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
11 relating to wiretapping, eavesdropping, surveillance, and related offenses, is amended by
12 adding a new Code section to read as follows:

13 "16-11-61.1.

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

15 (1) 'Adult' means any individual 18 years of age or older.

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- 16 (2) 'Generative artificial intelligence system' means an engineered or computer based
17 system that is intended to generate, with some degree of autonomy, synthetic content and
18 information, including, but not limited to, images.
- 19 (3) 'Image' means any readily recognizable photorealistic representation of an individual,
20 including, but not limited to, a photograph.
- 21 (4) 'Individual' means a natural person.
- 22 (5) 'Minor' means an individual who is under the age of 18 years.
- 23 (6) 'Nudity' means:
- 24 (A) The showing of the human male or female genitals, pubic area, or buttocks without
25 any covering or with less than a full opaque covering;
- 26 (B) The showing of the female breasts without any covering or with less than a full
27 opaque covering; or
- 28 (C) The depiction of covered male genitals in a discernibly turgid state.
- 29 (7) 'Obscene material' means material which meets the following requirements:
- 30 (A) To the average person, applying contemporary community standards, taken as a
31 whole, the material predominantly appeals or panders to prurient interest in nudity, sex,
32 or excretion;
- 33 (B) The material, taken as a whole, lacks serious literary, artistic, political, or scientific
34 value; and
- 35 (C) The material depicts or describes sexually explicit conduct, as such term is defined
36 in Code Section 16-12-100, in a patently offensive way.
- 37 (8) 'Photograph' means any photograph or photographic reproduction, still or moving,
38 of an individual, rendered in such a manner that the individual is readily identifiable.
- 39 (b) Except as provided in subsections (c), (d), and (e) of this Code section, a person
40 commits the offense of virtual peeping when such person intentionally causes a generative
41 artificial intelligence system to generate an image of an adult with the knowledge that the
42 generation of such image was not authorized or consented to by such adult. A person who

43 commits the offense of virtual peeping under this subsection shall be guilty of a
44 misdemeanor of a high and aggravated nature and shall be punished as provided by Code
45 Section 17-10-4.

46 (c) Except as provided in subsections (b), (d), and (e) of this Code section, a person
47 commits the offense of virtual peeping when such person intentionally causes a generative
48 artificial intelligence system to generate obscene material that includes an image of an adult
49 with the knowledge that the generation of such material including such image was not
50 authorized or consented to by such adult. A person who commits the offense of virtual
51 peeping under this subsection shall be guilty of a felony and, upon conviction thereof, shall
52 be punished by imprisonment for not less than one nor more than 10 years and a fine of not
53 more than \$50,000.00; provided, however, that, if the person so convicted is a member of
54 the immediate family of the victim, no fine shall be imposed.

55 (d)(1) Except as provided for in subsections (b), (c), and (e) of this Code section, a
56 person commits the offense of virtual peeping when such person intentionally causes a
57 generative artificial intelligence system to generate an image of a minor with the
58 knowledge that the generation of such image was not authorized or consented to by such
59 minor or the parent or legal guardian of such minor. Except as provided in paragraph (2)
60 of this subsection, a person who commits the offense of virtual peeping under this
61 subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by
62 imprisonment for not less than one nor more than 5 years and a fine of not more than
63 \$10,000.00; provided, however, that, if the person so convicted is a member of the
64 immediate family of the victim, no fine shall be imposed.

65 (2) A person who commits the offense of virtual peeping under this subsection shall be
66 guilty of a misdemeanor if:

67 (A) The image generated is of a minor who was at least 14 years of age at the time the
68 image was generated;

69 (B) The image was generated with the consent of the minor; and

70 (C) The defendant was 18 years of age or younger at the time of the offense and:

71 (i) The defendant's offense did not involve the distribution of such image to another
72 person; or

73 (ii) In the court's discretion, and when the prosecuting attorney and the defendant
74 have agreed, if the defendant's offense involved the distribution of such image to
75 another person, but such distribution was not for the purpose of:

76 (I) Harassing, intimidating, or embarrassing the minor depicted; or

77 (II) For any commercial purpose.

78 (e) Except as provided in subsections (b), (c), and (d) of this Code section, a person
79 commits the offense of virtual peeping when such person intentionally causes a generative
80 artificial intelligence system to generate obscene material that includes an image of a
81 minor. A person who commits the offense of virtual peeping under this subsection shall
82 be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for
83 not less than five nor more than 20 years and a fine of not more than \$100,000.00;
84 provided, however, that, if the person so convicted is a member of the immediate family
85 of the victim, no fine shall be imposed. Any person punished as provided in this subsection
86 shall, in addition, be subject to the sentencing and punishment provisions of Code Section
87 17-10-6.2.

88 (f) For any violation of subsections (b), (c), (d), or (e) of this Code section, each image
89 generated connected to such violation shall constitute a separate offense.

90 (g) If the sentence imposed under this Code section is probated, in whole or in part, by the
91 sentencing court, as a condition of such probation, the sentencing court shall have the
92 discretion to impose any or all of the requirements set forth in subsection (b) of Code
93 Section 42-8-35.

94 (h) The provisions of subsections (b) and (d) of this Code section shall not apply to the
95 activities of law enforcement and prosecution agencies in the investigation and prosecution
96 of criminal offenses."

97

SECTION 2.

98 This Act shall become effective upon its approval by the Governor or upon its becoming law
99 without such approval, and shall apply to all offenses committed on or after such date.

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SECTION 3.

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