

The Senate Committee on Judiciary offered the following substitute to SB 398:

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 distribution of computer
4 generated obscene material to a child; to prohibit the use of a generative artificial intelligence
5 system to generate obscene materials of individuals with the knowledge that such generation
6 was without authorization or consent; to provide for penalties; to provide for an exception;
7 to provide for definitions; to provide for related matters; to provide for an effective date and
8 applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

14 "16-11-61.1.

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

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

- 17 (2) 'Generative artificial intelligence system' means an engineered or computer based
18 system that is intended to generate, with some degree of autonomy, synthetic content and
19 information, including, but not limited to, images and text responses.
- 20 (3) 'Image' means any readily recognizable photorealistic representation of an individual,
21 including, but not limited to, a photograph.
- 22 (4) 'Individual' means a natural person.
- 23 (5) 'Minor' means an individual who is under the age of 18 years.
- 24 (6) 'Nudity' means:
- 25 (A) The showing of the human male or female genitals, pubic area, or buttocks without
26 any covering or with less than a full opaque covering;
- 27 (B) The showing of the female breasts without any covering or with less than a full
28 opaque covering; or
- 29 (C) The depiction of covered male genitals in a discernibly turgid state.
- 30 (7) 'Obscene material' means material which meets the following requirements:
- 31 (A) To the average person, applying contemporary community standards, taken as a
32 whole, the material predominantly appeals or panders to prurient interest in nudity, sex,
33 or excretion;
- 34 (B) The material, taken as a whole, lacks serious literary, artistic, political, or scientific
35 value; and
- 36 (C) The material depicts or describes sexually explicit conduct, as such term is defined
37 in Code Section 16-12-100, in a patently offensive way.
- 38 (8) 'Photograph' means any photograph or photographic reproduction, still or moving,
39 of an individual, rendered in such a manner that the individual is readily identifiable.
- 40 (b)(1) A person commits the offense of virtual peeping on a minor when such person
41 intentionally causes a generative artificial intelligence system to generate obscene
42 material that includes an image of a minor. Except as provided in paragraph (2) of this
43 subsection, a person who commits the offense of virtual peeping on a minor shall be

44 guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for
45 not less than five nor more than 20 years and a fine of not more than \$100,000.00;
46 provided, however, that, if the person so convicted is a member of the immediate family
47 of the victim, no fine shall be imposed. Any person punished as provided in this
48 paragraph shall, in addition, be subject to the sentencing and punishment provisions of
49 Code Section 17-10-6.2.

50 (2) A person who commits the offense of virtual peeping on a minor shall be guilty of
51 a misdemeanor if:

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

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

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

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

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

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

62 (II) For any commercial purpose.

63 (c) A person commits the offense of virtual peeping on an adult when such person
64 intentionally causes a generative artificial intelligence system to generate obscene material
65 that includes an image of an adult with the knowledge that the generation of such material
66 including such image was not authorized or consented to by such adult. A person who
67 commits the offense of virtual peeping on an adult shall be guilty of a felony and, upon
68 conviction thereof, shall be punished by imprisonment for not less than one nor more than
69 ten years and a fine of not more than \$50,000.00.

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

72 (e) For a felony violation of this Code section, if the sentence imposed is probated, in
73 whole or in part, by the sentencing court, as a condition of such probation, the sentencing
74 court shall have the discretion to impose any or all of the requirements set forth in
75 subsection (b) of Code Section 42-8-35.

76 (f) The provisions of subsections (b) and (c) of this Code section shall not apply to the
77 activities of law enforcement and prosecution agencies in the investigation and prosecution
78 of criminal offenses.

79 (g)(1) A person who owns or operates a computer program or application that is
80 designed primarily for use by or marketed to children, is accessible to the public, and
81 which utilizes a generative artificial intelligence system to generate text responses to a
82 user's prompts shall be guilty of the offense of distribution of computer generated
83 obscene material to a child if such person knows or reasonably should have known that
84 such computer program or application was reasonably likely to and in fact did provide
85 a description of obscene material to a child.

86 (2) A person who commits an offense under this subsection shall be guilty of a felony
87 and, upon conviction thereof, shall be punished by imprisonment for not less than one
88 year nor more than 15 years."

89 **SECTION 2.**

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

92 **SECTION 3.**

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