Georgia State University Law Review

Volume 17
Issue 1 *Fall 2000*

Article 18

3-1-2000

CRIMES AND OFFENSES Offenses Against Public Order and Safety: Invasions of Privacy; Wiretapping, Eavesdropping, Surveillance, and Related Offenses

Jean Gutermuth

CRIMES AND OFFENSES

Offenses Against Public Order and Safety: Invasions of Privacy; Wiretapping, Eavesdropping, Surveillance, and Related Offenses

CODE SECTIONS:	O.C.G.A. §§ 16-11-60, -62 (amended)
BILL NUMBER:	SB 316
ACT NUMBER:	723
GEORGIA LAWS:	2000 Ga. Laws 875
SUMMARY:	The Act amends the Georgia Code as it relates to the crimes of wiretapping, eavesdropping, and surveillance, by clarifying provisions relating to these crimes; by providing more specifically for violations involving the use of photographic and video equipment; by changing the definition of the term 'device;' by changing provisions relating to unlawful observation, photographing, and recording of another in a private place; and by making it unlawful for any person to sell, give, or distribute to any person or entity any photograph, videotape, or record of the activities of another which occur in any private place and out of public view without the consent of all persons observed.
EFFECTIVE DATE:	July 1, 2000

History

The former Georgia Code made wiretapping, eavesdropping, and surveillance a crime, but the Code did not include language that would cover photographic images, a growing problem in light of the developments on the world wide web.[1] Senator

1. *See* Audio Recording of Senate Proceedings, Feb. 4, 2000 (remarks by Sen. Michael Meyer von Bremen) <http://www.ganet.org/services/leg/audio/2000archive.html> [hereinafter

Michael Meyer von Bremen was speaking at a Lion's Club meeting when it was brought to his attention that photographic devices were being used by landlords to tape tenants and by tanning salon owners to tape customers undressing.[2] These videos are then posted on the Internet for anyone to see, thus invading the privacy of the individuals who were secretly taped.[3] At the time SB 316 was introduced, a Florida court was considering a civil case in which one thousand college athletes brought a class action for being taped secretly in their dressing rooms.[4] Men entered the dressing rooms disguised as referees or coaches and taped the athletes, mostly wrestlers, with cameras hidden in their gym bags.[5] These videos were then displayed on web pages entitled, "Straight off the Mat" and "Shower Time."[6] Georgia was one of the first states to address this problem by changing the language in the wiretapping statute to include the language "camera, photographic equipment, [or] video equipment."[7]

SB 316

Introduction

On January 13, 2000, Senators Rene' Kemp, Michael Meyer von Bremen, Daniel Lee, and Greg Hecht of the 3rd, 12th, 29th, and 34th Senate Districts, respectively, sponsored SB 316.[8] The bill was introduced on January 13, 2000, to amend the Georgia wiretapping laws, reflecting the changes in technology, specifically photographic and video devices.[9] The Senate assigned the bill to its Judiciary Committee, which favorably

---

Senate Audio]; *see also* Audio Recording of House Proceedings, Mar. 13, 2000 (remarks by Rep. Chuck Sims) <http://www.ganet.org/services/leg/audio/2000archive.html> [hereinafter House Audio].

2. *See* Senate Audio, *supra* note 1; *see also* Dana Hawkins, *Cheap Video Cameras Are Monitoring Our Every Move*, U.S. NEWS & WORLD REPORT, Jan. 17, 2000, at 52.

3. *See* House Audio, *supra* note 1; Senate Audio, *supra* note 1; *see also* Hawkins, supra note 2.

4. *See* Senate Audio, *supra* note 1; *see also* Hawkins, *supra* note 2.

5. *See* Senate Audio, *supra* note 1; *see also* Hawkins, *supra* note 2.

6. *See* Senate Audio, *supra* note 1; *see also* Hawkins, *supra* note 2.

7. O.C.G.A. § 16-11-60(1) (Supp. 2000); *see also* Senate Audio, *supra* note 1.

8. *See* SB 316, as introduced, 2000 Ga. Gen. Assem.

9. *See* SB 316, as introduced, 2000 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

reported the bill, as substituted, on February 2, 2000.[10] On February 4, 2000, the Senate adopted the Committee substitute and passed the bill.[11] Representative Chuck Sims of the 167th District introduced SB 316 in the House on February 7, 2000.[12] The House then assigned the bill to its Judiciary Committee, which favorably reported the bill, as substituted, on February 29, 2000.[13] The House adopted the Committee substitute and a floor amendment on March 13, 2000.[14] On March 15, 2000, the Senate agreed to the House version of the bill.[15] The General Assembly forwarded the bill to Governor Roy Barnes, who signed SB 316 into law on April 27, 2000.[16]

Consideration by the Senate Judiciary Committee

The Senate assigned the bill to its Judiciary Committee on January 13, 2000.[17] In its substitute, the Committee divided Code section 16-11-62(2) into two subsections.[18] The language of the first subsection, (2)(A), was originally contained within section (2), as introduced, and created an exception for monitoring the behavior of incarcerated individuals.[19] The Committee gave this exception its own subsection and changed the language, "it shall not be unlawful to use any *camera, photographic equipment, video equipment, or other devices*" (emphasis added) to, "it shall not be unlawful: to use any *device*" (emphasis added).[20] Additionally, the Committee added subsection (2)(B), creating another exception that allows anyone to videotape or record individuals for security purposes when

---

10. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
11. *See* Georgia Senate Voting Record, SB 316 (Feb. 4, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
12. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000; House Audio, *supra* note 1.
13. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
14. *See* Georgia House of Representatives Voting Record, SB 316 (Mar. 13, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
15. *See* Georgia Senate Voting Record, SB 316 (Mar. 15, 2000).
16. *See* 2000 Ga. Laws 875, § 4, at 877.
17. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
18. *Compare* SB 316, as introduced, 2000 Ga. Gen. Assem., *with* SB 316 (SCS), 2000 Ga. Gen. Assem.
19. *Compare* SB 316, as introduced, 2000 Ga. Gen. Assem., *with* SB 316 (SCS), 2000 Ga. Gen. Assem.
20. *Compare* SB 316, as introduced, 2000 Ga. Gen. Assem., *with* SB 316 (SCS), 2000 Ga. Gen. Assem.

the individuals are in a public or semipublic location and have no reasonable expectation of privacy.[21] The subsection offered by the Committee provided that "it shall not be unlawful: (B) To use for customary security purposes, crime prevention, or crime detection, any device to observe, photograph, or record the activities of persons who are in public or semipublic locations where they have no reasonable expectation of privacy."[22]

This subsection addressed the concerns of legislators, law enforcement officials, and private detectives.[23] It allows property owners to protect their property and private detectives to continue to observe and record the activities of others, so long as the subjects of the recording are not in a private location and do not have a reasonable expectation of privacy.[24]

On the Senate Floor

The Senate Judiciary Committee returned the Committee substitute to the Senate, and the Senate voted on this version of the bill on February 4, 2000.[25] Senator Meyer von Bremen discussed the bill on the floor and asked for support of the bill.[26] No one debated the bill or asked questions of the Senator.[27] The Senate then adopted the Committee substitute and unanimously passed the bill.[28]

Consideration by the House Judiciary Committee

The Senate forwarded SB 316 to the House on February 7, 2000, and the House assigned the bill to its Judiciary Committee.[29] The Judiciary Committee favorably reported the bill, as substituted, on February 29, 2000.[30] First, the Committee

---

21. *Compare* SB 316, as introduced, 2000 Ga. Gen. Assem., *with* SB 310 (SCS), 2000 Ga. Gen. Assem.
22. SB 316 (SCS), 2000 Ga. Gen. Assem.
23. *See* House Audio, *supra* note 1 (remarks by Reps. Kathy Cox and Chuck Sims).
24. *See id.*
25. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
26. *See* Senate Audio, *supra* note 1.
27. *See id.*
28. *See* Georgia Senate Voting Record, SB 316 (Feb. 4, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
29. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.
30. *See id.*

made a minor language change in Code section 16-11-60(1).[31] This subsection defines the term 'device' as "an instrument or apparatus used for . . . observing, photographing, recording, or transmitting visual images."[32] The Committee added videotaping as an activity included in this list.[33] Second, the Committee added and changed language in Code section 16-11-62(2)(B), which creates an exemption for customary security purposes.[34] The Committee added language, "[f]or an owner or occupier of real property," to the beginning of the subsection, thus limiting the applicability of this exemption to property owners or occupiers.[35] Additionally, the Committee changed the language, "in public or semipublic locations" to "on the property or an approach thereto," thus requiring that the exempted observation be limited to the property.[36] The House Committee also changed the language of the Senate Committee substitute, which limited the exemption to "where [individuals observed, recorded, or photographed] have no reasonable expectation of privacy."[37] The House Judiciary Committee changed that language to "where there is no reasonable expectation of privacy."[38]

Finally, the most substantial change in the House Committee substitute was the addition of subsection (6) to Code section 16-11-62.[39] This subsection provided that is unlawful for "[a]ny person to sell, give, or distribute, without legal authority, to any person or entity any photograph, videotape, or record, or copies thereof, of the activities of another which occur in any private place and out of public view without the consent of all persons

---

31. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

32. SB 316 (SCS), 2000 Ga. Gen. Assem.

33. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

34. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

35. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

36. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

37. SB 316 (SCS), 2000 Ga. Gen. Assem.

38. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

39. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

observed."[40] The Committee added this subsection pursuant to a conversation between Senator Michael Meyer von Bremen and Representative Chuck Sims.[41] Representative Sims asked Senator Meyer von Bremen if the House could amend the bill to include this subsection to prohibit the distribution of photographs and videos, and Senator Meyer von Bremen consented.[42] This subsection prohibits any distribution of videotapes or other records of the private activities of others unless consent has been obtained by *all* persons observed.[43] This all-party consent requirement only applies to Code section 16-11-62(6), concerning the distribution of videotapes or photographs.[44] The rest of the wiretapping statute remains intact, and it remains legal to tape a telephone conversation with the consent of only one party to the conversation.[45]

---

40. SB 316 (HCS), 2000 Ga. Gen. Assem.

41. *See* Electronic Mail Interview with Sen. Michael Meyer von Bremen, Senate District No. 12 (July 10, 2000) [hereinafter Meyer von Bremen Interview]. Representative Chuck Sims of the 167th District had introduced HB 1576, which addressed the problem of distribution of pornography on the Internet, where the privacy of those photographed and videotaped had been violated. *See id.* The purpose of HB 1576 was incorporated into SB 316 through the addition of subsection(6). *See id.*; *see also* Telephone Interview with Rep. Chuck Sims, House District No. 167 (July 11, 2000) [hereinafter Sims Interview].

42. *See* Meyer von Bremen Interview, *supra* note 41; *see also* Sims Interview, *supra* note 41.

43. *Compare* SB 316 (SCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCS), 2000 Ga. Gen. Assem.

44. *See* Sims Interview, *supra* note 41. Representative Sims commented that the "all consent" requirement could potentially create litigation as it pertains to interspousal immunity. *See id.* Specifically, this issue could arise in situations where one spouse secretly tapes the behavior of himself or herself and his or her spouse. *See id.* Representative Sims commented that the courts will probably treat this issue the same as they have treated the issue of interspousal immunity in the past, within the context of telephone wiretapping. *See id.*; *see also* Telephone Interview with Rep. Earl Ehrhart, House District No. 36 (July 10, 2000) [hereinafter Ehrhart Interview] (expressing belief that the "all consent" requirement applied only to videotaping and not telephone wiretapping).

45. *See* O.C.G.A. § 16-11-62 (Supp. 2000). Georgia courts have interpreted the wiretapping statute as containing an implicit exemption if one party to a telephone conversation consents. *See* State v. Birge, 240 Ga. 501 (1978); Sheppard v. Reid, 193 Ga. App. 703 (1991); Hall v. State, 155 Ga. App. 724 (1980); Mitchell v. State, 142 Ga. App. 802 (1977).

On the House Floor

The House adopted the Committee substitute and a floor amendment on March 13, 2000.[46] Representatives Chuck Sims, Len Walker, and Earl Ehrhart, of the 167th, 141st, and 36th Districts, respectively, offered the floor amendment.[47] The amendment made minor language changes to the bill.[48] In Code section 16-11-62(2)(B), the amendment deleted "customary" before "security purposes" within the exemption for an owner or occupier of real property.[49] Additionally, the floor amendment added "in areas" before the clause "where there is no reasonable expectation of privacy," further clarifying the meaning of the clause.[50] No one objected to the amendment; therefore, the House adopted the floor amendment.[51] The House unanimously passed SB 316, as substituted and amended.[52] The Senate agreed to the House version of the bill on March 15, 2000,[53] and Governor Roy Barnes signed SB 316 into law on April 27, 2000.[54]

The Act

The Act amends Code sections 16-11-60 and -62, relating to the crimes of wiretapping, eavesdropping, surveillance, and related offenses.[55] The Act adds language to the Code sections to address the new ways that personal privacy can be violated through the use of hidden video cameras and the Internet.[56]

---

46. *See* Georgia House of Representatives Voting Record, SB 316 (Mar. 13, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

47. *See* House Audio, *supra* note 1 (remarks by Clerk of the House); *see also* Ehrhart Interview, *supra* note 44.

48. *Compare* SB 316 (HCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCSFA), 2000 Ga. Gen. Assem.

49. *Compare* SB 316 (HCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCSFA), 2000 Ga. Gen. Assem.

50. *Compare* SB 316 (HCS), 2000 Ga. Gen. Assem., *with* SB 316 (HCSFA), 2000 Ga. Gen. Assem.

51. *See* House Audio, *supra* note 1 (vote on amendments).

52. *See* Georgia House of Representatives Voting Record, SB 316 (Mar. 13, 2000).

53. *See* Georgia Senate Voting Record, SB 316 (Mar. 15, 2000)

54. *See* 2000 Ga. Laws 875, § 4, at 877.

55. *Compare* 1995 Ga. Laws 1051, § 2, at 1053-54 (formerly found at O.C.G.A. § 16-11-60 (1999)), *and* 1976 Ga. Laws 1100, § 1, at 1100-02 (formerly found at O.C.G.A. § 16-11-62 (1999)), *with* O.C.G.A. §§ 16-11-60, -62 (Supp. 2000).

56. *Compare* 1995 Ga. Laws 1051, § 2, at 1053-54 (formerly found at O.C.G.A. § 16-11-60 (1999)), *and* 1976 Ga. Laws 1100, § 1, at 1100-02 (formerly found at O.C.G.A. § 16-11-62 (1999)), *with* O.C.G.A. §§ 16-11-60, -62 (Supp. 2000).

Section 1 of the Act amends Code section 16-11-60(1), which defines 'device,' by adding videotaping to the list of prohibited behavior and by adding video equipment to a new list of equipment that can be used to violate the law, along with "any camera, photographic equipment, . . . or other similar equipment."[57]

Section 2 of the Act changes Code section 16-11-62(2), a specific list of equipment that can be used to violate the law to the simple language, "any device," thus encompassing current and any future technological advances.[58] Section 2 adds two subsections to Code section 16-11-62(2).[59] The first subsection, 16-11-62(2)(A), is an exception to the general prohibition to allow monitoring and recording of prisoners and other incarcerated individuals.[60] The second subsection, 16-11-62(2)(B), creates an exemption that allows owners or occupiers of real property to videotape or record for security purposes, when those being monitored have no reasonable expectation of privacy.[61] Finally, the Act adds subsection (6) to Code section 16-11-62 to make it illegal to sell, give, or distribute a photograph, videotape, or record of the private activities of another without the consent of all parties observed.[62]

Joan Gutermuth

57. *Compare* 1995 Ga. Laws 1051, § 2, at 1053 (formerly found at O.C.G.A. § 16-11-60(1) (1999)), *with* O.C.G.A. § 16-11-60(1) (Supp. 2000).

58. *Compare* 1976 Ga. Laws 1100, § 1, at 1100-02 (formerly found at O.C.G.A. § 16-11-62(2) (1999)), *with* O.C.G.A. § 16-11-62(2) (Supp. 2000).

59. *Compare* 1976 Ga. Laws 1100, § 1, at 1100-02 (formerly found at O.C.G.A. § 16-11-62(2) (1999)), *with* O.C.G.A. § 16-11-62(2) (Supp. 2000).

60. *See* O.C.G.A. § 16-11-62(2)(A) (Supp. 2000).

61. *See id.* § 16-11-62(2)(B).

62. *Compare* 1976 Ga. Laws 1100, § 1, at 1100-02 (formerly found at O.C.G.A. § 16-11-62 (1999)), *with* O.C.G.A. § 16-11-62(6) (Supp. 2000).