

OCGA 16-11-90

TITLE 16 Crimes and Offenses (Chs. 1 – 17)

CHAPTER 11 Offenses Against Public Order and Safety (Arts. 1 – 6)

Article 3 Invasions of Privacy (Parts. 1 – 3)

PART 3 Invasion of Privacy (§§ 16-11-90 – 16-11-92)

16-11-90. Prohibition on nude or sexually explicit electronic transmissions.

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

(1) "Harassment" means engaging in conduct directed at a depicted person that is intended to cause substantial emotional harm to the depicted person.

(2) "Nudity" means:

(A) The showing of the human male or female genitals, pubic area, or buttocks without any covering or with less than a full opaque covering;

(B) The showing of the female breasts without any covering or with less than a full opaque covering; or

(C) The depiction of covered male genitals in a discernibly turgid state.

(3) "Sexually explicit conduct" shall have the same meaning as set forth in Code Section 16-12-100.

(b) A person violates this Code section if he or she, knowing the content of a transmission or post, knowingly and without the consent of the depicted person:

(1) Electronically transmits or posts, in one or more transmissions or posts, a photograph or video which depicts nudity or sexually explicit conduct of an adult, including a falsely created videographic or still image, when the transmission or post is harassment or causes financial loss to the depicted person, serves no legitimate purpose to the depicted person, and is transmitted or posted:

(A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post, linked list, live webcam, web page, or message board that advertises or promotes its service as showing, previewing, or distributing sexually explicit conduct; or

(B) Via any other electronic means that does not fall within subparagraph (A) of this paragraph; or

(2) Causes the electronic transmission or posting, in one or more transmissions or posts, of a photograph or video which depicts nudity or sexually explicit conduct of an adult, including a falsely created videographic or still image, when the transmission or post is harassment or causes financial loss to the depicted person, serves no legitimate purpose to the depicted person, and is transmitted or posted:

(A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post, linked list, live webcam, web page, or message board that advertises or promotes its service as showing, previewing, or distributing sexually explicit conduct; or

(B) Via any other electronic means that does not fall within subparagraph (A) of this paragraph.

Nothing in this Code section shall be construed to impose liability on an interactive computer service, as such term is defined in 47 U.S.C. Section 230(f)(2), or an information service or telecommunications service, as such terms are defined in 47 U.S.C. Section 153, for content provided by another person.

(c)

(1) Any person who violates subparagraph (b)(1)(B) or (b)(2)(B) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that upon a second or subsequent violation of this Code section, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than \$100,000.00, or both.

(2) Any person who violates subparagraph (b)(1)(A) or (b)(2)(A) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than \$100,000.00, or both. Upon the second and all subsequent convictions for violations of subparagraph (b)(1)(A) or (b)(2)(A) of this Code section, such person shall be guilty of a felony and shall be punished by imprisonment of not less than two nor more than five years, a fine of not more than \$100,000.00, or both.

(d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by this Code section which the person engages in while:

(1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides in this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides within or outside this state.

(e) The provisions of subsection (b) of this Code section shall not apply to:

(1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses;

(2) Legitimate medical, scientific, or educational activities;

(3) Any person who transmits or posts a photograph or video depicting only himself or herself engaged in nudity or sexually explicit conduct;

(4) The transmission or posting of a photograph or video that was originally made for commercial purposes;

(5) Any person who transmits or posts a photograph or video depicting a person voluntarily engaged in nudity or sexually explicit conduct in a public setting; or

(6) A transmission that is made pursuant to or in anticipation of a civil action.

(f) There shall be a rebuttable presumption that an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet, for content provided by another person, does not know the content of an electronic transmission or post.

(g) Any violation of this Code section shall constitute a separate offense and shall not merge with any other crimes set forth in this title.

2010 Georgia Code
TITLE 16 - CRIMES AND OFFENSES
CHAPTER 9 - FORGERY AND FRAUDULENT PRACTICES
ARTICLE 6 - COMPUTER SYSTEMS PROTECTION
PART 1 - COMPUTER CRIMES
§ 16-9-93 - Computer crimes defined; exclusivity of article

(a) **Computer theft.** Any person who uses a computer or computer network with knowledge that such use is without authority and with the intention of:

(1) Taking or appropriating any property of another, whether or not with the intention of depriving the owner of possession;

(2) Obtaining property by any deceitful means or artful practice; or

(3) Converting property to such person's use in violation of an agreement or other known legal obligation to make a specified application or disposition of such property

shall be guilty of the crime of computer theft.

(b) **Computer Trespass.** Any person who uses a computer or computer network with knowledge that such use is without authority and with the intention of:

(1) Deleting or in any way removing, either temporarily or permanently, any computer program or data from a computer or computer network;

(2) Obstructing, interrupting, or in any way interfering with the use of a computer program or data; or

(3) Altering, damaging, or in any way causing the malfunction of a computer, computer network, or computer program, regardless of how long the alteration, damage, or malfunction persists shall be guilty of the crime of computer trespass.

(c) **Computer Invasion of Privacy.** Any person who uses a computer or computer

network with the intention of examining any employment, medical, salary, credit, or any other financial or personal data relating to any other person with knowledge that such examination is without authority shall be guilty of the crime of computer invasion of privacy.

(d) **Computer Forgery.** Any person who creates, alters, or deletes any data contained in any computer or computer network, who, if such person had created, altered, or deleted a tangible document or instrument would have committed forgery under Article 1 of this chapter, shall be guilty of the crime of computer forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to the crime of computer forgery if a creation, alteration, or deletion of data was involved in lieu of a tangible document or instrument.

(e) **Computer Password Disclosure.** Any person who discloses a number, code, password, or other means of access to a computer or computer network knowing that such disclosure is without authority and which results in damages (including the fair market value of any services used and victim expenditure) to the owner of the computer or computer network in excess of \$500.00 shall be guilty of the crime of computer password disclosure.

(f) Article not Exclusive. The provisions of this article shall not be construed to preclude the applicability of any other law which presently applies or may in the future apply to any transaction or course of conduct which violates this article.

O.C.G.A. § 16-11-91

§ 16-11-91. Use or installation of device to film underneath or through an individual's clothing under certain circumstances

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

(1) "Device" means an instrument or apparatus used for observing, photographing, videotaping, recording, or transmitting visual images, including but not limited to a camera, photographic equipment, video equipment, mobile phone, or other similar equipment.

(2) "Intimate parts" shall have the same meaning as set forth in Code Section 16-6-22.1.

(b)

(1) Notwithstanding Code Section 16-11-90, it shall be unlawful for any person to, knowingly and without the consent of the individual observed, use or install a device for the purpose of surreptitiously observing, photographing, videotaping, filming, or video recording such individual underneath or through such individual's clothing, for the purpose of viewing the intimate parts of the body of or the undergarments worn by such individual, under circumstances in which such individual has a reasonable expectation of privacy, regardless of whether it occurs in a public place.

(2) It shall be unlawful to disseminate any image or recording with knowledge that it was taken or obtained in violation of paragraph (1) of this subsection.

(c) Any person convicted of violating this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one year nor more than five years, a fine of not more than \$10,000.00, or both, or in the discretion of the court, as for a misdemeanor.

(d) Subsection (b) of this Code section shall not apply to:

(1) The lawful activities of law enforcement and prosecution agencies; or

(2) A business's or entity's surveillance device used in the ordinary course of its business, provided that signage conspicuously warns of such surveillance and the use of such device is primarily designed to detect unlawful activity.

(e) Any violation of this Code section shall constitute a separate offense and shall not merge with any other crimes set forth in this title.

O.C.G.A. § 16-11-62

§ 16-11-62. Eavesdropping, surveillance, or intercepting communication which invades privacy of another; divulging private message

It shall be unlawful for:

- (1) Any person in a clandestine manner intentionally to overhear, transmit, or record or attempt to overhear, transmit, or record the private conversation of another which shall originate in any private place;
- (2) Any person, through the use of any device, without the consent of all persons observed, to observe, photograph, or record the activities of another which occur in any private place and out of public view; provided, however, that it shall not be unlawful:
 - (A) To use any device to observe, photograph, or record the activities of persons incarcerated in any jail, correctional institution, or other facility in which persons who are charged with or who have been convicted of the commission of a crime are incarcerated, provided that such equipment shall not be used while the prisoner is discussing his or her case with his or her attorney;
 - (B) For an owner or occupier of real property to use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are on the property or an approach thereto in areas where there is no reasonable expectation of privacy;
 - (C) To use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are within the curtilage of the residence of the person using such device. A photograph, videotape, or record made in accordance with this subparagraph, or a copy thereof, may be disclosed by such resident to the district attorney or a law enforcement officer and shall be admissible in a judicial proceeding, without the consent of any person observed, photographed, or recorded; or
 - (D) For a law enforcement officer or his or her agent to use a device in the lawful performance of his or her official duties to observe, photograph, videotape, or record the activities of persons that occur in the presence of such officer or his or her agent;
- (3) Any person to go on or about the premises of another or any private place, except as otherwise provided by law, for the purpose of invading the privacy of others by eavesdropping upon their conversations or secretly observing their activities;
- (4) Any person intentionally and secretly to intercept by the use of any device, instrument, or apparatus the contents of a message sent by telephone, telegraph, letter, or by any other means of private communication;
- (5) Any person to divulge to any unauthorized person or authority the content or substance of any private message intercepted lawfully in the manner provided for in Code Section 16-11-65;
- (6) Any 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 observed; or
- (7) Any person to commit any other acts of a nature similar to those set out in paragraphs (1) through (6) of this Code section which invade the privacy of another.