

**Members of the Senate Judiciary Committee  
2011 Session**

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**Ex-Officio, District 28**

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## SENATE JUDICIARY COMMITTEE RULES

### 2011-2012

1. Quorum of the Committee shall be six (6) members. Every member, including ex-officio members, shall count as a voting member for purposes of establishing a quorum at any given meeting.
2. The Chairman shall determine which bills, resolutions, substitutes, or amendments are to be considered and the order in which said measures are considered; the Chairman shall have the authority and discretion to call a bill, resolution, substitute or amendment for debate and explanation only or to limit consideration of such measures.
3. The Chairman shall have the authority to refer bills and resolutions to subcommittee for study. Such subcommittees in turn shall have the authority to make recommendation on such measures to the full Committee at such times as shall be designated by the Chairman. All actions of the subcommittees shall be approved or disapproved by the standing committee.
4. The Chairman shall have the authority to schedule, manage, and regulate the debate on bills, resolutions, substitutes, and amendments, and may in his discretion recognize motions related to such measures and the order in which they are recognized.
5. When a bill or resolution is before the committee for consideration, the following shall be the precedence of the motions:
  1. a motion that a bill do pass;
  2. a motion that a bill do not pass;
  3. a motion to postpone to a time certain;
  4. a motion to refer a bill to a subcommittee.

All motions shall receive a Second before consideration.

6. The Committee shall convene, recess and adjourn upon the order of the Chairman.
7. A bill or resolution will be considered only after presentation by its principal author or other legislator whom he/she may designate unless otherwise directed by the Chairman. The principal author shall be the legislator whose name appears first on the list of authors. The Committee shall not vote on any bill until the author or his or her designee has been given the opportunity to appear and be heard.

8. The Chairman reserves the right to delay or decline action on substitutes and amendments not provided to the Chairman in writing at least 24 hours prior to the hearing in which they are presented.
9. The Chairman shall not vote unless the committee shall be equally divided or unless his or her vote if given in the minority will make the division equal. In case the vote is equally divided, the Chairman must vote.
10. Any Member or Members of the Committee who disagree with the majority report of the Committee shall be privileged to file a minority report if they so desire.
11. These rules may be amended upon a motion duly made and subsequently approved by two-thirds of the members of the Committee.
12. Where these rules are silent on a specific issue, the Rules of the Senate as adopted shall govern. If the Rules of the Senate are silent on a specific issue, Mason's Manual of Legislative Procedure shall govern.

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Monday, January 24, 2011**

The Senate Judiciary Committee held its first meeting of the 2011 Session on Monday, January 24, 2011, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 2:05 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Charlie Bethel, 54 <sup>th</sup>
Senator Jason Carter, 42 <sup>nd</sup>	Senator William Ligon, 3 <sup>rd</sup>
Senator Joshua McKoon, 29 <sup>th</sup>	Senator Ronald Ramsey, 43 <sup>rd</sup>
Senator Mitch Seabaugh, Ex-Officio, 28 <sup>th</sup>	

**NOTE:** Senators Cowsert, 46<sup>th</sup>, Crosby, 13<sup>th</sup>, Brown, 26<sup>th</sup>, Fort, 39<sup>th</sup>, and Stone, 23<sup>rd</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The Committee Rules were read and Chairman Hamrick asked for a motion on the adoption of the rules. Senator Carter, 42<sup>nd</sup>, made a motion to adopt the rules, and Senator Bethel, 54<sup>th</sup>, seconded the motion. The vote was unanimous (6-0) in favor of adoption of the rules.

**RULES ADOPTED**

**NOTE:** Yeas were Senators Bethel, Jason Carter, Ligon, McKoon, Ramsey, and Seabaugh.

Chairman Hamrick established two subcommittees within the Senate Judiciary Committee in order to assign legislation for review that would make efficient use of committee time this session. These subcommittees were established as Division I and Division II and the following appointments were made:

**Division I**

Senator Bill Cowsert, 46<sup>th</sup>, Chairman  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Robert Brown, 26<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Mitch Seabaugh, 28<sup>th</sup>

**Division II**

Senator John Crosby, 13<sup>th</sup>, Chairman  
Senator Jason Carter, 42<sup>nd</sup>  
Senator Vincent Fort, 39<sup>th</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Jesse Stone, 23<sup>rd</sup>

Chairman Hamrick stated he would serve as an Ex-Officio member of both subcommittees, and that Pursuant to Senate Rule 2-1.7(d) the Chair of each subcommittee shall arrange to have minutes kept for the meetings of the Subcommittee and shall see that proceedings of all meetings were reduced to writing. This record would show:

- (i) the time and place of each meeting of the committee,
- (ii) the attendance of the committee members,
- (iii) an accurate record of all votes taken,
- (iv) the number of all bills acted upon,
- (v) all motions and results,
- (vi) any appearances by any persons other than members of the committee,

- (vii) the date and time the committee convened and adjourned,
- (viii) and such additional information as the committee shall determine.

Chairman Hamrick stated that these appointments were effective immediately and shall coincide with the Senators' terms of office.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 2:45 p.m.

Respectfully submitted,

/s/ Senator Bill Hamrick, 30<sup>th</sup>, Chairman

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Monday, January 31, 2011**

The Senate Judiciary Committee held its second meeting of the 2011 Session on Monday, January 31, 2011, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 3:05 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator William Ligon, 3 <sup>rd</sup>
Senator Bill Cowsert, 46 <sup>th</sup> , Vice Chair	Senator Joshua McKoon, 29 <sup>th</sup>
Senator John Crosby, 13 <sup>th</sup> , Secretary	Senator Ronald Ramsey, 43 <sup>rd</sup>
Senator Charlie Bethel, 54 <sup>th</sup>	Senator Jesse Stone, 23 <sup>rd</sup>
Senator Jason Carter, 42 <sup>nd</sup>	Senator Mitch Seabaugh, Ex-Officio, 28 <sup>th</sup>
Senator Vincent Fort, 39 <sup>th</sup>	

**NOTE:** Senator Brown, 26<sup>th</sup>, was absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was heard:

**SB 19 (Hill, 32<sup>nd</sup>) Forgery/Fraudulent Practices; definitions; medical identity fraud; provide punishment**

**Senator Hill, 32<sup>nd</sup>**, presented **SB 19** to the committee stating that the intent of this legislation would be to create a new crime under the same article that governed identity fraud. Unless otherwise noted, all laws that pertain to general consumer identity fraud would now also apply to medical identity fraud. Medical identity fraud would be considered the willful and fraudulent use of another person's identifying information for the purpose of obtaining medical care, prescription drugs, other health care services, or financial gain. The following categories were created by this legislation:

- 1) Use or possession with intent to fraudulently use identifying information without consent;
- 2) Use of identifying information of a person under 18 when the offender has custodial authority;
- 3) Use or possession with intent to fraudulently use a dead person's identifying information;
- 4) Creation, use or possession with intent to fraudulently use any counterfeit identifying information of a fictitious person for the purpose of committing or facilitating the commission of a crime or fraud on another person; or
- 5) Creation, use or possession with intent to fraudulently use any counterfeit identifying information of a real person for the purpose of committing or facilitating the commission of a crime or fraud on another person without consent.

Senator Hill, 32<sup>nd</sup>, stated that the legislation would give the Attorney General and prosecuting attorneys would have the authority to prosecute medical identity theft, and that this legislation would bring Georgia law in alignment with several other states. Medical information is too easy to obtain and the purpose of this legislation is to give a more severe penalty. Chairman Hamrick asked if it were really necessary to create a separate statute for this issue and would it not be a cleaner fix to just insert the term 'medical identity theft' in current law? Senator Hill, 32<sup>nd</sup>, stated that he felt that this legislation would help create a cause of action for prosecutors, and that we don't have the

same provisions in place for medical information as we do for financial information. Chairman Hamrick stated that more research needed to be done on the issue to make the new law flow with current law. He would like to explore the current identity theft statute to see if there were simple additions that could be made. There was no testimony for or against the legislation. Chairman Hamrick stated that the committee would take up the legislation again following some research into areas of question.

**SB 19 HEARING ONLY**

**SB 11 (Seay, 34<sup>th</sup>) Garnishment proceedings; extend the effective period of a continuing garnishment**

**Senator Seay, 34<sup>th</sup>**, presented **SB 11** to the committee stating that plaintiffs who prevail in garnishment proceedings were entitled to continuing garnishment against a garnishee who was the defendant's employer. That employer was required to hold onto all non-exempt money and property owed to the defendant. Current law limits continuing garnishment for all debts owed by the garnishee to the defendant to 179 days after the date of service of process. The intent of this legislation is to extend that time limit to 539 days. Current law requires the last answer be filed by the employer/garnishee no later than 195 days after process has been served; this bill would change that requirement to no later than 559 days after service. Chairman Hamrick recognized Senator Cowser, 46<sup>th</sup>, who wondered if this legislation might drive debtors into bankruptcy. Senator Seay stated that this legislation does not affect the amount of money collected from a debtor. Federal law defines the amount you can collect each week. Chairman Hamrick stated that the practical reason for this legislation is to allow collectors to collect the full amount owed without going to the time and expense of refiling for continuation of the garnishment. There were several questions from Senators Carter, 42<sup>nd</sup>, Ligon, 3<sup>rd</sup>, Crosby, 13<sup>th</sup>, Bethel, 54<sup>th</sup>, Fort, 39<sup>th</sup>, and Stone 23<sup>rd</sup>. Would this legislation allow a garnishment of a smaller amount each week? What would be the employer administrative cost? What are other states doing? Chairman Hamrick stated that these were all good questions that deserved further study. There was no testimony for or against the legislation. Chairman Hamrick stated that the committee would take up the legislation again following some research into the questions posed by the committee.

**SB 11 HEARING ONLY**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 4:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, February 2, 2011**

The Senate Judiciary Committee held its third meeting of the 2011 Session on Wednesday, February 2, 2011, in room 310 of the CLOB. Chairman Bill Hamrick called the meeting to order at 4:05 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Robert Brown, 26<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator William Ligon, 3<sup>rd</sup>  
Senator Joshua McKoon, 29<sup>th</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Jesse Stone, 23<sup>rd</sup>

**NOTE:** Senators Fort, 39<sup>th</sup>, and Seabaugh, 28<sup>th</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 15 (Hamrick, 30<sup>th</sup>) Private Detective/Security Businesses; provisions; exclude persons certified by Georgia Peace Officer Standard and Training Council**

**Chairman Hamrick, 30<sup>th</sup>**, said that he had received some information at the last minute regarding this legislation that he needed to review with Legislative Counsel and that he was tabling **SB 15** to resolve some issues.

**SB 15 TABLED**

**SB 31 (Carter, 42<sup>nd</sup>) Evidence; extend the attorney-client privilege to third persons under certain circumstances**

**Senator Carter, 42<sup>nd</sup>**, presented a substitute to **SB 31** to the committee stating that the intent of this legislation was to tweak the definitions of client and parent under specific circumstances. Senator Carter, 42<sup>nd</sup>, stated that Code Section 24-9-21 listed the relationships that were entitled to be privileged within the legal system, including communications between an attorney and his or her client. For the purposes of the attorney-client privilege, “client” would be defined as:

- A person who is represented by or is seeking representation from an attorney;
- A person who was been provided a court appointed attorney or public defender;  
or
- If the client is a minor accused of a crime or delinquent act, that minor’s parent will also be considered a client, but only the minor would have the right to waive the privilege.

For the purposes of the attorney-client privilege, “parent” would be defined as: the legal mother, legal father, stepparent, legal guardian, foster parent, or person who has court ordered legal custody. These would be used throughout Chapter 9 of the evidence code,

dealing with witnesses. A substitute was drafted to include an exception if **HB 24** (Evidence Code Revision) was enacted that stated the above definition would also be used in the new code section relating to privileges, and this legislation would be automatically repealed. There were several concerns raised by committee members regarding privileged information. Senator Hamrick assigned **SB 31** to the Division II subcommittee chaired by Senator Crosby, 13<sup>th</sup>, for further review.

#### **SB 31 ASSIGNED TO SUBCOMMITTEE**

#### **SB 27 (Hill, 32<sup>nd</sup>) Georgia Public Works and Contractor Protection Act; redefine a certain term; provisions**

**Senator Hill, 32<sup>nd</sup>**, presented **SB 27** to the committee. Senator Hill, 32<sup>nd</sup>, stated that the purpose of this bill was to ensure that all public entities and employers, along with contractors and subcontractors who bid for public works contracts, complied with employment eligibility verification requirements. Current law already requires public employers to verify employment eligibility using the federal work authorization program; this bill is much more specific in requiring such public entities to use the program on a continuous basis. All bids would have to include a signed, notarized affidavit that the contractor has used the federal program continuously for a specified length of time; and would only contract with subcontractors who swear to having used the federal program for a specified length of time. Subcontractors would also be required to provide the above affidavit. Criminal consequences were attached in this legislation for the knowing or negligent violation of these requirements. Further, this legislation would require all public employers to submit annual compliance reports to the state auditor. The reports must contain the employer's federal e-verify user number along with the e-verify numbers of every contractor and subcontractor used by the public employer. The state auditor would be required to conduct annual audits of at least half of reporting agencies and publish the findings. If the state auditor were to find any political instrumentality of the state to be in violation of this law, that public employer would no longer be listed as a qualified local government until compliance was achieved. If a state department or agency was found to have violated these rules twice in five years, funding for the next fiscal year would be cut to no more than 90% of the amount appropriated in the second year of noncompliance. In addition, such agencies and departments would be listed on an official state website as being in violation. Noncompliant contractors and subcontractors would also be listed on the state website for violators. The legislation makes clear that public employees could not be held liable for negligently accepting a bid from or contracting with a noncompliant contractor or subcontractor and that on January 1, 2013, only corporations approved under the IMAGE program of the U.S. ICE agency would be allowed to bid on public works contracts in Georgia.

Chairman Hamrick, 30<sup>th</sup>, opened the floor to questions from the committee members. Senators Cowsert, 46<sup>th</sup>, and Bethel, 54<sup>th</sup>, had concerns about the term “criminal negligence” in line 82 of the bill. Senator Hill, 32<sup>nd</sup>, stated that the use of the word “criminal” was meant to raise the standard for violations. Senator Crosby, 13<sup>th</sup>, asked why it was necessary to have time lines. Senator Hill, 32<sup>nd</sup>, answered that timelines made companies verify all employees, not just the ones recently hired. Senator McKoon, 29<sup>th</sup>, had some clarifying questions regarding both the E-verify and IMAGE program. Senator Carter, 42<sup>nd</sup>, asked if requiring the use of the IMAGE federal program wouldn’t be like allowing a federal entity to determine state bids. Senator Hill, 32<sup>nd</sup>, said he did not think that was the case. Senators Stone, 23<sup>rd</sup>, Ligon, 3<sup>rd</sup>, and Bethel, 54<sup>th</sup>, wondered what the term “newly incorporated contractor” meant and if this prohibits a contractor from bidding unless he has a history. Would this create a monopoly for those contractors already using E-verify? Senator Bethel, 54<sup>th</sup>, also asked if there was a fiscal note that addressed the cost of a compliance audit by state agencies. Chairman Hamrick, 30<sup>th</sup>, said that these were good questions for future discussion and opened the floor to public testimony.

**Note:** Senator Brown, 26<sup>th</sup>, left the meeting.

Those expressing concerns about the legislation were **Todd Edwards**, Association County Commissioners of Georgia (ACCG), **Mark Woodall**, Association of General Contractors (AGC), and **Marci Rubensohn**, Georgia Municipal Association (GMA). **D.A. King**, Dustin Inman Society, was the only person testifying in full support of the legislation despite the many valid concerns raised by members of the committee.

**Note:** Senators Cowsert, 46<sup>th</sup>, and Stone, 23<sup>rd</sup>, left the meeting

Chairman Hamrick, 30<sup>th</sup>, tabled further discussion on **SB 27** until a later date.

### **SB 27 HEARING ONLY**

### **SB 30 (Hamrick, 30<sup>th</sup>) Municipal Courts; require municipal court judges to be attorneys; exceptions**

**Chairman Hamrick, 30<sup>th</sup>**, presented a substitute to **SB 30** to the committee. He stated that this bill would simply add a new code section requiring municipal court judges to be licensed Georgia attorneys. However, any judge already in office as of June 30, 2011 who was not an attorney would be permitted to retain his or her judgeship, as long as annual training requirements were met. This law would supersede any conflicting local rule. There were no questions on the legislation from committee members. **Skin Edge**, representing the Municipal Court Judges Association, spoke in favor of the legislation. Chairman Hamrick asked for a motion on the bill. Senator Bethel, 54<sup>th</sup>, moved **SB 30 Do Pass by Substitute**, and Senator Carter, 42<sup>nd</sup>, seconded the motion. The vote was unanimous (6-0) in favor of **SB 30**.

### **SB 30 DO PASS BY SUBSTITUTE**

**Note:** Yeas were Senators Crosby, Jason Carter, Bethel, Ligon, McKoon and Hamrick.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:10 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

Senator Bill Hamrick  
District 30  
121-H State Capitol  
Atlanta, GA 30334

**Committees:**  
Judiciary  
Rules  
Public Safety  
Appropriations  
Ethics

The State Senate  
Atlanta, Georgia 30334

February 9, 2011

Mr. Bob Ewing  
Secretary of the Senate  
353 State Capitol  
Atlanta, GA 30034

Dear Bob:

I have authorized Senator Bill Cowsert, Vice Chair of the Judiciary Committee, to preside in the capacity and authority of Chairman in my absence from the committee meeting being held Wednesday, February 9, 2011, in 310 CLOB at 4:00 p.m.

Thank You,

/s/ Bill Hamrick

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, February 9, 2011**

The Senate Judiciary Committee held its fourth meeting of the 2011 Session on Wednesday, February 9, 2011, in room 310 of the CLOB. Chairman Bill Hamrick called the meeting to order at 4:10 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Joshua McKoon, 29<sup>th</sup>  
Senator Jesse Stone, 23<sup>rd</sup>

**NOTE:** Senators Brown, 26<sup>th</sup>, Ramsey, 43<sup>rd</sup>, and Seabaugh, 28<sup>th</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 39 (Grant, 25<sup>th</sup>) Courts; create mental health court divisions; assignment of cases; provide for planning groups and work plans; standards**

**Senator Grant, 25<sup>th</sup>**, presented **SB 39** to the committee. This bill would allow criminal courts the option to establish mental health court divisions as an alternative to the traditional court system for defendants with mental illness and/or developmental disability. The court would be allowed to assign such a defendant's case to the mental health court either prior to entering the sentence, with the prosecutor's consent; as part of the sentence; or upon consideration of a petition to revoke probation. Each mental health court division would be required to establish a planning group to address the needs of the court, including eligibility criteria. All mental health courts would combine judicial supervision, mental health treatment, and drug and mental health testing. The Judicial Council of Georgia would adopt standards for all mental health courts, to serve as a framework and to provide a structure for overview and evaluation. Furthermore, a court that established a mental health court division could request both the prosecuting attorney to assign one or more prosecutors, and the public defender to assign one or more assistant public defenders to serve the new division. The court also has the option to request that probation officers and other court employees perform duties for the mental health court. The expenses incurred for starting a mental health court division may be paid from several sources such as state funds, county or municipal funds, federal grant money, or private donations. If a defendant assigned to a mental health court division successfully completed the program prior to judgment, the prosecutor would have the option to dismiss the case. If a defendant successfully completed the program as part of a sentence, that sentence could be reduced or modified. Any statement made by a defendant in the mental health court division, or any report made in connection to the court, regarding the defendant's mental health would not be admissible as evidence against the defendant in any legal proceeding. However, if the defendant violated the conditions of the program or was terminated from the program, those reasons could be

considered in sanctioning, sentencing or otherwise disposing of the case. This statute would *not* permit a judge to impose or reduce a sentence below the legal minimum.

**Note:** Chairman Hamrick, 30<sup>th</sup>, Senator McKoon, 29<sup>th</sup>, and Senator Bethel, 54<sup>th</sup>, left for a critical Transportation Board vote. Senator Cowsert, 46<sup>th</sup>, chaired the meeting in Chairman Hamrick's absence.

Senator Grant, 25<sup>th</sup>, stated that this legislation mirrors the language that established drug courts in 2005. He stated that jails and prisons have become the new psychiatric hospitals and that the ability to use drug courts would help tremendously in resolving some of the issues facing our prison system since mental illness and drug abuse seem to go hand in hand. The Drug Courts have been successful with a recidivism rate of less than 80%. The key to their success is accountability. When these people have to come back before the Judge, the interaction brings positive reinforcement. The advantage of this legislation would be that it encourages others to develop Mental Health Courts and gets everyone on the same page.

**Note:** Senators Carter, 42<sup>nd</sup>, and Crosby, 13<sup>th</sup>, arrived.

After a few clarifying questions regarding funding, Senator Cowsert, 46<sup>th</sup>, opened up the floor to testimony.

Testimony in favor of the legislation was given by the following:

**Judge Kathy Gosselin**, Superior Courts

**Judge David Sweat**, Superior Courts

**Debra Nesbit**, Association County Commissioners of Georgia (ACCG)

**Oliver Hunter**, Georgia Sheriff's Association

The following expressed concerns:

**Ken Mauldin**, District Attorneys Association of Georgia (DAAG)

Senator Cowsert, 46<sup>th</sup>, opened up the floor for questions from the members of the committee. Senator Carter, 42<sup>nd</sup>, raised an issue of concern regarding the difference between offenders in each court. Drug Court was limited to offenders with a drug charge which was a narrow group of folks. A Mental Health Court could potentially be open to a wide range of charges and apply to any offense. Senator Crosby, 13<sup>th</sup>, agreed and asked for more definition on the eligibility criteria. Senator Cowsert, 46<sup>th</sup>, asked where this legislation fit in with the Crime Victim's Bill of Rights. Senator Fort, 39<sup>th</sup>, asked if there were any numbers as to the cost savings on the jail side.

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, and Senator Bethel, 54<sup>th</sup>, returned to the meeting. Senator Fort, 39<sup>th</sup>, left the meeting.

In the interest of time, Chairman Hamrick, 30<sup>th</sup>, ended the hearing and assigned **SB 39** to the Division II subcommittee chaired by Senator Crosby, 13<sup>th</sup>, to work out the issues raised in the hearing.

### **SB 39 ASSIGNED TO SUBCOMMITTEE**

### **SB 47 (Crosby, 13<sup>th</sup>) Georgia Magistrate Courts Training Council; training for magistrates/senior magistrates; composition/responsibilities; provisions**

**Senator Crosby, 13<sup>th</sup>**, presented **SB 47** to the committee. He stated that former Senator John Wiles introduced and passed legislation in 2009 (SB 199) which gave the Magistrate Courts Training Council (MCTC) the power to suspend training due to the budget crisis through 2011. After the 2011 calendar year, the mandated 20 hours of training was to resume. This bill would allow Code Section 15-10-136 to be amended to give the Georgia Magistrate Courts Training Council (MCTC) the flexibility to require 12 to 20 hours of annual training to be completed by every magistrate and senior magistrate judge. This change will benefit both the State and Counties in times of financial uncertainty by allowing the MCTC to reduce the hours from 20 to 12 which would reduce all the associated costs (travel, hotel, mileage, meeting space, meals and other costs). The MCTC does not want to reduce required hours from 20 to 12, but they realize that the current budget situation of the State and most Counties require that decision. The flexibility provided by this legislation would allow the MCTC to increase hours from 12 to 20 when training is needed and it is fiscally appropriate. This legislation would also allow a judge who has acquired more training hours than required in a calendar year to roll over up to 6 hours to the following calendar year which would also add to cost savings. This legislation would also allow senior magistrates to serve on the MCTC. Senator Crosby stated that some of the most knowledgeable and qualified judges were classified as magistrates and that the MCTC should be able to draw from their knowledge and experience. Chairman Hamrick, 30<sup>th</sup>, asked if there were any questions from the committee. Seeing that there were no questions, he opened the floor to public testimony.

Testimony in favor of the legislation was given by the following:

**Chandler Haydon**, representing Council of Magistrate Judges  
**Judge Kim Warden**, Magistrate Judge  
**Debra Nesbit**, ACCG

There was no opposing testimony.

Chairman Hamrick asked for a motion on SB 47. Senator Crosby, 13<sup>th</sup>, moved **SB 47 Do Pass**, and Senator Stone, 23<sup>rd</sup>, seconded the motion. The vote was unanimous (6-0) in favor of **SB 47**.

**SB 47 DO PASS**

**Note:** Yeas were Senators Cowsert, Crosby, Bethel, Jason Carter, Ligon, McKoon and Stone

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 5:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, February 16, 2011**

The Senate Judiciary Committee held its fifth meeting of the 2011 Session on Wednesday, February 16, 2011, in room 450 of the capitol. Chairman Bill Hamrick called the meeting to order at 4:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Vincent Fort, 39 <sup>th</sup>
Senator Bill Cowsert, 46 <sup>th</sup> , Vice Chair	Senator William Ligon, 3 <sup>rd</sup>
Senator John Crosby, 13 <sup>th</sup> , Secretary	Senator Josh McKoon, 29 <sup>th</sup>
Senator Charlie Bethel, 54 <sup>th</sup>	Senator Ronald Ramsey, 43 <sup>rd</sup>
Senator Jason Carter, 42 <sup>nd</sup>	Senator Jesse Stone, 23 <sup>rd</sup>
	Senator Mitch Seabaugh, 28 <sup>th</sup> , Ex-Officio

**NOTE:** Senator Brown, 26<sup>th</sup>, was absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 31 (Carter, 42<sup>nd</sup>) Evidence; extend the attorney-client privilege to third persons under certain circumstances**

**Senator Carter, 42<sup>nd</sup>**, presented a substitute to **SB 31** to the full committee which was developed after meeting with the members of the Division II subcommittee. Senator Carter, 42<sup>nd</sup>, stated that there were two parts to the substitute and shared a summary with the committee as follows:

**PART I (Effective July 1, 2011, except as noted in Part II)**

Code Section 24-9-21 lists the relationships that were entitled to be privileged within the legal system, including communications between an attorney and his or her client. For the purposes of the attorney-client privilege, “client” would now be defined as:

- A person who is represented by or is seeking representation from an attorney;
- A person who was been provided a court appointed attorney or public defender;  
or
- If the client is a minor accused of a crime or delinquent act, that minor’s parent will also be considered a client but only allowing the minor the right to waive the privilege.

For the purposes of the attorney-client privilege, “parent” would be defined as: the legal mother, legal father, stepparent, legal guardian, foster parent, or person who had court ordered legal custody.

These definitions would also be used throughout Chapter 9 of the evidence code, dealing with witnesses.

**PART II (Effective on or before January 1, 2013)**

If the revision of the evidence code ([HB 24](#)) was enacted, the above definition would also be used in the new code section relating to privileges, and Part I would be automatically repealed. If [HB 24](#) does not become law, then Part II will be automatically repealed.

Testimony in favor of the legislation was given by the following:

**Tom Boller**, State Bar of Georgia  
**Kirsten Widener**, Barton Law Clinic

There was no opposing testimony.

Seeing there were no questions from the committee members, Chairman Hamrick asked for a motion on the **SB 31**. Senator Seabaugh, 28<sup>th</sup>, moved **SB 31 Do Pass by Substitute**, and Senator Stone, 23<sup>rd</sup>, seconded the motion. The vote was unanimous (9-0) in favor of **SB 31**.

**SB 31 DO PASS BY SUBSTITUTE**

**Note:** Yeas were Senators Cowsert, Crosby, Bethel, Jason Carter, Fort, Ligon, McKoon, Stone, and Seabaugh.

**Note:** Senator Ramsey, 43<sup>rd</sup>, arrived at the meeting.

**SB 62 (Ligon, 3<sup>rd</sup>) State: no private property shall be alienated to any other state; exercise of state sovereignty/jurisdiction without consent of General Assembly**

**Senator Ligon, 3<sup>rd</sup>**, presented **SB 62** to the committee as legislation that was developed in response to real estate developers who were trying to bring casinos into the state. The intent of the legislation is to establish state sovereignty by enacting a new statute that would prohibit any other state, territory or nation from owning any private property in Georgia if it extinguishes or decreases Georgia's right of sovereignty and jurisdiction, unless there was express approval from the General Assembly with a two-thirds vote from both chambers. Contracts and conveyances made in violation of the above would be void and have no effect. In addition, any act that had the effect of extinguishing or decreasing the state's sovereignty or jurisdiction over property within its boundaries would not be recognized and would be void. Chairman Hamrick, 30<sup>th</sup>, asked if any committee members had any questions and recognized Senator Cowsert, 46<sup>th</sup>, for a question. Senator Cowsert, 46<sup>th</sup>, asked if restricting alienability of land was constitutional. Senator Ligon, 3<sup>rd</sup>, responded that Indian Tribes were recognized as sovereign nations and that lands already ceded to them would not be held accountable. Senator Carter, 42<sup>nd</sup>, asked if there were any contracts that had already been entered into in the state and would this legislation capture any prior conveyances. Chairman Hamrick, 30<sup>th</sup>, asked if the Property Lawyers with the State Bar had been asked for input. Senator Ligon, 3<sup>rd</sup>, said they had not. Chairman Hamrick, 30<sup>th</sup>, thought it best to consult with some experts on the subject since this legislation might have potential constitutional

issues. He stated that he would give **SB 62** another hearing at a later date after the issues raised had been explored more thoroughly.

### **SB 62 HEARING ONLY**

### **SB 64 (McKoon, 29<sup>th</sup>) Corporations; change the amount of fees/penalties for application for reinstatement for corporations, nonprofit corporations, limited liability companies**

**Senator McKoon, 29<sup>th</sup>**, presented a substitute to **SB 64** to the committee. He stated that the intent of **SB 64** was to streamline the procedure for corporate reinstatements. The current reinstatement procedure works as follows:

- Corporations were administratively dissolved for not filing their annual registration in accordance with state law.
- If the filer wished to reinstate the corporation, he or she must pay a \$100 reinstatement fee plus the total amount of annual registration fees and penalties that would have been payable during the period between the last filing and the time of reinstatement. By law, a corporation could only be able to reinstate a previously dissolved corporation within five years.
- To complete the reinstatement, a multi-step process must occur: (1) Requestor would fill out a reinstatement application request form and delivers it to the Corporations Division. (2) Corporations Division would process the application request by reviewing the information provided and calculating the cost to reinstate. This cost assessment would be done by hand because the processor must review the corporation's previous filings to determine the amount of the fees and penalties that would have been due. (3) After the fees and penalties were calculated, the Corporation Division provides the requestor another application to complete along with the total amount owed to the State. (4) Once the requestor returned the application and paid the reinstatement fee, the Corporations Division would reinstate the corporation.
- From the initial request to the time of reinstatement, this process currently took an average of 4 to 6 weeks to complete.

Senator McKoon, 29<sup>th</sup>, stated that if **SB 64** were enacted the process would be the following:

- Simply replace the fee that required a unique calculation for each request and set a flat fee.
- If the flat fee were implemented, the process would be changed to one step. The individual would simply submit a completed application with the \$250 payment and the process would be complete.
- Processing time would be cut from several weeks to a matter of hours.

Senator McKoon, 29<sup>th</sup>, stated the potential benefits to utilizing a flat fee were the reduction of time for reinstatement and would allow for the processing of applications online. A flat fee would also allow requestors to better plan for the costs to reinstate. Chairman Hamrick, 30<sup>th</sup>, asked if any members had any questions. Senator Cowsert, 46<sup>th</sup>, stated that it seemed that \$250 was more than he usually paid in his law practice for reinstatement. Senator Seabaugh, 28<sup>th</sup>, asked if there was ever any mercy given on fees. Senator Bethel, 54<sup>th</sup>, asked if there were any circumstance where the reinstatement would cost more than \$250. Chairman Hamrick, 30<sup>th</sup>, called on **Michael O'Sullivan**, representing the Office of the Secretary of State, to speak to those questions. Mr. O'Sullivan stated that **HB 1055** which passed last session did increase the reinstatement fees. He stated that \$250 was the amount most requestors paid to reinstate. Very rarely would the fees ever go above this amount. This process would save money and all revenue generated would go into the general fund. There were no further questions from the committee. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **SB 64**. Senator Bethel, 54<sup>th</sup>, moved **SB 64 Do Pass by Substitute**, and Senator Crosby, 13<sup>th</sup>, seconded the motion. The vote was (8-1) in favor of **SB 64**.

#### **SB 64 DO PASS BY SUBSTITUTE**

**Note:** Yeas were Senators Crosby, Bethel, Jason Carter, Ligon, McKoon, Ramsey, Stone, and Seabaugh. Senator Cowsert cast the single nay.

**Note:** Senator Fort left before the vote on the legislation.

#### **HB 30 (Willard, 49<sup>th</sup>) Contracts; illegal or void; repeal certain code sections**

**Representative Willard, 49<sup>th</sup>**, Chairman of the House Judiciary Committee, presented **HB 30** to the committee as legislation drafted to correct an error on previous legislation that did not address an enactment date.

**NOTE:** Senators Cowsert, Crosby, Bethel, Jason Carter, Seabaugh and Stone left the meeting.

Seeing that there was no longer a quorum, Chairman Hamrick, 30<sup>th</sup>, told Representative Willard that **HB 30** would be taken up again at a later date.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, February 23, 2011**

The Senate Judiciary Committee held its sixth meeting of the 2011 Session on Wednesday, February 23, 2011, in room 310 of the CLOB. Chairman Bill Hamrick called the meeting to order at 4:10 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>  
Senator Vincent Fort, 39<sup>th</sup>

Senator William Ligon, 3<sup>rd</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Jesse Stone, 23<sup>rd</sup>  
Senator Mitch Seabaugh, 28<sup>th</sup>, Ex-Officio

**NOTE:** Senators Cowsert, 46<sup>th</sup>, Brown, 26<sup>th</sup>, and Ramsey, 43<sup>rd</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**[HB 41](#) (Smith, 131<sup>st</sup>) Superior court fees; appellate record and transcript; change; provisions**

**Representative Smith, 131<sup>st</sup>**, presented **HB 41** to the committee. He stated this bill was drafted to undo an unintended consequence of previous legislation. Representative Smith shared the following summary with the committee:

- Section 1 eliminated the fee charged by the court clerk to the Attorney General for a copy of the record in case of appeal by defendants convicted of capital felonies. This section would apply retroactively.
- Section 2 reduced the fee charged by superior court clerks for preparation of an appellate record and transcript, from \$10 to \$1 per page; and preparation of copies of the record in cases where a defendant was convicted of a capital felony, from \$5 to \$1, except that there would be no fee charged to the Attorney General as stated in Section 1. This section would apply retroactively.
- Section 3 abolished the judicial operations fund fee for issuing certificates for the appointment of notaries public *only*.

Testimony in favor of the legislation was given by the following:

**Tom Boller**, State Bar of Georgia  
**Rusty Sewell**, State Bar of Georgia  
**Jeff Milsteen**, Department of Law

There was no opposing testimony.

Seeing that there were no questions from the committee, Chairman Hamrick asked for a motion on **HB 41**. Senator Crosby, 13th, moved **HB 41 Do Pass**, and Senator Seabaugh, 28<sup>th</sup>, seconded the motion. The vote was unanimous (6-0) in favor of **HB 41**.

**HB 41 DO PASS**

**NOTE:** Yeas were Senators Crosby, Bethel, Ligon, McKoon, Ramsey, Stone and Seabaugh. (Senators Fort and Jason Carter were not present for the vote.)

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, stated he would be the Senate Sponsor of **HB 41**.

**SB 19 (Hill, 32<sup>nd</sup>) Forgery/Fraudulent Practices; definitions; medical identity fraud; provide punishment**

**Senator Hill, 32<sup>nd</sup>**, presented a substitute to **SB 19** to the committee after working with members of the committee on issues raised during the hearing on this legislation earlier in the session. He stated that this legislation's intent was to create a new crime of medical identify fraud under the same article that governed identity fraud. Unless otherwise noted, all laws that pertained to general consumer identity fraud would also apply to medical identity fraud. Senator Hill, 32<sup>nd</sup>, shared the following summary with the committee:

Medical identity fraud would be defined as the willful and fraudulent use of someone else's information for the purpose of obtaining medical care, prescription drugs, other health care services, or financial gain:

- 6) Use or possession with intent to fraudulently use identifying information without consent;
- 7) Use of identifying information of a person under 18 when the offender has custodial authority;
- 8) Use or possession with intent to fraudulently use a dead person's identifying information;
- 9) Creation, use or possession with intent to fraudulently use any counterfeit identifying information of a fictitious person for the purpose of committing or facilitating the commission of a crime or fraud on another person; or
- 10) Creation, use or possession with intent to fraudulently use any counterfeit identifying information of a real person for the purpose of committing or facilitating the commission of a crime or fraud on another person without consent.

The Attorney General and prosecuting attorneys would have the authority to prosecute medical identity fraud.

There were no questions from the committee and no testimony for or against the legislation. Chairman Hamrick asked for a motion on **SB 19**. Senator Bethel, 54th, moved **SB 19 Do Pass**, and Senator Ligon, 3<sup>rd</sup>, seconded the motion. The vote was unanimous (6-0) in favor of **SB 19**.

### **SB 19 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Senators Crosby, Bethel, Ligon, McKoon, Ramsey, Stone and Seabaugh. (Senators Fort and Jason Carter were not present for the vote.)

### **SB 50 (Hamrick, 30<sup>th</sup>) Courts; add certain fees for funding of local victim assistance programs**

**NOTE:** Senators Fort and Jason Carter arrived.

**Chairman Hamrick, 30<sup>th</sup>**, presented **SB 50** to the committee. He stated that this legislation was intended to address Code Section 15-6-95 which contained the priority list for distribution of fines and fees collected in superior court. **SB 50** would add the Victim's Assistance Program to the distribution list and move them up in order of priority. Chairman Hamrick called on **Ken Mauldin**, representing the District Attorneys Association of Georgia (DAAG), to speak on behalf of the legislation. Mr. Mauldin introduced **Ashley Ivey** and **Brenda Hoffmeyer**, who worked in the Victims' Assistance Programs in the Western and Conasauga Circuits, who joined him in support of this legislation. Mr. Mauldin stated that this legislation would allow for the collection of Victim Assistance 5% funds (add on fees) to be moved up in the line for payments on local fines. Mr. Mauldin explained that these funds were used primarily in local prosecutors' offices to hire crime victim advocates to provide comprehensive services to all victims of crime. Mr. Mauldin also pointed out that the 5% funds did not provide enough money to fully fund most programs and the counties in each circuit supplemented the program with money from their general funds. The hope would be that, with the passage of this bill, enough money would be generated to allow the programs to be fully funded by 5% funds, thereby eliminating or greatly reducing local funding. Testimony opposing the legislation was given by **Debra Nesbit**, representing the Association of County Commissioners of Georgia (ACCG), who stated that it had become harder and harder for counties to collect the fines with the decline in the economy and respectfully requested that nothing be prioritized in front of the county fund. Chairman Hamrick, 30<sup>th</sup>, recognized questions from Senator Seabaugh, 28<sup>th</sup>, and Senator McKoon, 29<sup>th</sup>, who asked if the concerns were that this legislation would take away the counties' flexibility to prioritize the programs they fund. Ms. Nesbit responded that this was the main concern. Chairman Hamrick, 30<sup>th</sup>, said that these were issues he felt could be addressed at a later date and that he would work on drafting a substitute to **SB 50** that would alleviate these concerns.

### **SB 50 HEARING ONLY**

**SB 40 (Murphy, 27<sup>th</sup>) Public Contracts; provide penalties for the failure of a public employer to utilize the federal work authorization program**

**Senator Murphy, 27<sup>th</sup>**, presented a substitute of **SB 40** to the committee which was developed following two hearings on the legislation in the Division II Subcommittee chaired by Senator Crosby, 13<sup>th</sup>. He stated that this legislation was only meant to penalize those who willfully or intentionally ignored immigration laws and was not intended to be a profiling bill. He shared the following summary of the substitute language with the committee:

**Sections 1 & 6 – Definitions**

These sections establish the definition for "Agency Head" as a commissioner, chairperson, mayor, sheriff, or other executive official responsible for establishing policy for a public employer.

**Section 2 – Contracts for Public Works: Immigration Compliance**

This section clarifies current law related to public works contracts by requiring subcontractors to submit an affidavit, to the public employer and separate from the contractor, attesting to the subcontractor's name, address, E-Verify user identification number, and date of authorization to use the federal work authorization program. A contractor would not be held legally or criminally responsible for a false statement in a subcontractor's affidavit.

In order to assist contractors in complying with this law, the Attorney General would create a standardized form affidavit to be used as acceptable evidence demonstrating use of the federal E-Verify system. Contractors and subcontractors who submitted a false affidavit would be prohibited from bidding on or entering into any public contract for 12 months, in addition to a \$1000 fine for each day the he/she acted in violation of the law. Documentation demonstrating the verification of a newly hired employee would be required to be maintained for at least five years.

An agency head's failure to abide by state law regarding employment verification and compliance as it relates to public contracts or employment will be:

- a violation of O.C.G.A. § 45-10-1 relating to the code of ethics for government service and subject the agency head to removal from office and a fine up to \$10,000;
- considered abandonment of office under § 45-5-1 and the position will be deemed vacated; and
- a misdemeanor offense if the agency head willfully violates the law, punishable by a fine of \$5000 to \$10,000 and/or up to 12 months in prison.

Also, the Attorney General would be authorized to bring civil action against a public employer or agency head for violating this statute.

No public employer who failed to abide by the provisions of employment verification and compliance laws or failed to take reasonable steps to abide by such laws would receive state funding or state administered federal funding.

### **Section 3 – Mandatory E-Verify Participation for Private Employers**

This section would require every private employer operating under a Georgia business license to verify the employment eligibility of each newly hired employee through the E-Verify program, within three days of the hiring. Documentation demonstrating the verification of a newly hired employee was required to be maintained for at least five years. This requirement did not apply to part-time or seasonal employment when such employees were eligible for temporary agricultural visas.

The Labor Commissioner would be responsible for the enforcement of these provisions, including limited subpoena powers to obtain employment records, conducting hearings to determine whether violations have been committed, and imposing sanctions against private employers.

Beginning January 1, 2013 and every six months thereafter, the Labor Commissioner would request from the U.S. Department of Homeland Security a list of employers from this state that were registered with the E-Verify program. The Commissioner would make the list available on its website.

#### **Penalties**

For an initial violation of this requirement within an 18 month period, a private employer would receive a written warning. Second and subsequent violations would result in a civil fine up to \$10,000 and revocation of such employer's privilege to operate a business in Georgia. At the direction and final order of the Labor Commissioner, the local governing authority would revoke the violator's business license for up to two years. The Commissioner would be required to waive the fine and suspension if he or she found that the violation was inadvertent or unintentional, or that the employer had made a good faith effort to comply with these provisions.

### **Section 4 – Failure to Carry an Alien Registration Document**

This new code section requires all aliens, 18 years of age or older, who are required to register pursuant to federal law and issued a certificate of registration, to carry, at all times, any certificate of alien registration. A violation of this provision would be a misdemeanor offense carrying a fine of up to \$100 and/or up to 30 days in jail.

#### **Exceptions**

A person charged with such violation but who produced in court a certificate that was valid at the time of the charge would not be guilty of a violation.

This statute would not be enforced against any person who contacted law enforcement or a state prosecutor for the purpose of acting as a witness to a crime, to report a crime, or to seek assistance as a victim to a crime.

### **Section 5 – Determination of a Person's Immigration Status**

The new Code Section 17-5-100 would allow law enforcement officers to seek to verify a person's immigration status if the officer (1) had probable cause to believe that the person has committed a criminal offense, including traffic offenses, (2) the person had been lawfully detained, and (3) the officer developed reasonable cause to suspect that the person was an illegal alien. There would be a presumption that the person was not an illegal alien if he/she presented a valid government identification document.

If the person did not present such a document, the officer would be required to use any reasonable and available means to determine the person's immigration status. The person could be detained for a reasonable, but unspecified, period of time. If the officer received confirmation that the person was an illegal alien or otherwise had probable cause to believe the suspect was an illegal alien, then the officer was authorized to arrest and detain him/her as allowed under state and federal law. Such suspects detained by the state pending transfer to a federal facility could not be held for longer than 7 days without appearing before a magistrate judge for a probable cause determination.

Law enforcement officers would not be allowed to consider race, color or national origin in implementing the requirements of this statute. Anyone who, in good faith, contacted law enforcement as a witness to a crime, to report criminal activity, or to seek assistance as a crime victim would not be investigated under this statute.

### **Section 7 – Public Benefits**

Except where exempted by federal and any other state law, every state and local agency would be required to verify the lawful presence in the U.S. of any applicant for public benefits.

This section provided that an agency head's failure to abide by this state law would be:

- a violation of O.C.G.A. § 45-10-1 relating to the code of ethics for government service and subject the agency head to removal from office and a fine up to \$10,000;
- considered an abandonment of office under O.C.G.A. § 45-5-1 and the position will be deemed vacated; and
- a misdemeanor offense if the agency head acted in willful violation of the law, punishable by a fine of \$5000 to \$10,000, and/or up to 12 months in prison.

Also, the Attorney General would be authorized to bring civil action against a public employer or agency head for violating this statute.

### **Section 8 – Severability Clause**

If any provision of this legislation was held invalid or unconstitutional, the invalidity would not affect the other provisions.

### **Section 9 – Effective Date**

This legislation would become effective on July 1, 2011, and would apply to offenses and violations on or after that day.

Chairman Hamrick, 30<sup>th</sup>, opened the floor to questions from the committee. Senator Seabaugh, 28<sup>th</sup>, asked why there was a need to retain records for 5 years. Senator Murphy, 27<sup>th</sup>, responded that 5 years was consistent with federal requirements. Chairman Hamrick, 30<sup>th</sup>, recognized Senator Crosby, 13<sup>th</sup>, who asked if the number of exemptions were increased to more than 4 to cover the Mom and Pop organizations. Senator Murphy, 27<sup>th</sup>, said the intent of this legislation was not to make things more difficult for the small business owners. Senator McKoon, 29<sup>th</sup>, was recognized with concerns regarding our law enforcement officers' potential liability in making traffic stops, and asked if the committee could remove that language. Senator Murphy, 27<sup>th</sup>, was okay with removing that language. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

Testimony in support of the legislation was given by the following:

**David Raynor**, Georgia Chamber of Commerce

**Kim Thompson**, Immigration Attorney

Testimony in general support, but with concerns, was given by the following:

**Mark Woodall**, Associated General Contractors

**Bryan Tolar**, Georgia Agribusiness Council

**Bill Brim**, Lewis Taylor Farms

**Kent Hamilton**, Hamilton Farms

**Rusi Patel**, GMA

**Kyle Jackson**, NFIB

**Todd Edwards**, ACCG

Testimony in opposition to this legislation was expressed by the following:

**Larry Pellegrini**, Georgia Latino Alliance

**D.A. King**, Dustin Inman Society

There were some follow-up questions from the committee regarding the H2A and H2B temporary worker program. Chairman Hamrick, 30<sup>th</sup>, called on **Bryan Tolar**, President of the Georgia Agribusiness Council, to summarize the issues for the committee. Mr. Tolar stated that not all necessary jobs were desirable, even during economic downturns. Agricultural jobs were temporary, outdoors in extreme weather, physically demanding and found in rural areas. Some non-agricultural jobs such as tree-planting, landscaping, roofing, and manufacturing were also physically demanding, outdoors and in rural areas. They had found that US workers were not willing to commit to these jobs, especially when the period of employment was temporary. The H2A and H2B federal "guest worker" programs were not viable alternatives for most Georgia employers who needed seasonal workers due to the cost, burdensome paperwork and reporting requirements, constant government oversight and inflexible timelines. For agricultural jobs, activities such as building the housing required to accommodate these workers would require front-end capitol and time should H2A participation become necessary. These federal programs were not viable alternatives for employers who operate year-round and could not do without workers for two months of the year. Until these programs were streamlined, made more cost effective for employers, and provided the flexibility required by the modern marketplace, private sector employers would continue to resist

participation in E-Verify. Chairman Hamrick, 30<sup>th</sup>, thanked everyone for their input and said that the committee would continue to work on the issues addressed in the committee.

**SB 40 HEARING ONLY**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:01 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Monday, February 28, 2011**

The Senate Judiciary Committee held its seventh meeting of the 2011 Session on Monday, February 28, 2011, in room 450 of the capitol. Chairman Bill Hamrick called the meeting to order at 3:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Jesse Stone, 23<sup>rd</sup>

**NOTE:** Senators Brown, 26<sup>th</sup>, and Seabaugh, 28<sup>th</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 134 (Hamrick, 30<sup>th</sup>) Guardianship, Workers Compensation, Trusts; make technical corrections, correct terminology and update cross-references reflecting enactment**

**Chairman Hamrick, 30<sup>th</sup>**, presented **SB 134** to the committee. This bill would move language that allows a parent to represent and bind his or her minor child or unborn child if there were no appointed conservator or guardian, and if there were no conflict of interest between the parent and child, from the chapter on appointments and vacancies to the chapter on general trust provisions. The following persons will have the rights of a qualified beneficiary:

- The Attorney General, for charitable trusts; and
- Persons appointed to enforce a trust created for the care of an animal.

The bill would provide several technical corrections, including new terminology and updated cross-references. Further, the bill would exempt supplemental needs trusts by an agent for a settlor from the requirement of a power of attorney that contained an express authorization to create or declare a trust. Chairman Hamrick, 30<sup>th</sup>, invited **Bill Linkous** from the State Bar to give a summary of the changes in each section. There were no questions from the committee and no testimony for or against the legislation. Chairman Hamrick asked for a motion on the **SB 134**. Senator Stone, 23<sup>rd</sup>, moved **SB 134 Do Pass**, and Senator Crosby, 13<sup>th</sup>, seconded the motion. The vote was unanimous (8-0) in favor of **SB 134**.

**SB 134 DO PASS**

**NOTE:** Yeas were Senators Crosby, Bethel, Jason Carter, Fort, Ligon, McKoon, Ramsey and Stone.

**NOTE:** Senator Cowsert left the meeting before the vote.

### **SB 127 (Hamrick, 30<sup>th</sup>) Juvenile Proceedings; revise provisions**

**Chairman Hamrick, 30<sup>th</sup>**, presented **SB 127** to the committee for a hearing on Article VII of the legislation. He asked **Kirsten Widener**, Barton Law Clinic, to give an overview of the changes to the committee. Kirsten shared the following overview with the committee:

The Child Protection and Public Safety Act (“the Act”) was introduced as Senate Bill 292 (“SB 292”) in the 2009 Georgia General Assembly Session by Senator Bill Hamrick. The Act would comprehensively revise Title 15, Chapter 11 of the Official Code of Georgia Annotated, relating to juvenile courts and the cases they hear (“the Children’s Code”). Throughout 2009 and 2010, the Senate Judiciary Committee and a specially appointed Subcommittee reviewed the bill in detail, and a working group of stakeholders met to come to agreement on issues that needed refinement in the Act. Through this process, the Act was revised for reintroduction in 2011 as Senate Bill 127 (“SB 127”).

The following changes were made:

#### **Incorporation of Recently Passed Legislation**

Any legislation affecting the Children’s Code that was considered by the General Assembly and passed while SB 292 was pending has been incorporated into SB 127. Specifically:

- Agency names were updated to reflect 2009 reorganization of the Department of Human Resources under HB 228.
- “Smash and Grab” burglaries were added to the list of designated felonies as a result of HB 1104.
- First time, minor weapons at school infractions are excluded from the definition of designated felony as a result of SB 299.
- New federal requirements were added relating to foster children’s placement with siblings, educational stability, and planning for transition from care as a result of HB 1085.
- New federal requirements regarding searches for and notice to relatives of children taken into state custody for protection from abuse and neglect were added as a result of HB 254 and SB 244.
- Revised factors for the court to consider in placing a child after a termination of parental rights proceeding were added as a result of HB 254 and SB 244.
- Probation management programs using graduated sanctions were added to the disposition options in delinquency cases as a result of HB 1104.
- The sunset provision for the return of short-term programs for delinquent youth to 60 days, from its current 30, was incorporated from HB 1104.

- Language relating to victim’s impact statements in delinquency cases was updated in response to HB 567.
- Public access to juvenile court hearings was expanded as a result of SB 207.
- Technical corrections made by HB 388 were incorporated.

### **Change to Terminology**

Georgia is the only state in the country that uses the term “deprivation” to refer to cases involving children who have been taken under the court’s protection due to abuse or neglect. This term was descriptive of the situation that brought the child before the court – specifically that they were deprived of proper parental care or control. All other states use the term “dependency” to refer to these cases. This term would be more descriptive of the relationship between the child and the court. After discussion with the Committee and the stakeholders, the Act was updated to use the nationally recognized term, “dependency”, for these cases.

### **Other Specific Changes by Article**

#### **Article 1**

Article 1 provides general definitions and provisions that apply to all juvenile court proceedings. The following revisions were made to this Article:

- The definition of emotional abuse was updated to include significant risk of harm in addition to actual harm.
- The death of a sibling as added to the definition of aggravated circumstances.
- “Under 22 and in the legal custody of DFCS” was eliminated from the definition of child.
- The definition of children in need of services was updated by:
  - Adding cross references for truancy and runaway provisions, and
  - Eliminating underage sex as grounds for alleging that a child is in need of services.
- The definition of delinquency was updated to clarify that failure to appear for a citation is a delinquent act if the citation is for an act which would be a crime if committed by an adult.
- The definition of dependent child has been clarified to require not only that the child has been abused and neglected, but is also in need of the protection of the court.
- The age at which a child can be held to have committed a designated felony is lowered from 14 to 12.
- An examiner may now be a licensed clinical social worker, per the request of DFCS.
- The definition of incriminating information was deleted.

- The definition of a party now includes a cross-reference to clarify that who is a party differs in delinquency cases.
- The definition of prenatal abuse is revised to require that the harmful effects of an expectant mother's drug or alcohol use must be medically diagnosed.
- The juvenile court's jurisdiction was reverted to current law by:
  - Clarifying by cross-reference the superior court's original jurisdiction over SB 440 offenses.
  - Eliminating concurrent jurisdiction for adoption.
- If a court uses electronic recording for appellate transcription, SB 127 clarifies that the recording must be able to fully capture proceedings.
- Mediation provisions were revised for clarity and compliance with best practices and state standards.
- Clarifications were made to the factors a court should consider in determining the "best interest of the child."
- Provisions relating to use of admissions a child makes during treatment, assessment or screening were clarified to avoid potential constitution challenges.
- A provision relating to court orders for assessment was edited to clarify that while DJJ should not be ordered to perform evaluations, they may be otherwise implicated in the order.

### **Article 2**

Article 2 relates to juvenile court administration. The only change made to this Article was:

- Probation officer duties were edited to make clear that a probation officer can provide information to a prosecuting attorney, but cannot prepare or file legal documents.

### **Article 3**

Article 3 governs dependency proceedings, which are known under the current code as deprivation proceedings. The following revisions were made to this Article:

- The provision regarding who can file a petition alleging dependency has been reverted to current law so that any person can file the petition.
- A provision incorporating the Civil Practice Act discovery procedures was replaced by a dependency-specific discovery provision.

### **Article 4**

Article 4 relates to termination of parental rights proceedings. The following changes were made to this Article:

- A provision incorporating the Civil Practice Act discovery procedures was replaced by a termination of parental rights-specific discovery provision.

- Stakeholder feedback on the factors a judge should consider in determining whether termination is in a child's best interest factors was incorporated.

### **Article 5**

Article 5 relates to services provided to youth in foster care and youth who have just aged out of care to prepare them for independent living as adults. The following changes were made to this Article:

- A purpose statement was incorporated for consistency with other Articles.
- Language regarding the services DFCS is required to provide was made more discretionary, to allow flexibility when there are budget limitations. DFCS is still required to provide a system of services for all eligible children, but there is more flexibility in what those services are.
- A provision was added to clarify that the permissive language for independent living services is not meant to impact a child's right to post-secondary education services under O.C.G.A. § 20-3-660.

### **Article 6**

Article 6 creates a new framework called "Children in Need of Services" for unruly children and children found to be unrestorably incompetent to proceed in delinquency cases. The following changes were made to this Article:

- The term "mental health plan" has been replaced with the term "comprehensive services plan."
- The individuals who are able to file a complaint and a petition alleging that a child is in need of services have been expanded to include any attorney.

### **Article 7**

Article 7 relates to delinquency cases. The following changes were made:

- Additional factors were added to the list of things a judge should consider in determining whether a child who has committed a designated felony requires secure confinement.
- The provision excluding statements made during intake from evidence was revised to limit that exclusion to adjudications involving this child, and allowing them to be used for impeachment or rebuttal so long as the statements were voluntary.
- The provision regarding informal adjustment was edited to clarify that if the juvenile court intake officer decides not to proceed by informal adjustment, then a referral needs to be made to the prosecuting attorney.
- The provision that prevents a child from making an admission at arraignment has been limited to children who are unrepresented at arraignment. Represented children will be allowed to admit.

- The jurisdictional language relating to “SB 440” regarding automatic transfers was corrected to clarify that the superior has exclusive jurisdiction over those crimes.
- A provision from current law allowing the superior court to transfer some “SB 440” cases back to juvenile court after indictment for extraordinary cause was reinserted and edited to allow the sex crimes that could be transferred down prior to the 2006 sex offender legislation to be sent to juvenile court.
- A provision from current law allowing the juvenile court discretion to transfer cases involving 13 and 14 year olds who committed acts that would be crimes punishable by life imprisonment or aggravated battery which caused serious bodily injury to superior court was added to the bill.
- Factors that a judge should consider in deciding whether to use discretion to transfer were clarified.
- The provision requiring transfer hearing to be conducted according to the standards of an adjudicatory hearing was eliminated.
- Probation officers’ reports and recommendations regarding whether a child should be transferred to superior court now are to go to the parties in addition to the court.
- The provision preventing use at a criminal trial of statements made by a child at a transfer hearing was edited to allow the statements to be used for impeachment or rebuttal.

### Article 8

Article 8 governs procedures and proceedings relating to children who are incompetent to participate in their defense in delinquency cases. The following changes were made to this Article:

- The term “mentally competent” was replaced with “incompetent to proceed” and references were updated to reflect the term’s opposite focus on the deficiency in the child’s understanding of or participation in the court process.
- The definitions of “remediation services” and “restoration to competency services” were clarified.
- References to residential treatment were revised to focus on appropriate treatment and services, rather than on the treatment setting.
- The age below which a court is required to order a competency evaluation if the child is accused of a serious, violent felony was lowered from 14 to 13.
- The required contents of a competency examiner’s report were edited for clarity.
- The provision allowing a court that has found a child to be incompetent to proceed to dismiss without prejudice a petition alleging the child had committed a misdemeanor was edited to clarify that dismissal may occur at any time.

- Provisions relating to who receives court documents and copies of the court findings were revised to protect confidential health information.
- A provision asking a competency restoration or remediation program provider to indicate whether civil commitment proceedings should be initiated was eliminated.

**NOTE:** Senator Cowser returned to the meeting during the overview.

Chairman Hamrick, 30<sup>th</sup>, opened the floor up to questions from the members of the committee. Senator Crosby, 13<sup>th</sup>, asked for more clarification of the change in the terms deprivation versus dependency. Ms. Widener explained that deprivation described what happened to the child before coming to court. Dependency described the relationship between the child and the court currently.

Testimony in favor of the legislation was given by:

**Viveca R. Famber Powell**, Attorney

**Sandra Michaels**, Georgia Association of Criminal Defense Lawyers (GACDL)

**Linda Pace**, GACDL

Concerns regarding the legislation were expressed by:

**Kermit McManus**, Prosecuting Attorneys Council (PAC)

**Tom Williams**, PAC

**[SB 127 HEARING ONLY](#)**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 5:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Monday, March 2, 2011**

The Senate Judiciary Committee held its eighth meeting of the 2011 Session on Monday, March 2, 2011, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 4:12 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator William Ligon, 3<sup>rd</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Jesse Stone, 23<sup>rd</sup>  
Senator Mitch Seabaugh, 28<sup>th</sup>, Ex-Officio

**NOTE:** Senators Brown, 26<sup>th</sup>, and Fort, 39<sup>th</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 40 (Murphy, 27<sup>th</sup>) Public Contracts; provide penalties for the failure of a public employer to utilize the federal work authorization program**

**Senator Murphy, 27<sup>th</sup>**, presented a substitute of **SB 40** to the committee developed following two subcommittee hearings and a full committee hearing on the legislation. He shared the following summary of the substitute language with the committee:

**Contracts for Public Works: Immigration Compliance**

Current law required public employers to verify employment eligibility using the federal work authorization program. All bids would include a signed, notarized affidavit that the contractor had registered with and was using the federal program, including the user number; and would only contract with subcontractors who also swore to use the federal program.

Subcontractors and sub-subcontractors who did not register with and participate in the federal work authorization program would be prohibited from entering into any contract with a contractor for a public contract. A subcontractor who received an affidavit from a sub-subcontractor, or who received notice of an affidavit from a sub-subcontractor that had contracted with another sub-subcontractor, would have a duty to forward it to the contractor within 5 business days.

A contractor, subcontractor or sub-subcontractor who did not intend to hire any employees for the purpose of completing work on a contract, or part thereof, would be required to instead provide a copy of the drivers' license or state-issued identification of the contracting party and each independent contractor. If he/she later determined that employees will be needed to comply with the contract, an affidavit swearing that the contractor/subcontractor was using the federal program would be required. The Attorney

General would be responsible for providing a list of states that verify immigration status before issuing drivers' licenses and other identification.

If the state auditor found any political subdivision of this state to be in violation of this law, that political subdivision would have 30 days to demonstrate that all deficiencies had been corrected. If not, that political subdivision would be excluded as a qualified local government until compliance was achieved. If a state department or agency was found to have violated these rules twice in five years, funding for the next fiscal year would be cut to no more than 90% of the amount appropriated in the second year of noncompliance. In addition, such agencies and departments would be listed on an official state website as being in violation.

At any time, a public employer could seek administrative relief through the Office of State Administrative Hearings, which would toll the time limit for coming into compliance until a final ruling is handed down.

Parties to a public works contract could not be held civilly or criminally liable for the failure of any contractor to submit a required affidavit; however, each party would be held responsible for any failure to submit a required affidavit.

There would be a rebuttable presumption that a party receiving and acting upon an affidavit does so in good faith. Affidavits would be admissible in court in order to establish the presumption.

### **Mandatory E-Verify Participation for Private Employers**

This section requires every private employer with five or more employees to verify the employment eligibility of each newly hired employee through the federal program, within three business days of the hiring. This requirement would apply to businesses with: more than 500 employees on July 1, 2011; more than 100 employees on January 1, 2012; and five or more employees on July 1, 2012. Documentation demonstrating the verification of a newly hired employee would be required to be maintained for at least five years.

This requirement does not apply to seasonal employees eligible for temporary agricultural visas under the federal H-2 program. Upon notification of a potential violation, a business would have five days to correct the problem and register with and begin using the federal work authorization program.

The Labor Commissioner would be responsible for the enforcement of these provisions, including limited subpoena powers to obtain employment records, conducting hearings to determine whether violations have been committed, and imposing sanctions against private employers. Beginning January 1, 2013 and every six months thereafter, the Labor Commissioner would request from the U.S. Department of Homeland Security a list of employers from this state that were registered with the E-Verify program. The Commissioner would make the list available on its website.

Once an employer obtained a user number for the federal work authorization program, the business could not use a new or different user number except upon a showing of good cause based on need.

### **Failure to Carry an Alien Registration Document**

This new code section would track federal law by requiring all aliens, 18 years of age or older, who were required to register pursuant to federal law and issued a certificate of registration, to carry, at all times, any certificate of alien registration.

This statute would not be enforced against any person who contacted law enforcement or a state prosecutor for the purpose of acting as a witness to a crime, to report a crime, or to seek assistance as a victim to a crime.

### **Determination of a Person's Immigration Status**

The bill would allow law enforcement officers to seek to verify a person's immigration status if the officer had probable cause to believe that the person had committed a criminal offense, including traffic offenses. If the person did not present a valid state or federal identification document, the officer would be authorized to use any reasonable and available means to determine the person's immigration status, including contacting the appropriate federal agency.

If the officer received confirmation that the person was an illegal alien, then the officer is authorized to take any action under state or federal law, such as detainment, transfer to a federal facility, and notifying the federal Department of Homeland Security. Peace officers, prosecutors and local governing authorities who acted in good faith to carry out this law would have immunity.

Law enforcement officers would not be allowed to consider race, color or national origin in implementing the requirements of this statute. Anyone who, in good faith, contacted law enforcement as a witness to a crime, to report criminal activity, or to seek assistance as a crime victim will not be investigated under this statute.

### **Tax Deductions**

Beginning January 1, 2012, wages for labor services greater than \$600 per annum per worker would not be eligible as a tax deductible business expense for state income tax purposes unless the taxpayer was using the federal work authorization program. However, this statute would not apply to:

- a business domiciled in Georgia that is exempt from the federal employment verification procedures under federal law;
- any individual hired by the taxpayer before January 1, 2012;
- any taxpayer where the person being paid is not directly compensated or employed by the taxpayer; or

- wages paid for labor services to any person who presents valid identification issued by the Georgia Department of Driver Services.

### **Public Benefits**

Except where exempted by federal and any other state law, every state and local agency would be required to verify the lawful presence in the U.S. of any applicant for public benefits.

This section provides that an agency head's intentional and knowing failure to abide by the law would be:

- a violation of O.C.G.A. § 45-10-1 relating to the code of ethics for government service and subject the agency head to removal from office and a fine up to \$10,000; and
- a high and aggravated misdemeanor offense if the agency head acted in willful or intentional violation of the law.

Also, the Attorney General would be authorized to bring civil action against a public employer or agency head for violating this statute. The state would be awarded attorney's fees and litigation expenses if a court entered an order against an employer.

### **Severability Clause**

If any provision of this legislation was held invalid or unconstitutional, the invalidity will not affect the other provisions.

Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

Testimony in support of the legislation was given by the following:

**David Raynor**, Georgia Chamber of Commerce  
**Kyle Jackson**, NFIB  
**Mark Woodall**, Associated Contractors of Georgia  
**Lee Fleck**, Private Citizen  
**Todd Edwards**, ACCG

Testimony in opposition to this legislation was expressed by the following:

**Larry Pellegrini**, Georgia Latino Alliance  
**Jerry Gonzalez**, GALEO  
**Mike Sprinkel**, Refuge Family Services  
**Frank Mulcahy**, Georgia Catholic Conference  
**D.A. King**, Dustin Inman Society

**NOTE:** Senator Crosby, 13<sup>th</sup>, left the meeting

Chairman Hamrick asked if there were any committee members willing to make a motion on the legislation. Chairman Hamrick, 30<sup>th</sup>, recognized Senator Bethel, 54<sup>th</sup>, who moved to amend the bill by striking “who is utilizing” on line 213 and insert “with respect to any employee or employees procured.” Senator Seabaugh, 28<sup>th</sup>, seconded the motion. The amendment passed with a vote of 5 to 2.

**NOTE:** Yeas were Bethel, Cowsert, Ligon, Seabaugh, and Stone. Nays were Jason Carter and Ramsey.

Chairman Hamrick, 30<sup>th</sup>, recognized Senator Seabaugh, 28<sup>th</sup>, who moved to insert on line 23 “taxpayer has utilized a federal work authorization program, as such term described in code 13-10-90.” Senator Cowsert, 46<sup>th</sup>, seconded the motion. The amendment passed with a vote of 4 to 3.

**NOTE:** Yeas were Senators Bethel, Cowsert, Ligon, Seabaugh. Nays were Jason Carter, Ramsey and Stone.

Seeing that there were no further amendments offered by any member of the committee, Chairman Hamrick, 30<sup>th</sup>, asked for a motion on SB 40 as amended. Senator Seabaugh, 28<sup>th</sup>, moved **SB 40 Do Pass by Substitute** as amended by the committee. Senator Cowsert, 46<sup>th</sup>, seconded the motion. SB 40 passed as amended with a vote of 5 to 2.

#### **SB 40 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Senators Bethel, Cowsert, Ligon, Seabaugh and Stone. Nays were Senators Jason Carter and Ramsey.

#### **SB 62 (Ligon, 3<sup>rd</sup>) State; no private property shall be alienated to any other state; exercise of state sovereignty/jurisdiction without consent of General Assembly**

**Senator Ligon, 3<sup>rd</sup>**, presented a substitute to **SB 62** to the committee developed after the committee raised some concerns at an earlier hearing on the legislation. Senator Ligon, 3<sup>rd</sup>, stated that this legislation did not prevent anyone from purchasing property. The intent of this legislation was simply to make a provision for the General Assembly to have a vote in if the purchaser wanted to remove that land from state sovereignty. Chairman Hamrick, 30<sup>th</sup>, asked if there were any questions from the committee. Seeing there were none, Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

**NOTE:** Senator McKoon, 29<sup>th</sup>, arrived at the meeting. Senator Ramsey, 43<sup>rd</sup>, left the meeting.

Testimony in favor of the legislation was given by the following:

**Marci Rubensohn, GMA**  
**Nealiz McCormick, GCAIC**

Testimony opposed to the legislation was given by:  
**Joe McDonough**, St. Andrews Plantation

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the substitute to **SB 62**. Senator McKoon, 29<sup>th</sup>, moved **SB 62 Do Pass by Substitute**. Senator Cowsert, 46<sup>th</sup>, seconded the motion. **SB 62** passed unanimously (7 to 0).

### **SB 62 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Senators Cowsert, Bethel, Jason Carter, Ligon, McKoon, Stone and Seabaugh.

**NOTE:** Senator Cowsert left the meeting.

### **SB 172 (Shafer, 48<sup>th</sup>) Adoption; require home study by an evaluator prior to the placement of the child; recommend placement; definitions**

**Senator Shafer, 48<sup>th</sup>**, presented **SB 172** to the committee and stated that the intent of this legislation was to prohibit a child from being placed with an adoptive family unless a home study recommended such placement. If the home study had not occurred before placement of the child, the third-party adopter would be required to petition the court for an order authorizing the child's placement before the completion of the home study.

If the court found the placement was in the best interest of the child and the petition was granted, the child would be allowed to remain in the home of the third party with whom the parent or guardian placed the child. Then the order would be delivered to the Department of Human Services ("DHR") and the home study evaluator would be selected by the clerk of court within 15 days of the order. If not in process already, the home study should be initiated by the evaluator within 10 days of receiving the court order. Once initiated, the home study would be required to be completed within 60 days, and the evaluator would be required to provide the report to the petitioner and file with the court. A copy of the court order would be required to be included with the petition for adoption. Also, a copy of the home study report or a copy of the court order that permitted the child to remain in the petitioner's home pending completion of the home study would be required to be included when an adoption petition was filed in a case involving the surrender or termination of parental or guardian's rights and the child was to be adopted by a third party. The clerk of court would be required to send copies of the adoption petition, exhibits, and relevant documents to the evaluator who conducted the home study within 15 days of the petition being filed. The Surrender of Rights/Final Release for Adoption form was amended to require more specific identifying information of the parties involved, as well as a new section where the parent acknowledged that a home study recommending the placement would be required before placement of the child can occur, unless each party secured court approval for the placement. Chairman Hamrick opened the floor to public testimony.

Testimony in favor of the legislation was given by the following:

**Jamie Self**, Georgia Association of Licensed Adoption Agencies (GALAA)

**Doug Mead**, GALAA

**Trish Small**, Bethany Christian Services

**Normer Adams**, GA Association of Homes and Services for Children (GAHSC)

Testimony opposed to the legislation was given by the following:

**Ruth Claiborne**, Georgia Council of Adoption Attorneys

**Kathy Lee**, Adoptive Mother

**NOTE:** Senators Ligon, Seabaugh and Stone left the meeting.

Chairman Hamrick, 30<sup>th</sup>, noted that the committee had lost its quorum and that there seemed to be some issues that would need to be worked out before passage of the legislation after hearing the testimony for and against the bill. Chairman Hamrick, 30<sup>th</sup>, assigned **SB 172** to the Division I Subcommittee chaired by Senator Cowsert, 46<sup>th</sup>, for further study.

**SB 172 ASSIGNED TO SUBCOMMITTEE**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:15 p.m.

Respectfully submitted,

/s/ Senator Bill Hamrick, 30<sup>th</sup>, Chairman

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, March 4, 2011**

The Senate Judiciary Committee held its ninth meeting of the 2011 Session on Wednesday, March 4, 2011, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 4:12 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Mitch Seabaugh, 28<sup>th</sup>, Ex-Officio

**NOTE:** Senators Brown, 26<sup>th</sup>, and Stone, 23<sup>rd</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 139 (Stone, 23<sup>rd</sup>) Appellate Practice; provide for appeals involving nonmonetary judgments in child custody cases; provisions**

**Chairman Hamrick, 30<sup>th</sup>**, presented **SB 139** to the committee on behalf of the sponsor, Senator Stone, 23<sup>rd</sup>, who was in another meeting. Chairman Hamrick, 30<sup>th</sup>, stated that the intent of this legislation was to insure that the best interests of children involved in custody cases were being served. This bill would place a child upon the Judge's ruling on the case despite opportunity for appeals at a later date. There was no testimony for or against the legislation and no questions from the committee. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the bill. Senator Cowsert, 46<sup>th</sup>, moved **SB 139 Do Pass**. Senator Ramsey, 43<sup>rd</sup>, seconded the motion. SB 139 passed unanimously (6 to 0).

**SB 139 DO PASS**

**NOTE:** Yeas were Hamrick, Cowsert, Crosby, Ligon, McKoon, and Ramsey.

**NOTE:** Senators Bethel, Jason Carter and Fort arrived at the meeting.

**SB 112 (McKoon, 29<sup>th</sup>) Military Parents Rights Act; procedures governing parental rights in the event one parent is subject to military deployment**

**Senator McKoon, 29<sup>th</sup>**, presented **SB 112** to the committee and stated that this bill had already been enacted in several other states as the **Military Parents' Rights Act**. This legislation would establish court procedures to address parental rights and responsibilities and parent-child contact when a military parent was deployed for service unaccompanied by family members. A military parent who was planning deployment or his or her co-parent could seek a temporary order from the family court which would establish the conditions for the time of deployment, and a transition schedule for when the deploying parent returns, after which time the original orders would resume effect. This bill would

also allow the court to assign the deploying parent's parent-child contact rights to another family member or person with whom the child has a significant relationship if it was in the child's best interests. Orders could make accommodations for the deploying parent to participate in court proceedings via electronic means, and could require the non-deploying parent to make the child reasonably available to the deploying parent when the deploying parent had leave, and to facilitate opportunities for communications with the deploying parent while he or she is deployed. Chairman Hamrick, 30<sup>th</sup>, opened the floor to the committee members for questions from the committee. Senator Cowsert, 46<sup>th</sup>, asked if this legislation would create a new category in custody cases for military parents. Senator McKoon, 29<sup>th</sup>, responded that this legislation does create a new category, and that it has been done in several other states. Chairman Hamrick, 30<sup>th</sup>, recognized **John Camp**, a family law attorney, who was there to testify in support of the legislation to speak to the bill. Mr. Camp stated that he had 38 years of experience dealing with legal issues that affect military families. Family plans were required by the military. He said that 38 states have enacted this legislation, which would more aptly be entitled the "Military Family Rights Act," in recognition of our citizens who put their lives on the line for us. This legislation would not limit judges and would prevent the likelihood that the military parent would not lose their relationship with their children. Mr. Camp stated that this legislation would not create any new rights, but would for instance allow grandparents visitation with the child while the parent was deployed. Chairman Hamrick, 30<sup>th</sup>, recognized **Kevin Brunch**, US Department of Defense state liaison, who was there to testify in support of the legislation as a means of serving as a balance for military families who live under extreme stress. The welfare of the child always needs to be the most important consideration. Chairman Hamrick, 30<sup>th</sup>, recognized Senator Ramsey, 43<sup>rd</sup>, who asked how many individuals there were who provide for national security, and if any other classifications were included. Senator Ramsey, 43<sup>rd</sup>, stated that he was in support of the legislation because people in uniform do not have a choice in saying yes or no to deployment.

**NOTE:** Senators Cowsert, 46<sup>th</sup>, Carter, 42<sup>nd</sup>, and Fort, 39<sup>th</sup>, left the meeting. Senator Seabaugh, 28<sup>th</sup>, arrived.

Chairman Hamrick, 30<sup>th</sup>, recognized Shelley Senterfit, Senterfit and Knight, who spoke in general support of the legislation but raised some concerns regarding legitimization actions and attorney fees. She also said that the term "shared" is not used in referencing custody arrangements and should be changed to "sole or joint." Chairman Hamrick, 30<sup>th</sup>, asked Senator McKoon, 29<sup>th</sup>, to work on a substitute for the committee addressing the concerns that were raised and thanked everyone for their input.

**SB 112 HEARING ONLY**

**SB 162 (Ligon, 3<sup>rd</sup>) Rules of the Road; provide driving under the influence of alcohol/drugs by illegal alien is a felony**

**Senator Ligon, 3<sup>rd</sup>**, introduced **SB 162** to the committee. He stated that this bill simply made it a felony offense for illegal immigrants who were convicted for driving under the influence of alcohol, drugs or other intoxicating substances. There was no testimony for or against the legislation. There were no questions from committee members. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator McKoon, 29<sup>th</sup>, moved **SB 162 Do Pass**. Senator Crosby, 13<sup>th</sup>, seconded the motion. **SB 162** passed unanimously (6 to 0).

**SB 162 DO PASS**

**NOTE:** Yeas were Hamrick, Crosby, Bethel, Ligon, McKoon and Seabaugh.

**SB 105 (Jones, 10<sup>th</sup>) Juvenile Justice, Dept. of; provide for parole of children committed for commission of designated felony acts; certain circumstances**

**Senator Jones, 10<sup>th</sup>**, presented **SB 105** to the committee. Senator Jones, 10<sup>th</sup>, presented the following summary to the committee:

**Chapter 4A of Title 49:**

*Parole Panels Appointed by DJJ Commissioner (New Code Section 49-4A-15)*

Each panel would have three members appointed by the DJJ Commissioner (“commissioner”) serving as DJJ employees. The commissioner would be responsible for determining the number of panels, their location within the state and how often they would meet.

The panels would have the following duties:

- Which designated felons sentenced by a juvenile court may be released on parole;
- Supervising parolees;
- Determining, investigating and taking action on parole violations;
- Aiding parolees in finding employment;
- Determining which designated felons are fit for relief from the panel; and
- **Granting parole by majority vote of at least 2 members.**

*Parole Guidelines (New Code Section 49-4A-16)*

Require the Board of Juvenile Justice (“board”) to adopt a parole guidelines system to be used to determine parole actions for designated felons. The guidelines must consider public safety above all, but also the severity of the offense, the offender’s prior criminal history, and social factors which may have contributed to the offense.

*Procedural Parole Rules (New Code Section 49-4A-17)*

Allow the board to adopt rules regarding parole procedures and remission of fines and forfeitures. Such rules must include an eligibility requirement with a time for automatic initial consideration for parole and times for periodic reconsideration. At minimum, designated felons must be initially eligible for parole after s/he had served one third of his/her sentence.

Designated felons with substance abuse problems would not be parole eligible until completion of a DJJ substance abuse program. Those who have committed an offense involving family violence cannot be parole eligible until completion of a DJJ family violence counseling program.

*Powers and Duties of the Panels (New Code Section 49-4A-18)*

Panels must collect informational records on every person who may become eligible for relief, including: the circumstances of the designated felony act and term of commitment; copies of the court record, pre-sentence investigation, and probation reports; any social, physical or mental examinations; information on the person's conduct while committed; level of education; and victim testimony.

Panels would be authorized to conduct their own investigations, and the court and all probation officers would be required to furnish information at the panel's request. All other state and local agencies, including sheriffs and peace officers, must cooperate and assist the panel if needed.

Panels are prohibited from granting parole unless there was a reasonable probability that the parolee would conduct him/herself in a respectable and law-abiding manner. In determining whether parole was appropriate, the panels must consider good conduct, achievement of at least a 5<sup>th</sup> grade reading level, and efficient performance of assigned duties. Panels would have the option to personally examine a designated felon who was parole eligible before making a decision. The terms and conditions of parole would be placed in writing and the parolee would be released after being informed and given a copy of such conditions. The parolee would remain in legal custody of DJJ until the expiration of his/her term of commitment.

The judge, district attorney, and sheriff of the county where the juvenile was adjudicated, along with local law enforcement of the juvenile's last residence and the victim, must be notified within 72 hours of a decision to parole a designated felon.

The board must adopt rules concerning what constitutes a parole violation. The rules must include the requirements that a parolee: cannot leave Georgia, or a designated area within Georgia, without the panel's consent; must support his/her dependents if possible; must make restitution for his/her act; must perform community service; must abandon evil associates; and must abide the instructions of his/her parole supervisor. Violating these terms may subject the parolee to re-arrest and return to a detention center for the remainder of his/her commitment.

The board may require payment of a monthly, uniform parole supervision fee as a condition of parole, to be paid into the general fund of the state treasury.

*Warrant Power (New Code Section 49-4A-19)*

**This statute authorized parole panel members to issue warrants for the arrest of any parolee suspected of violating parole or otherwise lapsing into criminal ways.** Such warrant would require the parolee to appear before the panel for a parole revocation hearing. All peace officers and others authorized to serve process would also be authorized to execute these warrants. Parole supervisors would be required to notify the parole panel upon reasonable suspicion that a parolee had violated his/her parole.

*Preliminary Hearings Following a Warrant (New Code Section 49-4A-20)*

When a warrant as described above was issued, a preliminary hearing must be held within a reasonable time near the place of the alleged parole violation. The purpose of the preliminary hearing would be to determine whether there is probable cause to believe the parolee had violated his/her parole. However, such hearing would not be required if the parolee was not under arrest subject to the warrant, had absconded from supervision, had waived the hearing, had admitted the alleged violation, or had been adjudicated as a delinquent or convicted of a crime. The bill specifies all the procedures necessary to conduct the hearing.

*Final Revocation Hearing (New Code Section 49-4A-21)*

Parolees would have the right to a final hearing before the panel, except that a hearing will not be required if the parolee has signed a waiver, been adjudicated as a delinquent, convicted of a crime, or has entered a guilty plea. The purpose of the final hearing would be to determine whether the parolee has in fact committed a parole violation worthy of parole revocation. The bill specifies all the procedures necessary to conduct the hearing, similar to the procedures for the preliminary hearing.

- If a parolee has been adjudicated as a delinquent or convicted of a crime or has entered a guilty plea, parole may be revoked without a hearing.
- If the parolee has absconded or has been adjudicated as a delinquent or convicted of a crime, the panels will be authorized to issue temporary parole revocations.
- If the panel finds that there is no parole violation, the parolee will continue with his/her original parole schedule.

*Limits on Panel's Authority (New Code Section 49-4A-22)*

Prohibits the panel from discharging anyone before the expiration of their sentence or a court modifies the sentence. If in the parolee's and society's best interest, panels are authorized to relieve parolees of certain requirements, such as making regular reports and remaining in the state or county.

*Confidentiality (New Code Section 49-4A-23)*

All records and information related to the performance of the parole panel's duties would be confidential, except as needed by the General Assembly, Governor or state auditor. A parolee is entitled to hear the evidence against him/her. All hearings would be public.

*Power of the Governor (New Code Section 49-4A-24)*

The Governor would have no authority in the granting of paroles under this chapter.

*Annual Report (New Code Section 49-4A-25)*

Requires DJJ to create an annual report of the parole panels' activities for the Governor, General Assembly, and others as deemed necessary by the commissioner.

Chapter 11 of Title 15:

**The law currently requires all children convicted of a designated felony act be confined to a youth development center (YDC) for 12 to 60 months, with no option for parole. This bill deletes any mandatory minimum time of confinement and allows for parole.**

*New Code Section 15-11-63.1*

Children convicted of a designated felony could not be discharged from DJJ custody unless released by a juvenile parole panel. A request for parole could not be made until the child has served at least one year in DJJ custody, and new requests could only be made once every 12 months. All requests for parole must be accompanied by such a recommendation from the child's DJJ counselor.

A parole panel hearing would make its determination based on a preponderance of the evidence standard. In order to grant parole, the panel must find that the child has been rehabilitated using these factors: best interests of the child; child's criminal and disciplinary history; child's academic progress while in custody; any victim impact statement; and any safety risk to the community should the child be released.

Chairman Hamrick, 30<sup>th</sup>, recognized **Kermit McManus**, District Attorney, and **Eric John**, Council of Juvenile Court Judges, who had concerns regarding the legislation as it would set up a parole system outside the current system. They were both concerned that the victim and the prosecution were not a part of the parole determination process in this legislation, and would not allow a judge to make the decision. Chairman Hamrick, 30<sup>th</sup>, asked Senator Jones, 10<sup>th</sup>, to close discussion on the legislation. Senator Jones, 10<sup>th</sup>, stated that the intent of the legislation was to create a cost efficient way to handle parole for juvenile offenders without adding an undue burden on the court system.

**[SB 105 HEARING ONLY](#)**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:00p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Monday, March 7, 2011**

The Senate Judiciary Committee held its tenth meeting of the 2011 Session on Monday, March 7, 2011, in the Senate Mezzanine of the Capitol. Chairman Bill Hamrick called the meeting to order at 4:45 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Robert Brown, 26<sup>th</sup>  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Joshua McKoon, 29<sup>th</sup>  
Senator Jesse Stone, 23<sup>rd</sup>  
Senator Mitch Seabaugh, 28<sup>th</sup>, Ex-Officio

**NOTE:** Senator Ramsey, 43<sup>rd</sup>, was absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 11 (Seay, 34<sup>th</sup>) Garnishment Proceedings; extend the effective period of a continuing garnishment**

**Senator Seay, 34<sup>th</sup>**, presented **SB 11** to the committee. She stated that plaintiffs who prevailed in garnishment proceedings were entitled to continuing garnishment against a garnishee who was the defendant's employer, and that employer was required to hold onto all non-exempt money and property owed to the defendant. Current law limits continuing garnishment for all debts owed by the garnishee to the defendant to 179 days after the date of service of process; this bill would extend that time limit to 539 days. Current law requires the last answer be filed by the employer/garnishee no later than 195 days after process had been served; this bill would change that requirement to no later than 559 days after service. If passed, this law would become effective and apply to garnishment filed on or after July 1, 2011. Senator Hamrick noted that there was no testimony for or against the bill and asked if any of the members had any questions. Senator Stone, 23<sup>rd</sup>, asked Senator Seay, 34<sup>th</sup>, how many other states had passed legislation that would allow for the continuation of garnishment. Senator Seay, 34<sup>th</sup>, replied that there were 6 states. There were some concerns expressed by the other members of the committee and a request to continue working on the garnishment language. Senator Seay, 34<sup>th</sup>, requested a vote on SB 11. Chairman Hamrick, 30<sup>th</sup>, asked the committee for a motion. Senator Carter, 42<sup>nd</sup>, moved **SB 11 Do Pass**. Senator Crosby, 13<sup>th</sup>, seconded the motion. The motion failed (2 to 4).

**SB 11 FAILED**

**NOTE:** Yeas were Senators Jason Carter and Crosby. Nays were Senators Bethel, Fort, Ligon and Stone.

**NOTE:** Senators Brown and Seabaugh entered the meeting following the vote

**SB 50 (Hamrick, 30<sup>th</sup>) Courts; add certain fees for funding of local victim assistance programs**

**Senator Hamrick, 30<sup>th</sup>**, presented a substitute to **SB 50** developed since the last hearing on the legislation to the committee. Senator Hamrick stated that Code Section 15-6-95 was the priority list for distribution of fines and fees collected in superior court, for use if the full amount was not collected. This bill would amend the list in the following ways:

- Priority level 6: Instead of county law libraries, funds for jail construction and staff is moved up;
- Level 7: Probation fees are added;
- Level 8: Funding for local victim assistance programs are added;
- Level 9: Georgia Crime Victims Emergency Fund is added;
- Level 10: Application fee for legal defense services is moved down;
- Level 11: Brain and Spinal Injury Trust Fund is added;
- Level 12: Drug Abuse Treatment and Education Fund is moved down;
- Level 13: Funding for county law libraries is moved here; and
- Level 14: Balance of the fine will be paid to the county.

Senator Hamrick, 30<sup>th</sup>, opened the floor for public testimony.

Testimony in opposition to the bill was given by the following:

**Stephanie Lottie**, Brain and Spinal Injury Trust Fund Commission  
**Debra Nesbit**, ACCG

Testimony in support of the legislation was given by the following:

**Ken Mauldin**, DAAG

**Note:** Senators Bethel, Brown, Jason Carter, Fort, Ligon and Seabaugh left the meeting.

Noting that the quorum had been lost, Chairman Hamrick, 30<sup>th</sup>, stated that **SB 50** would be voted on at the next meeting.

**SB 50 HEARING ONLY**

**Note:** Senator McKoon arrived.

**SB 191 (Cowsert, 46<sup>th</sup>) Jury Composition Reform Act of 2011; provide for a modernized and uniform system of compiling, creating, maintaining, jury lists**

**Senator Cowsert, 46<sup>th</sup>**, presented **SB 191** to the committee and invited **Justice Hugh Thompson** to explain the bill to the committee. Justice Thompson stated that the intent of this legislation, known as the **Jury Composition Reform Act of 2011**, was to require the Council of Superior Court Clerks (“Council”) to establish a statewide master jury list and then to distribute county master jury lists to each county board of jury

commissioners. Clerks would be required to keep a computer based jury management system for the purpose of maintaining the county master jury list.

Justice Thompson continued by stating that the bill would provide for a deferral of jury duty, in addition to excusal, when a juror showed good cause. The court would provide affidavits for the purpose of requesting a deferral or excusal. Military service members and their spouses could request a jury duty deferral or excusal upon presentation of a valid military identification card and an affidavit. When a deferral or excuse was granted, the court would notify the clerk.

Justice Thompson also noted that jurors would be ineligible for juror service at the next succeeding term of superior or state court where he/she previously served, but would be eligible to serve at the next term of a different level of court. The bill removed the exception to this rule for counties where the grand juror pool was less than 100 people and the trial juror pool was less than 350 people. Expense allowances for jury service would only be paid to those who appear for service. Juror questionnaires would be considered confidential and exempt from public disclosure, except the court could order questionnaire data be released to parties and their counsel in order to challenge the array of the jury or in preparation for voir dire. County boards of jury commissioners would have six members, who serve six year terms, and the terms of no more than two members could expire each year.

The Council would be required to compile a statewide master jury list and would be responsible for updating the list. The Department of Driver Services would provide the Council with a list of all persons to whom they have issued a driver's license or personal identification card; however, persons whose licenses had been suspended or revoked due to a felony conviction would not be included. The Secretary of State would provide the Council with a list of all registered voters, in addition to a list of persons who: had felony convictions; had been declared mentally incompetent; and whose voting rights had been removed. The Council would annually provide each county board of jury commissioners with a county master jury list. The Council could charge a fee for such list, not to exceed 3 cents per name.

Twelve months after this bill becomes effective, court clerks would be required to:

- Make the county master jury list available by request of a party or his/her attorney;
- Choose a sufficient number of people to serve as grand jurors, and issue summonses no less than 20 days before the commencement of the term of court for which a grand jury will be impaneled;
- Mail all summonses to the prospective jurors' most notorious places of abode at least 25 days before the court date; Failure to receive the notice personally would be a defense to a contempt citation;
- Choose prospective trial jurors from the county master jury list and summon the jurors when there were insufficient jurors in attendance to complete the jury panel;

- Choose and cause to be summoned additional prospective trial jurors when there were an insufficient number of jurors in attendance;
- Choose and summon prospective jurors in the same manner as choosing jurors at the close of a regular term of court, when a court session was prolonged or where court had convened or was about to convene and there had been no jurors chosen.

Twelve months after this bill becomes effective, trial juries would be chosen from a county master jury list. The presiding judge would order the clerk to choose the number of jurors necessary, and the clerk would choose the names of persons to serve as trial jurors. When there were no regular trial juror panels to make up panels for misdemeanor cases, or where jurors were already engaged in considering a case, the presiding judge could fill the panels by summoning competent jurors as necessary. Also, twelve months after this bill became effective, a prospective juror chosen for service in superior court would also be legally competent to serve as a juror in any court with county-wide jurisdiction concurrent with the superior courts to try any type of case not within the superior courts' exclusive jurisdiction, for the same period of time that the juror was competent to serve as a superior court juror. Thirty jurors would be impaneled when any person was indicted for a felony, from which the defense and prosecution could strike jurors. If the state intended to seek the death penalty, the panel must have 42 jurors. If, after striking, there were fewer than 12 qualified jurors, the clerk would choose and summon the necessary number of competent prospective jurors. The clerk would be required to provide the prosecutor and the accused with the names and identifying information of the prospective jurors. Alternate jurors would be chosen from the county master jury list in the same manner as jurors already sworn, and subject to the same examination and challenges. The state and the accused would be entitled to as many peremptory challenges to alternate jurors as there were alternate jurors called, in addition to the regular number of peremptory challenges allowed by law in criminal cases.

The following statutes would be repealed one year after this bill became effective: 15-12-40, the compilation, maintenance and revision of jury lists; 15-12-40.2, list of convicted felons and mentally ill; 15-12-41, revision of the jury list; 15-12-42, selection of jurors; 15-12-43, jury list book or computer print out; 15-12-44, procedures for loss or destruction of a jury box or list; 15-12-45, loss or destruction of precepts; 15-12-62, selection of grand jurors; 15-12-64, procedure where judge has failed to draw a grand jury; 15-12-65, service of summons; 15-12-66, tales jurors; 15-12-120, selection and summoning of trial jurors; 15-12-121, procedure where judge fails to draw jurors; 15-12-124, tales jurors in civil actions; 15-12-126, additional jurors in misdemeanor cases; 15-12-127, separate panels to be drawn each week; 15-12-128, term of service as tales juror; 15-12-129, drawing juries where necessary; 15-12-130, when selected jurors in superior court may serve other courts with concurrent jurisdiction; 15-12-160, required panel of jurors in felony trials; 15-12-169, manner of selecting alternative jurors; and 15-16-21, fees for sheriff's services.

The Secretary of State would be required to provide the Council with a monthly list of the following people, to be used only for the maintenance of the statewide and county master jury lists:

- Convicted of a felony involving moral turpitude;
- Identify themselves as not being U.S. citizens;
- Declared mentally incompetent;
- Convicted of a felony in federal court;
- Who died;
- Whose name has been removed from the list of electors; and
- Voters who have failed to vote and become inactive.

Justice Thompson closed with the statement that this bill would only become effective if funds are specifically appropriated. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony:

Testimony in favor of the legislation was given by the following:

**Judge Ben Studdard**

**Judge Hugh Thompson**

**Ken Mauldin, DAAG**

Testimony in opposition to the legislation was given by the following:

**Beverly Logan, Clerk of Superior Court**

**Linda Pierce, Clerk of Superior Court**

**Mike Holiman, Clerk's Association**

**Debra Nesbit, ACCG**

Chairman Hamrick, 30<sup>th</sup>, thanked everyone for their testimony and encouraged Senator Cowser, 46<sup>th</sup>, to work with those who had concerns with the legislation. He stated that we would take up **SB 191** at the next meeting.

**[SB 191 HEARING ONLY](#)**

**[SB 39](#) (Grant, 25<sup>th</sup>) Courts; create mental health court divisions; assignment of cases; provide for planning groups and work plans; standards**

**Senator Grant, 25<sup>th</sup>**, presented **SB 39** to the committee and stated that this bill would allow criminal courts the option to establish mental health court divisions as an alternative to the traditional court system for defendants with mental illness and/or developmental disability. The court could assign such a defendant's case to the mental health court either prior to entering the sentence, with the prosecutor's consent; as part of the sentence; or upon consideration of a petition to revoke probation.

Each mental health court division would be required to establish a planning group to address the needs of the court, including eligibility criteria. All mental health courts would combine judicial supervision, mental health treatment, and drug and mental health testing. The Judicial Council of Georgia would adopt standards for all mental health courts, to serve as a framework and to provide a structure for overview and evaluation.

A court that established a mental health court division could request both the prosecuting attorney to assign one or more prosecutors, and the public defender to assign one or more assistant public defenders to serve the new division. The court could also request that probation officers and other court employees perform duties for the mental health court.

The expenses incurred for starting a mental health court division could be paid from state funds, county or municipal funds, federal grant money, or private donations.

If a defendant assigned to a mental health court division successfully completed the program prior to judgment, the prosecutor would have the option to dismiss the case. If a defendant successfully completed the program as part of a sentence, that sentence could be reduced or modified.

Any statement made by a defendant in the mental health court division, or any report made in connection to the court, regarding the defendant's mental health could not be held admissible as evidence against the defendant in any legal proceeding. However, if the defendant violated the conditions of the program or was terminated from the program, those reasons could be considered in sanctioning, sentencing or otherwise disposing of the case.

**SB 39 HEARING ONLY**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:30 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, March 9, 2011**

The Senate Judiciary Committee held its eleventh meeting of the 2011 Session on Wednesday, March 9, 2011, in room 307 of the CLOB. Chairman Bill Hamrick called the meeting to order at Noon. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Joshua McKoon, 29<sup>th</sup>  
Senator Jesse Stone, 23<sup>rd</sup>  
Senator Mitch Seabaugh, 28<sup>th</sup>, Ex-Officio

**NOTE:** Senator Brown was absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**[SB 39](#) (Grant, 25<sup>th</sup>) Courts; create mental health court divisions; assignment of cases; provide for planning groups and work plans; standards**

**Senator Grant, 25<sup>th</sup>**, presented a substitute for **SB 39** to the committee that was developed following the hearing at the last meeting. Senator Grant, 25<sup>th</sup>, stated that this bill would allow criminal courts the option to establish mental health court divisions as an alternative to the traditional court system for defendants with mental illness and/or developmental disability. The court could assign such a defendant's case to the mental health court either prior to entering the sentence, with the prosecutor's consent; as part of the sentence; or upon consideration of a petition to revoke probation.

Each mental health court division would be required to establish a planning group to address the needs of the court, including eligibility criteria. All mental health courts would combine judicial supervision, mental health treatment, and drug and mental health testing. However, this version of SB 39 spells out specifically that defendants charged with murder, armed robbery, kidnapping, rape, aggravated sodomy, aggravated sexual battery, aggravated child molestation, or child molestation *would not* be eligible for mental health court.

The Judicial Council of Georgia would be required to adopt standards for mental health courts, to provide a structure for overview and evaluation. The expenses incurred could be paid from state funds, county or municipal funds, federal grant money, or private donations.

A court that established a mental health court division could request the district attorney (or solicitor-general) to assign one or more prosecutors, and the public defender to assign one or more assistant public defenders to serve the new division. The court could also request that probation officers and other court employees perform duties for the mental health court.

If a defendant assigned to a mental health court division successfully completed the program prior to judgment, the prosecutor would have the option of dismissing the case. If a defendant successfully completed the program as part of a sentence, that sentence could be reduced or modified.

Any statement made by a defendant in the mental health court division, or any report made in connection to the court, regarding the defendant's mental health would not be admissible as evidence against the defendant in any legal proceeding. However, if the defendant violated the conditions of the program or was terminated from the program, those reasons could be considered in sanctioning, sentencing or otherwise disposing of the case. This statute *would not* permit a judge to impose or reduce a sentence below the legal minimum.

Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

The following people testified in favor of the legislation:

**Judge Kathy Gosselin**, Council of Superior Court Judges

**Judge David Sweat**, Council of Superior Court Judges

**Ellen Jeager**, Mental Health Association of Georgia

**Ken Mauldin**, DAAG

**Debra Nesbit**, ACCG

**Oliver Hunter**, Georgia Sheriff's Association

There was no opposing testimony.

Chairman Hamrick, 30<sup>th</sup>, recognized Senator Cowsert, 46<sup>th</sup>, who made the motion that **SB 39 Do Pass by Substitute** as amended by inserting the word "written" on line 35 and adding "sheriffs" on line 31. Senator Seabaugh, 28<sup>th</sup>, seconded the motion. **SB 39** passed unanimously (9 to 0).

### **SB 39 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Cowsert, Crosby, Bethel, Jason Carter, Fort, Ligon, McKoon, Ramsey, and Seabaugh.

### **SB 193 (Grant, 25<sup>th</sup>) Civil Practice; update administrative provisions; reimbursement to counties for habeas corpus costs**

**Senator Grant, 25<sup>th</sup>**, presented **SB 193** to the committee stating that this legislation simply outlined a new administrative procedure for Habeas Writs in Superior Courts. Current law directed superior court clerks to send an annual list of each writ of habeas corpus sought in that court to the commissioner of administrative services; this bill would require the list to be sent to the Council of Superior Court Judges of Georgia instead. There was no testimony for or against the legislation, and there were no questions from

the committee. Senator Crosby, 13<sup>th</sup>, moved that **SB 193 Do Pass**. Senator Seabaugh, 28<sup>th</sup>, seconded the motion. **SB 193** passed unanimously (9 to 0).

### **SB 193 DO PASS**

**NOTE:** Yeas were Cowsert, Crosby, Bethel, Jason Carter, Fort, Ligon, McKoon, Ramsey, and Seabaugh.

**NOTE:** Senators Cowsert and Jason Carter left the meeting.

### **SB 181 (Bethel, 54<sup>th</sup>) Attorney General; prohibit contingent compensation under certain circumstances**

**Senator Bethel, 54<sup>th</sup>**, presented a substitute to **SB 181** to the committee which addressed contingency fees for attorneys in forfeiture actions. Prosecuting attorneys and private attorneys would be prohibited from being compensated based on a contingent basis or an hourly or fixed fee arrangement contingent on proceeds resulting from a forfeiture action. However, district attorneys and local governments would be allowed to enter into hourly or fixed fee arrangements with private attorneys to prosecute forfeiture actions that *were not* contingent on the outcome and that were designed to pay for services rendered regardless of the outcome. Chairman Hamrick, 30<sup>th</sup>, recognized **Ken Mauldin**, DAAG, who testified in favor of the legislation. There were no questions from the committee. Senator Seabaugh, 28<sup>th</sup>, moved **SB 181 Do Pass by Substitute**. Senator Ligon, 3<sup>rd</sup>, seconded the motion. **SB 181** passed unanimously by substitute (7 to 0).

### **SB 181 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Crosby, Bethel, Fort, Ligon, McKoon, Ramsey, and Seabaugh.

### **SB 225 (Miller, 49<sup>th</sup>) Criminal Offenses; provide for new offense of transmitting a false report; penalties**

**Senator Miller, 49<sup>th</sup>**, presented **SB 225** to the committee which would make transmitting a false report a crime. Anyone who knowingly and intentionally sent a false claim, either written, electronic, or other type of transmission, that he/she or any other person had committed a serious violent felony, and if such claim caused law enforcement to investigate whether the crime had been committed by that person, would be guilty of the felony offense of transmitting a false crime report. This crime would be punishable by one to five years in prison and/or a fine up to \$10,000. In addition, the court would impose restitution that the offender must repay to the investigating law enforcement agency for the proven costs of investigation. There was no one signed up to testify for or against the bill. There were some concerns raised about the language in the bill by committee members. Chairman Hamrick, 30<sup>th</sup>, asked Senator Miller, 49<sup>th</sup>, to work out those details with the committee. Chairman Hamrick said the committee would vote on the legislation when the language issue was worked out.

**NOTE:** Senator Jason Carter returned. Senator Fort left.

**SB 112 (McKoon, 29<sup>th</sup>) **Military Parents Rights Act; procedures governing parental rights in the event one parent is subject to military deployment****

**Senator McKoon, 29<sup>th</sup>**, presented a substitute to **SB 112** to the committee which was intended to enact the **Military Parents Rights Act**. Senator McKoon, 29<sup>th</sup>, stated, as heard in previous testimony on the legislation, that this bill, had been already enacted in several other states. This legislation would establish court procedures to address parental rights and responsibilities and parent-child contact when a military parent was deployed for service unaccompanied by family members. A military parent who was planning deployment or his or her co-parent could seek a temporary order from the family court which established conditions for the time of deployment and a transition schedule for when the deploying parent returned, after which time the original orders would resume effect. There were no questions from committee members, so Chairman Hamrick opened the floor to public testimony.

The following people testified in favor of the legislation:

**Steven Shewmaker**, Lynch and Slanter, LLC  
**Mark Rogers**, retired military and private citizen  
**John Camp**, Family Law Attorney  
**Linda Pierce**, Clerk of Superior Court  
**Drew Early**, Military & Veterans Law Section, State Bar  
**Senator Don Balfour**, military parent

The following people had concerns regarding the legislation:

**Judge Bill Ray**, Council of Superior Court Judges  
**Regina Quick**, Family Law Section, State Bar  
**John Collar**, Family Law Section, State Bar

There were no further questions from the committee.

**Chairman Hamrick, 30<sup>th</sup>**, recognized **Senator Miller, 49<sup>th</sup>**, who returned to the committee with issues resolved. Chairman Hamrick, 30<sup>th</sup>, brought **SB 225** off the table and asked for a motion from the committee. Senator Seabaugh, 28<sup>th</sup>, moved that **SB 225 Do Pass by Substitute**. Senator McKoon, 29<sup>th</sup>, seconded the motion. **SB 225** passed unanimously by substitute. (7 to 0)

**NOTE:** Yeas were Crosby, Bethel, Jason Carter, Ligon, McKoon, Ramsey, and Seabaugh

**NOTE:** Senator Seabaugh left the meeting. Senator Stone arrived.

**Chairman Hamrick, 30<sup>th</sup>**, then asked for a motion on **SB 112**. Senator McKoon, 29<sup>th</sup>, moved **SB 112 Do Pass by Substitute**. Senator Bethel, 54<sup>th</sup>, seconded the motion. **SB 112** passed by substitute. (6 to 1)

### **SB 112 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Senators Crosby, Bethel, Jason Carter, Ligon, McKoon and Stone. Nay was Senator Ramsey.

### **SB 136 (Hamrick, 30<sup>th</sup>) Property; provide for transfer of control of a condominium association in certain circumstances**

**Chairman Hamrick, 30<sup>th</sup>**, presented a substitute to **SB 136** to the committee. The intent of the legislation was to allow condominium association control to pass from all owners and lessees of the property to the unit owners before the usual expiration of their right to control the association, if they failed to do any of the following:

- 1) Incorporate the association;
- 2) Appoint the board of directors and arrange for the election of officers;
- 3) Maintain a list of the board members' names and addresses;
- 4) Call meetings according to the association's bylaws, at least annually; or
- 5) Prepare an annual operating budget, establish the annual assessment, and distribute such to the owners.

Any owner could send the notice of a failure to comply with one of these requirements. If there was failure to cure the deficiency within 30 days, the owner could file a petition in superior court for an order granting the owners control of the association. This bill also announced a public policy that the statutory powers of a condominium association could not be waived, modified nor removed by any contract or document created before the expiration of the owners or lessees right to control the association. Liens for condominium association and property owners' association assessments for the unpaid common expenses that might come due in the 12 months before a foreclosure sale or deed in lieu of foreclosure by any mortgage holder would be prior to mortgage liens. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

**NOTE:** Senators Jason Carter and Ligon left the meeting. Senator Cowser returned.

The following testified in favor of the legislation:

**Randy Lipshitz**, Community Associations

There was no testimony in opposition to the legislation.

There were no further questions from the committee.

**Chairman Hamrick, 30<sup>th</sup>**, then asked for a motion on **SB 136**. Senator Stone, 23<sup>rd</sup>, moved **SB 136 Do Pass by Substitute**. Senator Cowsert, 46<sup>th</sup>, seconded the motion. **SB 136** passed unanimously by substitute. (6 to 0)

**SB 136 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Cowsert, Crosby, Bethel, McKoon, Ramsey and Stone.

**SB 191** (Cowsert, 46<sup>th</sup>) **Jury Composition Reform Act of 2011; provide for a modernized and uniform system of compiling, creating, maintaining, jury lists**

**Senator Cowsert, 46<sup>th</sup>**, presented **SB 191** to the committee and invited **Judge Ben Studdard** to explain the bill to the committee. Judge Studdard stated that the intent of this legislation, known as the **Jury Composition Reform Act of 2011**, was to require the Council of Superior Court Clerks (“Council”) to establish a statewide master jury list and then to distribute county master jury lists to each county board of jury commissioners. Clerks would be required to keep a computer based jury management system for the purpose of maintaining the county master jury list. Judge Studdard stated that he had been working for three years with others to develop this new process in balancing the jury box. The process they came up with had been tested and there was a fair cross section selection that was not skewed in favor or against any group. Judge Studdard also stated that this process was less expensive and defensively constitutional. The only change is in how the information is collected and pulled from the voter lists and driver lists. Senator Cowsert, 46<sup>th</sup>, stated that this legislation had been endorsed by the Judges and that no one would use this bill to change the roles of the Judicial Branch. This bill’s intent is strictly to address the gathering of information to provide fair and balanced jury pools. After several questions from committee members, Chairman Hamrick, 30<sup>th</sup>, decided that there was still some work to be done on the legislation. He tabled the bill until the next meeting.

**SB 191 TABLED**

**SB 236 (Cowsert, 46<sup>th</sup>) Drivers' Licenses; persons convicted under the influence; allow certain drivers with suspended licenses; limited driving permits**

**Senator Cowsert, 49<sup>th</sup>**, presented **SB 236** to the committee. He shared the following summary with the committee:

For offenders under age 21 who were convicted of driving under the influence of drugs or alcohol:

- A. 1<sup>st</sup> conviction: if no conviction and no nolo contendere plea accepted for a prior DUI within the previous 5 years, the offender's driver's license would be suspended for six months; however, if the driver's blood alcohol content was 0.08 grams or more, or the offender has previously had his/her license suspended, the suspension will be 12 months;
- B. 2<sup>nd</sup> conviction within 5 years: the offender's license would be suspended for 18 months;
- C. 3<sup>rd</sup> conviction within 5 years: the offender would be classified as a habitual violator and his/her license would be revoked.

Upon a driver's license suspension for a DUI conviction under age 21, the license would remain suspended until the offender submitted proof that he/she completed a DUI Drug or Alcohol Use Risk Reduction Program and paid the reinstatement fee.

Anyone whose driver's license had been suspended for a 2<sup>nd</sup> DUI conviction within 5 years could apply for a limited driving permit after at least 120 days of the suspension had passed and provided a certificate of eligibility from a drug or DUI court program *or* proof of enrollment in clinical treatment. Current law allows limited driving permits be issued for extreme hardship so that the offender could maintain employment, etc.; this bill added attending court, reporting to a probation office, performing community service, and transporting a family member without a driver's license to work, medical care or school to the list of acceptable hardships for which a driving permit is necessary.

Limited driving permits that required the use of an ignition interlock device would be valid for 6 months; upon successful completion, the device would be removed and the permit could be renewed for additional periods of 8 months.

In order to receive a limited driving permit after a second DUI conviction within 5 years, the court would be required to issue a certificate of eligibility for an ignition interlock device driving permit. In addition to using the device, the offender would have to participate in a substance abuse treatment program or drug court program for at least 120 days. However, judges would have the discretion to either decline to issue a certificate of eligibility or exempt a person from the ignition interlock requirement upon a determination that the requirement would pose an undue financial hardship.

The Department of Driver Services (DDS) would not issue an ignition interlock device limited driving permit without the following documents: proof of completion of a DUI Risk Reduction Program; clinical evaluation and proof of enrollment in an approved substance abuse treatment program or drug court; proof of installation of an ignition interlock device; and a certificate of eligibility for such ignition interlock device. Such permit could not be issued until at least 120 days after the conviction. For habitual violators, DDS would not issue a probationary license until at least 2 years have passed since the conviction, and the same documents would be required. Limited driving permits and probationary licenses would be required to be marked with the restriction that the holder may only operate motor vehicles equipped with an ignition interlock device.

If a court revoked an offender's probation for violation of the certificate of eligibility for an ignition interlock device limited driving permit, DDS would revoke that person's driving privileges for one year. If an offender had his probation revoked for twice violating the terms of the limited driving permit or probationary license, DDS would revoke driving privileges for 5 years.

**NOTE:** Senators Fort and Jason Carter returned to the meeting. Senators Bethel, McKoon and Ramsey left the meeting.

Testimony in favor of the legislation was given by **Judge Kent Lawrence**, Clarke County State Court.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Cowsert, 46<sup>th</sup>, moved that **SB 236 Do Pass by Substitute**. Senator Stone, 23<sup>rd</sup>, seconded the motion. The bill passed unanimously (6 to 0).

### **SB 236 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Hamrick, Crosby, Cowsert, Jason Carter, Fort and Stone.

### **SB 172 (Shafer, 48<sup>th</sup>) Adoption; require home study by an evaluator prior to the placement of a child; recommend placement; definitions**

**Senator Shafer, 48<sup>th</sup>**, presented **SB 172** to the committee and stated that the intent of this legislation was to prohibit a child from being placed with an adoptive family unless a home study recommended such placement. If the home study had not occurred before placement of the child, the third-party adopter would be required to petition the court for an order authorizing the child's placement before the completion of the home study.

If the court found the placement was in the best interest of the child and the petition was granted, the child would be allowed to remain in the home of the third party with whom the parent or guardian placed the child. Then the order would be delivered to the Department of Human Services ("DHR") and the home study evaluator would be selected by the clerk of court within 15 days of the order. If not in process already, the home study

should be initiated by the evaluator within 10 days of receiving the court order. Once initiated, the home study would be required to be completed within 60 days, and the evaluator would be required to provide the report to the petitioner and file with the court. A copy of the court order would be required to be included with the petition for adoption. Also, a copy of the home study report or a copy of the court order that permitted the child to remain in the petitioner's home pending completion of the home study would be required to be included when an adoption petition was filed in a case involving the surrender or termination of parental or guardian's rights and the child was to be adopted by a third party. The clerk of court would be required to send copies of the adoption petition, exhibits, and relevant documents to the evaluator who conducted the home study within 15 days of the petition being filed. The Surrender of Rights/Final Release for Adoption form is amended to require more specific identifying information of the parties involved, as well as a new section where the parent acknowledges that a home study recommending the placement would be required before placement of the child can occur, unless each party secured court approval for the placement. Chairman Hamrick opened the floor to public testimony.

Testimony in favor of the legislation was given by the following:

**Jamie Self**, Georgia Association of Licensed Adoption Agencies (GALAA)

**Randy Hicks**, Georgia Family Council

**Francis Mulcahey**, Archdiocese of Georgia

**Pat Chivers**, Archdiocese of Georgia

Testimony opposed to the legislation was given by the following:

**Ruth Claiborne**, Georgia Council of Adoption Attorneys

**John Collar**, Attorney

After a few questions from the committee and agreement on some minor language changes, Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator McKoon, 29<sup>th</sup>, moved **SB 172 Do Pass by Substitute** as amended. Senator Cowsert, 46<sup>th</sup>, seconded the motion. **SB 172** passed (6 to 3)

**NOTE:** Senators Bethel, Ligon, McKoon, and Seabaugh returned to the meeting during testimony.

### **SB 172 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Cowsert, Bethel, Fort, Ligon, Seabaugh and Stone. Nays were Crosby, Carter, and Fort.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Thursday, March 10, 2011**

The Senate Judiciary Committee held its twelfth meeting of the 2011 Session on Thursday, March 10, 2011, in room 125 of the Capitol. Chairman Bill Hamrick called the meeting to order at 4:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Vincent Fort, 39 <sup>th</sup>
Senator Bill Cowsert, 46 <sup>th</sup> , Vice Chair	Senator Jesse Stone, 23 <sup>rd</sup>
Senator John Crosby, 13 <sup>th</sup> , Secretary	Senator Mitch Seabaugh, 28 <sup>th</sup> , Ex-Officio
Senator Charlie Bethel, 54 <sup>th</sup>	

**NOTE:** Senators Brown, Jason Carter, Ligon, McKoon and Ramsey were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**SB 50 (Hamrick, 30<sup>th</sup>) Courts; add certain fees for funding of local victim assistance programs**

**Chairman Hamrick, 30<sup>th</sup>**, presented a substitute to **SB 50** heard at a previous meeting which did not receive a vote because the quorum was lost. Senator Hamrick reminded the Committee that this bill addressed Code Section 15-6-95 which was the priority list for distribution of fines and fees collected in superior court, and that this bill would amend the list in the following ways:

- Priority level 6: Instead of county law libraries, funds for jail construction and staff is moved up;
- Level 7: Probation fees are added;
- Level 8: Funding for local victim assistance programs are added;
- Level 9: Georgia Crime Victims Emergency Fund is added;
- Level 10: Application fee for legal defense services is moved down;
- Level 11: Brain and Spinal Injury Trust Fund is added;
- Level 12: Drug Abuse Treatment and Education Fund is moved down;
- Level 13: Funding for county law libraries is moved here; and
- Level 14: Balance of the fine will be paid to the county.

**Chairman Hamrick, 30<sup>th</sup>**, asked for a motion on the bill. Senator Bethel, 54<sup>th</sup>, moved **SB 50 Do Pass by Substitute**. Senator Stone, 23<sup>rd</sup>, seconded the motion. **SB 50** passed unanimously (6 to 0).

**SB 50 DO PASS BY SUBSTITUTE**

**Note:** Yeas were Hamrick, Cowsert, Crosby, Bethel, Fort and Stone.

**SB 229 (Fort, 29<sup>th</sup>) Searches with warrants; issuance of search warrants by judicial officers; provisions**

**Senator Fort, 29<sup>th</sup>**, presented **SB 229** to the committee and stated that this legislation would define “no-knock” as a provision in a warrant that would authorize a police officer to enter without giving audible notice of the officer’s presence, authority and purpose. However, the bill would limit the ability of judicial officers to issue warrants with no-knock provisions unless the affidavit or testimony behind the warrant established probable cause that an officer’s announcement of identity and purpose before entry would likely pose a significant and imminent danger to human life or imminent danger of evidence being destroyed. There were no questions from the committee and no testimony for or against the legislation presented. Chairman Hamrick, 30<sup>th</sup>, asked for a motion. Senator Stone, 23<sup>rd</sup>, moved **SB 229 Do Pass**. Senator Cowsert, 46<sup>th</sup>, seconded the motion. **SB 229** passed unanimously (6 to 0).

**SB 229 DO PASS**

**Note:** Yeas were Hamrick, Cowsert, Crosby, Bethel, Fort and Stone.

**SB 243 (Hamrick, 30<sup>th</sup>) Theft; definitions; provide for the offense of organized retail crime; penalties**

**Chairman Hamrick, 30<sup>th</sup>**, presented **SB 243** to the committee. He stated this bill would add organized retail crime to the statute relating to retail property fencing. Organized retail crime, which involves the taking of retail property valued at more than \$500 in the aggregate within 180 days with the intent to re-sell, would be a felony offense punishable by one to ten years imprisonment, with at least one year actually served in prison. The prosecutor would not have to prove that there was actual profit. The number of people involved, the actor’s net worth and expenditures for legitimate sources of income, and the amount of merchandise and cash involved could be used by the trier of fact to infer that profit was the motive.

The following spoke in favor of the legislation:

**John Heavener**, Georgia Retail Association

**Sharla Jackson**, Fulton County District Attorney

**Megan Middleton**, City of Atlanta

There were several questions from the committee. Senator Crosby, 13<sup>th</sup>, suggested that language regarding mandatory sentencing be stricken and allow judges to use their discretion in sentencing. Senator Stone, 23<sup>rd</sup>, was concerned about the added costs of incarceration with a mandatory sentence imposed. Senator Cowsert, 46<sup>th</sup>, felt that the legislation did not address the intent of the thief. Senator Bethel, 54<sup>th</sup>, asked if the legislation should be written to address the manner in which the crime was committed or should it be linked to the crime of organized retail theft as already defined. Chairman Hamrick, 30<sup>th</sup>, felt the members of the committee had legitimate concerns regarding the intent of the legislation and tabled **SB 243** for further study.

**SB 243 TABLED**

**Note:** Senator Seabaugh arrived.

**SB 191** (Cowsert, 46<sup>th</sup>) **Jury Composition Reform Act of 2011; provide for a modernized and uniform system of compiling, creating, maintaining, jury lists**

**Senator Cowsert, 46<sup>th</sup>**, presented a substitute to **SB 191** to the committee. He stated that the intent of this legislation, known as the **Jury Composition Reform Act of 2011**, was to require the Council of Superior Court Clerks (“Council”) to establish a statewide master jury list and then to distribute county master jury lists to each county board of jury commissioners as heard in previous meetings. Senator Cowsert, 46<sup>th</sup>, stated that in the substitute, the provision that paid the clerks was taken out and that the status quo would be maintained while in transition to the new system. Jury clerks would still be under the supervision of judges and would be required to keep a computer based jury management system for the purpose of maintaining the county master jury list. Senator Cowsert, 46<sup>th</sup>, stated that this legislation had been endorsed by the Judges and that no one would use this bill to change the roles of the Judicial Branch. This bill’s intent is strictly to address the gathering of information to provide fair and balanced jury pools. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Bethel, 54<sup>th</sup>, moved **SB 191 Do Pass by Substitute**. Senator Stone, 23<sup>rd</sup>, seconded the motion. **SB 191** passed unanimously (6 to 0).

**SB 191 DO PASS BY SUBSTITUTE**

**Note:** Yeas were Cowsert, Crosby, Bethel, Fort, Seabaugh and Stone.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 5:45 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Tuesday, March 22, 2011**

The Senate Judiciary Committee held its thirteenth meeting of the 2011 Session on Tuesday, March 22, 2011, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 4:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Vincent Fort, 39 <sup>th</sup>
Senator Bill Cowsert, 46 <sup>th</sup> , Vice Chair	Senator Josh McKoon, 29 <sup>th</sup>
Senator John Crosby, 13 <sup>th</sup> , Secretary	Senator Jesse Stone, 23 <sup>rd</sup>
Senator Jason Carter, 42 <sup>nd</sup>	Senator Mitch Seabaugh, 28 <sup>th</sup> , Ex-Officio

**NOTE:** Senators Bethel, Brown, Ligon, and Ramsey were absent from the meeting.

Chairman Hamrick called the meeting to order. The following legislation was discussed:

**[HB 142](#)** (Willard, 49<sup>th</sup>) **Official Code of Georgia Annotated; revise, modernize, and correct errors or omissions**

**[HB 143](#)** (Willard, 49<sup>th</sup>) **Elections; revise, modernize, and correct errors or omissions**

**[HB 144](#)** (Willard, 49<sup>th</sup>) **Retirement and pensions; revise, modernize, and correct errors or omissions**

House Judiciary Committee Chairman, **Representative Willard, 49<sup>th</sup>**, presented **HB 142**, **HB 143**, and **HB 144** to the committee. He stated that these were housekeeping bills that made minor corrections to the code and that these corrections would in no way change the intent of the code.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 142**. Senator Cowsert, 46<sup>th</sup>, moved **HB 142 Do Pass**. Senator Seabaugh, 28<sup>th</sup>, seconded the motion. **HB 142** passed unanimously (7 to 0).

**[HB 142 DO PASS](#)**

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Cowsert, Crosby, Jason Carter, Fort, McKoon, Stone and Seabaugh.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 143**. Senator Cowsert, 46<sup>th</sup>, moved **HB 143 Do Pass**. Senator Carter, 42<sup>nd</sup>, seconded the motion. **HB 143** passed unanimously (7 to 0).

**[HB 143 DO PASS](#)**

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Cowsert, Crosby, Jason Carter, Fort, McKoon, Stone and Seabaugh.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 144**. Senator Cowsert, 46<sup>th</sup>, moved **HB 144 Do Pass**. Senator Seabaugh, 28<sup>th</sup>, seconded the motion. **HB 144** passed unanimously (7 to 0).

**HB 144 DO PASS**

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Cowsert, Crosby, Jason Carter, Fort, McKoon, Stone and Seabaugh.

**HB 237 (Golick, 34<sup>th</sup>) Residential mortgage fraud; mortgage lending process; revise definition**

**Representative Golick, 34<sup>th</sup>**, presented **HB 237** to the committee. He stated that he was asked to present this legislation on behalf of the Office of the Attorney General. The term “mortgage lending process” would be amended by this legislation to include the execution of deeds under power of sale and the execution of assignments under the items required to be recorded. Under this bill, a person would not be charged with residential mortgage fraud based solely upon truthful information filed with the county registrar of deeds to correct scrivener’s errors, mistakes, or omissions in previously filed documents. Representative Golick stated that District attorneys and the Attorney General were currently authorized to prosecute residential mortgage fraud. This bill would allow them to issue subpoenas to compel production of any books, papers, documents or other tangible items, including computer and electronic records. Upon a failure to comply, the prosecutor could petition the superior court for an order compelling compliance. The subject of the order could move to modify or quash the subpoena on any legal or constitutional basis, and failure to comply with a court order would constitute contempt of court. Representative Golick stated that the intent of this legislation was to streamline the subpoena process and would apply to depositions and all forms of discovery. Chairman Hamrick, 30<sup>th</sup>, recognized Senator Cowsert, 46<sup>th</sup>, and Senator Carter, 42<sup>nd</sup>, who expressed concerns regarding the legislation. They felt it was unnecessary because the Office of the Attorney General already had subpoena powers in Title 45. Chairman Hamrick, 30<sup>th</sup>, then opened the floor for testimony from members of the audience.

Testimony in favor of the legislation was given by the following:

**David McLaughlin**, Sr. Assistant Attorney General

There was no testimony against the legislation.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 237**. Senator Stone, 23<sup>rd</sup>, moved **HB 237 Do Pass**. Senator Crosby, 13<sup>th</sup>, seconded the motion. **HB 237** passed (5 to 2).

**HB 237 DO PASS**

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Crosby, Fort, McKoon, Stone and Seabaugh. Nays were Cowsert and Jason Carter.

**NOTE:** Senator Fort left the meeting.

**HB 46 (Jacobs, 80<sup>th</sup>) Uniform Interstate Depositions and Discovery Act; enact**

**Representative Golick, 34<sup>th</sup>**, presented a substitute to **HB 46** on behalf of the bill sponsor, **Representative, Jacobs, 80<sup>th</sup>**. He stated that this bill would repeal the Uniform Foreign Depositions Act and replace it with the Uniform Interstate Depositions and Discovery Act. A party wishing to have a foreign subpoena issued in Georgia would be required to submit the subpoena to the clerk of the superior court of the county where the person or entity receiving the subpoena resides; such a request for issuance of a subpoena would not constitute an appearance in court. The clerk would be required to promptly issue a subpoena for service upon the person or entity to which it was directed. The subpoena would be required to be served within a reasonable time prior to the required appearance. Also, a witness could be compelled by such a subpoena to appear and testify in the same manner as employed for the purpose of taking testimony in matters pending in Georgia courts: when any mandate, writ or commission is issued out of any foreign court. An application for a protective order to enforce, quash or modify a subpoena issued in superior court would have to comply with Georgia statutes and court rules and would have to be submitted to the superior court of the county where the subpoena was issued. This law would become effective and would apply to subpoenas served and in actions pending on or after July 1, 2011. The intent of the legislation is to streamline the subpoena process. There were no questions from the committee, and no testimony for or against the legislation. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 46**. Senator Stone, 23<sup>rd</sup>, moved **HB 46 Do Pass by Substitute**. Senator Carter, 42<sup>nd</sup>, seconded the motion. **HB 46** passed unanimously (6 to 0).

**HB 46 DO PASS BY SUBSTITUTE**

**NOTE:** Senator Cowsert, 46<sup>th</sup>, was named Senate sponsor of the legislation.

**NOTE:** Yeas were Cowsert, Crosby, Jason Carter, McKoon, Stone and Seabaugh.

**HB 373 (Pak, 102<sup>nd</sup>) Designated felony acts; modify order for restrictive custody; clarify provisions**

**Representative Pak, 102<sup>nd</sup>**, presented **HB 373** to the committee as the Juvenile Good Behavior Bill. He stated that under current law, a juvenile convicted of a designated felony act was required the entirety of his/her sentence. This bill would allow the sentence to be modified upon motion by the juvenile or the Department of Juvenile Justice (DJJ) if the juvenile had completed at least one year of the sentence. Such motion would only be allowed once per 12 month period. All motions would require: a written recommendation for release, modification or termination from the juvenile's DJJ counselor or supervisor; be filed in the court that committed the child; and served on the prosecuting attorney. The moving party would be required to serve a copy of the motion to the victim of the designated felony act, the juvenile's attorney, the juvenile's parents or guardian, and the investigating law enforcement agency at least 10 days before the hearing. The prosecutor and the victim would be given the opportunity to present evidence at the hearing. The evidence standard for the motion would be a preponderance of the evidence. The court must consider and make specific findings on:

- I. The needs and best interests of the child;
- II. The record and background of the child, including disciplinary history while in custody;
- III. The child's academic progress while in custody;
- IV. Any victim impact statements;
- V. Safety risk to the community if the child is released; and
- VI. The child's acknowledgement that his/her conduct was the cause of harm to others.

**NOTE:** Senator Fort returned to the meeting.

Chairman Hamrick, 30<sup>th</sup>, opened the floor to testimony for or against the legislation.

The following testified in favor of the legislation:

**Amy Howell**, Commissioner, Department of Juvenile Justice

**Kirsten Widener**, Just Georgia and Barton Center

There was no testimony against the legislation.

Chairman Hamrick, 30<sup>th</sup>, recognized Senator McKoon, 29<sup>th</sup>, who asked if the time period for notice to the victim could be expanded from 10 to 14 days. Representative Pak, 102<sup>nd</sup>, agreed to the change. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the bill. Senator McKoon, 29<sup>th</sup>, moved **HB 373 Do Pass by Substitute**. Senator Cowsert, 46<sup>th</sup>, seconded the motion. **HB 373** passed unanimously (7 to 0).

**HB 373 DO PASS BY SUBSTITUTE**

**NOTE:** Senator McKoon, 29<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Cowsert, Crosby, Jason Carter, Fort, McKoon, Stone and Seabaugh.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, March 23, 2011**

The Senate Judiciary Committee held its fourteenth meeting of the 2011 Session on Wednesday, March 23, 2011, in room 310 of the CLOB. Chairman Bill Hamrick called the meeting to order at 2:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Jesse Stone, 23<sup>rd</sup>

**NOTE:** Senators Brown and Seabaugh were absent from the meeting.

Senator Crosby, 13<sup>th</sup>, called the meeting to order on behalf of Chairman Hamrick, 30<sup>th</sup>, who was in another meeting, along with Senator Cowsert, 46<sup>th</sup>, that was going longer than expected. The following legislation was discussed:

**HB 198 (Rice, 51<sup>st</sup>) Superior court clerks; real estate or personal property filing fees; extend sunset dates**

**Representative Rice, 51<sup>st</sup>**, presented **HB 198** to the committee. He stated that current law set superior court fees pertaining to real estate and personal property to expire on July 1, 2014; this bill would simply extend the fees until July 1, 2016. Also, the statute relating to the development of a statewide uniform automated information system would be repealed. However, the statute that related to the collection of fees and remittance to the Georgia Superior Court Clerks' Cooperative Authority would be set to be repealed on July 1, 2016 instead of July 1, 2014. Senator Crosby, acting as Chairman, asked if there were any questions from the committee or any testimony regarding the legislation. Seeing there were none, Senator Crosby, 13<sup>th</sup>, asked for a motion on **HB 198**. Senator Carter, 42<sup>nd</sup>, moved **HB 198 Do Pass**. Senator Stone, 23<sup>rd</sup>, seconded the motion. **HB 198** passed unanimously (7 to 0).

**HB 198 DO PASS**

**NOTE:** Senator Crosby, 13<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Bethel, Jason Carter, Fort, Ligon, McKoon, Ramsey, and Stone.

**NOTE:** Senators Hamrick and Cowsert arrived.

## **HB 64 (Jacobs, 80<sup>th</sup>) Attorney's fees; validity and enforcement; change provisions**

**Representative Jacobs, 80<sup>th</sup>**, presented a substitute to **HB 64** to the committee. He stated that the intent of this legislation was to reign in attorney's fees in high principal settings. This bill would allow a party in a civil action to petition the court for a determination on the reasonableness of attorney's fees if such exceeded \$10,000. The party that was seeking the attorney's fees would be required to submit an affidavit with evidence of the fees, and the party ordered to pay would have the opportunity to respond. The court would have the option to hold a hearing to decide the matter or could award attorney's fees based on the written submitted evidence that the court found to be reasonable and necessary for the rights of the party seeking the fees. However, a civil action initiated solely to question the amount of attorney's fees would be void. Chairman Hamrick, 30<sup>th</sup>, recognized Senator Cowsert, 46<sup>th</sup>, and Senator Carter, 42<sup>nd</sup>, with clarifying questions about what type of contract this legislation would address. Senator Cowsert, 46<sup>th</sup>, specifically wanted to make sure this legislation would not affect previous tort reform legislation. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

The following testified in opposition to the legislation:

**Thomas V. Keough**, Attorney, Stokes, Lazarus and Carmichael  
**Ragen Marsh**, Attorney, Troutman Sanders

There was no testimony in support of the legislation.

## **HB 64 HEARING ONLY**

## **HB 24 (Willard, 49<sup>th</sup>) Evidence; revise, supersede, and modernize provisions; provide definitions**

**Representative Willard, 49<sup>th</sup>**, presented **HB 24** to the committee. **Professor Paul Milich**, Professor of Law at Georgia State University was invited to give the committee an overview of the legislation. Professor Milich stated that Georgia's current evidence code was 146 years old. Civil and criminal litigation has certainly changed since 1863. The General Assembly and the appellate courts had applied patches here and there over the years but too many rules have remained antiquated, hard to find and inconsistent. **The Federal Rules of Evidence** were approved by the US Supreme Court and passed by Congress in 1975 after seven years of study and debate. They were clear, balanced and adjusted to the realities of modern litigation. Professor Milich continued stating that to date there were 42 states that had passed new rules of evidence based on the Federal Rules which included every state in the south, except Georgia. The State Bar of Georgia proposed new evidence rules, based on the federal rules, in 1989. Those rules were passed unanimously in the Senate but failed in the House due to the opposition of then Speaker Murphy. In 2003, the State Bar again assembled a broad based committee to prepare and present a proposed new set of evidence rules for Georgia. The result, after 5 years of study and debate within the Bar and further study by a legislative committee over the summer of 2008, was **HB 24**. This current legislation is based on the Federal Rules of Evidence with some changes to conform the rules for state use, to clarify a few

Federal Rules that have caused problems, and to retain a few Georgia rules that were considered preferable to the Federal Rule. Professor Milich stated that **HB 24** offered the following benefits:

- Accessibility – The new rules are easier to find and apply. Law schools have been teaching the Federal Rules for over 30 years. The more accessible and understandable the Rules of Evidence, the less time and expense would be required to apply them in the courtroom or to argue them on appeal.
- Up to Date – This legislation would be a 21<sup>st</sup> century set of rules designed to replace a 19<sup>th</sup> century version.
- Consistency – The Federal Rules have been remarkably consistent in their application, whereas 146 years of case law have left the state of Georgia with too many inconsistent rules.
- Uniformity – Georgia lawyers who have tried cases in federal courts or in the courts of nearby states have to use a different set of rules than the ones used in Georgia courts. This is unnecessary and inefficient. It is hard enough to master one set of evidence rules.
- Economical – Litigation is expensive. The new rules are designed to reduce the unnecessary expenses of litigation wherever possible.
- Fairness – The Federal Rules were adopted by so many states because they offered an even playing field for litigants in both civil and criminal trials.

Professor Milich then continued to explain some of the major differences between existing Georgia law and the proposed new rules of evidence:

**Hearsay** – Under current Georgia law, hearsay is “illegal” evidence and even if a party never objected to hearsay at trial, the party could later attack the verdict as resting on illegal hearsay. Georgia is the only state in the country that still retains this 19<sup>th</sup> century view of hearsay. The new rules would allow a fact finder to base a decision on hearsay if no one objected to the hearsay at the trial. (*See*, proposed O.C.G.A. 24-8-802.)

**Res Gestae** – The proposed rules would retire the term “*res gestae*.” Nearly every jurisdiction in the U.S. has replaced this maddeningly malleable doctrine with specific rules covering several classes of statements that experience with the *res gestae* concept had proved especially trustworthy. (*See*, proposed O.C.G.A. 24-8-803 (1), (2), (3).)

**Admissions by Agents** – Georgia’s agency admission rule had a confusing history, due in part to the overlap of two inconsistent statutes, one in the evidence code and one in the Title on Agency, that both spoke to the admissibility of an agent’s statements against his principal. Most cases limited agent admissions to those that were authorized by the principal. The proposed rules would require that a statement had been made during the agency relationship and that the subject matter of the statement falls within the scope of the agent’s duties. (*See*, proposed O.C.G.A. 24-8-801 (d) (2) (D).)

**Business Record Exception** – Current Georgia law and the proposed rules differ in two respects. (1) The current Georgia rule does not allow opinions in the record. The proposed rules do. Thus, for example, an appraiser’s report as to the value of certain property could be admissible under the new rule but not under Georgia’s current law. Lay and expert opinions in the record would still have to qualify under the rules governing opinion testimony. Moreover, the court could exclude a business record when “the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.” (2) Georgia requires that a witness at trial lay any foundation necessary to the admission of a business record. The proposed rules would allow the use of an affidavit to lay this foundation if the proponent gave opposing parties notice and an opportunity to examine records before trial. (*See*, proposed O.C.G.A. 24-8-803 (6); 24-9-902 (11).)

**Public Records Exception** – Georgia has dozens of statutes regarding the admissibility of specific public records scattered all over the Official Code of Georgia. Together, their coverage is similar to proposed O.C.G.A. 24-8-803 (8) (A), admitting the routine records of any public agency. Georgia uses its general business exception for admitting public records not specifically covered in the statute. Again, this does not permit statements of opinion in the record. Proposed O.C.G.A. 24-8-803 (8) (B) and (C) would admit matters observed and reported pursuant to duty as well as factual finding that results from duly authorized investigations, though these provisions were unavailable to the prosecution in criminal cases.

**Learned Treatises** – In Georgia, an expert could refer to treatises and other learned publications on direct but the expert could not disclose or show the pertinent contents of the publication to the jury. The contents could be inquired into on cross. The proposed rule would allow relevant portions of a treatise to be read or shown to the jury on direct if the work is considered a reliable authority in the particular field. (*See*, proposed O.C.G.A. 24-8-803 (18).)

**Expert Opinion Testimony** – Since 2005, Georgia has applied its version of Federal Rule 703 in civil cases which allow an expert to base an opinion on facts, otherwise inadmissible, that are reasonably relied upon by other experts in the field. The new rules would apply this same rule to criminal cases. The current rule that applies *Daubert* to expert opinions in civil cases but not in criminal cases would remain unchanged. (*See*, proposed O.C.G.A. 24-7-703.)

**Statements of Co-Conspirators** – Georgia does not require that a co-conspirator’s statement has been in furtherance of the conspiracy in order to be admissible under this exception. Georgia’s law is very unusual in this respect. The proposed rule is based on the requirement in common law and carried forward in the Federal Rules that any statements admissible as a co-conspirator had to be in furtherance of the conspiracy. (*See*, proposed O.C.G.A. 24-8-801 (d) (2) (E).)

**Statements Against Interest** – In Georgia criminal cases, statements against penal interest are inadmissible. Under the proposed rules, a statement against penal interest would be admissible if the declarant was unavailable and there existed corroborating circumstances that could indicate the trustworthiness of the statement. (*See*, proposed O.C.G.A. 24-8-804 (b) (3).)

**Character Witnesses** – Current Georgia law allows reputation testimony, but not opinion testimony. The new rules would allow both. As one Georgia court wrote, “It is an evidentiary anomaly that in proving general moral character Georgia law prefers hearsay, rumor and gossip, to personal knowledge of the witness.” (*See*, proposed O.C.G.A. 24-4-405, 24-6-608.)

**Admissions By Silence** – The Supreme Court in Georgia has held that a witness could not testify as to a declarant’s statements based on the silence of the accused. The new rules would allow admissions based on the accused’s silence if the statements were made in the presence of the accused, the police or other authorities were not present, and there was no good reason for the accused’s silence other than the statements were true. (*See*, proposed O.C.G.A. 24-8-802.)

**“Bent of Mind” in Proving “Similar Transactions”** – Georgia has been the only state in the country that allows a court to admit a criminal defendant’s past crimes or acts to prove the accused’s “bent of mind” toward the criminal conduct with which he was charged. The bent of mind statute was not in Georgia’s statute but crept quietly into Georgia cases starting in the 1980’s. A Supreme Court Justice wrote that a defendant’s “bent of mind” was really no different than his “character” and thus the bent of mind exception has been slowly swallowing the 350 year old rule that prohibits using proof of the defendant’s character against him at trial. The proposed rule is based on the Federal Rule 404 (b). (*See*, proposed O.C.G.A. 24-4-404 (b).)

**Offers to Compromise – Settlement Negotiations** – Georgia courts have made some arduous distinctions between offers to settle and offers to compromise. The proposed rules would simply require that liability or damages were in dispute in these situations. Also, Georgia struggles with collateral admissions or statements that were made in the course of presenting an offer to compromise but not themselves made with a view to a compromise. The proposed rules would cover such statements if they are part of the settlement negotiations or mediation. (*See*, proposed O.C.G.A. 24-4-408.)

**Prior Inconsistent Statements** – Georgia follows the rule that requires that a witness be shown his prior written statement or have his attention drawn to the time, place and circumstances of a prior oral statement before he can be impeached upon it. The proposed rules do not require this. They would only require that the witness have an opportunity to explain or deny the prior statement. In practice, this would mean the prior statement should be introduced on cross-examination of the declarant. (*See*, proposed O.C.G.A. 24-6-613.)

**Competency of Juror to Impeach Verdict** – In Georgia, a juror is considered competent only to sustain, never to impeach, a verdict. There is an exception that exists for times when the jury has been exposed to external information or influence. This exception applies only in criminal cases, not in civil cases. Georgia has been the only state with this distinction. The proposed rules would extend this exception to civil cases. (*See*, proposed O.C.G.A. 24-6-606.)

**Authentication and Identification** – Existing Georgia law and the proposed rules are consistent in this area, though the proposed rules are broader in some areas, such as identification of parties to a phone conversation and self-authentication of commercial paper, notarized documents, etc. The proposed rules would pull together all authentication rules into one, clear set. (*See*, proposed O.C.G.A. 24-9-901, 902.)

**Best Evidence Rule** – Georgia’s best evidence rule consists mainly of 19<sup>th</sup> Century statutes. Georgia’s rule, for example does not apply to photos or videos but only writings. The proposed rules would apply to all forms of recordation. Georgia requires most cases in which writing or a recording must be produced, that the original must be used or else an account for why the original could not be produced before being allowed to use a copy. The proposed rules would allow the use of copies unless the opponent cited specific reasons why the court should insist on the original. (*See*, proposed O.C.G.A. 24-10-1001 through 1008.)

**Exclusion of Evidence Because of Prejudice, Confusion or Waste of Time** – Although Georgia cases have recognized the court’s authority to balance the value of the evidence against an unfairly prejudicial effect, the cases have been inconsistent on the standard and scope of the trial court’s authority. The proposed rules would give the trial court discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or undue delay. This standard would apply to all evidence except where specific evidence rules expressly set a different standard. (*See*, proposed O.C.G.A. 24-4-403.)

**Habit Routine Practice** – Georgia case law has slowly recognized the admissibility of habit evidence but it generally does not allow a third party to testify to another’s habit. The proposed rule would have no such restriction. If adequate foundation was laid that showed how the witness would be familiar with the subject’s habit or routine, the witness would be allowed to testify to it. (*See*, proposed O.C.G.A. 24-4-406.)

Professor Milich concluded his testimony by stating again that HB 24 is based on the Federal Rules of Evidence with some changes to conform the rules for state use, to clarify a few Federal Rules that have caused problems, and to retain a few Georgia rules that are considered preferable to the Federal Rule. He asked for favorable consideration from the committee.

Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

The following testified in support of the legislation:

**Lester Tate**, State Bar of Georgia

**Tom Brune**, State Bar of Georgia

**Bill Clark**, Georgia Trial Lawyer's Association

There was no opposing testimony.

**NOTE:** Senators Crosby, Bethel, Ligon and Fort left to attend other committee meetings.

Seeing that there was no longer a quorum, Chairman Hamrick, 30<sup>th</sup>, stated that a vote on this legislation would take place at the next meeting.

### **HB 24 HEARING ONLY**

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, left for another committee meeting and asked Senator Cowser, 46<sup>th</sup>, to Chair the committee in his absence.

### **HB 30 (Willard, 49<sup>th</sup>) Contracts; illegal or void; repeal certain code sections**

**Representative Willard, 49<sup>th</sup>**, presented **HB 30** to the committee. Representative Willard told the committee that in 2009 the General Assembly passed HB 173, which was enacted. The bill required a constitutional amendment, which was passed in 2010 as HB 178 and ratified by the voters. **HB 30** is intended to re-enact HB 173 to ensure validity. He then shared the following summary of the bill:

The following contracts would be considered against public policy and would not be enforced: contracts tending to corrupt legislation or the judiciary; contracts in general restraint of trade, except as provided below; contracts to evade or oppose foreign revenue laws; wagering contracts; and contracts of maintenance or champerty.

The bill would create a new Article 4, relating to restrictive covenants. As a general rule, Georgia law would permit enforcement of contracts that restricted competition according to a restrictive covenant, as long as the restrictions were reasonable in time, geographic area and scope of prohibited activities. Employees could agree in writing to refrain, for a stated period of time following termination, from soliciting any business from any of their former employer's customers for purposes of providing products or services that were competitive with the employer's business. Express references to the geographic area or types of services or products were not necessary in order for the restraint to be enforceable. Prohibitions against soliciting business from an employer's customers would be narrowly construed to apply only to: customers with whom the restricted employee had material contact; and products or services that were competitive with those provided by the employer's business.

Any restrictive covenant that did not comply with this law would be considered unlawful and therefore void and unenforceable; however, a court could modify an otherwise unenforceable covenant as long as the modification did not make the covenant more restrictive than originally drafted. The law does not limit the time period for which a party may agree to maintain confidential information or trade secrets, or limit the geographical area where the information must be kept confidential.

Courts must construe restrictive covenants to comport with the reasonable intent and expectations of the parties and in favor of providing reasonable protection to the legitimate business interests of the person seeking enforcement. Such person must plead and prove the existence of one or more legitimate business interests justifying the covenant. If there was prima facie evidence that the restraint was in compliance with this law, any person opposing enforcement had the burden of establishing that the restraint did not comply with the law, or that the covenant was unreasonable.

In determining the reasonableness of a restrictive covenant during or after the course of a business relationship, the court would presume that:

- During the business relationship, a time period equal to or measured by the duration of the parties' business or commercial relationship was reasonable;
- A geographic territory that included the areas where the employer did business at any time during the parties' commercial relationship, even if not known at the time of entry into the covenant, was reasonable, provided that:
  - Total distance encompassed by the covenant was also reasonable;
  - Particular competitors were listed in the agreement as prohibited employers for a limited period of time after termination of the relationship; or both.
- The scope of the restricted competition was measured by the business of the person or entity in whose favor the covenant was given; and
- Any restriction that operates during the term of a business relationship could not be considered unreasonable if it lacked a specific limitation on scope of activity, duration, or geographic area, as long as it promoted or protected the purpose of the agreement or deterred any potential conflict of interest.

In determining the reasonableness of a covenant sought to be enforced *after a term of employment or business relationship*, courts would be required to apply these rebuttable presumptions:

- Against a former employee: any restraint of two years or less in duration was reasonable, and greater than two years was unreasonable, measured from the date of termination;
- Against a current or former distributor, dealer, or licensee: any restraint three years or less was reasonable, and greater than three years was unreasonable, measured from the date of termination of the business relationship;
- Against the owner or seller of a business: any restraint of five years or less, or equal to the period of time during which payments are being made to the owner or

seller was reasonable, and any time longer than five years or longer than the time period during which payments are being made to the owner or seller was unreasonable.

Courts could not refuse to enforce a restrictive covenant because the person seeking enforcement was a third party beneficiary of the contract, or was an assignee or successor to a party to the contract. It is not a defense that the person seeking enforcement no longer continues in the business that was the subject of the action, if the discontinuance of the business is the result of violation of the restrictive covenant. Courts can use any appropriate remedy, such as temporary and permanent injunctions, to enforce restrictive covenants. In determining reasonableness, courts would be allowed to consider the economic hardship on the employee due to the covenant.

Seeing that there was no longer a quorum, Senator Cowsert, 46<sup>th</sup>, acting as Chairman, stated that a vote on this legislation would take place at another time.

**HB 30 HEARING ONLY**

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, and Senators Crosby and Bethel returned to the meeting.

**HB 114 (Powell, 29<sup>th</sup>) Lien foreclosures; abandoned vehicles; file affidavit; set fee**

**Representative Powell, 29<sup>th</sup>**, presented **HB 114** to the committee. He stated that this bill would simply prohibit additional fees on top of those required for filing an affidavit regarding lien foreclosures on abandoned motor vehicles without a court hearing and changed the definition on restricted contents found in abandoned vehicles. There were some clarification questions asked by remaining committee members.

Testimony in favor of the legislation was given by:

**Mo Thrash**, Thrash-Haliburton Government Affairs Group

**John Haliburton**, Thrash-Haliburton Government Affairs Group

Chairman Hamrick, 30<sup>th</sup>, stated that a vote on this legislation would take place at a later meeting.

**HB 114 HEARING ONLY**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 4:11 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

Senator Tommie Williams  
District 19  
321 State Capitol  
Atlanta, GA 30334

**Committees:**

Finance  
Appropriations  
Reapportionment and Redistricting  
Regulated Industries and Utilities  
Rules  
Education and Youth  
State Institutions and Property

The State Senate  
Atlanta, Georgia 30334  
**PRESIDENT PRO TEMPORE**

March 24, 2011

Bob Ewing  
Secretary of the Senate  
353 State Capitol  
Atlanta, GA 30334

Dear Bob:

In accordance with senate rules, the Committee on Assignments has appointed Senator Jeff Mullis and Senator Renee Unterman to serve as Ex-Officio for the Senate Judiciary Committee meeting on March 24th, 2011. These appointments shall expire upon the adjournment of the committee meeting. Please feel free to contact me if you have any questions or concerns on this matter.

Sincerely,

/s/ Tommie Williams  
Senate President Pro Tempore

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Thursday, March 24, 2011**

The Senate Judiciary Committee held its fifteenth meeting of the 2011 Session on Thursday, March 24, 2011, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 1:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Jesse Stone, 23<sup>rd</sup>  
Senator Renee Unterman, 45<sup>th</sup>, Ex-Officio

Senator Vincent Fort, 39<sup>th</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Mitch Seabaugh, 28<sup>th</sup>, Ex-Officio

**NOTE:** Senators Cowsert, Bethel, Brown, Jason Carter, Ligon, and Ramsey were absent from the meeting.

Chairman Hamrick, 30<sup>th</sup>, called the meeting to order. The following legislation was discussed:

**[HB 503](#) (Carter, 175<sup>th</sup>) Sexual offenses; fund certain medical examinations; provide**

**Representative Carter, 175<sup>th</sup>**, presented a substitute to **HB 503** to the committee. She explained that current law states that the investigating law enforcement agency was responsible for the cost of medical examinations for collecting evidence in cases of rape and sodomy; this bill stated that such examinations would be paid for by the Georgia Crime Victims Emergency Fund (“fund”). The bill also defines ‘forensic medical examination’ as an exam conducted after a rape or sodomy act in order to gather evidence; it could include: an exam for physical trauma; a determination of the extent of such trauma; patient interview; collection of evidence; and additional testing if deemed necessary by the examiner. When a forensic medical examination was conducted, the cost would be paid for by the fund, up to \$1,000, regardless of whether the victim has health insurance or coverage. Seeing there were no questions from the committee, Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

Testimony in favor of this bill was given by:  
**Greg Loughlin**, GA Commission on Family Violence  
**Shawanda Reynolds**, CJCC  
**Rebecca Dehart**, GA Network to End Sexual Assault

There was no opposing testimony.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the substitute to **HB 503**. Senator Seabaugh, 28<sup>th</sup>, moved **HB 503 Do Pass by Substitute**. Senator Stone, 23<sup>rd</sup>, seconded the motion. **HB 503** passed unanimously (6 to 0).

**[HB 503 DO PASS BY SUBSTITUTE](#)**

**NOTE:** Senator Jackson, 24<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Hamrick, Crosby, Fort, McKoon, Stone and Seabaugh.

**HB 339 (Welch, 110<sup>th</sup>) Emergency powers; challenge of quarantine or vaccination order; revise courts; provisions**

**Representative Welch, 110<sup>th</sup>**, presented **HB 339** to the committee. He stated that current law allows a challenge to any order instituting a quarantine or vaccination program due to a public health emergency to be heard before any available judge in state court, superior court, the Court of Appeals, and the Supreme Court of Georgia. This bill would allow such challenges to be heard only in superior court in the county where the person resides or in Fulton County. The Court of Appeals was also removed from the options for the Department of Community Health or a party challenging an order pursuant to an emergency, so that such challenge may only be heard by the Georgia Supreme Court or any Justice if the full court was unavailable. Such challenge would be required to be considered on an expedited basis, and time requirements for filings could be suspended. If no Supreme Court Justice was available, only then may a panel of the Court of Appeals or judge thereof consider a challenge. The Chief Judge of the Georgia Court of Appeals would no longer be an ‘authorized judicial official’ for purposes of judicial emergencies. If a public health emergency is declared by the Governor, the Chief Justice of the Georgia Supreme Court could also extend the judicial emergency order for as long as the emergency existed. Chairman Hamrick, 30<sup>th</sup>, recognized Senator Seabaugh, 28<sup>th</sup>, who asked a clarifying question on the definition of “availability.” He stated that current rules were “in person” and he wondered if video conferencing would be allowed in the definition in the future. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

Testimony in favor of the legislation was given by the following:  
**Michael Cuccaro**, Administrative Office of the Courts

There was no opposing testimony.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 339**. Senator Crosby, 13<sup>th</sup>, moved **HB 339 Do Pass**. Senator Stone, 23<sup>rd</sup>, seconded the motion. **HB 339** passed unanimously (6 to 0).

**HB 339 DO PASS**

**NOTE:** Senator Crosby, 13<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Hamrick, Crosby, Fort, McKoon, Stone and Seabaugh.

**HB 53 (Bearden, 68<sup>th</sup>) Detective and security businesses; certified Peace Officer Standard excluded; provide**

**Chairman Hamrick, 30<sup>th</sup>**, presented a substitute to **HB 53** on behalf of Representative Bearden, 68<sup>th</sup>. He stated that the original version of HB 53 dealt only with the licensing

of private detectives. In the substitute there were now two sections to the bill. The first section stated that under this bill, any peace officer certified under the Georgia Peace Officer Standards and Training Act would be exempt from the regulations that apply to private detective and private security businesses, while providing private security services. Chairman Hamrick, 30<sup>th</sup>, recognized **Trip Mitchell**, Director of the State Board of Private Detectives, to speak to the first section of the bill. He stated the intent of this legislation was to exempt post certified officers from having to duplicate training for part time jobs. This legislation does not exempt private detectives from training or meeting the requirements for licensing. The second section added a change to real estate license law which had been unanimously approved by the Georgia Real Estate Commission. Chairman Hamrick, 30<sup>th</sup>, invited **Keith Hatcher**, Georgia Real Estate Association to speak to the committee regarding the changes. Mr. Hatcher stated that current law requires a broker to disclose all expenditures to all parties in a real estate transaction. MLS fees, newspaper fees, and marketing fees were simply costs of doing business until a lawsuit was recently filed alleging violations of current law based on failure of a broker to disclose MLS fees. Current law requires a broker to disclose to all parties if a gift was given upon the purchase of a house. This requirement would be eliminated by this legislation. Also, the new language proposed in this legislation would require a broker to disclose whether or not he would be receiving a referral fee, but not the amount of the referral fee. The actual amount was not always known and sometimes disputes would arise over the accuracy of the disclosure. Mr. Hatcher stated that current law is so broadly written that referrals from one licensee within a company to another licensee with the same company are required. **HB 53** would only require referral disclosure from one brokerage to another. Chairman Hamrick, 30<sup>th</sup>, recognized Senator Seabaugh, 28<sup>th</sup>, with a question about the germaneness of the two sections. Chairman Hamrick, 30<sup>th</sup>, asked legislative counsel to look into the issue of germaneness and stated that the committee would move on the legislation at a later meeting.

### **HB 53 HEARING ONLY**

**NOTE:** Senator Seabaugh, 28<sup>th</sup>, left the meeting. Senator Unterman, 45<sup>th</sup>, was called in as ex-officio to maintain the quorum.

### **HB 421 (Welch, 110<sup>th</sup>) Criminal procedure; plea of mental incompetency; change provisions**

**Representative Welch, 110<sup>th</sup>**, presented a substitute **HB 421** to the committee. He stated the intent of this legislation was to modernize procedures to determine competency in juvenile court. This bill would require judges to inquire into an accused's mental competency when information arose that was sufficient to raise a bona fide doubt. The court could then order the Department of Behavioral Health ("department") to conduct an evaluation, which would remain under seal except to the parties. The court could also order an evaluation if the accused requested one; in that case, if the licensed department professional that conducted the evaluation determined that the accused was mentally incompetent, then he/she would be required to make recommendations as to restoring

competency. If the accused filed a special plea that alleged that he/she was mentally incompetent to stand trial, the court would hold a bench trial. However, either the state or the accused could request a special jury trial to determine the accused's competency. The court could order the department to evaluate whether the accused would attain mental competency in the foreseeable future. If the evaluation shows:

- 1) That the accused was mentally competent, the accused would be returned to court;
- 2) That the accused was mentally incompetent and that there was *not* a substantial probability that the accused would become competent in the foreseeable future, the court would begin civil commitment proceedings; or
- 3) That the accused was mentally incompetent but there was a substantial probability that the accused would become competent in the foreseeable future, the department would retain custody and continue treatment up to nine months. If the accused was still considered to be mentally incompetent after nine months, the court would begin civil commitment proceedings.

The department may notify the court at any time if it determined that the accused was mentally competent to stand trial. If the accused was determined to be mentally incompetent by the department, the state may file at any time for a rehearing of the mental competency issue. Either the accused or the state may also request a court order for a non-department mental competency evaluation of the accused, paid for by the moving party.

Chairman Hamrick, 30<sup>th</sup>, recognized several committee members with questions and concerns regarding bench trial issues, and capping commitment period for less serious offenses. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

The following testified in support of the legislation:

**Betty Watson**, Dept. of Behavioral Health & Developmental Disabilities (DBHDD)

**Consuelo Campbell**, DBHDD

**Sandy Michaels**, Defense Attorney

The following testified in support of the legislation with minor concerns:

**Ken Mauldin**, DA

Seeing that there were still some minor issues to resolve with this legislation, Chairman Hamrick, 30<sup>th</sup>, stated that **HB 421** would be taken up again at a later date.

**HB 421 HEARING ONLY**

**HB 272 (Weldon, 3<sup>rd</sup>) Juvenile court; rehearing an order of associate juvenile court judge; delete provision**

**Representative Weldon, 3<sup>rd</sup>**, presented **HB 272** to the committee. In juvenile court, current law allows judges to call a re-hearing at any time, but it also requires a re-hearing if a party files a written request after they receive an order from an associate juvenile court judge. This bill strikes the language that authorizes re-hearings. If an associate judge has a hearing, current law requires that you do it over. This bill makes it possible for a judge to determine if the previous hearing was a good hearing and to decide that a second hearing is unnecessary. Representative Weldon, 3<sup>rd</sup>, said that this legislation just stops the second bite of the apple. There were no questions from the committee. Chairman Hamrick, 30<sup>th</sup>, opened the floor for public testimony.

The following testified in favor of the legislation:

**Judge Brad Boyd**

**Kirsten Widener**, Barton Clinic

There was no opposing testimony.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 272**. Senator Stone, 23<sup>rd</sup>, moved **HB 272 Do Pass**. Senator Crosby, 13<sup>th</sup>, seconded the motion. **HB 272** passed unanimously (6 to 0).

**HB 272 DO PASS**

**NOTE:** Senator Bethel, 54<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Hamrick, Crosby, Fort, McKoon, Stone and Unterman.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 2:45 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Monday, March 28, 2011**

The Senate Judiciary Committee held its sixteenth meeting of the 2011 Session on Monday, March 28, 2011, in room 307 of the CLOB. Chairman Bill Hamrick called the meeting to order at 8:45 a.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator William Ligon, 3<sup>rd</sup>  
Senator Josh McKoon, 29<sup>th</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Jesse Stone, 23<sup>rd</sup>

**NOTE:** Senators Brown, Fort, and Seabaugh were absent from the meeting.

Chairman Hamrick, 30<sup>th</sup>, called the meeting to order. The following legislation was discussed:

**[HB 421](#) (Welch, 110<sup>th</sup>) Criminal procedure; plea of mental incompetency; change provisions**

**Representative Welch, 110<sup>th</sup>**, presented a substitute **HB 421** to the committee. He stated the intent of this legislation is to modernize procedures to determine competency in juvenile court. Representative Welch stated that the concerns brought forth at the last meeting had been worked to the best of his knowledge. There were no questions from the committee, and no testimony for or against the legislation. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Cowsert, 46<sup>th</sup>, moved **HB 421 Do Pass by Substitute**. Senator Bethel, 54<sup>th</sup>, seconded the motion. **HB 421** passed unanimously (6 to 0).

**[HB 421 DO PASS BY SUBSTITUTE](#)**

**NOTE:** Senator Grant, 25<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Hamrick, Cowsert, Crosby, Bethel, Jason Carter, and Stone.

**NOTE:** Senator McKoon arrived.

**[HB 30](#) (Willard, 49<sup>th</sup>) Contracts; illegal or void; repeal certain code sections**

**Representative Willard, 49<sup>th</sup>**, presented a substitute to **HB 30** to the committee. This legislation received a hearing earlier in the session and some minor issues were corrected. In 2009, the General Assembly passed **HB 173**, which was enacted. The bill required a constitutional amendment, which was passed in 2010 as **HB 178** and ratified by the voters. **HB 30** is intended to re-enact **HB 173** to ensure validity. There were no questions from the committee, and no testimony for or against the legislation. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Cowsert, 46<sup>th</sup>, moved **HB**

**30 Do Pass by Substitute.** Senator Carter, 42<sup>nd</sup>, seconded the motion. **HB 30** passed unanimously (6 to 0).

**HB 30 DO PASS BY SUBSTITUTE**

**NOTE:** Senator Cowsert, 46<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Cowsert, Crosby, Bethel, Jason Carter, McKoon and Stone.

**NOTE:** Senator Ligon arrived.

**HB 149 (Bearden, 68<sup>th</sup>) Magistrates; termination under certain circumstances; provide**

**Representative Bearden, 68<sup>th</sup>**, presented **HB 149** to the committee. He stated that under current law, magistrate judges serve their terms concurrently with the chief magistrate's term; this bill states that such magistrates would no longer have a set term of office and instead would serve at the pleasure of the chief magistrate. There is a unique provision in current law that would automatically confer status as a special judge of the magistrate court to any superior court judge serving on January 1, 1994 who was removed from office by a federal court order before December 31, 1996. The federal court order is based on federal law that the manner of selecting superior court judges in Georgia is unconstitutional, and the terms of the order prohibited certain superior court judges from serving. The intent of this legislation is removal of all provisions that relate to special judges of the magistrate court. Chairman Hamrick, 30<sup>th</sup>, opened the floor to questions from the committee. Senator Bethel, 54<sup>th</sup>, and Senator Cowsert, 46<sup>th</sup>, expressed concerns about giving one judge power to remove another judge which would allow one court the possibility of regulating another court. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

The following people neither supported nor opposed the legislation:

**Lester Tate**, Commissioner, Judicial Qualification Commission (JQC)

**Jeff Davis**, Director, JQC

**Mike Cuccaro**, AOC

The following person testified in opposition to the legislation:

**Charles Anslander**, Council of Magistrate Judges

Chairman Hamrick, 30<sup>th</sup>, decided to wait on a vote for **HB 149** until issues raised during the hearing could be worked out.

**HB 149 HEARING ONLY**

**HB 53 (Bearden, 68<sup>th</sup>) Detective and security businesses; certified Peace Officer Standard excluded; provide**

**Chairman Hamrick, 30<sup>th</sup>**, presented a substitute to **HB 53** on behalf of Representative Bearden, 68<sup>th</sup>. He stated that the original version of **HB 53** dealt only with the licensing of private detectives. In the substitute there were two sections to the bill. The first section stated any peace officer certified under the Georgia Peace Officer Standards and Training Act would be exempt from the regulations that apply to private detective and private security businesses, while providing private security services. The intent of this section was to exempt post certified officers from having to duplicate training for part time jobs. This legislation would not exempt private detectives from training or meeting the requirements for licensing. The second section added a change to real estate license law which had been unanimously approved by the Georgia Real Estate Commission. If this legislation were passed then referral disclosure from one brokerage to another would be the new requirement. Chairman Hamrick, 30<sup>th</sup>, reported that the issue of germaneness brought up by Senator Seabaugh, 28<sup>th</sup>, at another hearing had been resolved to his satisfaction. After some research, Taryn Kirbo, committee staff assigned from the office of Senate Research, determined **Art. III, Sec. V, Par. III of the 1983 Georgia Constitution** had been interpreted and applied to give broad legislative discretion within the constitutional limits. Applying the constitution and these principles to the bill at issue, the enactment would not violate the multiple subject matter provision of our Constitution. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Stone, 23<sup>rd</sup>, moved **HB 53 Do Pass by Substitute**. Senator Cowsert, 46<sup>th</sup>, seconded the motion. **HB 53** passed unanimously (7 to 0).

**HB 53 DO PASS BY SUBSTITUTE**

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Cowsert, Crosby, Bethel, Jason Carter, Ligon, McKoon and Stone.

**NOTE:** Senator Ramsey arrived.

**HB 167 (Davis, 109<sup>th</sup>) Insurance Delivery Enhancement Act of 2011; enact**

**Representative Davis, 109<sup>th</sup>**, presented **HB 167** to the committee. He stated that the previous year this legislation had passed both the house and the senate but was vetoed by Governor Perdue because of the medical community's opposition to the hospital bed tax legislation. He shared the following summary of the legislation:

### **Group Accident and Sickness Insurance**

Current law requires an employer, union, or an association of two or more employers in the same industry to insure a minimum of 25 members or employees in order to qualify for group accident and sickness insurance. This legislation would reduce the threshold to 10 members or employees. Individuals filing IRS 1099 forms would also be eligible for group accident and sickness insurance under this legislation.

### **Plan Administrators and Prompt Pay**

Current law does not require a business entity that acts solely as an administrator of an employee benefit plan and which is regulated by ERISA, to be licensed as an administrator. This legislation would repeal this exemption. Obtaining a license as an administrator would subject the applicant to the prompt pay laws as provided in Code Sections 33-24-59.5 and 33-24-59.13. However, if a self-insured failed to properly fund its plan to allow the administrator to pay any claims, the administrator would not be subject to the prompt pay laws if it provided evidence to the Insurance Commissioner documenting the funding shortfall. This legislation would exempt insurers, solely administering limited benefit insurance, from having to be licensed as an administrator. For the purpose of this provision, “limited benefit insurance“ would mean accident or sickness insurance designed, advertised, and marketed to supplement major medical insurance, specifically: accident only, CHAMPUS supplement, disability income, fixed indemnity, long-term care, or specified disease.

### **Prompt Pay: Electronic and Written Claims**

This legislation would also require insurers and plan administrators to accept written or electronic claims. Within 15 working days of receiving an electronic claim, or 30 calendar days for written claims, the insurer or administrator would be required to mail or electronically send payment; or send a notice that stated the reasons the insurer may have for failing to pay the claim. Insurers who failed to respond within the given timeframe would be required to pay to the facility or health care provider, claiming such payments, interest equal to 12 percent per year in addition to the payment. Insurers or administrators would only be subject to an administrative penalty by the Commissioner when such insurer or administrator properly processed less than 95 percent of all claims, as required by this legislation, in a standard financial quarter. This law would *not* apply to limited benefit insurance policies.

Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony on the legislation.

The following people spoke in support of the legislation:

**Brian Looby**, Medical Association of Georgia General Assembly

**Martha Phillips**, Georgia Dental Association

**Keith Hatcher**, Georgia Real Estate Association

**Stacy Freeman**, Health Insurance Plans

**Ron Jackson**, Office of the Insurance Commissioner

The following people opposed the legislation:

**Josh Belafonte**, Attorney

**David Raynor**, Georgia Chamber of Commerce

Chairman Hamrick, 30<sup>th</sup>, opened the floor to questions from the committee who had some concerns about mandates in the legislation that affect the employer and the employee and may potentially erode the **Employee Retirement Income Security Act of 1974 (ERISA)**. ERISA was explained as a federal law that set minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. Representative Davis, 109<sup>th</sup>, addressed those concerns by stating that this legislation has been narrowly defined with the express intent not to affect ERISA. This legislation was drafted to extend current law to the TPA (Third Party Administrators) which would require them to pay the claim, or give a reason for the delay in payment, within the prescribed time consistent with current Georgia statute. Representative Davis, 109<sup>th</sup>, closed with the statement, “Try not paying your insurance premiums on time and see how long your insurance continues.” Chairman Hamrick, 30<sup>th</sup>, thanked Representative Davis, 109<sup>th</sup>, and all those who testified on behalf of the legislation for their time. Seeing that there were still some issues to be resolved, he stated that would be considered a hearing only for the time being.

#### **HB 167 HEARING ONLY**

**NOTE:** Senators Cowsert and Crosby left the meeting.

**HB 114** (Powell, 29<sup>th</sup>) Lien foreclosures; abandoned vehicles; file affidavit; set fee

**Representative Powell, 29<sup>th</sup>**, presented a substitute to **HB 114** to the committee. This bill was heard in a previous meeting and the substitute was drafted to address a few minor concerns. Representative Powell, 29<sup>th</sup>, stated that the intent of this legislation is to make the process of lien foreclosures on abandoned motor vehicles uniform statewide. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Bethel, 54<sup>th</sup>, moved **HB 114 Do Pass by Substitute**. Senator Ramsey, 43<sup>rd</sup>, seconded the motion. **HB 114** passed unanimously (6 to 0).

#### **HB 114 DO PASS BY SUBSTITUTE**

**NOTE:** Senator Bethel, 54<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Bethel, Jason Carter, Ligon, McKoon, Ramsey and Stone

**HB 265 (Neal, 1<sup>st</sup>) 2011 Special Council on Criminal Justice Reform for Georgians;  
Joint Committee; create**

**Representative Jay Neal, 1<sup>st</sup>**, presented a substitute to **HB 265** to the committee. He stated that this bill would create the **2011 Special Council on Criminal Justice Reform for Georgians**. The Council would consist of 11 members who would conduct a study of the criminal justice system and report its findings and recommendations. The bill also created the **Special Joint Committee on Georgia Criminal Justice Reform** which would consist of 17 legislation members. The bill mandated that this committee would introduce legislation in 2012 based on the Council's recommendations. The Council and the Committee would automatically be abolished on July 1, 2012. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Bethel, 54<sup>th</sup>, moved **HB 265 Do Pass by Substitute**. Senator Ramsey, 43<sup>rd</sup>, seconded the motion. **HB 265** passed unanimously (6 to 0).

**HB 265 DO PASS BY SUBSTITUTE**

**NOTE:** Senator Grant, 25<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Yeas were Bethel, Jason Carter, Ligon, McKoon, Ramsey and Stone

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 10:35 a.m.

Respectfully submitted,

/s/ Senator Bill Hamrick, 30<sup>th</sup>, Chairman

/s/ Laurie Sparks, Recording Secretary

Senator Tommie Williams  
District 19  
321 State Capitol  
Atlanta, GA 30334

**Committees:**

Finance  
Appropriations  
Reapportionment and Redistricting  
Regulated Industries and Utilities  
Rules  
Education and Youth  
State Institutions and Property

The State Senate  
Atlanta, Georgia 30334  
**PRESIDENT PRO TEMPORE**

March 29, 2011

Bob Ewing  
Secretary of the Senate  
353 State Capitol  
Atlanta, GA 30334

Dear Bob:

In accordance with senate rules, the Committee on Assignments has appointed Senator Ross Tolleson to serve as Ex-Officio for the Senate Judiciary Committee meeting on March 29th, 2011. This appointment shall expire upon the adjournment of the committee meeting. Please feel free to contact me if you have any questions or concerns on this matter.

Sincerely,

/s/ Tommie Williams  
Senate President Pro Tempore

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Tuesday, March 29, 2011**

The Senate Judiciary Committee held its seventeenth meeting of the 2011 Session on Tuesday, March 29, 2011, in the room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 4:15 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Vincent Fort, 39 <sup>th</sup>
Senator John Crosby, 13 <sup>th</sup> , Secretary	Senator William Ligon, 3 <sup>rd</sup>
Senator Charlie Bethel, 54 <sup>th</sup>	Senator Josh McKoon, 29 <sup>th</sup>
Senator Jason Carter, 42 <sup>nd</sup>	Senator Jesse Stone, 23 <sup>rd</sup>
Senator Ross Tolleson, 20 <sup>th</sup> , Ex-Officio	

**NOTE:** Senators Cowser, Brown, Fort, Ramsey, and Seabaugh were absent from the meeting.

**NOTE:** Senator Tolleson, 20<sup>th</sup>, was called in as ex-officio to help make the quorum at the beginning of the meeting.

Chairman Hamrick, 30<sup>th</sup>, called the meeting to order. The following legislation was discussed:

**HB 24 (Willard, 49<sup>th</sup>) Evidence; revise, supersede, and modernize provisions; provide definitions**

**Representative Willard, 49<sup>th</sup>**, presented **HB 24** to the committee. As stated in a previous hearing on this legislation, Representative Willard said Georgia's current evidence code is 146 years old. There have been many changes in the civil code since 1863. The General Assembly and the appellate courts have applied patches here and there over the years, but too many rules have remained antiquated, hard to find and inconsistent. **The Federal Rules of Evidence** were approved by the US Supreme Court and passed by Congress in 1975 after seven years of study and debate. They are clear, balanced and adjusted to the realities of modern litigation. In 2003, the State Bar assembled a broad based committee to prepare and present a proposed new set of evidence rules for Georgia. The result, after 5 years of study and debate within the Bar and further study by a legislative committee over the summer of 2008, is **HB 24**. This current legislation is based on the Federal Rules of Evidence with some changes to conform the rules for state use, to clarify a few Federal Rules that have caused problems, and to retain a few Georgia rules that are considered preferable to the Federal Rule.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Crosby, 13<sup>th</sup>, moved **HB 24 Do Pass**. Senator Ligon, 3<sup>rd</sup>, seconded the motion. **HB 24** passed unanimously (6 to 0).

**HB 24 DO PASS**

**NOTE:** Yeas were Crosby, Jason Carter, Fort, Ligon, McKoon, and Tolleson.

**NOTE:** Senator Cowsert, 46<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Senator Stone arrived at the meeting. Senator Tolleson left the meeting.

**HB 149 (Bearden, 68<sup>th</sup>) Magistrates; termination under certain circumstances; provide**

**Representative Bearden, 68<sup>th</sup>**, presented **HB 149** to the committee. He stated that under current law, magistrate judges serve their terms concurrently with the chief magistrate's term; this bill states that such magistrates would no longer have a set term of office and instead would serve at the pleasure of the chief magistrate. There is a unique provision in current law that would automatically confer status as a special judge of the magistrate court to any superior court judge serving on January 1, 1994 who was removed from office by a federal court order before December 31, 1996. The federal court order is based on federal law that the manner of selecting superior court judges in Georgia is unconstitutional, and the terms of the order prohibit certain superior court judges from serving. The intent of this legislation is removal of all provisions that relate to special judges of the magistrate court. Chairman Hamrick, 30<sup>th</sup>, opened the floor to the committee. Senator Carter, 42<sup>nd</sup>, presented an amendment to the committee that would add language to the bill that would make it clear that on line 67 after the word "circuit" the rest of the paragraph would not apply to those magistrates elected by local law. The author agreed to the change. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator Ligon, 3<sup>rd</sup>, moved **HB 149 Do Pass by Substitute** as amended by the committee. Senator Carter, 42<sup>nd</sup>, seconded the motion. **HB 149** passed by substitute unanimously (6 to 0).

**HB 149 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Crosby, Jason Carter, Fort, Ligon, McKoon, and Stone.

**NOTE:** Senator Crosby, 13<sup>th</sup>, was named Senate sponsor of this legislation.

**HB 167 (Davis, 109<sup>th</sup>) Insurance Delivery Enhancement Act of 2011; enact**

**Representative Davis, 109<sup>th</sup>**, presented **HB 167** to the committee. He stated that the previous year this legislation had passed both the house and the senate but was vetoed by Governor Perdue because of the medical community's opposition to the hospital bed tax legislation. He shared a summary of the legislation at a previous meeting. The following issue outlined in the bill caused the most debate:

**Prompt Pay: Electronic and Written Claims**

This legislation would require insurers and plan administrators to accept written or electronic claims. Within 15 working days of receiving an electronic claim, or 30 calendar days for written claims, the insurer or administrator would be required to mail or electronically send payment; or send a notice that states the reasons the insurer may have for failing to pay the claim. Insurers who fail to respond within the given timeframe

would be required to pay to the facility or health care provider, claiming such payments, interest equal to 12 percent per year in addition to the payment. Insurers or administrators would only be subject to an administrative penalty by the Commissioner when such insurer or administrator properly processed less than 95 percent of all claims, as required by this legislation, in a standard financial quarter. This law would *not* apply to limited benefit insurance policies.

**Chairman Hamrick, 30<sup>th</sup>**, addressed the concerns raised at the previous hearing and reiterated that this legislation had been narrowly defined with the express intent not to affect ERISA and was drafted to extend current law to the **TPA** (Third Party Administrators) which would require them to pay the claim, or give a reason for the delay in payment, within the prescribed time consistent with current Georgia statute. Chairman Hamrick, 30<sup>th</sup>, stated that he had received an opinion from the Office of Legislative Counsel that **HB 167** would have a good likelihood of surviving an attack based on grounds of **ERISA** preemption. The opinion letter has been included with these minutes.

The following people opposed the legislation:

**Josh Belafonte**, Attorney

**Kevin Curtin**, Georgia Chamber of Commerce

**Chuck McMullen**, United Healthcare

**Representative Davis, 109<sup>th</sup>**, closed again with the statement, “Try not paying your insurance premiums on time and see how long your insurance continues.” Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the legislation. Senator McKoon, 29<sup>th</sup>, moved **HB 167 Do Pass**. Senator Stone, 23<sup>rd</sup>, seconded the motion. **HB 167** passed unanimously (6 to 0).

**[HB 167 DO PASS](#)**

**NOTE:** Yeas were Crosby, Jason Carter, Fort, Ligon, McKoon, and Stone.

**NOTE:** Senator McKoon, 29<sup>th</sup>, was named Senate sponsor of this legislation.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 5:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

Senator Tommie Williams  
District 19  
321 State Capitol  
Atlanta, GA 30334

**Committees:**

Finance  
Appropriations  
Reapportionment and Redistricting  
Regulated Industries and Utilities  
Rules  
Education and Youth  
State Institutions and Property

The State Senate  
Atlanta, Georgia 30334  
**PRESIDENT PRO TEMPORE**

March 29, 2011

Bob Ewing  
Secretary of the Senate  
353 State Capitol  
Atlanta, GA 30334

Dear Bob:

In accordance with senate rules, the Committee on Assignments has appointed Senator Jeff Mullis to serve as Ex-Officio for the Senate Judiciary Committee meeting on March 30th, 2011. This appointment shall expire upon the adjournment of the committee meeting. Please feel free to contact me if you have any questions or concerns on this matter.

Sincerely,

/s/ Tommie Williams  
Senate President Pro Tempore

**MINUTES OF THE SENATE JUDICIARY COMMITTEE**  
**Wednesday, March 30, 2011**

The Senate Judiciary Committee held its eighteenth meeting of the 2011 Session on Wednesday, March 30, 2011, in the room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 3:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Bill Cowsert, 46<sup>th</sup>, Vice Chair  
Senator John Crosby, 13<sup>th</sup>, Secretary  
Senator Charlie Bethel, 54<sup>th</sup>  
Senator Jason Carter, 42<sup>nd</sup>

Senator Vincent Fort, 39<sup>th</sup>  
Senator Josh McKoon, 23<sup>rd</sup>  
Senator Ronald Ramsey, 43<sup>rd</sup>  
Senator Jesse Stone, 23<sup>rd</sup>  
Senator Jeff Mullis, 53<sup>rd</sup>, Ex-Officio

**NOTE:** Senators Brown, Ligon, and Seabaugh were absent from the meeting.

**NOTE:** Senator Mullis, 53<sup>rd</sup>, was called in as ex-officio to help make the quorum at the beginning of the meeting.

Chairman Hamrick, 30<sup>th</sup>, called the meeting to order. The following legislation was discussed:

**[HB 87](#) (Ramsey, 72<sup>nd</sup>) **Illegal Immigration Reform and Enforcement Act of 2011; enact****

After many previous hearings on the issue of illegal immigration with **[SB 40](#)**, Chairman Hamrick, 30<sup>th</sup>, worked with **Representative Matt Ramsey, 72<sup>nd</sup>**, who presented similar legislation in the form of **HB 87**, to develop a substitute that embraced the best aspects of both bills. The substitute switched a few provisions for those in **SB 40** because they were provisions that were based on settled federal law and extensive case law research. Chairman Hamrick, 30<sup>th</sup>, noted that the substitute does **NOT** allow any private citizen to file a lawsuit to compel public officials and state agencies to obey state law requiring the use of the federal E-Verify system. Instead, private citizens would be allowed to file a complaint with the Attorney General. He then shared the following summary of the substitute for **HB 87** with the committee:

**Contracts for Public Works: Immigration Compliance (Similar to [SB 40](#))**

Current law requires public employers to verify employment eligibility using the federal work authorization program. All bids would include a signed, notarized affidavit that the contractor had registered with and was using the federal program, including the user number; and would only contract with subcontractors who also swore to use the federal program.

Subcontractors and sub-subcontractors who did not register with and participate in the federal work authorization program would be prohibited from entering into any contract with a contractor for a public contract. A subcontractor who received an affidavit from a sub-subcontractor, or who received notice of an affidavit from a sub-subcontractor that had contracted with another sub-subcontractor, would have a duty to forward it to the contractor within 5 business days.

A contractor, subcontractor or sub-subcontractor who did not intend to hire any employees for the purpose of completing work on a contract, or part thereof, would be required to instead provide a copy of the drivers' license or state-issued identification of the contracting party and each independent contractor. If he/she later determined that employees would be needed to comply with the contract, an affidavit swearing that the contractor/subcontractor was using the federal program would be required. The Attorney General would be responsible for providing a list of states that verify immigration status before issuing drivers' licenses and other identification.

If the state auditor found any political subdivision of this state to be in violation of this law, that political subdivision would have 30 days to demonstrate that all deficiencies had been corrected. If not, that political subdivision would be excluded as a qualified local government until compliance was achieved. If a state department or agency was found to have violated these rules twice in five years, funding for the next fiscal year would be cut to no more than 90% of the amount appropriated in the second year of noncompliance. In addition, such agencies and departments would be listed on an official state website as being in violation.

Public employees and employers, contractors, subcontractors and sub-subcontractors could not be held civilly or criminally liable for *unknowingly* accepting a bid from someone who had violated this law. However, a party may be held liable for failure to submit a required affidavit.

At any time, a public employer may seek administrative relief through the Office of State Administrative Hearings, which would toll the time limit for coming into compliance until a final ruling was handed down. There would be a rebuttable presumption that a party receiving and acting upon an affidavit did so in good faith. Affidavits would be admissible in court in order to establish the presumption.

### **Aggravated Identity Fraud**

Aggravated identity fraud would be defined as the willful and fraudulent use of counterfeit or fictitious identifying information for the purpose of gaining employment. This offense would not merge with other offenses. The penalty would be one to 15 years in prison and/or a fine up to \$250,000.

### **Transporting Illegal Aliens by Motor Vehicle**

New Code Section 16-11-200: It would be a misdemeanor to transport seven or fewer illegal aliens by motor vehicle, either knowingly or with reckless disregard, *while committing another criminal offense*. The penalty would be a fine of up to \$1000 and/or imprisonment up to 12 months. Transporting more than seven illegal aliens, and a second or subsequent offense of transporting seven or fewer illegal aliens, would be considered to be a felony offense, punishable by a fine of \$5000 to \$20,000 and/or one to five years in prison. This statute would not apply to law enforcement officers or government employees in furtherance of their official duties.

### **Harboring Illegal Aliens**

New Code Section 16-11-201: It would be a misdemeanor to knowingly conceal or harbor seven or fewer illegal aliens at once and in the same location. The penalty would be a fine up to \$1000 and/or imprisonment up to 12 months. Concealing or harboring more than seven illegal aliens, or harboring an illegal alien with the intent of making a profit or receiving anything of value, would be a felony, punishable by a fine of \$5000 to \$20,000 and/or one to five years in prison. This statute would not apply to a government employee who harbored an illegal alien who was a crime victim or witness in a civil or criminal court proceeding.

### **Encouraging an Illegal Alien to Enter the United States**

New Code Section 16-11-202: For a first offense, it would be a misdemeanor to knowingly encourage or induce an illegal alien to enter Georgia, *while in violation of another criminal offense*. The misdemeanor penalty would be a fine up to \$1000 and/or imprisonment up to 12 months. Any subsequent offense of encouraging an illegal alien to enter the state would be a felony, punishable by \$5000 to \$20,000 and/or one to five years in prison. Inducing an illegal alien to enter Georgia with the intent of making a profit or receiving anything of value would be a felony, carrying a penalty of one to five years in prison and a \$5000 to \$20,000 fine.

### **Immigration Checks during Law Enforcement Stops**

The new Code Section 17-5-100 would allow law enforcement officers to seek to verify a person's immigration status during any investigation of a criminal suspect if the officer had probable cause to believe that the person had committed a criminal offense, including traffic offenses, and the suspect was unable to provide valid identification. If the person did not present such a document, the officer would be required to use any reasonable and available means to determine the person's immigration status. If the officer received confirmation that the person was an illegal alien, then the officer was authorized to arrest, detain, or transport the suspect to a detention facility, or notify the Department of Homeland Security.

Law enforcement officers would not be allowed to consider race, color or national origin in implementing the requirements of this statute. Anyone who, in good faith, contacted law enforcement as a witness to a crime, to report criminal activity, or to seek assistance as a crime victim would not be investigated under this statute. Peace officers who acted in good faith will have immunity for their actions under this statute.

### **Use of Full Immigration Enforcement Powers under Federal Law**

New Code Section 35-1-16 makes it clear that state and local law enforcement agencies want to cooperate with federal immigration authorities and use as much immigration enforcement power as allowed under federal law. With verification, state and local law enforcement officers would be authorized to transport and reasonably detain illegal aliens, as well as arrest persons who violate federal immigration law. Law enforcement officers who enforced federal immigration law in good faith would have immunity from related damages and liability.

### **Grants & Incentives for Use of Federal Immigration Programs**

Subject to available funding, this bill would require the Criminal Justice Coordinating Council (CJCC) to establish grant or incentive programs to local law enforcement agencies for the purpose of encouraging the use of the federal Department of Homeland Security Secure Communities program, and offsetting the costs of implementing Section 287(g) of the federal Immigration and Nationality Act. The CJCC would also be required to provide technical and communication assistance between the local agencies and the federal government.

### **Private Employers Required to Use E-Verify**

Every private employer with five or more employees who was required to be licensed under Title 43 would be required to use the E-Verify system for verification of newly hired employees. Licensure under Title 43 would be dependant upon a showing of evidence by the person requesting the license that the employer was authorized to use E-Verify, in the form of an affidavit. Once an affidavit had been submitted, the employer would not be allowed to submit a renewal application with a new or different E-Verify number without an explanation.

These requirements would become effective on July 1, 2012 for employers with 100 or more employees and on December 31, 2012 for employers with five or more employees.

Any person, including government officials, who knowingly violates this statute, would be guilty of a misdemeanor. Anyone who knowingly submits a false affidavit would be guilty of submitting a false document under Code Section 16-10-20. The Attorney General would be authorized to bring a criminal or civil action to ensure compliance.

### **Immigration Verification for Suspected Illegal Aliens in Jail**

If any foreign national was confined and being held for the alleged commission of a felony, this bill would require that his/her immigration status be verified. If the foreign national was an illegal alien, local law enforcement must notify the federal government. Such person could be detained, arrested and transported upon verification that he/she was an illegal alien.

### **County Reimbursement**

As an incentive, and subject to funding, counties that have entered into memorandums of understanding or agreement with the federal government under Section 287(g), or had demonstrated continuous attempts to do so, would receive an additional 10% of the rate paid as reimbursement for the confinement of state inmates.

### **Citizen Complaints to Attorney General**

This bill would allow any registered voter in Georgia to file a complaint with the Attorney General based on an alleged violation of this legislation by a public agency or employee. The Attorney General would be authorized to conduct an investigation, and if he/she found a reasonable basis to believe that the allegations could be true, he/she would issue findings and notice on the applicable public agency, employee, and complainant.

If the allegations were substantiated, the Attorney General would be required to order the agency and/or employee to conform to the law and must assess a civil penalty of \$1000 to \$5000 per violation. After the costs of investigation and litigation, the remainder of the fine would be remitted to the state general fund. The public agency or employee objecting to the findings would be entitled to appeal using the Georgia Administrative Procedure Act; the appeal would be required to be filed within 30 days of service of the notice of civil penalties.

### **Tax Deductions**

Beginning January 1, 2012, wages for labor services greater than \$600 per annum per worker would not be eligible as a tax deductible business expense for state income tax purposes unless the worker was an authorized employee. This would apply whether or not IRS Form 1099 was issued. However, this statute would not apply to:

- a business domiciled in Georgia that was exempt from the federal employment verification procedures under federal law;
- any individual hired by the taxpayer before January 1, 2012;
- any taxpayer where the person being paid was not directly compensated or employed by the taxpayer; or
- wages paid for labor services to anyone who presented to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.

### **Public Benefits**

The bill would require applicants for public benefits to present a secure and verifiable document.

### **Penalties for Agency Heads**

The intentional and knowing failure of an agency head to abide by these laws would be a violation of the code of ethics for government service and subject the agency head to removal from office and a fine up to \$10,000, *and* a high and aggravated misdemeanor if the agency head acted to deliberately interfere with the implementation of these laws. The Attorney General would be authorized to bring a civil suit or criminal prosecution against an agency or agency head.

### **Secure and Verifiable Identity Document Act**

The bill would require all agencies and political subdivisions to accept only secure and verifiable documents for official purposes after January 1, 2012. Willful violation of this act by knowingly accepting documents that were not secure and verifiable would be a misdemeanor offense punishable by a fine up to \$1000 and/or up to 12 months in prison. However, this act would not apply to an official accepting a crime report, persons reporting a crime, providing services to children or crime victims, or providing emergency medical services, or to peace officers, court officials or attorneys in furtherance of their official or professional duties.

### **Severability**

If any portion of this law was held invalid or unconstitutional, the rest of the law will be unaffected and will remain in effect. This law would be implemented in a manner consistent with federal law.

Because there has been much debate over the illegal immigration issues in [SB 40](#) and **HB 87** in previous meetings in both the Senate and House Judiciary committees, Chairman Hamrick, 30<sup>th</sup>, stated there was no need for another hearing. He asked for a motion on the legislation. Before the motion was made, Chairman Hamrick, 30<sup>th</sup>, recognized Senator Fort, 39<sup>th</sup>, who stated he had two major concerns with this legislation; one being the requirement to use a flawed e-verify system, and two being that this legislation may lead to racial profiling. Senator McKoon, 13<sup>th</sup>, moved **HB 87 Do Pass by Substitute**. Senator Cowsert, 46<sup>th</sup>, seconded the motion. **HB 87** passed by substitute (5 to 4).

### **HB 87 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Cowsert, Bethel, McKoon, Stone and Mullis. Nays were Crosby, Jason Carter, Fort, and Ramsey.

**NOTE:** Senator Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Senator Fort left the meeting.

### **HB 129 (McKillip, 115<sup>th</sup>) Conveyances; future conveyance of real property; prohibit fee**

**Representative McKillip, 115<sup>th</sup>**, presented a substitute to **HB 129** to the committee. This bill would prohibit any restriction or covenant running with the land in a conveyance of real property if such required a transferee or transferor, or their heirs, successors or assigns, to pay a fee in connection with a future transfer of the property to the person imposing the restriction or covenant. The substitute added that fees for property owners and condo associations would be exempted. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

The following testified in support of the legislation:

**Julie Howard**, Community Associations Institute

**Ron Fennel** and **Diane Calloway**, Georgia Land Title Association

**John Barbour**, Georgia Realtors Association

There was no opposing testimony.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the substitute for **HB 129**. Senator Ramsey, 43<sup>rd</sup>, moved **HB 129 Do Pass by Substitute**. Senator Mullis seconded the motion. **HB 129** passed unanimously (8 to 0).

#### **HB 129 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Cowsert, Crosby, Bethel, Jason Carter, McKoon, Ramsey, Stone and Mullis.

**NOTE:** Senator Stone, 23<sup>rd</sup>, was named Senate sponsor of this legislation.

**NOTE:** Senator Fort returned.

#### **HB 390 (Coomer, 14<sup>th</sup>) Criminal cases; state has right of direct appeal; authorize**

**Representative Coomer, 14<sup>th</sup>**, presented **HB 390** to the committee stating that he was carrying this legislation for the District Attorney's Association of Georgia. This legislation would allow the state to directly appeal non-final orders, decisions and judgments. A certificate of immediate review from an order, decision or judgment that suppressed or excluded illegally seized evidence, or granted a motion for a new trial, or extraordinary motion for a new trial in superior court would not be required for an appeal. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

Testimony in favor of the legislation was given by:

**Don Geary**, DeKalb County District Attorney

**Paul Howard**, Fulton County District Attorney

**David Miller**, Southern Circuit District Attorney

There was no opposing testimony.

Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 390**. Senator Crosby, 13<sup>th</sup>, moved **HB 390 Do Pass**. Senator Ramsey, 43<sup>rd</sup>, seconded the motion. **HB 390** passed unanimously (8 to 0).

#### **HB 390 DO PASS**

**NOTE:** Yeas were Cowsert, Bethel, Jason Carter, Fort, McKoon, Ramsey, Stone and Mullis.

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

**NOTE:** Senator Crosby was called out of the meeting before the vote and returned shortly thereafter. Senators Fort and Ramsey left the meeting.

**[HB 162](#) (Purcell, 159<sup>th</sup>) Sexual offender registry; photograph minor without parent permission; prohibit**

**Representative Purcell, 159<sup>th</sup>**, presented **HB 162** to the committee. He stated that this bill was a necessary clean-up of legislation passed the previous year that prohibited anyone from photographing a minor without the parents' permission, which was overbroad and probably unconstitutional. **HB 162** focused the intent of the legislation on prohibiting registered sexual offenders from intentionally photographing a minor without consent from the parent or guardian. Noting there was no one signed up to testify for or against the legislation, Chairman Hamrick, 30<sup>th</sup>, asked for a motion on **HB 162**. Senator Mullis, 53<sup>rd</sup>, moved **HB 162 Do Pass**. Senator Stone, 23<sup>rd</sup>, seconded the motion. **HB 162** passed unanimously (7 to 0).

**[HB 162 DO PASS](#)**

**NOTE:** Yeas were Cowser, Crosby, Bethel, Jason Carter, McKoon, Stone and Mullis.

**NOTE:** Senator Stone, 23<sup>rd</sup>, was named Senate sponsor of this legislation.

**NOTE:** Senators Fort and Ramsey returned.

**[HB 238](#) (Golick, 34<sup>th</sup>) Legal defense for indigents; powers and duties of council; change provisions**

**Representative Golick, 34<sup>th</sup>**, presented a substitute for **HB 238** to the committee. He stated that this legislation would reform the governing structure of the *Georgia Public Defender Standards Council (GPDSC)* in the following ways:

- The Georgia Public Defender Standards Council (GPDSC) would no longer have the authority to hire administrative personnel as needed, nor the broadly worded "other powers, privileges and duties as may be reasonable" in order to fulfill its duties.
- The director of the GPDSC is currently appointed by the Governor and serves at his pleasure; this bill stated that the director would be appointed and removed by the GPDSC, subject to the Governor's approval. The director would be authorized to hire a mental health advocate and capital defender without the approval of the GPDSC, and he/she would no longer have to report on each circuit public defender's job performance nor perform unspecified duties assigned by the GPDSC.

- The bill would require a two-thirds vote of the entire council in order to remove the council chairperson or to overturn the director's decision regarding the removal of a circuit public defender.
- Current law requires each judicial circuit to have a 7 person circuit public defender supervisory panel; this bill would change the number of panelists to three, and would require them to be attorneys who regularly practice law in that circuit. The bill also changes the appointment process for the panels. The panels would be responsible for nominating up to five people to serve as the circuit public defender, and the director would be required to select from that list.
- This bill authorizes the director to remove a circuit public defender for cause; any appeal would go to the GPDSC, which could overturn the director's decision with a two-thirds vote. The circuit public defender who is appealing his/her removal would continue to serve until the GPDSC reached a decision. The director would also be authorized to appoint an interim circuit public defender if there is a vacancy.

Representative Golick, 34<sup>th</sup>, stated that this legislation does not address funding for the GPDSC. His intent would be to clean up the governance first and then introduce a bill regarding funding next session. A controversial amendment was brought by the Fulton County Commission that would allow single county circuit public defenders to opt out of the statewide system. This amendment was tabled by Chairman Hamrick, 30<sup>th</sup>, because it was brought to the committee at the last minute and the members wanted more time to review the implications. Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

Testimony in support of the legislation was given by the following:

**Mike Berg**, Chairman, GPDSC

There was no opposing testimony.

Lee Robinson (CPD Macon Circuit), Sandra Michaels (GACDL) and the Southern Center for Human Rights did not take an official position on the bill, but all wanted a CPD to be a member of the Council. Senator Stone, 23<sup>rd</sup>, offered an amendment to add a circuit public defender. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the substitute for **HB 238** as amended. Senator Bethel, 54<sup>th</sup>, moved that **HB 238 Do Pass by Substitute** as amended by the committee. Senator Carter, 42<sup>nd</sup>, seconded the motion. HB 238 passed by substitute as amended (7 to 1).

### **HB 238 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Cowsert, Bethel, Jason Carter, McKoon, Ramsey, Stone and Mullis. The single nay vote was Fort.

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

## **HB 415 (Atwood, 179<sup>th</sup>) Jury Composition Reform Act of 2011; enact**

**Representative Atwood, 179<sup>th</sup>**, presented a substitute to **HB 415**, the **Jury Composition Reform Act of 2011**, to the committee which was substantially similar to **SB 191**, in the House Judiciary Committee at the time. The following summary was shared with the committee:

The differences were:

- In **SB 191**, all counties where the chief superior court judge had the statutory power to appoint a jury clerk on January 1, 2011 were grandfathered in and would continue to have such power. **HB 415** eliminates this provision.
- **SB 191** requires the Secretary of State to provide each voter's SSN and driver's license number to be included on the jury lists; **HB 415** does not.
- **HB 415** authorizes the Secretary of State to permit the Council of Superior Court Clerks to access the official list of electors, and to access the dates of birth and driver's license numbers of electors; the Council in turn is authorized to provide the data to county boards of jury commissioners. **SB 191** did not.
- Part II of **HB 415** is not in **SB 191**

### **PART I**

The Council of Superior Court Clerks ("Council") would be required to establish a statewide master jury list and to distribute county master jury lists to each county board of jury commissioners. Clerks would be required to keep a computer based jury management system for the purpose of maintaining the county master jury list.

The bill provides for a deferral of jury duty, in addition to excusal, when a juror shows good cause. The court would be required to provide affidavits for the purpose of requesting a deferral or excusal. Military service members and their spouses could request a jury duty deferral or excusal upon presentation of a valid military identification card and an affidavit. When a deferral or excuse is granted, the court would be required to notify the clerk.

Jurors would be ineligible for juror service at the next succeeding term of superior or state court where he/she previously served, but would be eligible to serve at the next term of a different level of court. The bill removes the exception to this rule for counties where the grand juror pool is less than 100 people and the trial juror pool is less than 350 people. Expense allowances for jury service would only be paid to those who appear for service.

Juror questionnaires were confidential and exempt from public disclosure, except the court could order questionnaire data be released to parties and their counsel in order to challenge the array of the jury or in preparation for voir dire.

County boards of jury commissioners would have six members, who serve six year terms, and the terms of no more than two members may expire each year.

The Council would be required to compile a statewide master jury list and would be responsible for updating the list. The Department of Driver Services would be required to provide the Council with a list of all persons to whom they have issued a driver's license or personal identification card; however, persons whose licenses have been suspended or revoked due to a felony conviction would not be included. The Secretary of State would provide the Council with a list of all registered voters, in addition to a list of persons who: have felony convictions; have been declared mentally incompetent; and whose voting rights have been removed. The Council would annually provide each county board of jury commissioners with a county master jury list. The Council could charge a fee for such list, not to exceed 3 cents per name.

Twelve months after this bill becomes effective, court clerks would be required to:

- Make the county master jury list available by request of a party or his/her attorney;
- Choose a sufficient number of people to serve as grand jurors, and issue summonses no less than 20 days before the commencement of the term of court for which a grand jury will be impaneled;
- Mail all summonses to the prospective jurors' most notorious places of abode at least 25 days before the court date;
  - Failure to receive the notice personally would be a defense to a contempt citation;
- Choose prospective trial jurors from the county master jury list and summon the jurors when there are insufficient jurors in attendance to complete the jury panel;
- Choose and cause to be summoned additional prospective trial jurors when there are an insufficient number of jurors in attendance;
- Choose and summon prospective jurors in the same manner as choosing jurors at the close of a regular term of court, when a court session is prolonged or where court has convened or is about to convene and there have been no jurors chosen.

The Council would be required to develop a statewide system to ensure that jury data is systematically preserved and could be restored in the event of loss or destruction.

Current law requires grand jurors to be the most experienced, upright and intelligent persons who reside in the county; this bill would remove that requirement.

Twelve months after this bill becomes effective, trial juries would be chosen from a county master jury list. The presiding judge would order the clerk to choose the number of jurors necessary, and the clerk would choose the names of persons to serve as trial jurors. When there were no regular trial juror panels to make up panels for misdemeanor cases, or where jurors were already engaged in considering a case, the presiding judge may fill the panels by summoning competent jurors as necessary.

Twelve months after this bill becomes effective, a prospective juror chosen for service in superior court would also be legally competent to serve as a juror in any court with county-wide jurisdiction concurrent with the superior courts to try any type of case not within the superior courts' exclusive jurisdiction, for the same period of time that the juror was competent to serve as a superior court juror.

Twelve months after this bill becomes effective, 30 jurors would be required to be impaneled when any person is indicted for a felony, from which the defense and prosecution could strike jurors. If the state intends to seek the death penalty, the panel would be required to have 42 jurors. If, after striking, there are fewer than 12 qualified jurors, the clerk would then choose and summon the necessary number of competent prospective jurors. The clerk would be required to provide the prosecutor and the accused with the names and identifying information of the prospective jurors.

Twelve months after this bill becomes effective, alternate jurors would be chosen from the county master jury list in the same manner as jurors already sworn, and subject to the same examination and challenges. The state and the accused would be entitled to as many peremptory challenges to alternate jurors as there are alternate jurors called, in addition to the regular number of peremptory challenges allowed by law in criminal cases.

The Secretary of State would be required to provide the Council with a monthly list of the following people, to be used only for the maintenance of the statewide and county master jury lists:

- Convicted of a felony involving moral turpitude;
- Identify themselves as not being U.S. citizens;
- Declared mentally incompetent;
- Convicted of a felony in federal court;
- Who died;
- Whose name has been removed from the list of electors; and
- Voters who have failed to vote and become inactive.

## **PART II**

This bill would prohibit the willful and knowing sale, purchase, installation, transfer or possession of any automated sales suppression device, zapper, or phantom-ware. Suppression devices and zappers are defined as software programs that are transportable and able to falsify the electronic records of electronic cash registers and other point-of-sale systems. Phantom-ware means a hidden programming option embedded in or hardwired into the operating system of an electronic cash register that could be used to create a virtual second till, or eliminate or manipulate transaction records.

Violating this statute would be a felony offense, punishable by imprisonment for one to five years and/or a fine up to \$100,000. Offenders would also be liable for the taxes and penalties due to the state as a result of the crime, and must hand over all profits associated with the sale or use of an automated sales suppression device or phantom-ware. Such devices and phantom-ware would be considered contraband.

*Part I of this bill would only become effective if funds are specifically appropriated.*

*Part II would become effective on the first day of the month after the month when approved by the Governor, or becomes law without such approval.*

Chairman Hamrick, 30<sup>th</sup>, opened the floor to public testimony.

The following testified in support of the legislation:

**Judge Arch McGarity**, Council of Superior Court Judges

**Sandra Michaels**, GACDL

The following objected to a change in **HB 415** that affected jury clerks in certain counties based on population:

**Mike Holiman**, Superior Court Clerks

**Senator Bill Cowsert**, 46<sup>th</sup>, presented an amendment that replaced his original **SB 191** language into **HB 415**, and added language for the superior court clerks so that all counties where the chief superior court judge had the statutory power to appoint a jury clerk on January 1, 2001, would be grandfathered in and would continue to have such power. Chairman Hamrick, 30<sup>th</sup>, asked for a motion on the substitute for **HB 415** as amended by the language offered by Senator Cowsert, 46<sup>th</sup>. Senator Cowsert moved that **HB 415 Do Pass By Substitute** as amended by the committee. Senator Carter, 42<sup>nd</sup>, seconded the motion. **HB 415** passed unanimously by substitute (8 to 0).

#### **HB 415 DO PASS BY SUBSTITUTE**

**NOTE:** Yeas were Cowsert, Crosby, Bethel, Jason Carter, McKoon, Ramsey, Stone, and Mullis.

**NOTE:** Chairman Hamrick, 30<sup>th</sup>, was named Senate sponsor of this legislation.

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 6:10 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13<sup>th</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

April 14, 2011

Honorable Bob Ewing  
Secretary of the Senate  
State Capitol  
Room 353  
Atlanta, GA 30334

Dear Mr. Ewing:

Along with the minutes of the **Senate Judiciary Committee**, I am returning the following Bills:

<a href="#"><u>HB 64</u></a>	<a href="#"><u>SB 217</u></a>
<a href="#"><u>HB 196</u></a>	<a href="#"><u>SB 221</u></a>
<a href="#"><u>HB 315</u></a>	<a href="#"><u>SB 224</u></a>
<a href="#"><u>SR 155</u></a>	<a href="#"><u>SB 228</u></a>
<a href="#"><u>SB 11</u></a>	<a href="#"><u>SB 230</u></a>
<a href="#"><u>SB 15</u></a>	<a href="#"><u>SB 243</u></a>
<a href="#"><u>SB 27</u></a>	<a href="#"><u>SB 256</u></a>
<a href="#"><u>SB 28</u></a>	<a href="#"><u>SB 260</u></a>
<a href="#"><u>SB 51</u></a>	<a href="#"><u>SB 262</u></a>
<a href="#"><u>SB 65</u></a>	<a href="#"><u>SB 263</u></a>
<a href="#"><u>SB 99</u></a>	<a href="#"><u>SB 280</u></a>
<a href="#"><u>SB 104</u></a>	<a href="#"><u>SB 290</u></a>
<a href="#"><u>SB 105</u></a>	
<a href="#"><u>SB 117</u></a>	
<a href="#"><u>SB 127</u></a>	
<a href="#"><u>SB 133</u></a>	
<a href="#"><u>SB 137</u></a>	
<a href="#"><u>SB 149</u></a>	
<a href="#"><u>SB 164</u></a>	
<a href="#"><u>SB 165</u></a>	
<a href="#"><u>SB 174</u></a>	
<a href="#"><u>SB 213</u></a>	

Respectfully submitted,

/s/ Laurie Sparks  
Recording Secretary  
Senate Judiciary Committee