

**Members of the Senate Judiciary Committee
2012 Session**

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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
Wednesday, January 11, 2012

The Senate Judiciary Committee held its first meeting of the 2012 Session on Wednesday, January 11, 2012, in room 450 of the Capitol. 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 th , Chairman	Senator William Ligon, Jr., 3 rd
Senator John Crosby, 13 th , Secretary	Senator Joshua McKoon, 29 th
Senator Charlie Bethel, 54 th	Senator Jesse Stone, 23 rd

NOTE: Senators Cowsert, 46th, Carter, 42nd, Fort, 39th, Ramsey, 43rd, and Hill, 32nd, were absent from the meeting.

Chairman Hamrick called the meeting to order.

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

Division I

Senator Bill Cowsert, 46th – Chair
Senator Charlie Bethel, 54th
Senator William Ligon, Jr., 3rd
Senator Ronald Ramsey, 43rd
Senator Judson Hill, 32nd, Ex-Officio

Division II

Senator John Crosby, 13th – Chair
Senator Jason Carter, 42nd
Senator Vincent Fort, 39th
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

The rules of these subcommittees were established as follows:

Pursuant to 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 are reduced to writing. This record shall 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.

SB 117 (Stone, 23rd) Levy/Sale of Property; increase the amount of certain exemptions

Senator Stone, 23rd, presented **SB 117** to the committee. This legislation would provide the option to exempt \$21,500 in real or personal property that was the debtor's primary residence from levy or sale of property, and increase the amount exempted for bankruptcy purposes. The following analysis was shared with the committee:

ANALYSIS

Currently, \$5,000 was exempt from levy or sale of property. This bill provided the option to exempt either \$5,000 or \$21,500 for real or personal property that was the debtor's primary residence.

This bill would also increase the amount exempted for bankruptcy purposes. Any debtor (who was a natural person) would be allowed to exempt his aggregate interest in real or personal property used as the debtor's residence, or a burial plot, up to \$21,500. The current limit was \$10,000 at the time the bill was presented. If title to the property was in one of two spouses, this bill would increase the exemption amount from its current amount of \$20,000 to \$43,000.

Noting that no one had signed up to testify for or against the bill, Chairman Hamrick asked for a motion. Senator Bethel, 54th, moved ***SB 117 Do Pass by Substitute*** (LC 29 4989 S). Senator Ligon, 3rd, seconded the motion. SB 117 passed unanimously 6-0.

SB 117 DO PASS BY SUBSTITUTE

NOTE: Yeas were Senators Hamrick, Bethel, Crosby, Ligon, McKoon, and Stone.

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 2:35 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Monday, January 23, 2012

The Senate Judiciary Committee held its second meeting of the 2012 Session on Monday, January 23, 2012, 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 th , Chairman	Senator William Ligon, Jr., 3 rd
Senator Bill Cowsert, 46 th , Vice Chair	Senator Joshua McKoon, 29 th
Senator John Crosby, 13 th Secretary	Senator Ronald Ramsey, 43 rd
Senator Charlie Bethel, 54 th	Senator Jesse Stone, 23 rd
Senator Jason Carter, 42 nd	

NOTE: Senators Fort and Judson Hill were absent from the meeting.

Chairman Hamrick called the meeting to order.

SB 225 (Miller, 49th) Criminal Offenses; provide for new offense of transmitting a false report; penalties

Senator Miller, 49th, had **T. J. Kaplan** present a substitute to **SB 225** (LC 29 5029S) to the committee. This legislation created the crime of transmitting a false report. The following analysis was shared with the committee:

ANALYSIS

Anyone who knowingly and intentionally sends a false claim, either written, electronic, or other type of transmission, that he/she or any other person has committed a serious violent felony, and if such claim causes law enforcement to investigate whether the crime has been committed by that person, would be guilty of the felony offense of transmitting a false crime report. This crime is punishable by one to five years in prison and/or a fine up to \$10,000.

Several members of the committee had issues with making the crime of transmitting a false report a felony. Chairman Hamrick, 30th, tabled the legislation so that the issues could be resolved.

SB 225 TABLED

HB 237 (Golick, 34th) Residential mortgage fraud; mortgage lending process; revise definition

Representative Golick, 34th, presented a substitute to **HB 237** (LC 29 4645S) to the committee. Attorney General **Sam Olens**, and **Stan Gunter**, representing DA's, answered committee questions. This legislation would authorize the Attorney General and district attorneys to issue subpoenas to compel information in residential mortgage fraud cases. The following analysis was shared with the committee:

ANALYSIS

The term “mortgage lending process” was amended to include the execution of deeds under power of sale and the execution of assignments required to be recorded.

Under this bill, one could 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.

District attorneys and the Attorney General are 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 things, including computer and electronic records. Upon a failure to comply, the prosecutor would be allowed to 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. Failure to comply with a court order would constitute contempt of court.

Several members of the committee had questions regarding the wisdom of one office having too much subpoena power. Chairman Hamrick, 30th, tabled the legislation to work out issues with the committee.

HB 237 TABLED

SB 136 (Hamrick, 30th) Property; provide for transfer of control of condominium association in certain circumstances

Chairman Hamrick, 30th, presented a substitute to **SB 136** (LC 29 5023S) to the committee. This legislation would create oversight of condominium associations. The following analysis was shared with the committee:

ANALYSIS

The right to control a condominium association would be allowed to pass from the declarant to the unit owners prior to the usual expiration of the declarant’s right to control the association, if the declarant 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 would be allowed to send the declarant notice of a failure to comply with one of these requirements. If the declarant failed to cure the deficiency within 30 days, the owner would have the option of filing a petition in superior court for an order granting the owners control of the association.

This bill also announces a public policy that the statutory powers of a condominium association cannot be waived, modified nor removed by any contract or document created before the expiration of the declarant's right to control the association.

Senator Cowsert, 46th, moved *SB 136 Do Pass by Substitute*. Senator Carter, 42nd, seconded the motion. **SB 136** passed unanimously 8 to 0.

SB 136 DO PASS BY SUBSTITUTE

NOTE: Yeas were Senators Cowsert, Crosby, Bethel, Carter, Ligon, McKoon, Ramsey, and Stone.

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 1:55 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Monday, January 30, 2012

The Senate Judiciary Committee held its third meeting of the 2012 Session on Monday, January 30, 2012 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, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th Secretary
Senator Charlie Bethel, 54th
Senator Jason Carter, 42nd
Senator Vincent Fort, 39th

Senator William Ligon, Jr., 3rd
Senator Joshua McKoon, 29th
Senator Ronald Ramsey, Sr., 43rd
Senator Jesse Stone, 23rd

NOTE: Senator Crosby left the meeting to attend a Criminal Justice Appropriations Subcommittee hearing. Senator Judson Hill was absent from the meeting.

Chairman Hamrick called the meeting to order.

SB 225 (Miller, 49th) Criminal Offenses; provide for new offense of transmitting a false report; penalties

Senator Miller, 49th, had **T. J. Kaplan** present a substitute to **SB 225** (LC 29 5067S) to the committee. This legislation creates the crime of transmitting a false report. The following analysis was shared with the committee:

ANALYSIS

A person would be guilty of the felony offense of transmitting a false report of a crime if he knowingly and intentionally transmitted a false claim by means of a written, electronic, or other transmission, and the claim:

- states that he/she had committed a serious violent felony, and
- was reasonably intended to cause law enforcement to initiate an investigation to determine whether the crime had been committed by that person.

This crime would be punishable by one to five years in prison and/or a fine up to \$10,000.

Senator Cowsert offered an amendment to change the penalty from a felony to a misdemeanor. Senator Miller agreed to the change. Senator Ramsey, 43rd, moved that the amendment **DO PASS**. Senator Bethel, 54th, seconded the motion. The amendment passed unanimously (8-0).

NOTE: Yeas were Senators Cowsert, Crosby, Bethel, Carter, Ligon, McKoon, Ramsey, and Stone.

Testimony in support of the substitute as amended was given by **Sandra Michaels**, GACDL.

Chairman Hamrick then asked for a motion on the legislation as amended. Senator Cowsert, 46th, moved that ***SB 225 Do Pass by Substitute*** as amended by the committee. Senator Carter, 42nd, seconded the motion. SB 225 passed unanimously (8-0).

SB 225 DO PASS BY SUBSTITUTE

NOTE: Yeas were Senators Cowsert, Bethel, Carter, Fort, Ligon, McKoon, Ramsey, and Stone.

HB 683 (Willard, 49th) Garnishment proceedings; filing of certain answers may be done by authorized officers or employees; provisions

Representative Willard, 49th, presented **HB 683** to the committee. This legislation addresses non-attorney responses to garnishments summons, and states that when an entity is a garnishee in a garnishment proceeding, the execution and filing of the garnishee's answer would not constitute the practice of law and does not require an attorney. Also, the entity's payment of garnishment would not constitute the practice of law. The following analysis was shared with the committee:

ANALYSIS

In September 2011, the Georgia Supreme Court approved a Georgia Bar Standing Committee on the Unauthorized Practice of Law Advisory Opinion, making that Advisory Opinion the law. In doing so, the Supreme Court approved the Advisory Opinion's holding that a non-attorney who answered for a garnishee other than himself in a legal proceeding pending with a Georgia court of record was engaged in the unlicensed practice of law. The intent of this legislation is to respond to that opinion.

This bill created a new Code section that provides, when an entity is a garnishee in a garnishment proceeding, the execution and filing of a garnishee answer would no longer constitute the practice of law and would not require an attorney. An entity's payment into the court of any property which is subject to garnishment could also be done by an entity's authorized officer or employer and would not constitute the practice of law. However, an attorney would be required to represent an entity if a traverse or claim was filed to the garnishee's answer in a court of record. The statutory forms are amended to provide that they may be signed by an authorized officer or employee of the entity.

This bill also revises the language of the Georgia garnishment statute by using the terms "garnishee answer," "garnishee's answer," and "answer of a garnishee" in place of the current term, "answer." A "garnishee answer" would be defined as a response to a summons of garnishment, filed by a garnishee, detailing the property of the defendant that is in the garnishee's possession or declaring that the garnishee holds no such property of the defendant. A garnishee answer would now be amendable at any time before judgment thereon.

This bill increases the amount of attorney's fees a garnishee may deduct from the sums paid into court from \$25.00 to \$50.00, or 10 percent of the amount paid into court, whichever is greater, but not to exceed \$100.00.

The method of service of a summons of garnishment procedure would be deleted and would instead require such service to follow the requirements of the Georgia Civil Practice Act, § 9-11-4.

Testimony in favor of the legislation was given by:

David Raynor, GA Chamber

Kyle Jackson, NFIB

Kevin Levitas, Hill Mfg, Company, Inc.

Clay Jones, GA Association of Manufacturers.

Chairman Hamrick asked for a motion on the legislation. Senator Bethel, 54th, moved **HB 683 Do Pass**. Senator Stone seconded the motion. **HB 683** passed unanimously 8 to 0. Senator Bethel was named Senate sponsor of the legislation.

HB 683 DO PASS

NOTE: Yeas were Senators Cowsert, Crosby, Bethel, Carter, Ligon, McKoon, Ramsey, and Stone.

NOTE: Senator Bethel, 54th, agreed to be the Senate sponsor of **HB 683**.

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 1:55 p.m.

Respectfully submitted,

/s/ Senator Bill Hamrick, 30th, Chairman

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Wednesday, February 1, 2012

The Senate Judiciary Committee held its fourth meeting of the 2012 Session on Wednesday, February 1, 2012, 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, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair

Senator Jason Carter, 42nd
Senator William Ligon, Jr., 3rd

Senator John Crosby, 13th Secretary
Senator Charlie Bethel, 54th

Senator Ronald Ramsey, Sr., 43rd
Senator Jesse Stone, 23rd

NOTE: Senators Fort, McKoon and Judson Hill were absent from the committee

Chairman Hamrick called the meeting to order.

SB 316 (Bethel, 54th) Civil Practice; increase the tolling period for limitations for tort actions while a criminal prosecution is pending

Senator Bethel, 54th, presented SB 316 to the committee. This legislation would extend the statute of limitation for sexual crimes against children for a tort action arising out of a sexual crime perpetrated on a child, and would extend the statute of limitations for the criminal prosecution of a sexual crime perpetrated on a child. The following analysis was shared with the committee:

ANALYSIS

Effective July 1, 2012, the statute of limitations for a tort action related to the following alleged crimes would be tolled from the date of the crime's commission until the prosecution of the crime became final or otherwise terminated, but no longer than 20 years from the eighteenth birthday of the victim:

- cruelty to a child in the first degree,
- rape,
- sodomy,
- aggravated sodomy,
- statutory rape,
- child molestation,
- aggravated child molestation,
- enticing a child for indecent purposes, or
- incest.

The statute of limitations for the criminal prosecution of any crime listed above, committed on and after July 1, 2012, toward a victim under 16 years of age on the date of the crime, would be tolled until the victim reached the age of 18 and will run for ten years after the victim's eighteenth birthday. For the crime of forcible rape, the statute of limitations would be tolled until the victim reaches the age of 18 and will run for 15 years after the victim's eighteenth birthday.

Several members of the committee had concerns about increasing the statute of limitations in these types of cases and worried that a 20 year statute of limitation seemed unreasonable.

Chairman Hamrick, 30th, tabled the legislation so that the issues could be resolved with the committee.

SB 316 TABLED

SB 351 (Crosby, 13th) Municipal Courts; require same training for all judges of courts exercising municipal court jurisdiction

Senator Crosby, 13th, presented **SB 351** to the committee. This legislation addresses Municipal Court Judge Training and would require training standards for judges of courts exercising municipal court jurisdiction. The following analysis was shared with the committee:

ANALYSIS

Under this legislation, all judges of courts exercising municipal court jurisdiction would join municipal court judges in their training requirements, subject to the rules and regulations established by the Georgia Municipal Courts Training Council. The reasonable costs of the training would be paid by the governing authority where the judge presided using the governing authority's funds.

Any person who became a judge of a court exercising municipal court jurisdiction on or after July 1, 2012 would be required to complete 20 hours of training before December 31, 2012 and would be required to attend the first scheduled training after his or her election or appointment date in order to become certified. Any person serving as such a judge before July 1, 2012 would be exempted from this training requirement; magistrate court judges or judges of courts of record presiding in courts exercising municipal court jurisdiction would also be exempted.

A judge of a court exercising municipal court jurisdiction would be required to complete the same training as municipal court judges who were seeking to attain certified status. Magistrate court judges and judges of courts of record presiding in courts exercising municipal court jurisdiction were exempted from this requirement.

An amendment was offered by Senator Crosby which would change the word “shall” to “may” on line 21 in the legislation so that there would be discretion to remove a judge for noncompliance rather than a requirement to do so.

Testimony in favor of the legislation was given by:

Skin Edge, Municipal Court Judges

Mike Cuccaro, Judicial Council

Chairman Hamrick asked for a motion on Senator Crosby’s amendment to **SB 351**. Senator Crosby, 13th, moved to amend SB 351 as stated above. Senator Ramsey, 43rd, seconded the motion. The amendment passed unanimously (7 to 0). Chairman Hamrick then asked for a motion on **SB 351** as amended by the committee. Senator Crosby, 13th, moved **SB 351 Do Pass by Substitute** as amended by committee. Ramsey seconded the motion. **SB 351** passed unanimously 7 to 0.

SB 351 DO PASS BY SUBSTITUTE

NOTE: Yeas were Senators Cowsert, Crosby, Bethel, Carter, Ligon, Ramsey, and Stone.

SB 333 (Stone, 23rd) Property; notices of sales made on foreclosure under power of sale shall be provided to all debtors

Senator Stone, 23rd, presented **SB 333** to the committee. This legislation would broaden the types of properties that require foreclosure sale notices. The following analysis was shared with the committee:

ANALYSIS

Currently, the foreclosure sale notice requirements apply only to property that the debtor uses as a dwelling place. Under this bill, notice of foreclosure sale would be required for all property.

Currently, all deeds under power are required to include a statement of compliance with notice requirements or why notice compliance is not applicable. This bill amends the provision to require a statement of notice compliance for all deeds under power.

Chairman Hamrick then asked for a motion on **SB 333**. Senator Ramsey, 43rd, moved SB 333 Do Pass. Senator Ligon, 3rd, seconded the motion. **SB 333** passed unanimously (7 to 0).

SB 333 DO PASS

NOTE: Yeas were Senators Cowsert, Crosby, Bethel, Carter, Ligon, Ramsey, and Stone.

SB 352 (Crosby, 13th) Prosecuting Attorneys; provide; probate courts, municipal courts, and courts exercising municipal court jurisdiction; process of such employment

Senator Crosby, 13th, presented **SB 352** to the committee. This legislation would authorize city and county governing authorities to employ prosecuting attorneys in probate courts, municipal courts, and courts exercising municipal court jurisdiction. The following analysis was shared with the committee:

ANALYSIS

This legislation would give municipal courts, probate courts, and courts exercising municipal court jurisdiction the authority to employ prosecuting attorneys to represent the jurisdiction in criminal proceedings in such courts.

The decision to employ and the nature of employment of the prosecuting attorneys would be vested with the governing authority of the county or city served by such court, and the costs associated with employing prosecuting attorneys would be borne by the respective governing authorities.

This legislation also provides for the title of such a prosecuting attorney. It also declares the attorneys to have the same duties and authority a state court solicitor-general has, unless otherwise provided by local law or city charter.

There were some concerns raised by the committee about prosecutors in municipal courts not having jurisdiction in higher courts. There were some amendments offered that addressed these concerns.

Testimony in favor of the legislation was given by:

Skin Edge, Municipal Court Judges

Mike Cuccaro, Judicial Council

Chairman Hamrick asked for a motion on **SB 352** as amended by the committee. Senator Crosby, 13th, moved ***SB 352 Do Pass by Substitute*** as amended by the committee. Senator Ligon, 3rd, seconded the motion. **SB 352** passed unanimously (7 to 0).

SB 352 DO PASS BY SUBSTITUTE

NOTE: Yeas were Senators Cowsert, Crosby, Bethel, Carter, Ligon, Ramsey, and Stone.

SB 355 (Unterman, 45th) Domestic relations; child abuse; expand mandatory reporting requirements; provide for procedure; exception

Senator Unterman, 45th, presented **SB 355** to the committee. This legislation would extend the legal duty to report suspected child abuse to all individuals who have reasonable cause to believe child abuse has occurred or is occurring. The following analysis was shared with the committee:

ANALYSIS

Currently, the Code section relating to the reporting of child abuse applies only to those persons responsible for the child's care and protection. This bill would extend the reporting requirement beyond those responsible for a child's care and protection.

Currently, those persons without a legal duty to report child abuse have the option to report abuse if they have reasonable cause to believe such abuse is taking place. This legislation would require any person with a reasonable cause to believe child abuse was occurring to report it. These individuals would be required to make an oral report by phone to a law enforcement agency of the abuse as soon as possible, but no later than 36 hours from the time he has reasonable cause to believe such abuse was occurring. The report must include any information relevant to the suspected abuse. Communications between an attorney and his client are exempted from this reporting requirement.

Individuals with a current legal duty to report suspected child abuse are required to report the suspected abuse immediately, but no later than 24 hours from the time there is reasonable cause to believe a child has been abused. Communications between an attorney and his client are also exempted from this reporting requirement.

Anyone with reasonable cause to believe child abuse is occurring and who knowingly and willingly fails to report such abuse would be guilty of a misdemeanor.

Currently, reports made by those with a legal duty to report abuse are not subject to public inspection unless a number of requirements are met. Under this legislation, the reports made under the new requirements would also be shielded from public inspection unless the same requirements are met.

Senator Unterman, 45th, stated that language had been added in the substitute before the committee that would exempt ministers.

Testimony in support of the legislation if amended was given by:

Nancy Chandler, Georgia Center for Child Advocacy

Ellen Reynolds, Children's Advocacy Centers

Frank Mulcahy, Georgia Catholic Conference

Expert Testimony given by:

Kirsten Widener, Barton Clinic, Emory Law School

Andy Mayo, Student, Emory Law School

There were several issues with the legislation brought up by committee members who were concerned about imposing a duty on regular people to determine what defines child abuse without the professional training that medical professionals and school officials are required to have as a part of their jobs. There were concerns that this legislation would create a situation where people would report everything, even a parent spanking a child, as abuse. There were also concerns about privileged communications between married persons, the clergy, etc. Seeing that there were still serious issues to be resolved with this legislation, Chairman Hamrick stated that he was going to table **SB 355** to give Senator Unterman the opportunity to work out the issues with the committee.

SB 355 TABLED

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 5:55 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Monday, February 6, 2012

The Senate Judiciary Committee held its fifth meeting of the 2012 Session on Monday, February 6, 2012, in room 450 of the Capitol. Vice Chair Bill Cowsert called the meeting to order at 2:30 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th Secretary
Senator Charlie Bethel, 54th
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

NOTE: Senators Fort, Carter, Ligon, Ramsey and Judson Hill were absent from the committee

NOTE: Chairman Hamrick left to attend another meeting.

Vice Chair Cowsert called the meeting to order.

SB 350 (Balfour, 9th) Crimes and Offenses; disposition of firearms used in burglaries or armed robberies

Senator Balfour, 9th, presented a substitute to **SB 350 (LC 28 6041S)** to the committee. This legislation would require that firearms used in the commission of a crime be returned to their innocent owners, and would provide for disposal procedures for forfeited and abandoned firearms by law enforcement agencies and the state. The following analysis was shared with the committee:

ANALYSIS

If a forfeited firearm was another person's property, there would be a requirement that it be returned to the owner when it was no longer needed for evidentiary purposes, so long as he was an innocent owner. An innocent owner was defined as a firearm owner who:

- Did not know beforehand, or, in his exercise of ordinary care, would not have known of the firearm's use causing it to be forfeited, seized or abandoned to law enforcement;
- Did not participate in the crime involving the firearm; and
- Legally owned the firearm in question and is legally authorized to possess that firearm.

The innocent owner would be required to bear the costs of retrieving the firearm from the agency. The costs would be limited to the actual costs of shipping and the costs from transfer and background checks performed. If six months pass between notifying the innocent owner and his failing to pay for its return or fails to respond, then the political subdivision or state custodial agency would be allowed to follow the disposal rules listed below.

All forfeited or abandoned firearms acquired by law enforcement agencies or the state that are no longer needed are required to be disposed in the following manner:

- Before disposal, the political agency or state custodial agency would be required to use best efforts to determine if the firearm was lost or stolen from an innocent owner. If it

was, the agency would be required to return the firearm to the owner unless he was not legally allowed to possess a firearm. If six months pass between notifying the innocent owner and his failing to pay for its return or fails to respond, then the political subdivision or state custodial agency may follow the disposal rules listed below.

- If the political subdivision with possession of the firearm is a municipal corporation, it is required to dispose the firearm as provided for in O.C.G.A. § 36-37-6. In such a sale, the municipal corporation could not reject any bid or cancel the proposed sale of such a firearm, and all sales must be to those legally authorized to possess firearms.
- For state custodial agencies and political subdivisions that are not municipal corporations, the agency is required to place the firearms for sale in a public auction for licensed firearm collectors, dealers, importers, or manufacturers who are authorized to receive firearms. These auctions are required to be held at least once every six months when the agency has an inventory of saleable firearms on a rolling basis or at live events.
- Political subdivisions are required to use proceeds from the sale for the necessary costs of administering the auctions. Surplus sale proceeds would be transferred to the political subdivision's general fund. A state custodial agency would be required to allot the proceeds in the same manner, but if it sells a firearm it previously used, the agency could be reimbursed for those firearms.

If no bids are received within six months, if a firearm is certified as unsafe for use, or if law prohibits the sale of such a firearm, an agency would not have to abide by these rules. Instead, the firearms would be given to the Division of Forensic Sciences of the Georgia Bureau of Investigation for training and experimental purposes, given to a municipal or county law enforcement forensic laboratory for training or experimental purposes, or be destroyed.

An agency would be required to keep records of the firearms acquired, firearms disposed, the proceeds of sale, and disbursement of proceeds. These records would be required to be maintained for the time required by the Georgia Secretary of State's retention schedule.

The state and its employees could not be held liable for personal injury or property damage arising from a firearm sold under this law unless they acted with gross negligence or neglect.

Testimony in support of the legislation was given by:

Matthew Brannan, citizen

Daniel Carey, NRA

Testimony in opposition of the legislation was given by:

Chief Turner, City of Atlanta, Police Department

Testimony in support, but with suggested amendments:

Rusi Patel, GMA

Vice Chair Cowsert tabled this legislation in committee for further work on amendments offered by Senator Balfour and others. **SB 350** would be brought back before the committee at the next meeting.

SB 350 TABLED

NOTE: Chairman Hamrick returned to the meeting.

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 3:00 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Wednesday, February 8, 2012

The Senate Judiciary Committee held its sixth meeting of the 2012 Session on Wednesday, February 8, 2012, 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, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th, Secretary
Senator Charlie Bethel, 54th
Senator Jason Carter, 42nd
Senator William Ligon, 3rd
Senator Jesse Stone, 23rd

NOTE: Senators Fort, McKoon, Ramsey and Judson Hill were absent from the committee

Chairman Hamrick called the meeting to order.

SB 350 (Balfour, 9th) Crimes and Offenses; disposition of firearms used in burglaries or armed robberies

Senator Balfour, 9th, presented a substitute to **SB 350** (LC 29 5125S) to the committee. **SB 350** would mandate municipal, county and state police authorities to return all seized firearms, not currently being held for evidentiary purposes to the lawful owner if able. If the lawful owner was not found or unable to take possession of the firearm, **SB 350** would require these agencies to sell these firearms at a public auction to a licensed firearms dealer with the appropriate license for reception of these guns. Current Georgia law allows for seized guns to be immediately and wastefully destroyed. Returning firearms to lawful and legal owners would be no different than efforts already in place by local authorities with regard to other pieces of valuable personal property (i.e. cash, jewelry, motor vehicle, etc.).

This legislation would not end the disposal of seized firearms by law enforcement agencies but would merely afford the opportunity to be disposed of by means other than immediate destruction, leaving destruction as a last resort. **SB 350** would prevent the wasteful and expensive practice of destroying firearms that could be re-circulated through licensed dealers to the retail market. Localities would be enabled with the ability to reap the benefits of the sale proceeds and consumers would have access to affordable firearms through licensed dealers, with all of the usual safeguards that pertain to dealer sales to the public.

NOTE: Sheriff Howard Stills of Putnam County signed up to give testimony in opposition to the legislation.

Chairman Hamrick stated that there were some issues that would be continued to be worked out through the process with the Sheriff's association and asked for a motion on the committee substitute. Senator Stone, 23rd, moved ***SB 350 Do Pass by Substitute***. Senator Bethel, 54th, seconded the motion. **SB 350** passed unanimously (6 to 0).

SB 350 DO PASS BY SUBSTITUTE

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Ligon, and Stone

SB 316 (Bethel, 54th) Civil Practice; increase the tolling period for limitations for tort actions while a criminal prosecution is pending

Senator Bethel, 54th, presented a substitute to **SB 316** (LC 29 5111S) to the committee. This legislation would extend the statute of limitations for the criminal prosecution of a sexual crime perpetrated on a child. The following analysis was shared with the committee:

ANALYSIS

Effective July 1, 2012, the statute of limitations for the criminal prosecution of any crime listed below against a victim less than 16 years of age on the date of the crime, would be tolled until the victim reaches the age of 18 and will run for ten years after the victim's eighteenth birthday:

- trafficking a person for sexual servitude,
- cruelty to a child in the first degree,
- rape,
- sodomy,
- aggravated sodomy,
- statutory rape,
- child molestation,
- aggravated child molestation,
- enticing a child for indecent purposes, or
- incest.

For the crime of forcible rape, the statute of limitations would be tolled until the victim reaches the age of 18 and will run for 15 years after the victim's eighteenth birthday.

There was no testimony for or against the legislation.

Chairman Hamrick asked for a motion on **SB 316**. Senator Carter, 42nd, moved ***SB 316 Do Pass by Substitute***. Senator Stone, 23rd, seconded the motion. **SB 316** passed unanimously (6 to 0).

SB 316 DO PASS BY SUBSTITUTE

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Ligon, and Stone

SB 383 (Hamrick, 30th) “Georgia International Commercial Arbitration Code”; repeal Part 2, relating to international arbitration

Chairman Hamrick presented **SB 383** (LC 29 5047ER) to the committee. The aim of this legislation is to revise Georgia’s current laws regarding international arbitration and enhance the state’s visibility as a neutral location for commercial contract resolution. This legislation was based on the United Nations Commission on International Trade Law (UNCITRAL, or “Model Law”), and receives the support of the business community, local chambers of commerce, and the State Bar of Georgia.

Chairman Hamrick stated that amending Georgia’s current code to incorporate the internationally recognized Model Law will be a step in the right direction towards Georgia becoming a leading venue for international commercial arbitration. Georgia has a strong legal community with an existing platform for this process, and our state has been home to a large concentration of Fortune 500 headquarters. The infrastructure has been in place and there has been a need to clarify and strengthen our existing laws in order for our state to be a leading center for dispute resolution.

International arbitration has been the leading method in solving disputes between companies entered into international commercial agreements. The process will avoid the uncertainties of traditional litigation by allowing both parties to have wide liberties in the selection of the arbitrator(s) and the arbitration procedure. International arbitration will also allow parties to be represented by the counsel of their choice, even if the attorney was not licensed in a U.S. jurisdiction, and will provide a binding resolution along with a confidentiality not often received in the legal system. With this system in place, U.S. companies will be less hesitant to enter into international contracts, and foreign entities will be more agreeable to arbitrate in Georgia if they know it will be a fair process.

Senator Hamrick explained that Georgia stood to gain several benefits from revising its current international arbitration code. By enhancing Georgia’s image as a center for international contract resolution, the amount of work available for Georgia lawyers would be expanded, even while allowing non-Georgia lawyers to practice; the state would receive an economic development and tourism boost through presenting an annual signature conference on international arbitration; and the cost of international business for U.S. companies throughout the southeast would ultimately be reduced.

The following analysis was shared with the committee:

ANALYSIS

This bill would repeal Part 2 of the Georgia Arbitration Code, which consists of several provisions that augment Part 1 in international commercial arbitrations. Part 2, as amended, would stand alone as a complete arbitral regime and would no longer have a functional relationship with Part 1.

Title and Statement of Purpose

The purpose of the Georgia International Commercial Arbitration Code is to:

- Encourage international commercial arbitration in Georgia;
- Enforce arbitration agreements and arbitration awards;
- Facilitate prompt and efficient arbitration proceedings; and
- Provide a conducive environment for international business and trade.

Scope of Application

This law would apply to international commercial arbitration only if the place of arbitration is in Georgia. An arbitration is international if:

- The parties have their places of business in different countries at the conclusion of the arbitration agreement;
- Either the place of arbitration or the place where a substantial part of the commercial relationship is to be performed is situated outside the country in which the parties have their places of business; or
- The parties expressly agreed that the subject matter of the agreement relates to more than one country.

This law would leave domestic arbitration Code provisions unaffected.

Definition, Rules of Interpretation, and International Origin

This bill would define “arbitration,” “arbitration agreement,” “arbitration award,” and “arbitration tribunal.” It would also provide interpretation rules to carry throughout the law. The international origin of this law and the need to promote uniformity must be considered in its interpretation.

Receipt of Written Communication

Excluding communications in court proceedings, communications would be deemed to have been received on the day they were delivered if they were delivered to the addressee personally; delivered to his place of business, habitual residence, or mailing address; or, if neither of those can be found after reasonable inquiry, delivered to the addressee’s last known place of business, habitual residence, or mailing address by registered mail.

Waiver of Right to Object

If a party knew he may derogate from a provision of this law or if an arbitration agreement (“agreement”) requirement was not met, but the party proceeded without objecting without undue delay or within the specified time period, he would waive the right to object.

Extent of Court Intervention

No court may intervene except where provided by law. The agreement must be enforced by Georgia courts if a controversy was within the scope of this law, regardless of the controversy’s justifiable character.

Court for Certain Functions of Arbitration Assistance and Supervision

For parts of the law that would provide for court assistance, the parties would be allowed to agree upon a Georgia county, and the superior court of that county would be required to perform those functions. If there was no such agreement, the superior court would be chosen from:

- The county where a portion of the hearing was conducted;
- If no portion of the hearing was conducted in Georgia, in a county where any party resides or does business; or
- If there is no such county, any county.

Definition and Form of Arbitration Agreements

All agreements must be in writing, meaning that the contents were recorded in any form. This requirement could be met by an electronic communication if the information it contains was accessible for future reference.

An agreement would be deemed to be in writing if it is in an exchange of statements of claim and defense where the existence of an agreement was alleged by one party and not denied by the other. Additionally, reference in a contract to an arbitration clause in a document would constitute an agreement in writing.

Arbitration Agreement and Substantive Claim before Court

Parties could ask a court to stay litigation and compel arbitration on a matter that they agreed to arbitrate. However, arbitration proceedings could be commenced and continued and an award may be made while an action was pending in court.

Arbitration Agreement and Interim Measures by Court

A party could request interim protection before or during arbitration proceedings. If the court granted the request, it would not be deemed incompatible with the agreement.

Number of Arbitrators, Appointment of Arbitrators

The parties were free to decide on the number of arbitrators, but if no number was set, then one person would be required to arbitrate.

Unless otherwise agreed on by the parties, a person would not be precluded from being an arbitrator because of his nationality. The parties were free to agree on appointment procedures for arbitrators. If they did not agree on the procedure, this bill provides such procedure.

If the parties do agree on appointment procedures, but one fails to act, the parties or arbitrators cannot reach an agreement under the procedure, or a third party cannot perform its function under the procedures, then a party would be allowed to request the specified court to take the necessary measure. If the court does make such a decision, that decision would not be subject to appeal.

Arbitrators and their employees or agents could not be held liable for any action completed in the discharge of arbitral functions unless it was done in bad faith or for any mistake of law, fact, or procedure made in the proceedings or award.

Disclosure and Grounds for Challenge, Challenge Procedure

Any person approached for possible appointment as an arbitrator must disclose any circumstances giving rise to justifiable doubts as to his impartiality. An arbitrator may be challenged only if there is justifiable doubt as to his impartiality or if he does not possess the qualifications agreed upon by the parties. The challenge could only be made for reasons of which the party becomes aware after the appointment has been made.

The parties could agree upon a challenge procedure, but if they do not, the challenging party would be required to send a written statement of the reasons for the challenge to the arbitration tribunal within a set time. The tribunal must decide on the challenge unless the challenged arbitrator withdraws or the other party agrees to the challenge. If such a challenge is not successful, the challenging party may request the court to decide within 30 days of the challenge's rejection. The court's decision would not be subject to appeal, and while the request was pending with the court, arbitration could continue and an award may be made.

Failure or Impossibility to Act, Appointment of Substitute Arbitrator

If an arbitrator becomes unable to perform his functions or fails to act without undue delay, his mandate would terminate upon his withdrawal from office or if the parties agree on the termination. Otherwise, any party could request the court to decide on the termination, and this decision would not be subject to appeal. If an arbitrator was terminated or withdraws, a substitute would be appointed according to the same rules the original arbitrator was appointed under.

Competence of the Arbitration Tribunal to Rule on its Own Jurisdiction

A tribunal may rule on its own jurisdiction. A plea that the tribunal does not have jurisdiction must be raised before the statement of defense was submitted. A plea that the tribunal is exceeding its scope of authority must be raised as soon as it is alleged to be beyond scope. Under this section, a ruling that the tribunal has jurisdiction over some issues but not others is appealable with the tribunal's permission. A ruling of no jurisdiction whatsoever is a final decision for purposes of appeal.

Interim Measures

Unless otherwise agreed, the tribunal could grant interim measures at the request of a party. The measure could be modified, suspended, or terminated upon application of the party or by the tribunal's own initiative in exceptional circumstances. If a granted measure proves to be unjustified from the outset, the petitioning party could be required to pay the other party for damage resulting from its enforcement and the claim may be included in the pending proceedings. Such a measure is binding and enforced upon application to the competent court. Recognition or enforcement of an interim measure may be refused only at the request of a party against whom it is invoked if the court finds

a number of factors are met, or if the court finds that the measure is incompatible with the powers conferred upon the court

Equal Treatment of the Parties, Determination of Rules of Procedure, Place of Arbitration

The parties will be required to be given full opportunities in presenting their cases. They will be free to agree on the procedure followed by the tribunal in the proceedings. If they cannot agree, the tribunal can follow procedures it considers to be appropriate. The parties are free to agree on the place of arbitration, but if they cannot, the tribunal will decide. The tribunal can meet at any appropriate place for its members' consultation, hearing witnesses, or for inspection of documents or goods.

Commencement of Arbitral Proceedings

The proceedings will be required to commence on the date the respondent receives a request for the dispute to be referred to arbitration.

Language, Statement of Claim and Defense

Parties can agree on the language used in the proceeding, but if they cannot agree, the tribunal will be required to decide. The tribunal can order that evidence be accompanied by a translation.

The claimant must state the facts supporting his claim, the points at issue, and the relief sought, and the respondent must state his defense, unless they agree otherwise. They will be required to submit relevant documents with their statements. These statements may be amended or supplemented during the proceedings unless the tribunal considers it inappropriate or the parties have agreed otherwise.

Hearings and Written Proceedings

The tribunal can decide to hold oral hearings for the presentation of evidence or for arguments, but the tribunal will be required to hold hearings if requested by a party, absent an agreement by the parties to not hold any hearings. Parties must be given advance notice of hearings, and all statements supplied to the tribunal must be communicated to the other party. The tribunal will not have the power to consolidate proceedings or hold concurrent hearings.

Default of a Party

If the claimant fails to communicate his statement, the tribunal will be required to terminate the proceedings. If the respondent fails to communicate his statement of defense, the tribunal can continue without treating the failure as an admission of the allegations. If a party fails to appear at a hearing or produce evidence, the tribunal can continue the proceedings and make the award on the evidence presented.

Expert Appointed by an Arbitration Tribunal

The tribunal can appoint experts to report to it on specific issues, and it can require a party to give the expert any relevant information. After delivering his report, the expert can participate in a hearing where the parties can question him.

Court Assistance in Taking Evidence

Arbitrators may issue subpoenas, which will be enforced in the same manner as they are in civil actions. Notices to produce and other discovery tools can be used in arbitration, and a party must be given the opportunity to obtain a witness list and examine relevant documents.

Rules Applicable to the Substance of the Dispute

The tribunal must rule on the dispute in accordance to the substantive law chosen by the parties. The tribunal must apply the law determined by conflict of law rules which it deems applicable. In all cases, the tribunal will be required to decide in accordance with the contract and will be required take into account the usages of the trade applicable.

Decision-Making by Panel of Arbitrators

If there are more than one arbitrator, the decision will be required to be made by a majority of members. Questions of procedure can be decided by a presiding arbitrator.

Award on Settlement; Form and Content of Award

If the parties settle the dispute during proceedings, the tribunal will be required to terminate the proceedings and record the settlement in the form of an arbitration award. Such an award will have the same status and effect as any other award on the merits of the case.

An award will be required to be in writing and signed by the arbitrators and must state the reasons upon which it is based unless the parties agree otherwise. After the award is made, a copy will be required to be sent to each party. Reasonable fees and expenses actually incurred can be awarded to any party.

Termination of Proceedings

The proceedings will be terminated by the final award or by an order of the tribunal. Such an order will be issued when the claimant withdraws his claim, the parties agree on termination, or the continuation of the proceeding has become unnecessary or impossible.

Correction and Interpretation of Award

A party can request the tribunal to correct clerical errors or to interpret a specific point in the award within 30 days of its receipt. The tribunal will be required to respond within 30 days. A party can request the tribunal to make an additional award as to claims presented in the tribunal but omitted from the award.

Recourse Against Award; Application for Setting Aside as Exclusive Recourse

An award can be set aside by the specified court if the party making the application provides proof that: a party in the agreement was incapacitated, the agreement was not valid under the applicable law; the party was not given proper notice of arbitrator appointment or the proceedings; the award fell outside the scope of the submission to arbitration; or the composition of the tribunal or its procedure did not follow stipulations of the agreement. The court would also be required to find that the subject matter was not capable of settlement by arbitration law, or the award was in conflict with public policy.

An application to set aside the award would be required within three months of the award. The court could allow the tribunal the opportunity to resume proceedings to eliminate the grounds for setting aside.

Recognition and Enforcement; Grounds for Refusing Recognition and Enforcement

An award made in any country would be binding and enforced. However, it could be refused if the party making the application provides proof that a party in the agreement was incapacitated; the agreement was not valid under the applicable law; the party was not given proper notice of arbitrator appointment or the proceedings; the award fell outside the scope of the submission to arbitration; the composition of the tribunal or its procedure did not follow stipulations of the agreement; or the award was not yet binding. The court would also be required to find that the subject matter was not capable of settlement by arbitration law, or the award is in conflict with public policy.

Appeals

Any final judgment under this law could be appealed pursuant to Chapter 6 of Title 5, *Certiorari and Appeals to Appellate Courts Generally*.

Effective Date

This law's effective date would be July 1, 2012, and would apply only to agreements entered into on and after that date.

Testimony in favor of the legislation was given by:

Hal Gray, State Bar

Doug Yarn, Georgia State University

Bruce Jackson, JAS Worldwide

David Raynor, Georgia Chamber

Chuck Meadows, Metro Atlanta Chamber

Chairman Hamrick asked for a motion on the legislation. Senator Stone, 23rd, moved **SB 383 Do Pass**. Senator Cowser, 46th, seconded the motion. **SB 383** passed unanimously (6 to 0).

SB 383 DO PASS

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Ligon, and Stone

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 5:10 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Wednesday, February 15, 2012

The Senate Judiciary Committee held its seventh meeting of the 2012 Session on Wednesday, February 15, 2012, 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, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th Secretary
Senator Charlie Bethel, 54th
Senator Jason Carter, 42nd
Senator William Ligon, Jr., 3rd
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

NOTE: Senators Fort, Ramsey and Judson Hill were absent from the committee

Chairman Hamrick called the meeting to order. The bills on the agenda had already been heard by the committee and testimony was noted in previous meetings. Chairman Hamrick stated substitutes were drafted that addressed the concerns raised and that the committee was ready to move forward.

HB 237 (Golick, 34th) Residential mortgage fraud; mortgage lending process; revise definition

Representative Golick, 34th, presented a substitute to **HB 237** (LC 29 5119S) to the committee. This legislation would bring foreclosures under the residential mortgage fraud statute. The following analysis was shared with the committee:

ANALYSIS

The term “mortgage lending process” was amended to include the execution of deeds under power of sale and the execution of assignments required to be recorded.

Under this bill, one could 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.

The previous version of this bill would have given district attorneys and the Attorney General subpoena powers in residential mortgage fraud cases. This substitute deletes the grant of subpoena power.

Chairman Hamrick asked for a motion on the legislation. Senator Carter, 42nd, moved ***HB 237 Do Pass by Substitute***. Senator Stone, 23rd, seconded the motion. **HB 237** passed unanimously (6 to 0).

HB 237 DO PASS BY SUBSTITUTE

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

NOTE: Chairman Hamrick agreed to be Senate sponsor of **HB 237**.

NOTE: Senator Cowsert arrived at the meeting.

SB 127 (Hamrick, 30th) Juvenile Proceedings; revise provisions

Chairman Hamrick, 30th, presented a substitute to **SB 127** (LC 29 5100 ERS) to the committee. The following analysis was shared with the committee:

ANALYSIS

The majority of this summary was provided by the Barton Child Law and Policy Center at the Emory University School of Law.

Part I – Juvenile Code

Article 1 – General Provisions

Article 1 provides general definitions and principles that would apply in all juvenile court code proceedings. Specifically, Article 1:

- Provide clear definitions of key terms, including:
 - **Abuse.** The current juvenile court provisions do not include a definition of abuse. The Act defines abuse to include emotional abuse and prenatal abuse, in addition to physical abuse and sexual abuse and exploitation.
 - **Child in Need of Services.** This definition would create a new designation to take the place of what is currently called an “unruly” child. Detailed provisions related to this new designation are found in Article 6.
 - **Dependency.** Currently, Georgia uses the term “deprivation” to describe cases where the court intervenes to protect children from abuse and neglect. The Act changes this term to “dependency,” which is the term used in all other states for these cases.
 - **Imminent Danger.** This definition helps to clarify the level of threat that justifies removal of a child from his or her home.
 - **Party.** This definition clarifies that children are parties to juvenile court proceedings involving their interests.
- Requires that, whenever possible, the same judge should preside over all proceedings involving a particular child or family.
- Clarifies how time should be calculated for purposes of time-limited provisions.
- Allows the court to consolidate proceedings if the same child is alleged to be both dependent and delinquent, or dependent and in need of services.
- Clarifies that a child, as a party, has a right to be present during juvenile court proceedings involving him or her, but allows the court to exclude the child from any part of a dependency proceeding that the court finds is not in the child’s best interest to attend.
- Allows the court to refer cases for mediation if appropriate.
- Outlines factors the court should consider when evaluating the best interests of a child.
- Protects children from having statements they make in court-related physical or mental health screenings, evaluations or treatment from being used against them at the adjudicatory phase of any proceeding, but allows courts to consider those statements in determining the child’s placement or other dispositional matters.
- Prohibited children under the juvenile courts’ jurisdiction from being confined in adult criminal detention facilities before they reach the age of majority.

Article 2 – Juvenile Court Administration

Article 2 governs the creation and administration of juvenile courts and the appointment of judges. Article 2 would reorganize existing provisions and make minor stylistic revisions. It contains very few substantive changes from current law, which were that it:

- Adds the Department of Juvenile Justice to agencies whose records the Council of Juvenile Court Judges are authorized to inspect for the purposes of compiling statistical data on children.
- Requires juvenile court judges to complete at least 12 hours per year of continuing education established or approved by the Council of Juvenile Court Judges.
- Requires anyone appointed as a pro tempore judge to have the same qualifications as other juvenile court judges.
- Clarifies that the Department of Juvenile Justice retains authority over the duties and responsibilities of their employees who serve as probation and intake officers.

Article 3 – Dependency

Article 3 relates to cases involving children who have been abused or neglected by the adults responsible for their well-being. The Act would rename what is currently known in Georgia as “deprivation” cases, because the children are considered to have been deprived of proper care, to stress the child’s relationship with the court and provide consistency with national standards. Article 3 reorganizes current law, and makes the following changes:

- Clarifies the purpose of dependency proceedings, stressing timeliness, permanency and protection.
- Allows child abuse and neglect investigators to request court-ordered physical or psychological evaluations of children or their parents. Courts are to review these requests using a probable cause standard.
- Changes the name of 72-hour hearing in dependency cases to the “preliminary protective hearing.”
- Consolidates provisions related to the timeframes in which different steps in a dependency case must occur into one code section for ease of reference.
- Shortens the timeline for holding a permanency planning hearing for children under the age of seven. Currently, all children are on the same timeline, which requires a permanency hearing within twelve months after their entry into foster care. The Act would leave this timeline in place for children aged seven and older, but shorten it to within nine months for younger children and the siblings of younger children.
- Clarifies that children in all dependency cases are entitled to attorneys acting according to the rules of a traditional attorney-client relationship. The attorney training requirements could be waived for attorneys proficient in child representation. The attorney could serve as the child’s guardian ad litem unless there was a conflict of interest. The child’s right to an attorney could not be waived.
- A child could also be appointed a Court Appointed Special Advocate (“CASA”) in addition to an attorney serving as a guardian ad litem, and the CASA’s role is to advocate for the best interests of the child.
- Provides specific guidance for attorneys and courts regarding when deviations from case timelines can be requested and granted. These deviations, known as “continuances,” would be required to be for good cause and could not be granted simply because the parties agreed or because a later time would be more convenient. The court would be required to always consider the child’s interests, giving particular weight to the child’s need for prompt resolution and stability.
- Creates a presumption that visitation between a child and his or her parents or other relatives should be unsupervised, unless the court finds that unsupervised visitation is not in the child’s best interests.
- Allows the court to issue an oral or electronic order for the removal of a child from his or her home. When this occurs, an affidavit containing supporting evidence must be submitted to the court the next business day and the court must issue a written order.

- Emphasizes that siblings who are taken into the state's care should be kept together whenever possible.
- Clarifies the rules governing the gathering of information related to a case, known as "discovery." The Act provides clear guidelines about which common evidence in a dependency case must be given to another party upon request, and which require consent or a court order. Requested information is required to be provided within five days or by 72 hours before the hearing, to accommodate the quick pace of proceedings in juvenile court. The court had discretion to prevent disclosure of evidence that could be harmful, and to sanction parties who fail to comply with discovery rules.
- Describes content that should be included in social study reports, stressing the need for information about children's relationships with their siblings and extended family and consideration of how these relationships can best be maintained.
- Outlines the requirements for case plans.
- Clarifies that the Division of Family and Children Services ("DFCS") would be required to show they had made reasonable efforts to preserve or reunite the family or to find another permanent home for the child at every hearing, and provide factors for the court to consider in determining whether reasonable efforts had been made.
- Changes one of the exceptions to the requirement to make reasonable efforts to preserve or reunify a family. Currently, reasonable efforts do not need to be made if the parental rights of the parent to a sibling of the child have been terminated. Under the Act, to apply this exception to the reasonable efforts requirement, the court would be required to also determine whether the parent had resolved the issues that led to the termination of his or her parental rights to the sibling.
- Improves compliance with federal law regarding permanency alternatives by eliminating the option for a court to place a child in someone's long-term custody without creating a legal guardianship.
- Requires the court to make detailed findings to support placement and case plan decisions, known as "dispositions." In making these findings, the court is to consider the child's attachments to significant people and his or her school, home, and community.
- Removes the time limitation on temporary custody orders. Under current law, a court could only grant temporary custody to DFCS for twelve months, and could extend that custody order by no more than an additional twelve months. Under the Act, custody orders were not time limited. Instead, they last until a contrary order is made or the purpose of the order has been fulfilled.
- Requires an initial review hearing within 75 days of a child's removal from his or her home, and a subsequent review hearing within four months after that. Currently, the initial review must happen within 90 days, and subsequent reviews occur at six month intervals.
- Identifies specific findings that must be made by the court at review hearings, requiring that the court evaluate whether the child continues to be dependent and whether the placement, case plan, and services offered to the child and the parents continue to be appropriate.
- Eliminates the option for courts to delegate permanency hearings to citizen review panels. These hearings would be required to be conducted by judges.
- Details the requirements for permanency planning reports. DFCS must document the steps that would be taken to move the child to a permanent home, and if the plan is not reunification, adoption, or permanent guardianship, DFCS would be required to document a compelling reason for a different plan. For children aged 14 and older, the report must also describe services that would be provided to help the child prepare for independent living in adulthood.
- Identifies specific findings that must be made by the court at permanency hearings.

- Continues the presumption of termination of parental rights if a child could not be reunified with his or her parent, but expands the list of exceptions to this presumption when termination may not be in the best interests of the child.

Article 4 – Termination of Parental Rights

Article 4 governs cases involving a petition to involuntarily terminate the rights of a parent to the custody and control of his or her child because the parent was unable to safely and adequately care for the child. These petitions generally follow dependency proceedings, and therefore several provisions cross-reference or incorporate changes made by Article 3. Additionally, Article 4 of the Act:

- Clarifies the purpose of termination of parental rights (“TPR”) proceedings, stressing timeliness, and protection of parties’ constitutional rights.
- Allows a child to retain the right to inherit from his or her natural parents and to receive any government or other benefits associated with the parent after TPR until the child is adopted by another family.
- Preserves a child’s relationships with siblings and other extended family after TPR until the child is adopted by another family.
- Prevents a parent from voluntarily surrendering his or her parental rights to anyone except for DFCS once a petition for TPR had been filed with the court. Currently, a parent could surrender their rights so that the child may be adopted by a family member or other person of the parent’s choosing at any time.
- Provides language that must be included in a notice to a parent when a petition for TPR is filed. This language explains in clear terms the effect of a court order terminating parental rights and advises the parent that they are entitled to be represented by an attorney.
- Requires that transcripts of TPR hearings be produced within 30 days of the filing of an appeal of a TPR order, unless there is just cause for delay.
- Shortens the length of time a parent’s failure: (1) to develop and maintain a bond with the child; (2) to provide support; or (3) to comply with court-ordered reunification services should be scrutinized by the court in determining whether the parent had provided proper care or control. Under current law, if a child is not in his or her parents’ custody, the court looks at the bond, support and participation in services over a year or more. Under the Act, this time frame is reduced to six months.
- Clarifies that a parent’s reliance on prayer or spiritual healing instead of medical care does not, by itself, constitute grounds for termination of parental rights.
- Requires the court to inform the parents whose rights had been terminated of their rights to use the services of the Adoption Reunion Registry.
- Eliminates the option to place a child with an organization outside of the adoption and foster care system for long-term care of the child without adoption or guardianship after TPR.
- Allows a child who has not been adopted and is unlikely to be adopted to ask the court to reinstate his or her parents’ parental rights under certain circumstances. In making the determination of whether to grant the request, the court would be required to hold a hearing and consider whether the parent had remedied the situation that resulted in the TPR and whether reinstatement of parental rights was in the child’s best interests. The court retains supervision over the case for six months after the request is granted, and could return the child immediately or order a gradual transition with appropriate DFCS services.

Article 5 – Independent Living Services

Article 5 creates a completely new set of provisions intended to ensure that deprived children in foster care are given the opportunity and assistance they need to plan for their futures, learn necessary skills for independence, and get off to a good start in their adult lives. Specifically, Article 5:

- Requires DFCS to administer a system of services to enable adolescents in foster care and young adults who have been in care until they turn 18 to enjoy a quality of life appropriate to their age and to make the transition to self-sufficient adulthood.
- Requires DFCS to develop procedures to ensure that children in foster care could participate in age-appropriate opportunities such as sports and extra-curricular school activities.
- Encourages opportunities for youth in foster care to interact with mentors.
- Provides children in foster care with support to plan for their futures. They would receive help from their caregivers and case workers on setting education and career goals, receive guidance about the steps necessary to achieve those goals, and, when possible, be offered internships and other work-related opportunities.
- Mandates individual assessment of the services each child should receive, so that these services reflect the individual child's needs and goals.
- Requires DFCS to review a child's access to these services at least once a year while the child is between the ages of 14 and 16, and at least every six months while the child is between the ages of 16 and 18, and to evaluate the child's progress in developing needed independent living skills.
- States that information about the child's assessment, services, and reviews should be included in the written report DFCS provides to the court at periodic review hearings.
- Allows certain children between the ages of 17 and 21 to live in subsidized independent housing as part of a plan leading to the child's total independence.
- Provides for aftercare services for young adults aged 18 to 23, including mentoring, tutoring, mental health services, substance abuse counseling, life skills classes, parenting classes, job skills training, and temporary financial assistance. Additional transitional services would also be available to meet the critical needs of young adults who are in foster care or subsidized transitional living arrangements when they turn 18, and who are in foster care for at least six months before their 18th birthdays.
- Provides judicial oversight of independent living services. For children between the ages of 14 and 18, judicial review would occur as part of the usual dependency review and permanency hearings, with one additional hearing to be held within 90 days after the child turns 17. Judges would also review independent living services for young adults between ages 18 and 23 at least once a year.
- Outlines items children should be provided with as they transition to adulthood, including a Medicaid card, a copy of their birth certificate, and information regarding government benefits and public assistance.
- Encourages children to attend all judicial reviews after their 17th birthdays.
- Allows the court to hold DFCS in contempt if services that should have been provided to a child have not been provided and DFCS fails to correct the problem within 30 days.
- Requires DFCS to follow the requirements of the Georgia Administrative Procedures Act in implementing this Article.

Article 6 – Children in Need of Services

Article 6 creates a new approach for intervening with children who are currently considered “unruly.” Children in Need of Services (“CHINS”) includes children who have committed an act that would not be against the law but for the fact that they were children, such as skipping school, running away from home, and violating curfew. CHINS also includes children who are “habitually disobedient” to their parents and place themselves or others in unsafe circumstances through their behavior. Currently, court intervention with these children is similar to intervention in delinquency cases. Under Article 6, the bill creates a more holistic, service-oriented approach to these cases. Specifically, it:

- Acknowledges that these behaviors happen within the context of the family and school environment the child is in, and that the involvement of the family and other important people in the child’s life is important to protect the child and help him or her become a responsible member of society.
- Allows a complaint indicating that a child is in need of services to be filed by a parent, DFCS, school, law enforcement, guardian ad litem, or prosecuting attorney.
- Provides that after a complaint is filed, the court intake officer is to convene a multidisciplinary conference, involving the child, his or her parents, DFCS, and any other agency that has the authority to provide services to the family. The court could order the participation of individuals necessary for a successful intervention, and could require the person under order to disclose relevant information for the purposes of developing a plan for the child.
- Empowers participants in the multidisciplinary conference to create an informal family services plan agreement, which identifies services and actions that would mitigate the child’s inappropriate conduct and related problems within the family. A DFCS case worker would be assigned to ensure that the plan was implemented. The initial plan should extend for six months or less, but the court could extend it for an additional period of up to six months.
- Permits the court intake officer to waive the multidisciplinary conference step when he or she believes it would be inappropriate or futile, such as in emergency circumstances or when the family has previously failed to comply with an informal family services plan.
- Proceeds to court oversight if the informal family services plan fails or was waived because it would be inappropriate or futile.
- Provides that a child is entitled to representation by an attorney at all stages of CHINS proceedings. The child’s right to an attorney could not be waived. The court could also appoint a guardian ad litem, when appropriate.
- Collects all time-frames for CHINS proceedings into one code section for ease of reference.
- Allows a child in need of services to be taken into temporary custody if the child has run away from home, the child is in immediate danger from his or her surroundings, or the court made an order specifying that the child’s welfare is endangered by remaining at home and reasonable services could not solve the problem.
- Clarifies that in CHINS cases, the child should receive services in the least restrictive environment possible, preferably at home with their parents, but if that is not appropriate, then in DFCS care.
- Ensures compliance with the federal Juvenile Justice and Delinquency Prevention Act by clarifying under what circumstances and for how long a child in need of services could be held in a secure detention facility. Specifically, the Act prohibits a child in need of services from being held in a jail or other detention facility intended for adults and limits the total time a child in need of services can be held in secure detention to no more than 24 hours before a court hearing and 24 hours after, unless certain exceptions are applied.

- Allows extended secure detention of a child who has violated a valid court order, provides that a hearing was held within 72 hours of the child being detained and other alternatives have been evaluated and determined to be inappropriate.
- Requires a case plan for a child who is placed in out-of-home care, and details what this plan would include.
- Incorporates requirements of the federal Adoptions and Safe Families Act to children in need of services cases in order to allow Georgia to better access federal IV-E funding for some unruly children. These requirements include specific findings the court needs to make when a child is placed in out-of-home care, use of case plans, and periodic reviews of the case and the placement by the court.
- Requires that a petition to have a court formally adjudicate that a child is in need of services must be filed by an attorney. The petition must state whether or not the family has been offered appropriate services.
- Provides that a petition that stems from a complaint filed by a school official must be dismissed unless the school has already attempted to resolve the problem through educational approaches, including evaluating a child for special education services if appropriate.
- Allows the court to order child-serving agencies to attend court hearings or multidisciplinary conferences and to sanction the agencies if they fail to attend.
- Establishes that in order for a court to adjudicate that a child is in need of services, the allegations in the petition must be proved beyond a reasonable doubt.
- Retains most of the disposition options currently available for unruly children, including placing the child on probation and requiring restitution or community service, but also clarifies that the court could order services for the child and/or his or her family, and that the child should not be placed in a correctional facility unless the child has violated a valid court order.
- Limits the duration of a disposition order to a maximum of two years, but allows the court to extend for an additional two years after a hearing, if necessary. The court could also terminate the order early if the purposes of the order have been accomplished.
- Clarifies that if a child violates probation, the court may modify the terms of the child's probation or make any other disposition that was originally available to the court when the child was adjudicated to be in need of services.
- Requires the court to review the child's disposition after three months, and then at least every six months after that until the order of disposition expires. If the child is placed in a foster home, the court must follow the review hearing and permanency planning requirements of Article 3.
- Includes children who have been found to be incurably incompetent to stand trial, meaning that because of a permanent disability or limitation they would never be able to understand the charges, the legal proceedings, and assist an attorney in their defense, for an act that would have been a crime if they were adults. These provisions are included in the child in need of services framework to ensure a collaborative response to these children. Children whose competence could be restored are subject to Article 8.

Article 7 – Delinquency

Article 7 relates to cases involving children who have committed acts that would be crimes if the children were adults. These acts are known as “delinquent acts” and the cases are known as “delinquency” cases. Article 7 reorganizes and clarifies the delinquency provisions of current law, and makes the following changes:

- Clarifies that the purposes of delinquency proceedings included protecting the public interest, holding children accountable for their actions, rehabilitating children so that they can become productive members of society, and strengthening families.
- Consolidates all timelines related to delinquency proceedings into one code section for ease of reference.
- Clarifies that the child and the state are the parties in a delinquency proceeding. Parents are entitled to notice, the right to be present for hearings, and the right to be heard in those hearings, but are not parties.
- Provides that the child’s right to be represented by an attorney could not be waived by the child’s parent, and could only be waived by the child after the child has had an opportunity to talk with an attorney about the implications of this decision.
- Permits attorney access to the child’s school, hospital, physician, or other health or mental care records upon a motion accompanied with the child’s written permission.
- Requires the court to appoint a separate guardian ad litem for the child when his or her parent fails to come to court or is unwilling or unable to protect the child’s best interests.
- Permits the court to order a behavioral health evaluation of the child. Voluntary statements made in an evaluation, in the course of treatment, in an intake screening, or in any related service are inadmissible in an adjudication hearing. However, these statements could be admissible as rebuttal or impeachment evidence.
- Provides that continuances could only be granted if there was good cause, and that they should be as short as possible.
- Clarifies when the double jeopardy protection of the U.S. Constitution applies. Once the court accepts a child’s admission or the first witness is sworn in for an adjudication hearing, the child could no longer be retried for the same offense if the current case was dismissed or ends in a finding that the child did not commit the act.
- Incorporates requirements of the federal Adoptions and Safe Families Act for delinquency cases in order to allow Georgia to better access federal IV-E funding for some delinquent children. These requirements include specific findings the court needs to make when a child is placed in certain out-of-home care, use of case plans, and periodic reviews of the case and the placement by the court.
- Requires that intake officers use a detention assessment instrument, which is a standardized tool to evaluate the risks a child poses to the community and to him or herself, to determine whether a child who has been taken into custody should be held in detention pending a court hearing or should be released to his or her parents.
- Clarifies that children held for delinquent acts are entitled to request bail and must be told of their right to do so. The court could release a child on bail if the child is likely to appear in court when required, does not pose a significant threat to the community or his or herself, and does not pose a significant risk of committing a felony, intimidating witnesses, or obstructing justice upon release. Bail must be posted by an adult blood relative, legal custodian, or stepparent.
- Clarifies that a child accused of a delinquent act, who would otherwise be released, cannot be held in secure detention because the child has no parent or other person who can provide appropriate supervision. These children should be treated as dependent children under Article 3. Ensures compliance with the federal Juvenile Justice and Delinquency Prevention Act by strictly limiting the circumstances and amount of time for

- which a child can be held in an adult detention facility, and by requiring that children who are in these facilities be kept completely separated from the adult residents there.
- Provides procedural guidance for intake and arraignment, requiring that a child be informed of the contents of the complaint, the nature of the proceedings, the possible consequences, and their rights with respect to their detention and the proceedings. It also clarifies that while a child may make an initial statement about whether he or she committed the act in question, the court may not accept a formal admission at arraignment.
 - Adds factors that should be considered in determining whether filing a petition or proceeding by informal adjustment is in the public and the child's best interests. "Informal adjustment" means a minimal level of short-term supervision, the successful completion of which leads to the dismissal of the complaint.
 - Requires that a prosecuting attorney file a delinquency petition. Under current law, any person can make a delinquency petition, which then must be endorsed by the juvenile court as being in the best interest of the public or child.
 - Requires the petition to specify if the child is being charged with a designated felony. "Designated felonies" are violations of certain criminal code sections that are considered particularly serious and carry more severe penalties.
 - Outlines when amendments to a delinquency petition could be made. Amendments alleging delinquency could be made by the prosecuting attorney at any time prior to the commencement of the adjudication hearing. Amendments that add new charges or make material changes to the allegations could only be made before a child formally admits charges before the court or the first witness is sworn in at the adjudication.
 - Clarifies the process for service of summons, which is the legal notice that a hearing is to be held and that the person being served is required to attend. The court could issue a bench warrant, which is an order to bring the person before the court, if a child above a certain age or a parent fails to attend a hearing for which he or she has been summoned.
 - Retains provision requiring transfer of a case to superior court for adult criminal proceedings if a child over 13 years of age is alleged to have committed certain specifically listed offenses, such as murder or rape.
 - Allows the optional transfer to superior court of cases involving children aged 15 and older.
 - Adds criteria that should be considered by the court in determining whether to make an optional transfer to superior court. Statements made by the child during a transfer hearing could not be used against him or her in the criminal trial except as impeachment or rebuttal evidence.
 - Allows a child to immediately appeal the decision to transfer his or her case to superior court, and provides that the criminal proceedings must be halted until that appeal is decided.
 - States that a child whose case is transferred to adult court should remain in juvenile, rather than adult, detention facilities until the child turns 17.
 - Requires that if multiple charges arise from the same actions by the child, or a "single criminal transaction," all the related charges must stay together and either be all kept in juvenile court, or all transferred to superior court.
 - Provides procedural guidance for the court's acceptance of a child's admission or denial of the charges, and for adjudication hearings.
 - Outlines the information that should be included in a probation officer's report to the court providing information and recommendations for disposition. Specifically, the report should include information on the child's background, relationships, home environment, prior contact with law enforcement and the courts, educational status, and

- medical and psychological evaluation results. It should also examine the circumstances of the crime, including its seriousness, and any aggravating or mitigating factors.
- Retains the current disposition options for a delinquent child, but clarifies that the court should select the least restrictive option that is appropriate under the circumstances of the individual case.
 - Adds additional factors for a judge to consider in determining whether to order restrictive custody for a child who has committed “designated felony,” a delinquency classification requiring that a child be committed to Department of Juvenile Justice (DJJ) custody for a substantial period of time. Specifically, the court would be required to consider the child’s maturity, culpability, and educational and dependency background.
 - Provides flexibility to judges in determining the length of sanctions for children adjudicated of a designated felony. Currently, if a court determines that restrictive custody is required, the child must be committed to DJJ for five years and must serve a minimum of one year in confinement, followed by at least 12 months of intensive supervision. Instead of mandating set time frames, the Act permits commitment to DJJ for a period up to five years, of which a minimum of six months must be served in restrictive custody. Intensive supervision is optional and is not to exceed 12 months.
 - Requires that a child receive credit for time spent in secure confinement in connection with the proceedings and that this time be deducted from detention time imposed at disposition.

Article 8 – Competency in Delinquency Cases

Article 8 governs the way courts determine whether a child is competent to participate in delinquency proceedings, and how the court responds to a child who is not competent. Article 8 of the Act revises current law regarding competency in juvenile proceedings. Specifically, it:

- Replaces the term “mental health evaluation” with “competency evaluation” for purposes of this article.
- Requires that if a child under the age of 13 is accused of committing a serious violent felony, the court would be required to order a competency evaluation before delinquency proceedings could move forward.
- The court retains the ability it has under current law to order an evaluation on its own motion or the motion of any party.
- Shifts the burden of proof to prove that a child is competent to the state. Under current law, the child has the burden of proving incompetence.
- Provides different responses depending on whether it is likely that an incompetent child is likely to ever become competent. Current law uses the same framework for all incompetent children.
- Requires that when a court finds that a child is unlikely to ever be competent to stand trial, it would be required to dismiss the delinquency petition, find that the child is a child in need of services, appoint a plan manager, and order that a mental health plan be instituted for the child. The court could also order the initiation of civil commitment proceedings, if appropriate. If a child has been found incompetent due to their age or immaturity, and would become competent eventually but not in the near future, the same approach would apply.
- Requires that if a child is currently incompetent but could become competent in the near future, then the court must order services to help the child attain competency.
- Clarifies the circumstances under which a child may be placed in a secure treatment facility, and stresses a preference for treatment in the least restrictive environment appropriate to the child’s needs.
- Outlines the information needed to be included in a court order for services to help the child attain competency. Specifically, the court order must include the name and location

- of the service provider, consideration of transportation for the child to services, and the length of time the services are to last.
- Requires service providers to report on the child’s progress on a schedule established by the court. The report would be required to include the provider’s view on whether the child could become competent in the near future, whether additional time is needed for services, and other appropriate information.
 - Clarifies the requirements for competency review hearings and for reinstating delinquency proceedings once a child’s competency is restored.

Article 9 – Parental Notification

Article 9 renumbers provisions of current law requiring notification of parents when people under the age of 18 seek abortions. The language of these provisions was not modified by the Act; the provisions were simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

Article 10 – Access to Hearings and Records

Article 10 governs access to hearings and records in juvenile proceedings. For the most part, Article 10 maintains the current level of confidentiality, with the following specific changes:

- Clarifies that while the court may decide to exclude a child from certain portions of proceedings under Articles 3 and 4 if it is in the child’s best interests, the child’s lawyer can not be excluded.
- Adds the Department of Juvenile Justice to the list of entities that should be notified when a child requests a hearing to have his or her juvenile delinquency or child in need of service records sealed.
- Eliminates language regarding children in the Department of Corrections, since under the Act, children under the juvenile court’s jurisdiction cannot be kept in adult detention facilities.
- Removes language regarding the release of names or pictures of children to the press.
- Eliminates provisions giving school officials broad access to court and law enforcement records about a child, but continues to require notice to school superintendents in certain circumstances.
- Restricts access to court records in Children in Need of Services cases. They can only be inspected by the child, the child’s attorney, probation officers, parents, and others entrusted with supervision of the child, unless additional access is granted by court order.
- Requires that the court keep records of cases handled through informal adjustment or mediation, but limits the use of these records to decisions regarding how to handle a subsequent case involving the same child. The records may not be used as evidence at trial that a child should be adjudicated delinquent or in need of services.
- Clarifies that court records regarding termination of parental rights may not be destroyed at any time, but rather must be permanently kept by the court.

Article 11 – Emancipation

Article 11 related to “emancipation,” which is the process by which a child becomes a legal adult responsible for his or her own care and able to enter into contracts and other adult transactions.

Emancipation also releases parents from their obligations to the child and their rights to the care and control of the child. A child is automatically emancipated when they turn 18, when they marry, or when they enlist in the U.S. military. Current law also provides for a child who does not meet these automatic criteria to petition the court for early emancipation. Article 11 of the Act reorganizes and clarifies current law regarding emancipation, but does not make any substantive changes.

Article 12 – Child Advocate for the Protection of Children

Article 12 rennumbers provisions of current law establishing the Office of the Child Advocate and governing its operation. The language of these provisions was not modified by the Act; the provisions were simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

Part II – Children and Youth Services

This Part would impose a new requirement on the Department of Human Services to develop a procedure for children and young adults to appeal an eligibility determination. The Department would also be required to develop outcome and performance measures for the independent living skills programs for oversight purposes.

Part III – Indigent Defense

Under this bill, the circuit public defenders would no longer be required to represent juveniles in juvenile court cases facing disposition of confinement, commitment, or probation. The circuit public defenders would no longer be required to establish juvenile divisions specializing in juvenile defense within their offices.

Counties may contract with circuit public defender offices for juvenile defense in confinement, commitment, or probation, as well as the direct appeals of those proceedings. If a county does not contract with the circuit public defender, it must still abide by the policies and standards adopted by the Georgia Public Defenders Standards Council regarding juvenile proceedings.

Part IV – Cross References

This part updates cross references in the O.C.G.A. pursuant to the changes made in the bill.

Part V – Effective Date

This bill would become effective on July 1, 2013 and would apply to all juvenile proceedings commenced on and after that date.

Chairman Hamrick asked for a motion on the legislation. Senator Bethel, 54th, moved ***SB 127 Do Pass by Substitute***. Senator Carter, 42nd, seconded the motion. **SB 127** passed unanimously (7 to 0).

SB 127 DO PASS BY SUBSTITUTE

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

SB 137 (Hamrick, 30th) Retirement; update certain cross-references to Chapter 11 of Title 15; provide for conditions (LC 21 1669S)

Chairman Hamrick, 30th, stated that the substitute for **SB 137** (LC 21 1669S) is simply a pension update for the Department of Juvenile Justice. The following analysis was shared with the committee:

ANALYSIS

This is a companion bill to **SB 127**, the Juvenile Code Rewrite. It is a non-fiscal retirement bill that would update cross-references should **SB 127** become law. If **SB 127** is not enacted, this bill would be automatically repealed on January 1, 2013.

Chairman Hamrick asked for a motion on the legislation. Senator Ligon, 3rd, moved ***SB 137 Do Pass by Substitute***. Senator Carter, 42nd, seconded the motion. **SB 137** passed unanimously (7 to 0).

SB 137 DO PASS BY SUBSTITUTE

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

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 5:20 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Debra Charnote, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Wednesday, February 22, 2012

The Senate Judiciary Committee held its eighth meeting of the 2012 Session on Wednesday, February 22, 2012, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 4:11 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th Secretary
Senator Charlie Bethel, 54th
Senator Jason Carter, 42nd
Senator Vincent Fort, 39th
Senator William Ligon, Jr., 3rd
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd
Senator Judson Hill, 32nd, Ex-Officio

NOTE: Senator Ramsey was absent from the committee

Chairman Hamrick called the meeting to order.

SB 299 (Davis, 22nd) Uniform Fraudulent Transfers Act; define certain terms; provide charitable contribution made to a charitable organization; good faith

Senator Davis, 22nd, presented a substitute to **SB 299** (LC 29 5176S) to the committee stating that this legislation was drafted to amend the “Uniform Fraudulent Transfers Act” so as to provide that a charitable contribution to a charitable organization shall not be deemed a fraudulent transfer when they receive the contribution in good faith.

Senator Crosby, 13th, stated that this bill had been vetted in his subcommittee and passed out unanimously.

No one signed up to testify for or against the legislation.

Chairman Hamrick asked for a motion. Senator Crosby moved ***SB 299 Do Pass by Substitute***. Senator Stone seconded the motion. **SB 299** passed unanimously (6 to 0).

SB 299 DO PASS BY SUBSTITUTE

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

NOTE: Senator Fort arrived at the meeting.

SB 356 (Murphy, 27th) Superior Courts; provide additional judge of the Bell-Forsyth Judicial Circuit; initial appointment; election and term of office

Senator Murphy presented a substitute for **SB 356** (LC 29 5159S) to the committee. This bill would increase the number of superior court judges in both the Bell-Forsyth Circuit and Middle Circuit from two to three. The following analysis was shared with the committee:

ANALYSIS

Bell-Forsyth Judicial Circuit

A new superior court judge would be added to the Bell-Forsyth Judicial Circuit, increasing the number to three judges. The new judge would be appointed by the Governor for a term running from January 1, 2013 through December 31, 2014 and until a successor is elected and qualified. The successor must be elected at a nonpartisan judicial election in 2014 for a term of four years, to start on January 1, 2015. Future successors would serve for terms of four years and must also be elected in nonpartisan judicial elections every four years. The new judge would have the same powers as the current superior court judges in this state. This legislation lists the qualifications the chief judge and the new judge must have. The compensation for the new judge would be the same as provided for all other superior court judges, but Forsyth County has the ability to supplement his salary. The judges can employ an additional court reporter. The official papers would be fully valid, and the choosing of jurors may be completed by any of the superior court judges.

Middle Judicial Circuit

A new superior court judge would be added to the Bell-Forsyth Judicial Circuit, increasing the number to three judges. The new judge would be appointed by the Governor for a term running from January 1, 2013 through December 31, 2014 and until a successor is elected and qualified. The successor must be elected at a nonpartisan judicial election in 2014 for a term of four years, to start on January 1, 2015. Future successors would serve for terms of four years and must also be elected in nonpartisan judicial elections every four years. The new judge would have the same powers as the current superior court judges in this state. This legislation lists the qualifications and responsibilities the chief judge and the new judge must have. The new judge's compensation would be the same as provided for the other superior court judges in the Middle Circuit. The new judge may appoint an additional court reporter for the circuit.

A fiscal note was shared with the committee which states that the estimated fiscal impact of this bill would total approximately \$495,500 annually. Given this annual estimate, the approximate cost for the six-month period applicable to fiscal year 2013 would be about \$247,000. The annual cost of \$494,500 is primarily comprised of salary and benefits for the additional judge position as well as affiliated support staff, plus nominal increases in the office operating costs. These support positions would be comprised of a secretary, law clerk, and assistant district attorney. Additionally, the Public Defender Standards

Council estimates approximately \$38,000 towards the minimum salary of an assistant public defender position.

No one signed up to testify for or against the legislation.

Chairman Hamrick asked for a motion. Senator Stone moved ***SB 356 Do Pass by Substitute***. Senator Bethel seconded the motion. **SB 356** passed unanimously (7 to 0).

SB 356 DO PASS BY SUBSTITUTE

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

NOTE: Senator Cowsert arrived at the meeting.

SB 365 (Hamrick, 30th) Property; collected funds; change prov.; residential real property; provide form Acknowledgment and Waiver of Borrower's Rights

Senator Stone, 23rd, presented the substitute for **SB 365 (LC 29 5166S)** to the committee. This legislation would expand the list of actions viewed as the unauthorized practice of law, and would require a settlement agent to be a lender or Georgia attorney.

ANALYSIS

This bill would expand the actions viewed as the unauthorized practice of law to include:

- The preparing of deeds of conveyance, facilitating the execution of deeds of conveyance, or supervising the recording of deeds of conveyance;
- The supervising of a real estate closing; and
- The collection and disbursement of the funds necessary to effectuate a real estate transaction.

This bill would provide a private cause of action for damages and attorney's fees to any person damaged by a person or entity engaged in the unauthorized practice of law. A "settlement agent" is clarified as being only a lender or Georgia attorney. The statute governing the disbursement of settlement proceeds would apply to purchase money loans made by a lender and refinance loans made by the current or a new lender to be secured on real estate located within Georgia. If this statute is violated, the party wronged would be entitled to \$1,000 or double the amount of interest payable on the loan for the first 60 days after the loan closing, whichever was greater.

No one signed up to testify for or against the legislation.

Chairman Hamrick asked for a motion. Senator Bethel moved ***SB 365 Do Pass by Substitute***. Senator McKoon seconded the motion. **SB 365** passed unanimously (7 to 0).

SB 365 DO PASS BY SUBSTITUTE

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

NOTE: Senator Ligon abstained from voting on this legislation.

NOTE: Senator Judson Hill arrived at the meeting.

SB 458 (Loudermilk, 52nd) Government; modify provisions; verification requirements, procedures, and conditions for applicants for public benefits

Senator Loudermilk, 52nd, and D. A. King presented **SB 458** (LC 35 2549) to the committee together.

NOTE: Senator Chip Rogers arrived during the testimony to speak on the intent of 2006 legislation that this bill sought to clarify.

Senator Loudermilk, 52nd, stated that the intent of this legislation is to require that applicants for postsecondary education public benefits have their lawful presence verified, and would ease the requirements regarding public benefits for applicants who provide secure and verifiable documentation. The following analysis was shared with the committee:

ANALYSIS

Postsecondary Education Benefits

Currently, the Board of Regents and the State Board of the Technical College System set the policies regarding postsecondary benefits. This bill would strip the Boards of that policy-making power and instead require the verification of lawful presence in the United States of any applicant for postsecondary education public benefits. In the Attorney General's annual report detailing the public benefits administered in the state, each of the benefits listed in O.C.G.A. §50-36-1(a) (4) (A) must be included and may not be omitted.

Applying for Public Benefits

Current law requires applicants for public benefits to present a secure and verifiable document. This bill would allow an applicant to submit such documents or copies of documents up to nine months before the application deadline, so long as their validity runs through the licensing period. The documents or copies may be sent in person, by mail, or electronically. Applicants renewing their applications with the same agency, who have complied with the requirements to show secure and verifiable document in the past, do not have to show their documentation on reapplication.

Similarly, current law prohibits agencies and political subdivisions from accepting, relying upon, or utilizing an identification document for any official purpose unless it is a secure and verifiable document. This bill would authorize agencies and political subdivisions to accept copies of such documents submitted in person, by mail, or

electronically. This bill clarifies that the secure and verifiable document must be unexpired and does not include a foreign passport, unless it is submitted with federal documentation specifying the alien's lawful immigration status. If an applicant for a postsecondary benefit is younger than 18 years old at the application date, he or she must execute an affidavit within thirty days of turning 18 in order to continue the enrollment process of attendance at a postsecondary institution.

Testimony in support of the legislation was given by:

Senator Chip Rogers

D. A. King, Dustin Inman Society

Susan Stanton, Georgia Tea Party

Joyce Schumacher, Georgia Tea Party

Michael O'Sullivan, Legislative Director, Office of Secretary of State

Judy Craft, citizen, Gwinnett County

Bill Hudson, Georgia Tea Party

Testimony in opposition to the legislation was given by:

Chancellor Hank Huckaby, Board of Regents

Commissioner Ron Jackson, Georgia Technical Colleges

Dr. Richard Stafford

Keish Kim, student

Kathleen McCullen, UGA graduate

Dorothy Foster, citizen

Teodoko Maus, Georgia Latino Alliance for Human Rights

Sean McKenzie, Educator

Jerry Gonzalez, GALEO

Jose Blanco, citizen

Sonrissa Trippe, student

Tim Franzen, American Friends Service Committee

June McDowall, retired educator

Tobie Bass, UGA

Barbara Hartman, citizen

NOTE: Senator Cowsert left the meeting.

Chairman Hamrick recognized Senator Hill, 32nd, who made the motion *SB 458 Do Pass by Substitute*. Senator Ligon, 3rd, seconded the motion. **SB 458** passed (6 to 2).

SB 458 DO PASS BY SUBSTITUTE

NOTE: Yeas were Crosby, Bethel, Ligon, McKoon, Stone and Judson Hill. Nays were Carter and Fort.

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

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Wednesday, February 27, 2012

The Senate Judiciary Committee held its ninth meeting of the 2012 Session on Monday, February 27, 2012, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 1:15 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator Charlie Bethel, 54th
Senator Jason Carter, 42nd
Senator Vincent Fort, 39th
Senator William Ligon, Jr., 3rd
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd
Senator Judson Hill, 32nd, Ex-Officio

NOTE: Senators Crosby and Ramsey were absent from the committee

Chairman Hamrick called the meeting to order.

SB 355 (Unterman, 45th) Domestic Relations; child abuse; expand mandatory reporting requirements; provide for procedure; exception

Senator Unterman, 45th, presented a substitute **SB 355** (LC 29 5191S) to the committee. This legislation would broaden the child abuse reporting requirements to adults witnessing abuse or receiving reliable information of abuse. The substitute language exempts clergy and attorneys from the mandatory reporting requirements in certain circumstances. The following analysis was shared with the committee:

ANALYSIS

This bill would change the reporting requirements in cases of suspected child abuse for the following persons:

- The persons required to report under O.C.G.A. § 19-7-5(c) (1) must report if they have reasonable cause to believe that suspected child abuse has occurred.
- If an adult is not currently required to report under O.C.G.A. § 19-7-5(c)(1), he must now report if he:
 - Witnesses sexual abuse;
 - Witnesses someone causing cruel or excessive physical or mental pain to a child; or
 - Receives reliable information that child abuse has occurred.

These individuals must make an oral report by phone to a law enforcement agency of the abuse as soon as possible, but no later than 72 hours from the time of observation or receipt of information. The report must include any information

relevant to the suspected abuse. Communications between an attorney and his client are exempted from this reporting requirement.

- Anyone not part of either of the groups listed above has the option to report if he or she has reasonable cause to believe that suspected child abuse has occurred.

This bill defines “child service organization,” “clergy,” and “school” for the purposes of the child abuse reporting Code section.

Clergy are exempted from reporting requirements when information is received solely from a perpetrator of child abuse through confession or other church communication that are required to be confidential. However, clergy must report child abuse if information is received from any other source.

Anyone required to report child abuse, who knowingly and willingly fails to report such abuse, will be guilty of a misdemeanor.

Currently, reports made by those with a legal duty to report abuse are not subject to public inspection unless a number of requirements are met. Under this legislation, the reports made under the new requirements would also be shielded from public inspection unless the same requirements are met.

NOTE: Senator Ligon left the meeting.

Testimony in support with modifications:
Frank Mulcahy, Georgia Catholic Conference

Called on by Chairman Hamrick for expert testimony:
Kirsten Widener, Barton Clinic
Kermit McManus, District Attorney

There were two amendments offered to the committee.

Cowsert amendment: delete “sexual abuse through mental pain” on line 64 and insert “child abuse as defined in subsection b of this code section.” On line 65, after “reliable information,” add “from a person who has witnessed child abuse.”

Chairman Hamrick asked for a motion. Senator Cowsert moved Do Pass on his amendment. Senator Bethel seconded the motion. The amendment passed (7-0).

Cowsert Amendment DO PASS

NOTE: Yeas were Bethel, Carter, Cowsert, Fort, Judson Hill, McKoon and Stone

Bethel/Carter Amendment: On line 98, strike “received” and insert “reported.” On line 99, insert “other” between the words any and source.

Chairman Hamrick asked for a motion. Senator Bethel moved Do Pass on the amendment. Senator Carter seconded the motion. The amendment passed unanimously (7-0).

Bethel/Carter Amendment DO PASS

NOTE: Yeas were Bethel, Carter, Cowsert, Fort, Judson Hill, McKoon and Stone

Chairman Hamrick asked for a motion on **SB 355**. Senator Bethel moved that **SB 355 Do Pass by Substitute** (LC 21 1744S) as amended by the committee. Senator Carter seconded the motion. **SB 355** passed unanimously by substitute (7-0).

SB 355 DO PASS BY SUBSTITUTE

NOTE: Yeas were Bethel, Carter, Cowsert, Fort, Judson Hill, McKoon and Stone

SB 431 (Hill, 32nd) Forgery and Fraudulent Practices; add medical identity fraud to the provisions relating to identity fraud; definitions

Senator Judson Hill, 32nd, presented **SB 431** to the committee. This legislation would create the crime of medical identity fraud and make it a felony offense. The following analysis was shared with the committee:

ANALYSIS

It would be a felony for any person to willfully and fraudulently use another person’s identifying information for the purpose of obtaining medical care, prescription drugs, or financial gain, without that person’s authorization or consent, including deceased persons, fictitious persons, and children under 18 over whom the accused has custodial authority.

This crime cannot be merged with any other offense. Medical identity fraud is a felony offense punishable by imprisonment for two to ten years and/or a fine not to exceed \$100,000. A second or subsequent offense is punishable by imprisonment for three to fifteen years and/or a fine not to exceed \$250,000. Each violation would be considered a separate offense.

The bill also includes a subsection specifically providing for a private cause of action for civil damages, attorney’s fees and reasonable litigation fees.

There was no one signed up to testify for or against this legislation. The language of this bill passed out of the committee by substitute last session. **SB 431** is a new bill drafted with this language.

Chairman Hamrick asked for a motion on **SB 431**. Senator Bethel moved ***SB 431 Do Pass***. Senator Judson Hill seconded the motion. **SB 431** passed unanimously (7-0).

SB 431 DO PASS

NOTE: Yeas were Bethel, Carter, Cowsert, Fort, Judson Hill, McKoon and Stone

NOTE: Senator Judson Hill left the meeting.

SB 341 (Jackson, 2nd) Juvenile Proceedings; clarify the definition of the term "designated felony"; increase the max. detention period for children adjudicated for delinquent acts

Senator Jackson, 2nd, presented **SB 341** to the committee. The following analysis was shared with the committee:

ANALYSIS

If a child had previously been adjudicated delinquent on three occasions for acts that would have been felonies if completed by an adult, his fourth act could be treated as a designated felony. Under this legislation, the previous delinquent adjudications could have occurred in any state (not just Georgia) in order for the fourth act to be treated as a designated felony. This bill would also increase the amount of time a child can serve in a youth detention center from 30 to 90 days.

Chairman Hamrick stated that the committee has issues with the increase in the amount of time a child can serve in a youth detention center from 30 days to 90 days. Senator Lester Jackson agreed to strike section II in order pass section I out of the committee.

There was no testimony for or against the legislation.

Chairman Hamrick asked for a motion on **SB 341** as amended by the committee. Senator Bethel moved that ***SB 341 Do Pass by Substitute*** (LC 21 1743S) as amended by the committee. Senator Carter seconded the motion. **SB 341** passed unanimously by substitute (6-0).

SB 341 DO PASS BY SUBSTITUTE

NOTE: Yeas were Bethel, Carter, Cowsert, Fort, McKoon and Stone

SB 229 (Fort, 39th) Searches with warrants; issuance of search warrants by judicial officers; provisions

Senator Fort, 39th, presented SB 229 to the committee. This legislation would limit judicial ability to issue no-knock warrants without probable cause shown in the affidavit. The following analysis was shared with the committee:

ANALYSIS

This bill defines “no-knock” as a provision in a warrant that authorizes a police officer to enter without giving audible notice of the officer’s presence, authority and purpose. However, the bill limits the ability of judicial officers to issue warrants with no-knock provisions unless the affidavit or testimony behind the warrant establishes 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.

Jason Saliba, Cobb County District Attorney’s Office, signed up in opposition to the legislation. There was no other testimony for or against the legislation.

Chairman Hamrick stated that **SB 229** passed out of committee last session and was returned to the committee at the end of session because it was leftover from the Rules Committee. He asked for a motion from the committee. Senator Cowser moved ***SB 229 Do Pass***. Senator Stone seconded the motion. **SB 229** passed unanimously (6-0).

SB 229 DO PASS

NOTE: Yeas were Bethel, Carter, Cowser, Fort, McKoon and Stone

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

Respectfully submitted,

/s/ Senator Bill Hamrick, 30th, Chairman

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Wednesday, February 29, 2012

The Senate Judiciary Committee held its tenth meeting of the 2012 Session on Wednesday, February 29, 2012, in room 307 of the Coverdell Legislative Office Building. Chairman Bill Hamrick called the meeting to order at 12:20 P.M. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th, Secretary
Senator Charlie Bethel, 54th
Senator Jason Carter, 42nd
Senator Vincent Fort, 39th
Senator William Ligon, Jr., 3rd
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

NOTE: Senators Ramsey, 43rd, and Hill, 32nd, were absent from the committee

Chairman Hamrick called the meeting to order.

SB 449 (McKoon, 29th) DNA Analysis; provide for DNA analysis of persons arrested for felony offenses; time and procedure for withdrawal of blood samples; prov.

Senator McKoon, 29th, presented a substitute to **SB 449** (LC 29 5221S) to the committee. This legislation would alter the requirements of DNA analysis for sex offenses, and broaden the grounds on which a person could request a DNA profile be expunged.

The following analysis was shared with the committee:

ANALYSIS

This bill broadens the DNA analysis requirement for certain sex offenses. Currently, persons convicted of felony offenses held in detention or on probation must have a DNA test. Under this legislation, anyone arrested for a felony offense must have DNA analysis taken by the arresting officer or a detention facility after a magistrate or grand jury finds probable cause for the arrest. This would apply to anyone convicted of a felony who was incarcerated in a detention facility, was on probation, or was serving under the jurisdiction of Pardons and Paroles. The DNA samples would be required to be taken within 30 days of the probable cause finding or within 30 days of incarceration.

This bill would broaden the grounds on which a person may request that his or her DNA profile be expunged from the data bank. In addition to his or her conviction being reversed and his or her case being dismissed, a person could also request expungement if he or she was acquitted of the felony charges, the felony charges were lowered to

misdemeanor charges, the felony charge was dead-docketed, or the charges were otherwise dismissed by the prosecuting attorney. Upon a written request of expungement, the GBI would be required to expunge the record if it receives the court order reversing and dismissing the charges, the judgment of acquittal, the sentencing order reducing charges to a misdemeanor, the court order dead-docketing the felony, or a document from the prosecuting attorney showing the felony charges were dismissed, whichever is applicable. If a DNA sample is obtained in good faith, its use would be authorized until the above documents were submitted to GBI.

This legislation will become effective upon specific appropriations becoming available for expenditure.

Testimony given in support:

Michael Berry, father of victim Johnia Berry

Testimony with concerns:

Sandra Michaels, GCDLA

Aimee Maxwell, Criminal Defense Attorney

Chairman Hamrick recognized Senator Bethel who offered an amendment to **SB 449** which would strike the word “arresting” in lines 16 and 23 and insert “detaining the arrestee.” Chairman Hamrick asked the committee for a motion on the amendment. Senator Bethel moved the amendment Do Pass. Senator Carter seconded the motion. The amendment passed (7 to 1).

Bethel Amendment DO PASS

NOTE: Yeas were Crosby, Bethel, Carter, Ligon, McKoon, Ramsey, and Stone. Senator Fort voted No.

NOTE: Senator Cowsert arrived.

Chairman Hamrick asked for a motion on **SB 449** as amended by the committee. Senator Bethel, 54th, moved **SB 449 Do Pass by Substitute** (LC 29 5221S). Senator Carter, 42nd, seconded the motion. **SB 449** passed by substitute (7 to 2).

SB 449 DO PASS BY SUBSTITUTE

NOTE: Yeas were Crosby, Bethel, Carter, Ligon, McKoon, Ramsey, and Stone. Senators Cowsert and Fort voted No.

SB 432 (Heath, 31st) Crimes and Offenses; define a certain term; political subdivision shall not enact any ordinance more restrictive of sale/possession of knife than general law

Senator Heath, 31st, presented **SB 432** to the committee. This legislation simply would prohibit any county, municipality, or consolidated government from constraining the possession, manufacture, sale, or transfer of a knife more restrictively than is otherwise provided in state law.

Testimony with concerns about the legislation:

Rusi Patel, GMA

After some discussion, which revealed confusion on what Section of the Code this legislation would best be placed, and concerns about conflicts with local municipal ordinances, Senator Hamrick suspended discussion on **SB 432** and asked Legislative Counsel, **Jill Travis**, to work with **Senator Heath**, **Senator Bethel** and **Rusi Patel** on substitute language.

Discussion Suspended on SB 432

SB 493 (Loudermilk, 52nd) Firearms; authorize persons between the ages of 18 and 21 to carry firearms under certain circumstances (LC 28 6175)

Senator Loudermilk, 52nd, presented **SB 493** to the committee. This legislation would authorize 18-21 year olds to carry a weapon if he or she passed a firearms course. The following analysis was shared with the committee:

ANALYSIS

This bill would allow Georgia residents aged 18 to 21 to be licensed to carry a weapon if they met all other requirements (besides the age requirement) in Code, and if they provided a certification of compliance from a licensed firearms instructor. The applicant would be required to complete and pass a firearms course within three months of the license application date.

The standards of the firearms course are as follows:

- four hours of classroom instruction on gun-related laws, proper methods of gun handling, and fundamentals of gun operation;
- four hours of instruction on a firearms range; and
- an examination on the classroom instruction and a practical examination on a firearms range.

There was no testimony for or against this legislation.

Chairman Hamrick asked for a motion. Senator Stone, 23rd, moved **SB 493 Do Pass**. Senator Bethel, 54th, seconded the motion. **SB 493** passed (8-1).

SB 493 DO PASS

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Ligon, McKoon, Ramsey, and Stone. Senator Fort voted No.

SB 502 (Cowsert, 46th) Insurance Companies; provide procedure; claimant's offers to settle torts claims involving liability insurance policies

Senator Cowsert, 46th, presented **SB 502** (LC 37 1429ER) to the committee. This legislation would provide a procedure for offers to settle tort claims covered by liability insurance policies. The following analysis was shared with the committee:

ANALYSIS

If an insured asserted a claim against an insurer for bad faith or negligent failure to settle a tort claim, the offer to settle a tort claim covered by a liability insurance policy must comply with the following requirements:

- The claimant must serve the offer to settle on the insurer;
- The insurer must have 60 days to respond to the offer to settle;
- The claimant must include full and complete copies of his treatment records and billing statements related to the tort claim; and
- An executed medical release for medical records must be included.

If an offer to settle a tort claim covered by a liability insurance policy does not comply with the above requirements, the offer would not give rise to a claim for bad faith or negligent failure to settle against the insurer.

Testimony opposed to the legislation:

Darren Penn, State Bar Association

Jay Sadd, State Bar Association

After several questions from committee members and testimony from the State Bar Association, Chairman Hamrick stated that this bill came to the committee late and clearly needed more work. He asked for a motion on the legislation. Senator McKoon, 29th, moved that the committee table **SB 502** for further work. Senator Bethel, 54th, seconded that motion. **SB 502 was tabled** (8 -1).

SB 502 TABLED BY COMMITTEE

NOTE: Yeas were Crosby, Bethel, Carter, Fort, Ligon, McKoon, Ramsey, and Stone. Senator Cowsert voted No.

SB 432 (Heath, 31st) Crimes and Offenses; define a certain term; political subdivision shall not enact any ordinance more restrictive of sale/possession of knife than general law

Chairman Hamrick, 30th, reopened discussion on **SB 432**. Jill Travis, Legislative Counsel, presented substitute language to the committee. Chairman Hamrick asked for a motion on the substitute. Senator Bethel, 54th, moved ***SB 432 Do Pass by Substitute*** (LC 29 5222S). Senator Ligon, Jr., 3rd, seconded the motion. **SB 432** passed by substitute unanimously (9-0).

SB 432 DO PASS BY SUBSTITUTE

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Fort, Ligon, McKoon, Ramsey, and Stone.

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 1:20 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Monday, March 12, 2012

The Senate Judiciary Committee held its eleventh meeting of the 2012 Session on March 12, 2012, in room 450 of the Capitol. Chairman Bill Hamrick called the meeting to order at 2:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th, Secretary
Senator Charlie Bethel, 54th
Senator William Ligon, Jr., 3rd
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

NOTE: Senators Carter, 42nd, Fort, 39th, Ramsey, Sr., 43rd, and Hill, 32nd, were absent from the committee

Chairman Hamrick called the meeting to order.

HB 763 (Atwood, 179th) Juries; certain persons ineligible to serve as trial or grand jurors; clarify (LC 29 5080S)

Representative Atwood, 179th, presented **HB 763** to the committee. This legislation addresses persons prohibited from serving on juries. The following analysis was shared with the committee:

ANALYSIS

No convicted felon whose civil rights have not been restored nor any person who has been judicially determined to be mentally incompetent is eligible to serve as a trial juror or a grand juror. This bill also clarifies that jurors summoned prior to July 1, 2012 are eligible to comprise the jury panel.

There was no testimony for or against the legislation.

Chairman Hamrick, 30th, asked for a motion on the legislation. Senator Bethel, 54th, moved **HB 763 Do Pass**. Senator Ligon, Jr., 3rd, seconded the motion. **HB 763** passed unanimously (6 – 0).

HB 763 DO PASS

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

NOTE: Senator Ligon, Jr., agreed to be the Senate sponsor of this legislation.

NOTE: Senator Cowsert, 46th, arrived at the meeting

HB 711 (Lindsey, 54th) Evidence; privileges; change provisions

Representative Lindsey, 54th, presented a substitute to **HB 711** (LC 29 5091S) to the committee. This legislation provides for confidential communication between victims and their advocates at domestic violence and sexual assault centers, and also exempts domestic abuse cases from the spousal evidence privilege in criminal proceedings. The following analysis was shared with the committee:

ANALYSIS

Spousal Privilege in Criminal Proceedings

This bill would provide new exceptions to the general rule of the spousal privilege concerning confidentiality. Specifically, a spouse would not be compelled to testify against the other spouse unless one spouse was charged with a crime against his or her spouse, one spouse was charged with causing damage to his or her spouse's property, or the spouse's crime against his or her current spouse occurred prior to their marriage.

Communications Between Victims and Advocates

This bill would prohibit any agent of a family violence shelter or rape crisis center from being compelled to disclose any evidence he acquired while rendering necessary services to a victim unless the victim waives the privilege. The court could also allow the disclosure of such evidence in the following manner, according to the type of proceeding:

- In a civil proceeding, the evidence must be material and relevant, its sole purpose is not for reference to the victim's character for truthfulness, it is not available or already obtained, and its probative value substantially outweighs the negative effect of disclosure.
- In a criminal proceeding, the evidence would be required to be material and relevant to the issue of guilt or sentencing, its sole purpose is not for reference to the victim's character for truthfulness, it is not available or already obtained, and the probative value substantially outweighs the negative effect of disclosure.

Upon a finding that specific evidence requires disclosure, the court must order its production, examine the evidence *in camera*, and would be allowed to permit portions of the evidence to be disclosed.

This privilege terminates upon the victim's death and does not apply if the agent is a witness to or party to the family violence or sexual assault that occurs in his presence. The privilege is not voided if a third party is present during the agent and victim's communications, so long as the communication occurs in a setting in which the victim has a reasonable expectation of privacy.

The privilege may be waived by the guardian of an incompetent victim

Testimony in support of the legislation:

Stephanie Woodard, Hall County Solicitor General
Shelly Senterfit, GA Coalition Against Domestic Violence

Testimony opposed to the legislation:
Sandra Michaels, GACDL

Chairman Hamrick, 30th, asked for a motion on the legislation. Senator Bethel, 54th, moved ***HB 711 Do Pass***. Senator Ligon, Jr., seconded the motion. **HB 711** passed unanimously (5 - 1).

HB 711 DO PASS

NOTE: Yeas were Crosby, Bethel, Ligon, McKoon, and Stone. Cowsert voted No.

NOTE: Chairman Hamrick agreed to be Senate sponsor of this legislation.

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 3:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Monday, March 19, 2012

The Senate Judiciary Committee held its twelfth meeting of the 2012 Session on March 19, 2012, in room 307 of the Coverdell Office Building. Chairman Hamrick, 30th, called the meeting to order at 4:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th, Secretary
Senator Jason Carter, 42nd
Senator Charlie Bethel, 54th
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

NOTE: Senators Fort, 39th, Ligon, Jr., 3rd, Ramsey, Sr., 43rd, and Hill, 32nd, were absent from the committee

Chairman Hamrick called the meeting to order.

HB 744 (Lindsey, 54th) Uniform Partition of Heirs Property Act; enact

Representative Lindsey, 54th, presented **HB 744** to the committee. This legislation would enact the *Uniform Partition of Heirs Property Act*, which lays out the means by which property, if determined by the court to be heirs property, shall be partitioned in a consistent and economically advantageous manner. The following analysis was shared with the committee:

ANALYSIS

In any action filed on or after January 1, 2013 to partition real property, the court must determine whether the property is heirs property. If the court finds the property to be heirs property, the property should be partitioned according to the *Uniform Partition of Heirs Property Act* (UPHPA), unless all cotenants agreed otherwise.

If heirs property is to be partitioned, the court must order an appraisal of fair market value (FMV) to be completed by a disinterested, licensed real estate appraiser. Within ten days of the appraisal's filing, the court must send notice to each party regarding the property's FMV appraisal, the appraisal's availability at the clerk's office, and that an objection may be filed. The court must then hold a hearing to determine FMV, after which it must determine FMV and send notice to the parties regarding its FMV finding.

The court would be required to send notice to other cotenants that they may buy interests of the cotenant requesting partition. The other cotenants would be required to notify the court if he or she wants to buy all of the interest in the property. If more than one cotenant elects to purchase, the court must allocate the right to purchase based on existing ownership percentage divided by the total ownership percentage of all electing cotenants.

The court would then send notice to the cotenants notifying them how much they must pay and by what date. If not all cotenants pay, the court could allow the paying cotenants to purchase the remaining interest. After the initial notice of partition sale, any cotenant could request the court to authorize a sale as part of the pending action.

If all of the interests are not bought in the partition by sale, or if a cotenant requests a partition in kind, the court would be required to order partition in kind unless it would result in manifest prejudice to the cotenants as a group, looking to factors listed in the legislation in the totality of circumstances. If there is no partition in kind, the court must order an open-market sale or dismiss the action. If there is a partition in kind, the court could require cotenants to pay other cotenants to make it just and proportionate in the value of interests held.

If an open-market sale is ordered, the sale must be open-market unless a sale by sealed bids or a public sale is in the best interests of the cotenants and is economically advantageous. A broker would be required to offer the property in a commercially reasonable manner and at a price that is equal or greater than the FMV. If the broker has the opportunity to sell the property in a reasonable time for FMV or more, he would be required to sell the property and file a report with the court detailing the material facts relevant to the sale. If the broker could not sell the property, the court would be required to hold a hearing and determine the next steps.

The intent of this legislation in applying the UHPA is that consideration should be given to uniformity of law among states who have enacted the UHPA. The legislation would also amend the Code provision related to court-appointed experts to include cross-references.

Testimony in support of the legislation was given by **Patrice Perkins-Hooker**, General Counsel for Beltline.

Chairman Hamrick, 30th, asked for a motion on the legislation. Senator Carter, 42nd, moved **HB 744 Do Pass**. Senator Bethel, 54th, seconded the motion. **HB 744** passed unanimously (6 – 0).

HB 744 DO PASS

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

NOTE: Chairman Hamrick agreed to be the Senate sponsor of this legislation.

HB 100 (Peake, 137th) Georgia Tax Court; create

Representative Peake, 137th, presented a substitute to **HB 100** (LC 29 5266ERS) to the committee. This legislation would create the *Georgia Tax Tribunal Act* and provide for its application in certain cases, procedure, and appeal procedure. The following analysis was shared with the committee:

ANALYSIS

The intent of this legislation was to respond to the need for an independent, specialized agency separate from the Department of Revenue to resolve taxpayer disputes in an efficient and cost-effective manner. The Tax Tribunal (“tribunal”) would be created as an independent and autonomous division within the Office of State Administrative Hearings. For administrative purposes, the tribunal would be assigned to the Department of Administrative Services and would be funded through their appropriations. The tribunal must set rules and regulations regarding its operation.

The tribunal would be required to have at least one administrative law judge, but may have more. Initial judges would be appointed by the Governor, and post-initial appointments would be made by the Governor with the Senate’s consent. The Governor would be allowed to appoint another judge if he thought it would help the tribunal’s administration. The tribunal’s administration would be run under the direction of the chief judge. Tribunal judges could be removed by the Governor and with the Senate’s consent after notice and an opportunity to be heard. Judges must be United States citizens, Georgia residents during their service, and be licensed Georgia attorneys with at least eight years of tax law experience. Tribunal judges would be prohibited from other employment during their service.

The chief judge would be required to appoint a clerk, court reporter, and other employees as was reasonably necessary for the tribunal to run efficiently. The tribunal could contract for court reporter services, as well as the reporting of services.

Effective January 1, 2013, any person could petition the tribunal as set forth in the situations listed below. The tribunal would have no jurisdiction over Title 3 (alcohol) or Title 40 (motor vehicles and traffic) actions. No surety bonds or security would be allowed in tribunal actions. Actions in the tribunal must be commenced pursuant to the procedure provided for in the Act. The Georgia Civil Practice Act rules regarding discovery and deposition would apply to tribunal proceedings, but informal practices would be preferred.

Trials in the tribunal would be de novo and without a jury. The tribunal would be allowed to receive evidence, conduct hearings, issue final judgments, and issue interlocutory orders. The tribunal could apply civil rules of evidence, but could also consider evidence if a reasonably prudent person would rely upon such evidence during their course of business. It would be a requirement that all orders be in writing and include statements of fact and law. The tribunal would be required to adhere to the

principle of *stare decisis*, and all decisions would be required to be indexed and published.

Any party could appeal the tribunal's final judgment to the Fulton County Superior Court within 30 days of the judgment's service. The reviewing court would be required to decide on the tribunal's judgment or remand the case within 90 days of receiving the last brief. A party would be allowed to seek final review with the Georgia Supreme Court.

A small claims division would be provided for in the tribunal, wherein certain actions less than a set monetary amount may be heard after a party makes an election for the action to be heard in small claims.

Tribunal Application

A taxpayer may appeal with the tax tribunal to challenge the State Board of Equalization Commissioner's proposed assessment. If he chose to appeal with the tax tribunal instead of Fulton County Superior Court, the discovery provisions of the tax tribunal would apply. A taxpayer could bring an action in the tax tribunal if his claim for a refund was rejected. If a taxpayer was affected by a presidentially declared disaster or terroristic or military action, the commissioner could specify one year to be disregarded in determining tax liability if the taxpayer filed a petition with the tax tribunal. Assessments would be required to be reviewed under tribunal procedure. A party would be allowed to appeal the commissioner's finding to the tribunal by filing a petition with the tribunal within 30 days of the decision and otherwise following tribunal procedure. Some provisions related to appeals in superior court would not apply to tribunal appeals.

If a writ of execution was issued for the collection of tax money due to the state, the taxpayer could file a petition with the tribunal to get a determination as to whether the amounts were legally due.

Railroad equipment companies would be allowed to appeal proposed assessments of public utility assessments with the tribunal according to the tribunal's rules.

Real estate transfer tax refund actions could be brought in the tribunal within 60 days from the claim's denial. Failure to grant or deny a refund claim within one year would constitute constructive discharge. If a refund of intangible recording tax claim was denied, the taxpayer could bring a refund action in the tribunal.

There was no testimony for or against the legislation.

Chairman Hamrick, 30th, asked for a motion on the legislation. Senator Bethel, 54th, moved ***HB 100 Do Pass by Substitute***. Senator Stone, 23rd, seconded the motion. **HB 100** passed unanimously (6 – 0).

HB 100 DO PASS BY SUBSTITUTE

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

NOTE: Chairman Hamrick agreed to be the Senate sponsor of this legislation

HB 997 (Pak, 102nd) Crimes and offenses; new crime of false lien statements against public officers; provide

Representative Pak, 102nd, presented **HB 997** to the committee. This legislation would criminalize the offense of filing a false lien statement against public officers or public employees. The following analysis was shared with the committee:

ANALYSIS

This legislation would create the criminal offense of filing a false lien statement against public officers or public employees. This felony offense was committed when a person knowingly files a false lien in a publicly available record against a public officer's or employee's property on account of the officer or employee's performance of official duties, while also knowing that the lien was false or contains a materially false representation. This crime would be punishable by imprisonment for one to ten years, a maximum fine of \$10,000, or both.

Testimony in support of the legislation was given by **Chief Timothy Snow** of Temple, Georgia.

Chairman Hamrick, 30th, asked for a motion on the legislation. Senator Bethel, 54th, moved **HB 997 Do Pass**. Senator Crosby, 13th, seconded the motion. **HB 997** passed (4-1 with one abstaining).

HB 997 DO PASS

NOTE: Yeas were Crosby, Carter, Bethel, and Stone. Nay was McKoon. Senator Cowsert abstained.

NOTE: Senator Albers, 56th, agreed to be the Senate sponsor of this legislation

HB 685 (Maddox, 172nd) Dogs; dangerous and vicious; extensively revise provisions

Representative Maddox, 172nd, presented **HB 685** to the committee. This legislation would create the ***Responsible Dog Ownership Law***, which would require the classification of dogs as dangerous or vicious and provide for regulation of those dogs. The following analysis was shared with the committee:

ANALYSIS

The intent of this legislation was to establish minimum standards for the regulation of dogs and to criminalize the violation of those regulations. Localities were not prohibited from adopting more restrictive regulations.

If a dog caused injury, death, or damage to a pet animal while off its owner's property, the owner would be considered civilly liable, whether the dog damaged public or private property.

This legislation authorizes the harming or killing of a dog if the dog is injuring a pet animal.

The Responsible Dog Ownership Law

Under the Responsible Dog Ownership Law ("Act"), a dog could be classified as either a dangerous dog or a vicious dog. A dog used by a law enforcement officer or military officer to carry out the officer's official duties could not be classified dangerous or vicious for actions taken during official use. Likewise, a dog could not be classified as dangerous or vicious if the person it injured was trespassing, abusing the dog, or committing a crime against the person.

Under the Act, every local government would be required to designate a person as the dog control officer. Localities would be authorized to consolidate dog control services. The dog control officer would be required to investigate whether a dog is subject to classification as dangerous or vicious when he received such a report. If the officer determined that the dog must be classified, he would be required to notify the owner within 72 hours. The notice would be required to include:

- A summary of the dog control officer's determination;
- A statement of the owner's right to request a hearing within 15 days;
- A form for requesting the hearing; and
- A statement that the determination would be effective if a hearing was not requested within 15 days.

A hearing would be required to be scheduled within 30 days of receiving the request, and the authority holding the hearing would be required to notify the owner at least ten days prior regarding the time, date, and place of the hearing. The authority would be required to mail the owner its determination within ten days after the determination, noting the effective date of the classification or the date of the euthanasia, whichever was applicable.

Any law enforcement officer or dog control officer who believed a dog poses a threat to public safety would be required to impound the dog.

A superior court judge would have the authority to order a dog's euthanasia if the dog seriously injured a human or presented a threat to humans, and either:

- The owner had been convicted of a dog-related crime, or
- A local government filed a civil action requesting the dog's euthanasia.

Any dog found to have caused serious injury to a human more than once must be euthanized.

An owner of a classified dog would be required to have a certificate of registration for that dog. Certificates would be nontransferable, may only be issued to persons over 18 years old, and may only be issued for one dog per household. A certificate must be issued if the dog control officer determines that certain conditions were met. Certificates may not be issued to anyone convicted twice or more under the Act, and one person may not have more than one vicious dog. Certain convicted felons would not be granted a certificate for a vicious dog. Owners must renew certificates annually.

An owner of a classified dog must notify the dog control officer if the dog was on the loose, has attacked a human, has died, or was euthanized. The classified dog must be re-registered if the owner moved. A vicious dog could not be transferred, sold, or donated to anyone.

A dangerous dog could not be off its owner's property unless it was restrained by a six-foot leash and was under the immediate physical control of someone capable of handling the dog, or was in a closed and locked cage or crate. A vicious dog could not be unattended with minors or outside a secured enclosure on the owner's property unless it was muzzled and leashed, or in a closed and locked cage or crate. Anyone who does not follow these vicious dog provisions would be committing a high and aggravated misdemeanor; however, if that person knowingly violated the provision and it resulted in the attack of a human, it would be considered a felony punishable by one to three years imprisonment and a maximum fine of \$20,000.

If the Act was violated, the dangerous or vicious dog would be required to be confiscated, and the owner would be allowed to recover the dog upon the payment of reasonable costs and proof of compliance with the Act. If the owner was not in compliance within 20 days, the dog would be euthanized.

Local government employees who failed to enforce the Act would be shielded from liability for damages or injury to a person by a dog. A violation of the Act would be considered a misdemeanor, punishable with a maximum fine of \$100 for the first offense, and a maximum fine of \$1,000 for each subsequent offense.

The effective date of this legislation would be July 1, 2012. Current owners of dogs would be required to comply with the Act by January 1, 2013.

There were several amendments offered on the legislation. Representative Maddox, 172nd, was not opposed to the amendments. Chairman Hamrick stated that the committee needed time to work on substitute language and that he would move the bill out at the next meeting once the substitute was drafted.

HB 685 TABLED

NOTE: Senators Cowsert, McKoon and Stone left the meeting.

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

Representative Weldon, 3rd, presented a substitute to **HB 272** (LC 21 1814S) to the committee. The following analysis was shared with the committee:

ANALYSIS

In juvenile court, current law allows judges to call a re-hearing at any time, and also requires a re-hearing if a party files a written request after receiving an order from an (unelected or unappointed) associate juvenile court judge. This bill would strike the language authorizing re-hearings, and would permit a duly appointed associate juvenile court judge to serve as judge pro tempore of a juvenile court in the event of the disqualification, illness, or absence of a juvenile court judge.

There was no opposing testimony.

Chairman Hamrick noted the quorum had been lost and stated the committee would come back for a vote once the quorum was re-established.

NOTE: Senator Buddy Carter came and stayed for a short time as Ex-Officio to try and help make quorum but had to go back to the Health and Human Services Committee.

HB 272 Discussion Suspended

HB 397 (Powell, 171st) State government; open meetings and records; revise provisions

Representative Powell, 171st, presented a substitute to **HB 397** (LC 29 5214ERS). This legislation would simplify the law regarding open meetings by eliminating ambiguities and incorporating judicial interpretations of the law. The following analysis was shared with the committee:

ANALYSIS

This legislation clarifies the definition of a “meeting.” A meeting does not include a gathering of less than a quorum unless smaller groups meet with the intent of circumventing the law. A meeting would not include property inspections, seminars, state or federal meetings, or social occasions absent an intent to evade or avoid the law. Under this legislation, all final votes must be taken in an open session. If an action is taken during an illegal meeting, a suit to void that action could be brought within six months.

Likewise, this legislation defines “executive sessions” as portions of meetings lawfully closed to the public. Such sessions are permitted during discussions of the disposal or lease of real estate. In an executive session, the members are allowed to vote on a number of issues, including real estate decisions and settlements for which the attorney-client privilege applies. Finalists for executive offices could be interviewed in executive

sessions. Discussion of exempt portions of records could occur in executive sessions if there was no reasonable means to hear the record without disclosing the exempt portions.

The bill limits the use of meetings by telephone for local governments by only allowing teleconference meetings during an emergency. In other circumstances, a member could teleconference if he or she has a health reason for not attending the meeting in person, but could teleconference no more than twice a year.

Open Records

The public policy of the state is in favor of open government, and public access to records is encouraged. There is a presumption that public records could be available for inspection immediately, and the law regarding this should be broadly construed. Exceptions to this policy should be interpreted narrowly.

Data and data fields would now be considered to be “records.” An agency would be allowed to designate an open records officer to whom requests should be directed. Fees for copying records were reduced from \$.25 per page to \$.10 per page. An agency could charge for records even if they were not picked up. The bill provides procedure for agencies in cases where the cost of producing records would be over \$25 or over \$500.

Requests for records may be oral or written, but only written requests would be subject to criminal and civil enforcement proceedings and penalties. Requests for emails or electronic messages would be required to be as detailed as possible.

The exemptions from disclosure were clarified. The attorney-client privilege was broadened, but did not include factual findings related to an investigation conducted by an attorney on behalf of the agency in some cases. Likewise, attorney work product would be exempted from disclosure requirements, but did not extend to factual findings.

Violations of the open records and open meetings provisions were essentially the same. The bill increased fines for violations of open records or meetings by imposing a maximum fine of \$1,000 for the first violation and \$2,500 for additional violations made within one year. Fines could be imposed in both civil and criminal proceedings, although only knowing and willful violations will lead to fines or criminal convictions. There would be no good faith defense for civil penalties.

Testimony in support of the legislation was given by:

Sam Olens, Attorney General

Nels Peterson, Office of Attorney General

Otis Raybon, Rome News-Tribune

Marci Rubensohn, GMA

Jim Grublak, ACCG

Testimony in support of the legislation but with an amendment offered:

Burns Newsome, Board of Regents

Testimony in opposition to amendment was given by:
Tom Clyde, Attorney, Atlanta Journal Constitution
Holly Manheimer, Georgia First Amendment Foundation

NOTE: Senators McKoon and Stone left other committee meetings and returned to help make quorum for a vote.

Chairman Hamrick noted that there was now a quorum and therefore asked for a motion on **HB 397**. Senator Bethel, 54th, moved ***HB 397 Do Pass by Substitute***. Senator Carter, 42nd, seconded the motion. Having a motion on the bill, Chairman Hamrick then asked for any amendments on the legislation.

Senator Carter, 42nd, offered an amendment which would strike “Chancellor or,” at line 733. Senator Carter, 42nd, moved Do Pass on his amendment and Senator Crosby, 13th, seconded the motion. The amendment passed (5-0 with Senator McKoon abstaining).

NOTE: Yeas were Hamrick, Crosby, Bethel, Carter, and Stone. McKoon abstained.

Chairman Hamrick, 30th, then asked for a motion on the amendment offered by the Attorney General’s office which addresses economic development issues. Senator Bethel, 54th, moved Do Pass. Senator Carter, 42nd, seconded the motion. The amendment passed (5-0 with Senator McKoon abstaining).

NOTE: Yeas were Hamrick, Crosby, Bethel, Carter, and Stone. McKoon abstained.

Chairman Hamrick, 30th, asked for a motion on the legislation as amended. Senator Bethel, 54th, moved ***HB 397 Do Pass by Substitute***. Senator Crosby, 13th, seconded the motion. **HB 397** passed (5-0, with one abstaining).

HB 397 DO PASS BY SUBSTITUTE

NOTE: Yeas were Hamrick, Crosby, Carter, Bethel, and Stone. Senator McKoon abstained.

NOTE: Senator Bethel, 54th, agreed to be the Senate sponsor of this legislation

Chairman Hamrick, 30th, then asked for a motion on the **HB 272** which had been tabled earlier in the meeting due to lack of quorum. Senator Bethel, 54th, moved ***HB 272 Do Pass by Substitute***. Senator Carter, 42nd, seconded the motion. **HB 272** passed (5-0, with one abstaining).

HB 272 DO PASS BY SUBSTITUTE

NOTE: Yeas were Hamrick, Crosby, Carter, Bethel, and Stone. Senator McKoon abstained.

NOTE: Senator Bethel, 54th, agreed to be the Senate sponsor of this legislation

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

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Wednesday, March 21, 2012

The Senate Judiciary Committee held its thirteenth meeting of the 2012 Session on Wednesday, March 21, 2012, in room 307 of the Coverdell Office Building. Chairman Bill Hamrick called the meeting to order at 2:15 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator Bill Cowsert, 46th, Vice Chair
Senator John Crosby, 13th, Secretary
Senator Jason Carter, 42nd
Senator Vincent Fort, 39th
Senator Charlie Bethel, 54th
Senator William Ligon, Jr., 3rd
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

NOTE: Senators Ramsey, Sr., 43rd, and Hill, 32nd, were absent from the committee

Chairman Hamrick called the meeting to order.

HB 1198 (Meadows, 5th) Parent and child; grandparent visitation rights; modify provisions

Representative Meadows, 5th, presented **HB 1198** to the committee. This legislation would provide factors a court must consider in determining whether a child's health and welfare would be harmed in the absence of grandparent visitation, and permit a court to award grandparent visitation where the parent was deceased, incapacitated, or incarcerated. The following analysis was shared with the committee:

ANALYSIS

This legislation set out factors a court would be required to consider when determining whether the health or welfare of a child would be harmed without grandparent visitation. Currently, there was no presumption in favor of grandparent visitation, but this legislation would strike that language. Instead, this legislation would create a rebuttable presumption that a child denied contact with his grandparents could suffer emotional injury harmful to his health. A parent's decision regarding grandparent visitation would not be considered conclusive when the lack or absence of grandparent contact would result in emotional harm to the child.

Grandparent visitation, if so ordered, would have the requirement of being at least one day per month and would not be allowed to interfere with the child's school or regularly scheduled extracurricular activities.

A court could award grandparent visitation in cases where the parent was deceased, incapacitated, or incarcerated if it found that visitation would be in the child's best interests. The custodial parent's judgment regarding the child's best interests would be given deference, but would not be considered conclusive.

Custodial parents could also be required to notify grandparents of the child's public performances.

Chairman Hamrick stated that **HB 1198** was sent to a subcommittee chaired by Senator Bethel, 54th, and he asked Senator Bethel to share the subcommittee report. Senator Bethel stated that the subcommittee discussed the legislation thoroughly with Representative Meadows and heard testimony for and against the legislation. The subcommittee was satisfied that this was good legislation and voted unanimously in favor of moving **HB 1198** to the full committee for favorable passage.

Chairman Hamrick, 30th, asked for a motion on the legislation. Senator Bethel, 54th, moved **HB 1198 Do Pass**. Senator Cowsert, 46th, seconded the motion. **HB 1198** passed unanimously (6 – 0).

HB 1198 DO PASS

Representative Meadows then asked that the bill be amended to change the effective date of the legislation to "upon the signature of the Governor." Chairman Hamrick asked for a motion to reconsider. Senator Bethel, 54th, moved to reconsider **HB 1198**. Senator Cowsert, 46th, seconded the motion. The motion to reconsider passed unanimously (6 – 0). Senator Bethel then offered the amendment to change the effective date of the legislation to "upon the signature of the Governor." Chairman Hamrick asked if there were any objections to the amendment. Seeing there were no objections, Chairman Hamrick asked for a motion on the bill as amended. Senator Bethel, 54th, moved **HB 1198 Do Pass by Substitute** (LC 29 5226S). Senator Cowsert, 46th, seconded the motion. **HB 1198** passed unanimously by substitute (6 – 0).

HB 1198 DO PASS BY SUBSTITUTE

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Fort, and McKoon

NOTE: Senator Bethel agreed to be Senate sponsor for this legislation.

HB 685 (Maddox, 172nd) Dogs; dangerous and vicious; extensively revise provisions

Chairman Hamrick, 30th, presented a substitute to **HB 685** (LC 29 5275ERS) stating that Representative Maddox had presented the bill which would create the **Responsible Dog Ownership Law** to the committee at the last meeting. Chairman Hamrick continued with the statement that overall the committee was supportive of the legislation but wished to change the language from a felony to a high aggravated misdemeanor. Representative

Meadows supported this change. Chairman Hamrick asked for a motion on **HB 685** by substitute. Senator Crosby, 13th, moved ***HB 685 Do Pass by Substitute***. Senator Carter, 42nd, seconded the motion. **HB 685** passed unanimously by substitute (6-0).

HB 685 DO PASS BY SUBSTITUTE

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Fort, and McKoon

NOTE: Chairman Hamrick agreed to be Senate sponsor this legislation.

HB 942 (Willard, 49th) Official Code of Georgia; revise, modernize and correct errors or omissions (LC 33 4420)

Representative Willard, 49th, presented **HB 942** to the committee as legislation which would revise, modernize and correct errors or omissions in the Code pursuant to the Code Revision Commission's work.

Chairman Hamrick asked for a motion on **HB 942**. Senator Carter, 42nd, moved ***HB 942 Do Pass***. Senator Crosby, 13th, seconded the motion. **HB 942** passed unanimously (6-0).

HB 942 DO PASS

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Fort, and McKoon

NOTE: Chairman Hamrick agreed to be Senate sponsor for this legislation.

HB 1048 (Willard, 49th) Civil practice; who may serve process; change provisions

Representative Willard, 49th, presented **HB 942** to the committee as legislation which would change provisions related to who may serve process. This legislation would impose a filing fee of \$58 on applications for appointment as a certified process server and would provide that process may be served by a certified process server as provided in O.C.G.A. § 9-11-4.1.

Chairman Hamrick asked for a motion on **HB 1048**. Senator Fort, 39th, moved ***HB 1048 Do Pass***. Senator Carter, 42nd, seconded the motion. **HB 1048** passed unanimously (6-0).

HB 1048 DO PASS

NOTE: Yeas were Cowsert, Crosby, Bethel, Carter, Fort, and McKoon

NOTE: Senator Bethel agreed to be Senate sponsor for this legislation.

HB 641 (Willard, 49th) Courts; juvenile proceedings; substantially revise provisions

Representative Willard invited **Kirsten Widener**, who has worked for several years on the rewrite for the Barton Child Law and Policy Center at Emory University's School of Law and Just Georgia, to help him summarize **HB 641**, which is the House version of the Juvenile Code Rewrite.

The following analysis was shared with the committee:

ANALYSIS

- The majority of this summary was provided by the Barton Child Law and Policy Center at the Emory University School of Law.
- Differences between this bill and SB 127 as it passed the Senate Judiciary Committee were italicized.
- Notably, this version would create a Juvenile Code Commission and would strike the Senate language exempting public defenders from juvenile representation.

Part I – Juvenile Code

Article 1 – General Provisions

Article 1 provided general definitions and principles that would apply in all juvenile court code proceedings. Specifically, Article 1:

- Provided clear definitions of key terms, including:
 - **Abuse.** The current juvenile court provisions did not include a definition of abuse. The Act defined abuse to include emotional abuse and prenatal abuse, in addition to physical abuse and sexual abuse and exploitation.
 - **Child in Need of Services.** This definition would create a new designation to take the place of what was currently called an “unruly” child. Detailed provisions related to this new designation were found in Article 6.
 - **Dependency.** Currently, Georgia used the term “deprivation” to describe cases where the court intervenes to protect children from abuse and neglect. The Act changed this term to “dependency,” which was the term used in all other states for these cases.
 - **Imminent Danger.** This definition helped to clarify the level of threat that justified removal of a child from his or her home.
 - **Party.** This definition clarifies that children were parties to juvenile court proceedings involving their interests.
- Required that, whenever possible, the same judge should preside over all proceedings involving a particular child or family.
- Clarified how time should be calculated for purposes of time-limited provisions.
- Allowed the court to consolidate proceedings if the same child was alleged to be both deprived and delinquent, or in need of services.
- Clarified that a child, as a party, has a right to be present during juvenile court proceedings involving him or her, but allowed the court to exclude the child from any part of a dependency proceeding that the court found was not in the child's best interest to attend.
- Allowed the court to refer cases for mediation if appropriate.

- Outlined factors the court should consider when evaluating the best interests of a child, *aligned as closely as possible with similar factors in the domestic relations section of the Georgia Code, while still respecting the uniqueness of the cases facing juvenile courts.*
- Protected children from having statements they make in court-related physical or mental health screenings, evaluations or treatment from being used against them at the adjudicatory phase of any proceeding *except for impeachment or rebuttal*, but allowed courts to consider those statements in determining the child's placement or other dispositional matters.
- Prohibited children under the juvenile courts' jurisdiction from being confined in adult criminal detention facilities before they reach the age of majority.
- Clarified the applicability of privacy laws in the juvenile court system, and outlined the steps required for access to different types of information.

Article 2 – Juvenile Court Administration

Article 2 governed the creation and administration of juvenile courts and the appointment of judges. Article 2 would reorganize existing provisions and make minor stylistic revisions. It contained very few substantive changes from current law, which are that it:

- Added the Department of Juvenile Justice to agencies whose records the Council of Juvenile Court Judges were authorized to inspect for the purposes of compiling statistical data on children.
- Required juvenile court judges to complete at least 12 hours per year of continuing education established or approved by the Council of Juvenile Court Judges.
- Required anyone appointed as a pro tempore judge to have the same qualifications as other juvenile court judges.
- Clarified that the Department of Juvenile Justice retains authority over the duties and responsibilities of their employees who serve as probation and intake officers, *and that these duties cannot include things that could be construed as the practice of law.*

Article 3 – Dependency

Article 3 related to cases involving children who have been abused or neglected by the adults responsible for their well-being. The Act would rename what was currently known in Georgia as “deprivation” cases, because the children were considered to have been deprived of proper care, to stress the child's relationship with the court and provide consistency with national standards. Article 3 reorganized current law, and made the following changes:

- Clarified the purpose of dependency proceedings, stressing timeliness, permanency and protection.
- Allowed child abuse and neglect investigators to request court-ordered physical or psychological evaluations of children or their parents. Courts were to review these requests using a probable cause standard.
- Changed the name of 72-hour hearing in dependency cases to the “preliminary protective hearing.”

- Consolidated provisions related to the timeframes in which different steps in a dependency case must occur into one code section for ease of reference.
- Shortened the timeline for holding a permanency planning hearing for children under the age of seven. Currently, all children were on the same timeline, which required a permanency hearing within twelve months after their entry into foster care. The Act would leave this timeline in place for children aged seven and older, but shorten it to within nine months for younger children and the siblings of younger children.
- Clarified that children in all dependency cases were entitled to attorneys *and a guardian ad litem, and that the same person can be appointed in both capacities unless or until a conflict arises between an attorney's duties to the child as client and the attorney's considered opinion of the child's best interests.* The child's right to an attorney cannot be waived.
- *Stressed the important role a Court Appointed Special Advocate ("CASA") can play, and that appointment of a CASA may be appropriate even if the child's attorney was also serving as guardian ad litem.*
- A child could also be appointed a Court Appointed Special Advocate ("CASA") in addition to an attorney serving as a guardian ad litem, and the CASA's role was to advocate for the best interests of the child.
- Provided specific guidance for attorneys and courts regarding when deviations from case timelines could be requested and granted. These deviations, known as "continuances," would be required to be for good cause and could not be granted simply because the parties agreed or because a later time would be more convenient. The court would be required to always consider the child's interests, giving particular weight to the child's need for prompt resolution and stability.
- Created a presumption that visitation between a child and his or her parents or other relatives should be unsupervised, unless the court finds that unsupervised visitation was not in the child's best interests.
- Allowed the court to issue an oral or electronic order for the removal of a child from his or her home. When this occurred, an affidavit containing supporting evidence must be submitted to court the next business day and the court must issue a written order.
- Emphasized that siblings who were taken into the state's care should be kept together whenever possible.
- Clarified the rules governing the gathering of information related to a case, known as "discovery." The Act provided clear guidelines about which common evidence in a dependency case must be given to another party upon request, and which required consent or a court order. Requested information would be required to be provided within five days or by 72 hours before the hearing, to accommodate the quick pace of proceedings in juvenile court. The court would have discretion to prevent disclosure of evidence that may be harmful, and to sanction parties who fail to comply with discovery rules.
- Described content that should be included in social study reports, stressing the need for information about children's relationships with their siblings and extended family and consideration of how these relationships could best be maintained.

- Outlined the requirements for case plans.
- Clarified that the Division of Family and Children Services (“DFCS”) must show they have made reasonable efforts to preserve or reunite the family or to find another permanent home for the child at every hearing, and provided factors for the court to consider in determining whether reasonable efforts have been made.
- Changed one of the exceptions to the requirement to make reasonable efforts to preserve or reunify a family. Currently, reasonable efforts do not need to be made if the parental rights of the parent to a sibling of the child have been terminated. Under the Act, to apply this exception to the reasonable efforts requirement, the court would be required to also determine whether the parent has resolved the issues that led to the termination of his or her parental rights to the sibling.
- Improved compliance with federal law regarding permanency alternatives by eliminating the option for a court to place a child in someone’s long-term custody without creating a legal guardianship.
- Required the court to make detailed findings to support placement and case plan decisions, known as “dispositions.” In making these findings, the court was to consider the child’s attachments to significant people and his or her school, home, and community.
- Removed the time limitation on temporary custody orders. Under current law, a court may only grant temporary custody to DFCS for twelve months, and can extend that custody order by no more than an additional twelve months. Under the Act, custody orders would not be time limited. Instead, they would last until a contrary order was made or the purpose of the order has been fulfilled.
- Required an initial review hearing within 75 days of a child’s removal from his or her home, and a subsequent review hearing within four months after that. Currently, the initial review should happen within 90 days, and subsequent reviews occur at six month intervals.
- Identified specific findings that must be made by the court at review hearings, requiring that the court evaluate whether the child continues to be dependent and whether the placement, case plan, and services offered to the child and the parents continue to be appropriate.
- Eliminated the option for courts to delegate permanency hearings to citizen review panels. These hearings would be required to be conducted by judges.
- Detailed the requirements for permanency planning reports. DFCS must document the steps that will be taken to move the child to a permanent home, and if the plan was not reunification, adoption, or permanent guardianship, DFCS must document a compelling reason for a different plan. For children aged 14 and older, the report must also describe services that would be provided to help the child prepare for independent living in adulthood.
- Identified specific findings that must be made by the court at permanency hearings.
- Continued the presumption of termination of parental rights if a child could not be reunified with his or her parent, but expanded the list of exceptions to this presumption when termination may not be in the best interests of the child.

Article 4 – Termination of Parental Rights

Article 4 governed cases involving a petition to involuntarily terminate the rights of a parent to the custody and control of his or her child because the parent was unable to safely and adequately care for the child. These petitions generally followed dependency proceedings, and therefore several provisions cross-reference or incorporate changes made by Article 3. Additionally, Article 4 of the Act:

- Clarified the purpose of termination of parental rights (“TPR”) proceedings, stressing timeliness, and protection of parties’ constitutional rights.
- Allowed a child to retain the right to inherit from his or her natural parents and to receive any government or other benefits associated with the parent after TPR until the child was adopted by another family.
- Preserved a child’s relationships with siblings and other extended family after TPR until the child was adopted by another family.
- Prevented a parent from voluntarily surrendering his or her parental rights to anyone except for DFCS once a petition for TPR had been filed with the court. Currently, a parent could surrender their rights so that the child may be adopted by a family member or other person of the parent’s choosing at any time.
- Provided language that must be included in a notice to a parent when a petition for TPR was filed. This language explained in clear terms the effect of a court order terminating parental rights and advised the parent that they are entitled to be represented by an attorney.
- Required that transcripts of TPR hearings be produced within 30 days of the filing of an appeal of a TPR order, unless there was just cause for delay.
- Shortened the length of time of a parent’s failure: (1) to develop and maintain a bond with the child; (2) to provide support; or (3) to comply with court-ordered reunification services that should be scrutinized by the court in determining whether the parent had provided proper care or control. Under current law, if a child was not in his or her parents’ custody, the court looked at the bond, support and participation in services over a year or more. Under the Act, this time frame is reduced to six months.
- Clarified that a parent’s reliance on prayer or spiritual healing instead of medical care does not, by itself, constitute grounds for termination of parental rights.
- Required the court to inform the parents whose rights had been terminated of their rights to use the services of the Adoption Reunion Registry.
- Eliminated the option to place a child with an organization outside of the adoption and foster care system for long-term care of the child without adoption or guardianship after TPR.
- Allowed a child who has not been adopted and was unlikely to be adopted to ask the court to reinstate his or her parents’ parental rights under certain circumstances. In making the determination of whether to grant the request, the court would be required to hold a hearing and consider whether the parent had remedied the situation that resulted in the TPR and whether reinstatement of parental rights was in the child’s best interests. The court retained supervision over the case for six months after the request was granted, and could return the child immediately or order a gradual transition with appropriate DFCS services.

Article 5 – Independent Living Services

Article 5 created a completely new set of provisions intended to ensure that deprived children in foster care were given the opportunity and assistance they need to plan for their futures, learn necessary skills for independence, and get off to a good start in their adult lives. Specifically, Article 5:

- Required DFCS to administer a system of services to enable adolescents in foster care and young adults who had been in care until they turned 18 to enjoy a quality of life appropriate to their age and to make the transition to self-sufficient adulthood.
- Required DFCS to develop procedures to ensure that children in foster care could participate in age-appropriate opportunities such as sports and extra-curricular school activities.
- Encouraged opportunities for youth in foster care to interact with mentors.
- Provided children in foster care with support to plan for their futures. They would receive help from their caregivers and case workers on setting education and career goals, receive guidance about the steps necessary to achieve those goals, and, when possible, be offered internships and other work-related opportunities.
- Mandated individual assessment of the services each child should receive, so that these services reflected the individual child's needs and goals.
- Required DFCS to review a child's access to these services at least once a year while the child was between the ages of 14 and 16, and at least every six months while the child was between the ages of 16 and 18, and to evaluate the child's progress in developing needed independent living skills.
- Stated that information about the child's assessment, services, and reviews should be included in the written report DFCS provides to the court at periodic review hearings.
- Allowed certain children between the ages of 17 and 21 to live in subsidized independent housing as part of a plan leading to the child's total independence.
- Provided for aftercare services for young adults aged 18 to 23, including mentoring, tutoring, mental health services, substance abuse counseling, life skills classes, parenting classes, job skills training, and temporary financial assistance. Additional transitional services would also be available to meet critical needs of young adults who were in foster care or subsidized transitional living arrangements when they turned 18, and who were in foster care for at least six months before their 18th birthdays.
- Provided judicial oversight of independent living services. For children between the ages of 14 and 18, judicial review would occur as part of the usual dependency review and permanency hearings, with one additional hearing to be held within 90 days after the child turned 17. Judges would also review independent living services for young adults between ages 18 and 23 at least once a year.
- Outlined items children should be provided with as they transition to adulthood, including a Medicaid card, a copy of their birth certificate, and information regarding government benefits and public assistance.
- Encouraged children to attend all judicial reviews after their 17th birthdays.

- Allowed the court to hold DFCS in contempt if services that should have been provided to a child had not been provided and DFCS failed to correct the problem within 30 days.
- Required DFCS to follow the requirements of the Georgia Administrative Procedures Act in implementing this Article.

Article 6 – Children in Need of Services

Article 6 created a new approach for intervening with children who are currently considered “unruly.” Children in Need of Services (“CHINS”) included children who had committed an act that would not be against the law but for the fact that they were children, such as skipping school, running away from home, and violating curfew. CHINS also included children who are “habitually disobedient” to their parents and placed themselves or others in unsafe circumstances through their behavior. Currently, court intervention with these children was similar to intervention in delinquency cases. Under Article 6, the bill created a more holistic, service-oriented approach to these cases. Specifically, it:

- Acknowledged that these behaviors happen within the context of the family and school environment the child was in, and that the involvement of the family and other important people in the child’s life was important to protect the child and help him or her become a responsible member of society.
- Allowed a complaint indicating that a child was in need of services to be filed by a parent, DFCS, school, law enforcement, guardian ad litem, or prosecuting attorney.
- Provided that after a complaint was filed, the court intake officer was to convene a multidisciplinary conference, involving the child, his or her parents, DFCS, and any other agency that had the authority to provide services to the family. The court could order the participation of individuals necessary for a successful intervention, and could require the person under order to disclose relevant information for the purposes of developing a plan for the child.
- Empowered participants in the multidisciplinary conference to create an informal family services plan agreement, which identified services and actions that would mitigate the child’s inappropriate conduct and related problems within the family. A DFCS case worker would be assigned to ensure that the plan was implemented. The initial plan should extend for six months or less, but the court could extend it for an additional period of up to six months.
- Permitted the court intake officer to waive the multidisciplinary conference step when he or she believed it would be inappropriate or futile, such as in emergency circumstances or when the family had previously failed to comply with an informal family services plan.
- Proceeded to court oversight if the informal family services plan fails or was waived because it would be inappropriate or futile.
- Provided that a child was entitled to representation by an attorney at all stages of CHINS proceedings. The child’s right to an attorney could not be waived. The court could also appoint a guardian ad litem, when appropriate.
- Collected all time-frames for CHINS proceedings into one code section for ease of reference.

- Allowed a child in need of services to be taken into temporary custody if the child had run away from home, the child was in immediate danger from his or her surroundings, or the court made an order specifying that the child's welfare was endangered by remaining at home and reasonable services could not solve the problem.
- Clarified that in CHINS cases, the child should receive services in the least restrictive environment possible, preferably at home with their parents, but if that was not appropriate then in DFCS care.
- Ensured compliance with the federal Juvenile Justice and Delinquency Prevention Act by clarifying under what circumstances and for how long a child in need of services could be held in a secure detention facility. Specifically, the Act prohibited a child in need of services from being held in a jail or other detention facility intended for adults and limited the total time a child in need of services can be held in secure detention to no more than 24 hours before a court hearing and 24 hours after, unless certain exceptions applied.
- Allowed extended secure detention of a child who had violated a valid court order, provided that a hearing was held within 72 hours of the child being detained and other alternatives had been evaluated and determined to be inappropriate.
- Required a case plan for a child who was placed in out-of-home care, and detailed what this plan would include.
- Incorporated requirements of the federal Adoptions and Safe Families Act to children in need of services cases in order to allow Georgia to better access federal IV-E funding for some unruly children. These requirements included specific findings the court needed to make when a child was placed in out-of-home care, use of case plans, and periodic reviews of the case and the placement by the court.
- Required that a petition to have a court formally adjudicate that a child was in need of services must be filed by an attorney. The petition must state whether or not the family had been offered appropriate services.
- Provided that a petition that stemmed from a complaint filed by a school official must be dismissed unless the school had already attempted to resolve the problem through educational approaches, including evaluating a child for special education services if appropriate.
- Allowed the court to order child-serving agencies to attend court hearings or multidisciplinary conferences and to sanction the agencies if they failed to attend.
- Established that in order for a court to adjudicate that a child is in need of services, the allegations in the petition must be proved beyond a reasonable doubt.
- Retained most of the disposition options currently available for unruly children, including placing the child on probation and requiring restitution or community service, but also clarified that the court could order services for the child and/or his or her family, and that the child should not be placed in a correctional facility unless the child had violated a valid court order.
- Limited the duration of a disposition order to a maximum of two years, but allowed the court to extend for an additional two years after a hearing, if

- necessary. The court could also terminate the order early if the purposes of the order have been accomplished.
- Clarified that if a child violated probation, the court may modify the terms of the child's probation or make any other disposition that was originally available to the court when the child was adjudicated to be in need of services.
 - Required the court to review the child's disposition after three months, and then at least every six months after that until the order of disposition expires. If the child was placed in a foster home, the court must follow the review hearing and permanency planning requirements of Article 3.
 - Included children who have been found to be incurably incompetent to stand trial, meaning that because of a permanent disability or limitation they would never be able to understand the charges, the legal proceedings, and assist an attorney in their defense, for an act that would have been a crime if they were adults. These provisions were included in the child in need of services framework to ensure a collaborative response to these children. Children whose competence could be restored are subject to Article 8.

Article 7 – Delinquency

Article 7 related to cases involving children who have committed acts that would be crimes if the children were adults. These acts are known as “delinquent acts” and the cases are known as “delinquency” cases. Article 7 reorganized and clarified the delinquency provisions of current law, and made the following changes:

- Clarified that the purposes of delinquency proceedings included protecting the public interest, holding children accountable for their actions, rehabilitating children so that they can become productive members of society, and strengthening families.
- Consolidated all timelines related to delinquency proceedings into one code section for ease of reference.
- Clarified that the child and the state were the parties in delinquency proceedings. Parents were entitled to notice, the right to be present for hearings, and the right to be heard in those hearings, but were not parties.
- Provided that the child's right to be represented by an attorney could not be waived by the child's parent, and could only be waived by the child after the child had an opportunity to talk with an attorney about the implications of this decision.
- ***Gave the child's attorney the right to access documents related to the case from schools, service providers, and certain government agencies with the child's permission and a court order and therefore without having to obtain the consent of his or her parent.***
- Required the court to appoint a separate guardian ad litem for the child when his or her parent failed to come to court or was unwilling or unable to protect the child's best interests.
- Permitted the court to order a behavioral health evaluation of the child. Voluntary statements made in an evaluation, in the course of treatment, in an intake screening, or in any related service were inadmissible in an adjudication hearing.

- However, these statements could be admissible as rebuttal or impeachment evidence.
- Provided that continuances may only be granted if there was good cause, and that they should be as short as possible.
 - ***Excluded statements made by a child during intake, screening, treatment, or evaluation from evidence, meaning that these statements cannot be considered by the court, except as impeachment or rebuttal if the child tells a conflicting story in court.***
 - Clarified when the double jeopardy protection of the U.S. Constitution applied. Once the court accepted a child's admission or the first witness was sworn in for an adjudication hearing, the child could no longer be retried for the same offense if the current case was dismissed or ended in a finding that the child did not commit the act.
 - Incorporated requirements of the federal Adoptions and Safe Families Act for delinquency cases in order to allow Georgia to better access federal IV-E funding for some delinquent children. These requirements included specific findings the court needed to make when a child was placed in certain out-of-home care, use of case plans, and periodic reviews of the case and the placement by the court.
 - Required that intake officers use a detention assessment instrument, which was a standardized tool to evaluate the risks a child posed to the community and to him or herself, to determine whether a child who had been taken into custody should be held in detention pending a court hearing or should be released to his or her parents.
 - Clarified that children held for delinquent acts were entitled to request bail and must be told of their right to do so. The court could release a child on bail if the child was likely to appear in court when required, did not pose a significant threat to the community or his or herself, and did not pose a significant risk of committing a felony, intimidating witnesses, or obstructing justice upon release. Bail would be required to be posted by an adult blood relative, legal custodian, or stepparent.
 - Clarified that a child accused of a delinquent act, who would otherwise be released, could not be held in secure detention because the child has no parent or other person who can provide appropriate supervision. These children should be treated as dependent children under Article 3. Ensured compliance with the federal Juvenile Justice and Delinquency Prevention Act by strictly limiting the circumstances and amount of time for which a child can be held in an adult detention facility, and by requiring that children who were in these facilities be kept completely separated from the adult residents there.
 - Provided procedural guidance for intake and arraignment, requiring that a child be informed of the contents of the complaint, the nature of the proceedings, the possible consequences, and their rights with respect to their detention and the proceedings. It also clarified that ***a court cannot accept an admission from a child at arraignment unless he or she is represented by a lawyer at the arraignment or has consulted with an attorney as to the advisability of admitting or denying the charge.***

- Added factors that should be considered in determining whether filing a petition or proceeding by informal adjustment was in the public and the child's best interests. "Informal adjustment" meant a minimal level of short-term supervision, the successful completion of which led to the dismissal of the complaint.
- Required that a prosecuting attorney file a delinquency petition. Under current law, any person can make a delinquency petition, which then must be endorsed by the juvenile court as being in the best interest of the public or child.
- Required the petition to specify if the child was being charged with a designated felony. "Designated felonies" were violations of certain criminal code sections that were considered particularly serious and carry more severe penalties.
- Clarified the process for service of summons, which was the legal notice that a hearing was to be held and that the person being served was required to attend. The court could issue a bench warrant, which was an order to bring the person before the court, if a child above a certain age or a parent failed to attend a hearing for which he or she has been summoned.
- Retained provision requiring transfer of a case to superior court for adult criminal proceedings if a child over 13 years of age was alleged to have committed certain specifically listed offenses, such as murder or rape.
- ***Allowed the superior court to transfer cases involving aggravated sodomy, aggravated child molestation, and aggravated sexual battery to the juvenile court for extraordinary cause.***
- ***Retained the optional transfer to superior court of cases involving children aged 15 or older who are alleged to have committed acts that would be felonies if they were adults, and cases involving children aged 13 and 14 who are alleged to have committed acts which would carry a life sentence if they were adults or would be aggravated battery that resulted in serious bodily injury to the victim.***
- Added criteria that should be considered by the court in determining whether to make an optional transfer to superior court. Statements made by the child during a transfer hearing could not be used against him or her except as impeachment or rebuttal evidence, ***in the criminal trial if the hearing does result in a transfer.***
- ***Allowed the court to order a transfer evaluation of the child be performed by the Department of Behavioral Health and Developmental Disabilities or a licensed psychologist or psychiatrist. The purpose of the evaluation would be to provide information on the child's behavioral health status, treatment needs, and receptiveness to rehabilitation, to help inform the court's decision about whether to grant a requested transfer to superior court.***
- Allowed a child to immediately appeal the decision to transfer his or her case to superior court, and provided that the criminal proceedings must be halted until that appeal was decided.
- Stated that a child whose case was transferred to adult court should remain in juvenile, rather than adult, detention facilities until the child turns 17.
- Required that if multiple charges arose from the same actions by the child, or a "single criminal transaction," all the related charges must stay together and either be all kept in juvenile court, or all transferred to superior court.
- Provided procedural guidance for the court's acceptance of a child's admission or denial of the charges, and for adjudication hearings.

- Outlined the information that should be included in a probation officer’s report to the court providing information and recommendations for disposition. Specifically, the report should include information on the child’s background, relationships, home environment, prior contact with law enforcement and the courts, educational status, and medical and psychological evaluation results. It should also examine the circumstances of the crime, including its seriousness, and any aggravating or mitigating factors.
- *Allowed the court to order a behavioral health evaluation of the child be performed by the Department of Behavioral Health and Developmental Disabilities or a licensed psychologist or psychiatrist. The purpose of the evaluation would be to provide information on the child’s behavioral health status and treatment needs, to help inform the court’s disposition order. The evaluation would be optional in most cases, but must be ordered and considered by the court before the child can be given a disposition involving secure detention.*
- Retained the current disposition options for a delinquent child, but clarified that the court should select the least restrictive option that was appropriate under the circumstances of the individual case.
- Added additional factors for a judge to consider in determining whether to order restrictive custody for a child who had committed “designated felony,” a delinquency classification requiring that a child be committed to the Department of Juvenile Justice (DJJ) custody for a substantial period of time. Specifically, the court must now consider the child’s maturity, culpability, and educational and dependency background.
- Provided flexibility to judges in determining the length of sanctions for children adjudicated of a designated felony. Currently, if a court determines that restrictive custody was required, the child must be committed to DJJ for five years and must serve a minimum of one year in confinement, followed by at least 12 months of intensive supervision. Instead of mandating set time frames, the Act would permit commitment to DJJ for a period up to five years, of which a minimum of six months must be served in restrictive custody. Intensive supervision would be optional and was not to exceed 12 months.
- Required that a child receive credit for time spent in secure confinement in connection with the proceedings and that this time be deducted from detention time imposed at disposition.

Article 8 – Competency in Delinquency Cases

Article 8 governed the way courts determine whether a child was competent to participate in delinquency proceedings, and how the court responds to a child who was not competent. Article 8 of the Act revised current law regarding competency in juvenile proceedings. *Competency was important because due process required that people not be subjected to the possible loss of their liberty in criminal or delinquency cases unless they understand the charges, the legal proceedings, and have the capacity to effectively assist their attorney in their defense.* Specifically, it:

- Replaced the term “mental health evaluation” with “competency evaluation” for purposes of this article.

- Required that if a child under the age of 13 is accused of committing a serious violent felony, the court must order a competency evaluation before delinquency proceedings can move forward, *unless the parties agree as to the child's competency.*
- The court retained the ability it has under current law to order an evaluation on its own motion or the motion of any party.
- Provided different responses depending on whether it was likely that an incompetent child was likely to ever become competent. Current law used the same framework for all incompetent children.
- Required that when a court found that a child was unlikely to ever be competent to stand trial, it must dismiss the delinquency petition, appoint a plan manager, and order that a mental health plan be instituted for the child. If a child has been found incompetent due to their age or immaturity, and would become competent eventually but not in the near future, the same approach applies.
- *Allowed the court to order services for a child who was currently incompetent but may become competent in the near future. The purposes of the services were to help the child attain competency to participate in delinquency or child in need of services proceedings.*
- Stressed a preference for treatment in the least restrictive environment appropriate to the child's needs.
- Outlined the information that needs to be included in a court order for services to help the child attain competency. Specifically, the court order must include the name and location of the service provider, consideration of transportation for the child to services, and the length of time the services were to last.
- Required service providers to report on the child's progress on a schedule established by the court. The report must include the provider's view on whether the child could become competent in the near future, whether additional time would be needed for services, and other appropriate information. *Only a licensed psychologist or psychiatrist could offer an opinion to the court as to whether the child has achieved competency.*
- Clarified the requirements for competency review hearings and for reinstating delinquency proceedings once a child's competency was restored.

Article 9 – Parental Notification

Article 9 renumbered provisions of current law requiring notification of parents when people under the age of 18 seek abortions. The language of these provisions was not modified by the Act; the provisions were simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

Article 10 – Access to Hearings and Records

Article 10 governed access to hearings and records in juvenile proceedings. For the most part, Article 10 maintained the current level of confidentiality, with the following specific changes:

- Clarified that while the court may decide to exclude a child from certain portions of proceedings under Articles 3 and 4 if it is in the child's best interests, the child's lawyer could not be excluded.

- Added the Department of Juvenile Justice to the list of entities that should be notified when a child requested a hearing to have his or her juvenile delinquency or child in need of services records sealed.
- Eliminated language regarding children in the Department of Corrections, since under the Act, children under the juvenile court's jurisdiction cannot be kept in adult detention facilities.
- Removed language regarding the release of names or pictures of children to the press.
- Eliminated provisions giving school officials broad access to court and law enforcement records about a child, but continued to require notice to school superintendents in certain circumstances.
- Restricted access to court records in Children in Need of Services cases. They could only be inspected by the child, the child's attorney, probation officers, parents, and others entrusted with supervision of the child, unless additional access was granted by court order.
- Required that the court keep records of cases handled through informal adjustment or mediation, but limited the use of these records to decisions regarding how to handle a subsequent case involving the same child. The records may not be used as evidence at trial that a child should be adjudicated delinquent or in need of services.
- Clarified that court records regarding termination of parental rights may not be destroyed at any time, but rather must be permanently kept by the court.

Article 11 – Emancipation

Article 11 related to “emancipation,” which was the process by which a child becomes a legal adult responsible for his or her own care and able to enter into contracts and other adult transactions.

Emancipation also released parents from their obligations to the child and their rights to the care and control of the child. A child was automatically emancipated when they turn 18, when they marry, or when they enlist in the U.S. military. Current law also provided for a child who did not meet these automatic criteria to petition the court for early emancipation. Article 11 of the Act reorganized and clarified current law regarding emancipation, but did not make any substantive changes.

Article 12 – Child Advocate for the Protection of Children

Article 12 renumbered provisions of current law establishing the Office of the Child Advocate and governing its operation. The language of these provisions was not modified by the Act; the provisions were simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

Article 13 – Juvenile Code Commission

Article 13 created a new Juvenile Code Commission to monitor developments in federal law, best practices, and the needs of Georgia children and courts and make periodic recommendations for updates to the juvenile code. The purpose of this Commission

would be to prevent another lapse of 40 years before the code is systematically reviewed again. Specifically, Article 13:

- Created a Juvenile Code Commission consisting of 13 members, including:
 - A superior court judge;
 - Two juvenile court judges;
 - An appellate judge;
 - Two legislators, one from the Senate and one from the House;
 - The Commissioner of the Department of Juvenile Justice;
 - The Commissioner of the Department of Behavioral Health and Developmental Disabilities;
 - The Commissioner of the Department of Human Services;
 - The Director of DFCS;
 - A public defender who represents children;
 - A prosecutor who works in juvenile court; and
 - One other member of the Governor's choosing.
- Required that the Commission review the juvenile code at least every two years, and make recommendations as to whether changes are needed.

Part II – Children and Youth Services

This Part would impose a new requirement on the Department of Human Services to develop a procedure for children and young adults to appeal an eligibility determination. The Department would also be required to develop outcome and performance measures for the independent living skills programs for oversight purposes.

Part III – Cross References

This part updated cross references in the O.C.G.A. pursuant to the changes made in the bill.

Part IV – Effective Date

This bill would become effective on July 1, 2013 and would apply to all juvenile proceedings commenced on and after that date.

(SENATE PROVISION DELETED FROM HOUSE VERSION)

Part III – Indigent Defense

Under this bill, the circuit public defenders would no longer be required to represent juveniles in juvenile court cases facing disposition of confinement, commitment, or probation. The circuit public defenders would no longer be required to establish juvenile divisions specializing in juvenile defense within their offices.

Counties may contract with circuit public defender offices for juvenile defense in confinement, commitment, or probation, as well as the direct appeals of those proceedings. If a county does not contract with the circuit public defender, it must still abide by the policies and standards adopted by the Georgia Public Defenders Standards Council regarding juvenile proceedings.

Having shared the summary with the committee, **Representative Willard, 49th**, stated that the biggest problem with the passage of this legislation were questions regarding the actual costs of implementing some portions of the legislation. There were five amendments presented to the committee which addressed some of the concerns but not all of them. The amendments were as follows:

1) Amend the House Committee on Judiciary substitute to HB 641 (LC 29 5200ERS) by deleting lines 5888 through 5890.

2) Amend the House Committee on Judiciary substitute to HB 641 (LC 29 5200ERS) by replacing lines 4131 through 4136 as follows:

(a) Except in emergencies or when the court or the juvenile court intake officer determines it to be inappropriate or futile, upon the filing of a complaint alleging that a child is in need of services, the juvenile court intake office shall refer the case to DFCS and DFCS shall convene a multidisciplinary conference to be attended by the child, the child's parent, guardian, or legal custodian, DFCS, and any other agency or public institution having legal responsibility or discretionary authority to supply services to the family.

3) Amend the House Committee on Judiciary substitute to HB 641 (LC 29 5200ERS) by replacing lines 4932 and 4933 as follows:

evaluation before ordering restrictive custody for a child adjudicated for a designated felony act; provided, however, that such order shall not be required if the court has considered

4) Amend the House Committee on Judiciary substitute to HB 641 (LC 29 5200ERS) by replacing lines 6435 and 6436 as follows:

(a) If the court finds that the child is incompetent to proceed but the child's incompetence may be remediated, if the child is alleged:

- (1) To be a child in need of services, the court shall dismiss the petition without prejudice; or
- (2) To have committed a delinquent act, the court may order competency remediation services for the child.

By revising line 6452 as follows:

- (2) The child is alleged to have committed an act that

By revising lines 6470 and 6471 as follows:

(f) If the court determines that a child alleged to have committed a delinquent act is incompetent to proceed, the court may dismiss the petition without prejudice.

(5) Amend the House Committee on Judiciary substitute to HB 641 (LC 29 5200ERS) by replacing lines 5304 and 5305 as follows:

(b) The court may accept an admission at arraignment and may proceed immediately to disposition if a child is represented by counsel at arraignment or if a child has waived the right to counsel after consultation with an attorney as to the

wisdom of making an admission or denial at arraignment. Otherwise, the child may make a preliminary statement indicating whether he or she plans to admit or deny the allegations of the complaint at the adjudication hearing, but the court shall not accept an admission from a child at arraignment.

Chairman Hamrick stated that there was a letter in the folders from **Melvin Davis**, Association County Commissions of Georgia (ACCG) President and Oconee County Chairman, which explained the concerns regarding the fiscal impact this legislation could possibly have on county taxpayers. He recognized **Debra Nesbit** to speak on behalf of the ACCG. Ms. Nesbit reiterated the concerns and stated that the ACCG would like a fiscal note on the substitute to determine the costs before the legislation moved forward. Representative Willard was recognized to comment. He stated that the effective date (July 2013) on the bill would give everyone a year to work on a comprehensive fiscal analysis to alleviate any concerns about costs.

NOTE: Senator Stone arrived at the meeting.

Chairman Hamrick asked for a motion on the legislation. Senator Stone moved **HB 641 Do Pass**. Senator Crosby seconded the motion. Chairman Hamrick asked if there were any objections on any of the amendments from the committee. Seeing that there were no objections, Chairman Hamrick asked for a motion on **HB 641** as amended by the committee. Senator Stone moved **HB 641 Do Pass by Substitute**. Senator Crosby again seconded the motion. **HB 641** passed unanimously by substitute (7-0).

HB 641 DO PASS BY SUBSTITUTE

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

NOTE: Chairman Hamrick agreed to be Senate sponsor of this legislation

NOTE: Chairman Hamrick left the meeting and asked Senator Cowsert to chair the meeting in his absence.

HB 728 (Jasperse, 12th) Property; covenants; clarify provisions

Representative Jasperse, 12th, presented **HB 728** to the committee. He stated the intent of this legislation was to clarify the law's treatment of covenants running with the land created prior to zoning laws.

The following analysis was shared with the committee:

The General Assembly found that the law was silent regarding the treatment of covenants running with the land created prior to the existence of county or municipal zoning laws, and this bill would seek to clarify their treatment. If a zoning ordinance expressly acknowledged the continuing application of a restrictive covenant upon the ordinance's

initial enactment, the covenant would be effective until it expired on its own terms. This would apply to covenants created before the county or municipality adopted zoning laws.

Chairman Cowsert noted that there were several people signed up opposed to amending the legislation. Since there was no amendment offered there was no need to hear any testimony. Chairman Cowsert asked for a motion on **HB 728**. Senator Carter moved **HB 728 Do Pass**. Senator Fort seconded the motion. **HB 728** passed unanimously (6-0).

HB 728 DO PASS

NOTE: Yeas were Crosby, Bethel, Carter, Fort, McKoon, and Stone.

NOTE: Senator Gooch, 51st, agreed to be Senate sponsor of **HB 728**.

HB 541 (Epps, 140th) Obstruction of public administration; threaten or intimidate officer or official; provide for offense

Representative Epps, 140th, presented **HB 541** to the committee as legislation intended to address intimidation of Law Enforcement Officers. He stated this legislation would prohibit anyone from threatening or intimidating a law enforcement officer or his family in retaliation to the officer's official duties. This offense would be punishable by a maximum fine of \$5,000, up to 20 years of imprisonment, or both. Representative Epps invited **Major Jamie McDaniel**, Twiggs County Sheriff's Office, to share his experience with intimidation with the committee and why he felt this legislation, which mirrored the retaliation law in Tennessee, was a necessary protection for public servants.

NOTE: Chairman Hamrick returned to the committee. Senator McKoon left the meeting.

Chairman Cowsert thanked Major McDaniel for his testimony but did have some concerns about the legislation which several members of the committee shared. Two amendments were offered by the committee:

(1) Senator Bethel, 54th, offered to amend the legislation on line 17, by taking out the words "or impede" and inserting "outside the scope and course of his/her employment."

(2) Chairman Cowsert offered to amend the legislation by changing the penalty from a felony to a misdemeanor.

Chairman Cowsert asked for a motion on the legislation. Senator Bethel, 54th, moved **HB 541 Do Pass**. Senator Hamrick, 30th, seconded the motion. Chairman Cowsert asked if there were any objections to the amendments offered. Seeing none, he asked for a motion on **HB 541** as amended by the committee. Senator Bethel, 54th, moved **HB 541 Do Pass by Substitute**. Senator Hamrick, 30th, seconded the motion. **HB 541** passed by substitute unanimously (6-0).

HB 541 DO PASS BY SUBSTITUTE

NOTE: Yeas were Hamrick, Crosby, Bethel, Carter, Fort, and Stone.

NOTE: Senator Staton, 18th, agreed to be Senate sponsor this legislation.

NOTE: Chairman Hamrick resumed his role. Senator Ligon, Jr., arrived at the meeting.

HB 342 (McKillip, 115th) Stalking; family violence order; define

Representative McKillip, 115th, presented **HB 342** to the committee stating the intent of the legislation was to broaden the definition of what was considered a “family violence order.”

The following analysis was shared with the committee:

Currently, violating the terms of a family violence temporary restraining order, temporary protective order, permanent restraining order, or permanent protective order issued against oneself would be considered to be a violation of a family violence order. Under this bill, the definition of a family violence order would be amended to include pretrial release orders issued as a result of an arrest for an act of family violence, as well as probation orders issued as a result of a conviction, plea of guilty, nolo contendere, or first offender to an act of family violence. Therefore, a violation of these orders would also be considered a violation of a family violence order.

NOTE: Senator McKoon returned to the meeting.

Judge Charles Spahos spoke in favor of the legislation as a necessary measure to address process problems.

There were some concerns about unintended consequences amongst the members of the committee.

Chairman Hamrick, 30th, asked for a motion on the legislation. Senator Stone, 23rd, moved **HB 342 Do Pass**. Senator Crosby, 13th, seconded the motion. **HB 342** passed (6 -2).

HB 342 DO PASS

NOTE: Yeas were Crosby, Bethel, Carter, Fort, McKoon, and Stone. Nays were Cowsert and Ligon, Jr.

NOTE: Senator Stone, 23rd, agreed to be Senate sponsor of this legislation.

HB 665 (Maddox, 127th) Clerk of superior court offices; modernize provisions

Representative Maddox, 127th, presented **HB 665** to the committee and stated that this legislation is intended to modernize provisions related to storage, collection, access, and transmittal of documents housed in superior court clerk offices.

The following analysis was shared with the committee:

This legislation would modernize the way superior court clerks were required to store and collect documents they were required to keep. Many of the proposed changes would allow for electronic storage or management on computer-based databases and digital images of documents, while some provisions would permit for a shorter period of required document retention. Some specific examples of this include:

- The general execution docket may be kept in an electronic database format.
- The clerk must retain deposition and discovery documents filed with him only until final disposition, after which he may destroy such documents, so long as he retains a digital image of those documents meeting Department of Archives and History standards.
- Liens and conveyances may be kept as digital images.
- The clerk's signature or stamp may be electronic.
- The clerk would be required to prepare maps and plats in accordance with the State Board of Registration for Professional Engineers and Land Surveyors, and the electronic entry of map or plat data would be permitted.
- The grantor-grantee index may be a computer-based management system.
- The search record and index may be an electronic, computer-based system.
- Personal property records books may be destroyed after five years of retention.
- Newspapers may be digitally imaged, and the newspaper designated as the legal organ may be required to provide copies containing legal advertisements in digital format to the clerk, probate judge, and sheriff by January 31 of each year.
- The clerk's fee table may be posted at the office or be made electronically available to the public.
- County documents may be kept on an electronic imaging medium, so long as daily backups are made.
- The clerk may cancel mortgages electronically.

This legislation also provides the procedure for a chief deputy clerk to become the clerk of the superior court if the clerk dies and provides for succession procedure, as well as special election procedure. If a suitable superior court clerk is not found, the judge of the probate court may act as the clerk for a set period. The legislation also provides for an interim clerk in case of the temporary absence of the clerk.

The bond amount a clerk must issue is also increased. The provision to allow local governments to supersede in the appointment of deputy clerks was deleted. Superior court clerk offices would be allowed to close for reasons other than inclement weather and to conduct employee training in certain circumstances.

The requirement to keep state journals and statutes in the clerk's office would be paid out of county or law library funds. If a contract for services or supplies requires county funds, those funds would be required to be obligated in the county budget at the time of the contract's execution. The county would be required to supply all fixtures, supplies, and equipment for the superior court clerk's office.

The Governor would be authorized to decide whether to investigate a superior court clerk because of criminal charges, alleged misconduct in office, or alleged incapacity to perform functions.

Testimony in favor of the legislation was given by **Greg G. Allen**, Superior Court Clerks.

NOTE: Senator McKoon left the meeting.

There were amendments offered by the committee and there were no objections to these amendments.

Chairman Hamrick asked for a motion on **HB 665** as amended by the committee. Senator Bethel, 54th, moved ***HB 665 Do Pass by Substitute*** (LC 29 5290ERS). Senator Carter, 42nd, seconded the motion. **HB 665** passed unanimously (7-0).

HB 665 DO PASS BY SUBSTITUTE

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

NOTE: Senator Bethel, 54th, agreed to be Senate sponsor of the legislation.

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

Representative Rice, 51st, presented **HB 198** to the committee stating the intent of this legislation was to extend the sunset date for superior court fees related to real estate and personal property.

Mike Holiman, Superior Court Clerks Cooperative Authority, spoke in support of the legislation.

The following analysis was shared with the committee:

Current law sets superior court fees pertaining to real estate and personal property to expire on July 1, 2014; this bill would extend the fees until July 1, 2016. The statute relating to the development of a statewide uniform automated information system would be repealed. However, the statute relating 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.

Chairman Hamrick asked for a motion on **HB 198**. Senator Carter, 42nd, moved ***HB 198 Do Pass by Substitute***. Senator Bethel, 54th, seconded the motion. **HB 198** passed unanimously (7-0).

HB 198 DO PASS BY SUBSTITUTE

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

NOTE: Senator Crosby, 13th, agreed to be Senate sponsor of the legislation.

HB 149 (Bearden, 68th) Magistrates; termination under certain circumstances; provide

Senator Cowsert, 46th, stated that the original language of this bill was removed and new language in the form of a substitute to **HB 149** (LC 29 5287S) was added which relates to the training and certification of court reporters which would change provisions relating to the prohibition of certain contracts.

There was no testimony for or against the legislation.

Chairman Hamrick, 30th, asked for a motion on **HB 149**. Senator Cowsert, 46th, moved ***HB 149 Do Pass by Substitute***. Senator Bethel, 54th, seconded the motion. **HB 149** passed unanimously (7-0).

HB 149 DO PASS BY SUBSTITUTE

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

NOTE: Senator Cowsert, 46th, agreed to be Senate sponsor of the legislation.

NOTE: Senator Cowsert left the meeting.

HB 1114 (Setzler, 35th) Homicide; offering to assist in commission of suicide; repeal certain provisions

Representative Setzler, 35th, presented **HB 1114** to the committee and stated that the intent of this legislation was to prohibit assisted suicide by making it a felony punishable by imprisonment for one to ten years.

The following analysis was shared with the committee:

In February, the Georgia Supreme Court struck down the state's assisted suicide law and stated that it violated free speech rights by making the act of promoting assisted suicide an element of the crime. This legislation would repeal the current law regarding assisted suicide that was struck down by the Supreme Court.

Under this bill, it would be a felony if a person knew that someone intended to commit suicide and knowingly and willfully assisted in that person's suicide. The offense would be punishable by imprisonment for one to ten years. Certain people were exempted from this prohibition, including:

- Those providing palliative care with the patient's consent;
- Those withholding treatment with the patient's consent;
- Those providing medicine pursuant to a living will or similar document;
- Those withholding treatment pursuant to a living will or similar document; and
- Those advocating on behalf of a patient in accordance with one of the above exceptions.

Any health care provider convicted of committing this offense would be required to notify the applicable licensing board within ten days, and upon such notification, the board would be required TO revoke the provider's license. This legislation also would provide for reasonable attorney fees and expenses for a prevailing plaintiff in a civil action for a homicide resulting from a violation of this statute. Any health care provider against whom a judgment was made in tort would be required to notify the applicable licensing board within ten days of the judgment against him.

NOTE: Chairman Hamrick left the meeting and asked Senator Crosby, 13th, to chair the committee in his absence.

Chairman Crosby stated that **HB 1114** was sent to a subcommittee chaired by Senator Bethel, 54th, and he asked Senator Bethel to share the subcommittee report. Senator Bethel stated that the subcommittee discussed the legislation thoroughly with Representative Setzler and heard testimony for and against the legislation. The subcommittee was satisfied that this was good legislation and voted unanimously in favor of moving **HB 1114** to the full committee for favorable passage with an amendment that would address some concerns brought up in subcommittee.

Chairman Crosby recognized Senator Bethel, 54th, who offered the following amendment drafted by Representative Setzler in hopes of addressing some concerns raised in subcommittee:

Amend **HB 1114** by inserting after "suicide;" on line 5 the following:
to amend Code Section 16-14-3 of the O. C.G.A, relating to definitions for the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," so as to provide for assisted suicide as a racketeering activity;

By replacing lines 27 through 41 with the following:

(1) Pursuant to a patient's consent or a consent pursuant to Code Section 29-4-18 or 31-9-2, any person prescribing, dispensing, or administering medications or medical procedures when such actions are calculated or intended to relieve or prevent such patient's pain or discomfort but are not calculated or intended to cause such patient's

death, even if the medication or the medical procedure may have the effect of hastening or increasing the risk of death;

(2) Pursuant to a patient's consent or a consent pursuant to Code Section 29-4-18 or 31-9-2, any person discontinuing, withholding, or withdrawing medications, medical procedures, nourishment, or hydration;

(3) Any person prescribing, dispensing, or administering medications or medical procedures pursuant to, without limitation, a living will, a durable power of attorney for health care, or an advance directive for health care; provided, however, that nothing in this paragraph shall be construed to condone, authorize, or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the process of dying as provided in Chapter 32 of Title 31;

By inserting between lines 55 and 56 the following:

SECTION 1 A.

Code Section 16-14-3 of the O.C.G.A., relating to definitions for the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," is amended by striking "or" at the end of division (9) (A) (xxxix), by striking the period and inserting in its place "or" at the end of division (9) (A) (x1), and by adding a new division to read as follows:

"(x1i) Code Section 16-5-5, relating to assisted suicide."

Chairman Crosby, 13th, noted that since there was an amendment offered on HB 1114 after it passed out of subcommittee, that he would allow testimony on the amendment.

The following people shared concerns about unintended consequences:

Lynne Kernaghan, Georgia Health Decisions

Dr. Richard Cohen, Georgia Health Decisions

Sheila Humberstone, Troutman Sanders on behalf of Alzheimer's Association

Kathy Simpson, Alzheimer's Association

The following people spoke in support of the legislation:

Frank Mucahy, Georgia Catholic Conference

Jonathan Crumley, Attorney

Chairman Crosby asked for a motion on the legislation. Senator Stone, 22nd, moved **HB 1114 Do Pass**. Senator Ligon, 3rd, seconded the motion. Chairman Crosby asked if there were any objections to the amendment. Seeing there were no objections to the amendment, Chairman Crosby asked for a motion on **HB 1114** as amended by the committee. Senator Stone, 23rd, moved **HB 1114 Do Pass by Substitute** (LC 29 5288S). Senator Ligon, 3rd, seconded the motion. **HB 1114** passed by substitute unanimously (6-0).

HB 1114 DO PASS BY SUBSTITUTE

NOTE: Yeas were Crosby, Bethel, Carter, Fort, Ligon, and Stone.

NOTE: Senator Ligon, 3rd, agreed to be Senate sponsor of the legislation.

HB 1093 (Braddock, 19th) Crimes and offenses; removal of shopping carts and required posting of Code section in stores and markets; change provisions

Senator Bethel, 54th, presented **HB 1093** to the committee on behalf of Representative Braddock and stated the this legislation simply would no longer require store owners to post copies on the store premises of the Code Section criminalizing the removal or abandonment of shopping carts.

Senator Crosby asked for a motion on **HB 1093**. Senator Bethel, 54th, moved **HB 1093 Do Pass**. Senator Stone, 23rd, seconded the motion. **HB 1093** passed unanimously (6-0).

HB 1093 DO PASS

NOTE: Yeas were Crosby, Bethel, Carter, Fort, Ligon, and Stone.

NOTE: Senator Hamrick, 30th, agreed to be Senate sponsor of this legislation.

With no further business, Chairman Crosby, 13th, adjourned the meeting at 6:15 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

MINUTES OF THE SENATE JUDICIARY COMMITTEE
Monday, March 26, 2012

The Senate Judiciary Committee held its final meeting of the 2012 Session on Monday, March 26, 2012, in room 450 CAP. Chairman Bill Hamrick called the meeting to order at 11:43 a.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30th, Chairman
Senator John Crosby, 13th, Secretary
Senator Vincent Fort, 39th
Senator Charlie Bethel, 54th
Senator William Ligon, Jr., 3rd
Senator Josh McKoon, 29th
Senator Jesse Stone, 23rd

NOTE: Senators Cowsert, 46th, Carter, 42nd, Ramsey, Sr., 43rd, and Hill, 32nd, were absent from the committee

Chairman Hamrick called the meeting to order.

HB 940 (Pak, 102nd) Georgia Public Defender Standards Council; pay attorney in event of conflict of interest in capital cases; change certain provisions

Representative Pak, 102nd, presented **HB 940** to the committee. This legislation addresses the issue of payment of conflict attorneys in capital cases. The following analysis was shared with the committee:

ANALYSIS

This legislation would prohibit the Georgia Public Defender Standards Council (“GPDSC”) from using state funds to pay for a defendant’s attorney fees and expenses in conflict cases unless the judge to whom the case is assigned has reviewed and approved the invoice prior to its submission to the GPDSC. Judges would be allowed to require periodic submission of interim invoices.

Sandra Michaels, GACDL, gave testimony in opposition to the legislation.

Chairman Hamrick, 30th, asked for a motion on **HB 940**. Senator Stone, 23rd, moved **HB 940 Do Pass**. Senator Ligon, Jr., 3rd, seconded the motion. HB 940 passed unanimously (6-0).

HB 940 DO PASS

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

NOTE: Chairman Hamrick, 30th, agreed to be the Senate sponsor of this legislation.

HB 534 (Fullerton, 151st) Eligibility requirements; probate court clerks; modify provisions

Representative Fullerton, 151st, presented **HB 534** to the committee. This legislation addresses population eligibility requirements for Probate Courts by adjusting statutes affecting probate courts to reflect the 2010 census. The following analysis was shared with the committee:

ANALYSIS

In counties with populations exceeding 90,000 persons based on the 2010 census, probate judges must be at least 30 years old and have been admitted to practice law for at least seven years.

In counties with populations exceeding 90,000 persons based on the 2010 census, the chief clerk or designated clerk may exercise the probate judge's jurisdiction in uncontested matters in the court

There was no testimony for or against the legislation.

Chairman Hamrick, 30th, asked for a motion on **HB 534**. Senator Crosby, 13th, moved ***HB 534 Do Pass***. Senator Bethel, 54th, seconded the motion. **HB 534** passed unanimously (6-0).

HB 534 DO PASS

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

NOTE: Senator Crosby, 13th, agreed to be the Senate sponsor of this legislation.

NOTE: Senator Fort arrived.

SR 1217 (Hamrick, 30th) Senate Garnishment Proceedings Study Committee; create

Chairman Hamrick, 30th, presented **SR 1217** to the committee. This resolution would create the *Senate Garnishment Proceedings Study Committee* to undertake a study of the conditions, needs, issues, and problems related to post-judgment garnishment procedure and recommend any action or legislation the committee deems necessary or appropriate.

There was no testimony for or against the legislation.

Chairman Hamrick, 30th, asked for a motion on **SR 1217**. Senator Bethel, 54th, moved ***SR 1217 Do Pass***. Senator Stone, 23rd, seconded the motion. **SR 1217** passed unanimously (6-0).

SR 1217 DO PASS

NOTE: Yeas were Hamrick, Crosby, Bethel, Ligon, McKoon, and Stone. Senator Fort did not vote.

With no further business, Chairman Hamrick, 30th, adjourned the meeting at 12:53 p.m.

Respectfully submitted,

/s/ Senator John Crosby, 13th, Secretary

/s/ Laurie Sparks, Recording Secretary

March 29, 2012

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:

<u>HB 64</u>	<u>SB 105</u>	<u>SB 262</u>
<u>HB 196</u>	<u>SB 133</u>	<u>SB 263</u>
<u>HB 372</u>	<u>SB 149</u>	<u>SB 280</u>
<u>SR 155</u>	<u>SB 164</u>	<u>SB 296</u>
<u>SR 728</u>	<u>SB 165</u>	<u>SB 311</u>
<u>SR 889</u>	<u>SB 174</u>	<u>SB 342</u>
<u>SR 926</u>	<u>SB 213</u>	<u>SB 353</u>
<u>SB 11</u>	<u>SB 217</u>	<u>SB 442</u>
<u>SB 15</u>	<u>SB 221</u>	<u>SB 443</u>
<u>SB 27</u>	<u>SB 224</u>	<u>SB 488</u>
<u>SB 28</u>	<u>SB 228</u>	<u>SB 502</u>
<u>SB 51</u>	<u>SB 230</u>	<u>SB 505</u>
<u>SB 65</u>	<u>SB 243</u>	
<u>SB 99</u>	<u>SB 256</u>	
<u>SB 104</u>	<u>SB 260</u>	

Respectfully submitted,

/s/ Laurie Sparks
Recording Secretary
Senate Judiciary Committee