



# Legislative Update

For the week of: February 13-February 17  
Legislative Days: 19-21

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February 17, 2012

Volume 6, Number 5

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## Week 5 of the 2012 Legislative Session

This week the General Assembly met for week five of the 2012 legislative session. The Legislature plans to reconvene for the twenty-second legislative day on Tuesday, February 21, at which time they will have approximately two weeks until Crossover Day – Wednesday, March 7<sup>th</sup>. Crossover Day is the last day for House and Senate bills to be taken up for consideration in their respective chambers.

The following newsletter provides a brief overview of legislation affecting the Georgia judiciary. To follow legislation online, you can visit <http://legislation.georgiacourts.gov>.

## Legislative Log

### **SB 13 - Rules of the Road; driving under influence with a child in a motor vehicle is a felony**

SB 13 provides that any person who drives under the influence of alcohol or drugs while transporting a child under the age of 16 is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. A person convicted of a first violation shall be guilty of a misdemeanor of a high and aggravated nature. A person convicted of a second and any subsequent violation shall be guilty of a felony and shall be fined not less than \$1,000.00 nor more than \$5,000.00 or shall be imprisoned for not less than one year nor more than three years, or both fined and imprisoned.

**SB 13 received a DO PASS from the Senate Special Judiciary Committee**

### **SB 107 - Superior Courts; increase penalties that can be imposed for contempt of court**

SB 107 amends Code Section 15-6-8 of the O.C.G.A., relating to jurisdiction and powers of the superior courts, so as to increase penalties that can be imposed for contempt of court. This bill increases the fine of contempt to not exceed \$1,000.00, formerly \$500.00.

**SB 107 PASSED out of the Senate**

### **SB 127 - Juvenile Proceedings; revise provisions**

SB 127 amends Title 15 of the O.C.G.A., relating to courts, so as to substantially revise, supersede, and modernize provisions relating to juvenile proceedings. It requires that a set of specified services be provided to all eligible foster youth up to age 23, and it increases the number of permanency planning hearings for children in foster care. The bill also establishes a new set of provisions to provide a program of treatment, care, guidance, counseling, structure, supervision, and rehabilitation for children considered to be unruly or habitually disobedient and therefore 'in need of services'.

**SB 127 received a DO PASS by COMMITTEE SUBSTITUTE from the Senate Judiciary Committee**

### **SB 137 - Retirement; update certain cross-references to Chapter 11 of Title 15; provide for conditions**

SB 137 is a companion bill to SB 127 that Amends Title 47 of the O.C.G.A., relating to retirement and pensions, so as to update certain cross-references to Chapter 11 of Title 15.

**SB 137 received a DO PASS by COMMITTEE SUBSTITUTE from the Senate Judiciary Committee**

### **SB 236 - Drivers' Licenses; persons convicted under the influence; allow certain drivers with suspended licenses; limited driving permits**

SB 236 allows a judge, at his or her discretion, to allow a participant in a Drug/DUI Court program a limited driving permit. The bill expands the places that a person with a limited driving permit may drive. It also reduces the time a participant in a Drug/DUI Court program must use an interlock device, at the Judge's discretion, and provides for penalties for violating the limited driving permit or ignition interlock provisions.

**SB 236 received a DO PASS by COMMITTEE SUBSTITUTE from the House Judiciary (Non-Civil) Committee**

**SB 366 - Juvenile Justice Dept.; revise restrictions; possessions of contraband at juvenile detention centers**

SB 366 amends Chapter 4A of Title 49 of the Official Code of Georgia Annotated, relating to the Department of Juvenile Justice, so as to revise restrictions regarding possession of contraband at juvenile detention centers. The bill restricts an individual from coming onto the grounds of a juvenile detention center to sell, buy, give, provide, barter, exchange, or trade any contraband with any youth assigned to a juvenile detention center. Any person found to be in violation shall be guilty of a felony and, upon conviction punished by imprisonment for not less than one nor more than five years.

**SB 366 PASSED out of the Senate**

**SB 402 - "Employees' Retirement System of Georgia Enhanced Investment Authority Act"; define certain terms relating to certain types of investments**

SB 402 establishes the "Employees' Retirement System of Georgia Enhanced Investment Authority Act." The bill allows certain public retirement systems to invest retirement assets in certain types of alternative investments, private placements, and other private investments. The alternative investments by the retirement system shall not in the aggregate exceed 5 percent of the retirement system's assets at any time.

**SB 402 received a DO PASS from the Senate Retirement Committee**

**HB 237 - Residential mortgage fraud; mortgage lending process; revise**

HB 237 amends Article 5 of Chapter 8 of Title 16 of the O.C.G.A., relating to residential mortgage fraud, so as to revise the definition of mortgage lending process and change provisions relating to the offense of mortgage fraud. The definition of mortgage lending process is expanded to include the execution of deeds under power of sale that are required to be recorded pursuant to Code Section 44-14-160 and the execution of assignments that are required to be recorded pursuant to subsection (b) of Code Section 44-14-162.

HB 237 establishes that an offense of residential mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the mortgage lending process nor upon truthful information contained in documents filed with the official registrar of deeds of any county for the stated purpose of correcting scrivener's errors, mistakes, inadvertent misstatements, or omissions contained in previously filed documents.

**HB 237 received a DO PASS by COMMITTEE SUBSTITUTE from the Senate Judiciary Committee**

**HB 372 - Bonds; release unclaimed bonds one year after surety released; provide**

HB 372 amends Code Section 17-6-4 of the O.C.G.A., relating to authorization of posting of cash bonds generally, furnishing of receipt to person posting bond, recordation of receipt of bond on docket, and disposal of unclaimed bonds, by providing for the release of unclaimed bonds one year after surety is released. HB 372 also provides for notice to the officer in possession of the cash bond.

**HB 372 received a DO PASS by the House Judiciary (Non-Civil) Committee**

### **HB 397 - State Government; Open meetings and records; revised provisions**

HB 397 amends Title 50 of the Official Code of Georgia Annotated, relating to state government, by comprehensively revising the provisions of law regarding open meetings and open records.

**NO ACTION was taken on HB 397 by the House Judiciary (Civil) Jacobs Subcommittee**

### **HB 541 - Obstruction of public administration; threaten or intimidate officer or official; provide for offense**

HB 541 amends Article 2 of Chapter 10 of Title 16 of the O.C.G.A., by providing for the offense of threatening or intimidating a law enforcement officer, public official, or other person relating to their involvement in a judicial proceeding. A person who knowingly and willfully harms, threatens to harm, or acts in a manner to intimidate a public official or participant in a judicial proceeding in retaliation or response for anything the public official or participant did in his or her official capacity or for participating in a judicial proceeding shall be guilty of a felony. Upon conviction, the guilty party shall be punished by a fine of not less than \$5,000.00 nor more than \$20,000.00, by imprisonment of not less than one nor more than ten years, or both. In addition, an individual convicted of this offense, if found guilty, will receive a felony in addition to fine and/or imprisonment.

**HB 541 received a DO PASS by the House Judiciary (Non-Civil) Ramsey Subcommittee**

### **HB 636 - Brookhaven City of; provide a charter**

HB 636 is an Act to incorporate the city of Ashford and to provide a charter for the city. It establishes a court to be known as the Municipal Court of the City of Ashford and the judge or judges thereof.

**HB 636 PASSED out of the House**

### **HB 665 - Clerk of superior court offices; modernize provisions**

HB 665 amends Titles 9, 15, and 44, Chapter 18 of Title 50, and Code Section 36-9-5 of the O.C.G.A., relating to civil practice, courts, property, state printing and documents, and storage of documents, respectively. The bill contains many provisions of interest to Superior Court Clerks. Various councils have reviewed this bill and suggested amendments.

**NO ACTION was taken on HB 665 by the House Judiciary (Civil) Lane Subcommittee**

### **HB 685 - Dogs; dangerous and vicious; extensively revise provisions**

HB 685 amends Title 4 of the O.C.G.A., regarding dogs, explicitly vicious or dangerous dogs. The bill defines and redefines the owner's liability for damages and injuries caused by dogs. It also amends Chapter 2 of Title 51 of the O.C.G.A. concerning imputable negligence for state legislative intent. The owner or custodian (if owner cannot be found) exercising care/control over any dog is liable for any damage caused to public or private property and consequential damages by the dog. Any person convicted of a felony from the time they were convicted to ten years after completion of sentence will be unable to possess/have custody or live in a residence with any dog or puppy over 12 weeks old that has not been spayed or neutered or any dog classified as vicious. HB 685 establishes that any superior court judge of Georgia may order euthanasia of a dog found guilty of killing or seriously injuring a human being or presents danger to human beings. The superior court judge may also order euthanasia if the owner or custodian of a dog is in violation of any state criminal law and if the charge is related to the dog. In addition, a superior court judge may order euthanasia if any local government or person has filed a civil action in the court requesting the euthanasia of the dog. The owner of a vicious dog that violates any provision in this article will be found guilty of a high and aggravated misdemeanor. Also, in addition to any confinement imposed at owner's conviction, the owner will receive a fine of no less than \$1,000.00 for first conviction and no less than \$5,000.00 for second or subsequent convictions.

**NO ACTION was taken on HB 685 by House Judiciary (Non-Civil) Ramsey Subcommittee**

### **HB 717 - Dogs; criminal penalties for certain owners failing to secure; provide**

HB 717 Amends Article 2 of Chapter 8 of Title 4 of the O.C.G.A., relating to dangerous dog control. HB 717 provides that criminal penalties be enforced on certain owners who fail to secure their dangerous dog resulting in the dog inflicting severe injury or death on a human being. If said event does occur, the owner shall be guilty of the offense of failure to secure a dangerous dog and once convicted shall be guilty of a felony and punished by imprisonment for no less than one nor more than three years or a fine of not more than \$20,000.00, or both.

**HB 717 received a DO PASS by the House Judiciary (Non-Civil) Ramsey Subcommittee**

### **HB 733 - Family violence; holdover provisions for appointees; add**

HB 733 Amends Chapter 13 of Title 19 of the O.C.G.A., relating to family violence. HB 733 provides for the addition of holdover provisions for appointees. HB 733 adds, to subsection (c) of the Code Section 19-13-32, that each member of the Family Violence Commission shall serve until the date his or her successor is appointed.

**HB 733 received a DO PASS by the House Judiciary (Non-Civil) Committee**

### **HB 744 - Uniform Partition of Heirs Property Act; enact**

HB 744 amends Part 2 of Article 7 of Chapter 6 of Title 44 of the O.C.G.A., relating to partition, so as to enact the "Uniform Partition of Heirs Property Act". The Uniform Partition of Heirs Property Act 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. 'Heirs property' is defined as real property held in tenancy in common, which satisfies all of the following requirements on the date of filing a partition action: 1) There is no agreement in a record binding all the cotenants which governs the partition of the property; 2) One or more of the cotenants acquired the title from a relative; 3) Any of the following applies: twenty percent or more of the interests are held by cotenants who are relatives or by an individual who acquired the property from a relative, or twenty percent or more of the cotenants are relatives. HB 744 also amends Code Section 24-7-706 of the O.C.G.A., relating to court appointed experts, so as to include cross-references.

**HB 744 PASSED out of the House**

### **HB 776 - Elections; nonpartisan elections for members of consolidated governments considered county elections; provide**

HB 776 amends Chapter 2 of Title 21 of the O.C.G.A., relating to primaries and elections, so as to provide that all nonpartisan elections for members of consolidated governments shall be considered county elections and not municipal elections. This act is intended to clarify the intent of the original legislation.

**HB 776 received a DO PASS by the House Governmental Affairs Committee.**

### **HB 811 - Budgetary and financial affairs; automatic fee adjustment in certain cases; provide**

HB 811 amends Part 1 of Article 4 of Chapter 12 of Title 45 of the O.C.G.A., relating to management of budgetary and financial affairs. This bill provides for automatic fee adjustments in cases where funds are not appropriated in the amounts or for the purposes for which they were imposed. 'State department or agency' means any state department, state agency, or state authority or any public officer, public official, or public entity which collects or receives proceeds of a fee specified under this Code section. Beginning in 2014, not later than June 30, each state department or agency which collects or receives a fee shall determine the base fee amount collected or received for the particular purpose or function as described in this Code section for which the fee was collected or received by such state department or agency during the previous calendar year beginning on January 1 and concluding on December 31. The Office of Planning and Budget shall determine the total amount of funds appropriated to the state department or agency for purposes of administration and enforcement relative to the purpose or function of the fee for the following fiscal year. Adjustments of fees shall continue each fiscal year until the total amount of appropriated funds is 95 percent or more of the base fee amount. It is the responsibility of each state department or agency to promulgate such rules and regulations as are necessary and appropriate to implement and administer this code section.

**HB 811 received a DO PASS by the House Governmental Affairs Committee**

**HB 895 - Sexual Offender Registration Review Board; gathering information relating to sexual offenders; provide more effective methods**

HB 895 Amends Chapter 3 of Title 35 and Article 2 of Chapter 1 of Title 42 of the O.C.G.A., relating to the Georgia Bureau of Investigation (G.B.I.) and the Sexual Offender Registration Review Board. It provides that the G.B.I. will acquire, collect, analyze, and provide to the board any information which will assist the board in determining a sexual offender's risk assessment classification in accordance with the board's duties. The board will have access to incident and investigative reports, records from the clerks of court, records maintained by prosecuting attorneys, records maintained by state agencies, as well as other documents or information requested by the board.

**HB 895 received a DO PASS by the House Judiciary (Non-Civil) Committee**

**HB 899 - Primaries and elections; dates of nonpartisan elections; provide**

HB 899 amends Chapter 2 of Title 21 of the O.C.G.A., relating to primaries and elections. HB 899 provides that Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, and county judicial officers shall be elected in the nonpartisan general election next preceding the expiration of the term of office. A qualifying petition shall be in the form and manner determined by the Secretary of State and approved by the State Elections Board. Each sheet of a qualifying petition shall bear the affidavit of the circulator. This affidavit shall be subscribed and sworn to before a notary. If any person whose name is not on the list of registered electors maintained by the Secretary of State desires to vote at any special primary or special election, such person may make application by the close of business on the fifth Monday prior to the date of the special primary or special election or, if such Monday is a legal holiday, by the close of business on the following business day. The board of registrars or absentee ballot clerk shall issue official absentee ballots to all eligible applicants not more than 49 days but not less than 45 days prior to any presidential preference primary, general primary other than a municipal general primary, general election other than a municipal general election, or special primary or special election in which there is a candidate for a federal office on the ballot; 22 days prior to any municipal general primary or municipal general election; and as soon as possible prior to any runoff. In the case of all other special primaries or special elections, the board of registrars or absentee ballot clerk shall issue official absentee ballots to all eligible applicants no earlier than 22 days prior to the election; provided, however, that should any elector of the jurisdiction be permitted to vote by absentee ballot beginning 49 days prior to a primary or election, all eligible applicants of such jurisdiction shall be entitled to vote by absentee ballot beginning 49 days prior to such primary or election. In the case that an elections officer makes a mistake that affects the qualification of a candidate, then such candidate's qualifying fee shall be refunded. No person shall use cameras or other electronic monitoring or recording devices while such person is in a polling place while voting is taking place unless allowed to do so by the polling manager. In addition, no photography shall be allowed of a ballot, the face of a voting machine, a DRE unit while an elector is voting or of an electors list, electronic electors list.

**HB 899 received a DO PASS by the House Governmental Affairs Committee**

**HB 904 - Monroe County Probate Court; future elections for the office of judge shall be nonpartisan; provide**

HB 904 amends code section 21-2-139 of the O.C.G.A., relating to non-partisan elections for the office of judge of the Probate Court of Monroe County. HB 904 establishes that nonpartisan elections shall be held in conjunction with the nonpartisan general election immediately preceding expiration of the term of office. Nothing in this Act shall affect the term of office of the judge of the Probate Court of Monroe County, the sitting judge shall serve out the term of office for which he or she was elected and shall be eligible to succeed himself or herself as provided in this Act.

**HB 904 PASSED out of the House**

**HB 911 - Putnam County; change compensation for certain officials**

HB 911 changes the compensation for the judge of the State Court of Putnam County, the solicitor-general of the State Court of Putnam County, the clerk of the State Court of Putnam County and the sheriff of Putnam County. The judge of the state court of Putnam County shall be a part-time judge and shall be paid an annual salary of \$54,000.00. Any and all compensation benefits that are currently in place at the time of the effective date of this legislation shall remain in place. The salary shall be payable out of the funds of Putnam County at the same intervals as installments are paid to other county employees. This amount of compensation shall be increased by multiplying the amounts by the percentage which equals five times the number of completed four-year terms of office served by any judge following December 31, 2008, effective the first day of January, 2013, following the completion of each period of service. The minimum compensation for the clerk of the state court and the sheriff shall be an annual base salary of \$4,800.00, each to be paid in equal monthly installments from the county funds. On and after January 1, 2013, whenever the employees in the classified service of the state merit system receive a cost-of-living increase or general performance based increase of a specified percentage or a specified amount, the amount of the salaries of the aforementioned shall be increased by the same percentage. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or amounts then salaries shall be increased a percentage or an amount not to exceed the average general increase in salary granted to the state employees. Said increase in salaries for aforementioned employees shall become effective on the first day of January following or on the date that the cost-of-living increases become effective for state employees.

**HB 911 PASSED out of the Senate**

**HB 929 - Judicial circuits; assistant district attorney for certain populations; repeal office**

HB 929 repeals the Act creating the office of assistant district attorney in each judicial circuit whose population is no less than 103,000 and no more than 135,000 persons according to the United States census.

**HB 929 received a DO PASS by the Intragovernmental Affairs Committee**

**HB 930 - Judicial circuits; superior court judge for certain populations; repeal supplemental expense allowance**

HB 930 repeals the Act that provides for a supplemental expense allowance for the judges of the superior courts of each judicial circuit within this state. The aforementioned judges must have a population of not less than 103,000 and not more than 135,000 persons according to the United States census.

**HB 930 received a DO PASS by the House Intragovernmental Affairs Committee**

**HB 949 - Primaries and elections; number of signatures for certain petitions shall be based on the turnout in last presidential election; provide**

HB 949 amends amend Chapter 2 of Title 21 of the O.C.G.A., relating to primaries and elections generally. HB 949 provides that Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, and county judicial officers shall be elected in the nonpartisan general election next preceding the expiration of the term of office. Whenever a municipal general primary or election is held in conjunction with the general primary or November general election in even-numbered years, the time specified for the closing of the registration list, the time within which candidates must qualify for the municipal primary or election, and the time specified for the holding of any runoff necessary shall be the same as specified for general elections. Each candidate for a nonpartisan municipal office or a designee shall file a notice of candidacy in the office of the municipal superintendent of such candidate's municipality during the municipality's nonpartisan qualifying period. Each municipal superintendent shall designate the days of such qualifying period. A qualifying petition shall be signed by the number of voters set forth in Section 2 according to the type of office sought. A qualifying petition shall be in the form and manner determined by the Secretary of State and approved by the State Elections Board. Each candidate, or his or her agent, desiring to have his or her name placed on the general election ballot shall file a notice of his or her candidacy according to the deadlines set forth in Section 2 of HB 949. A person who is qualified to register to vote in this state and who has a valid Georgia driver's license or identification card may submit a voter registration application on the Internet website of the Secretary of State. An absentee ballot may be mailed to an incarcerated elector at the elector's place of incarceration. No person shall use cameras or other electronic monitoring or recording devices while voting is taking place unless allowed to do so by the polling manager.

**HB 949 received a DO PASS by the House Governmental Affairs Committee**

**HB 954 - Abortion; criminal abortion; change certain provisions**

HB 954 amends Article 5 of Chapter 12 of Title 16 of the O.C.G.A., relating to abortion by changing certain provisions relating to when abortion is legal. HB 954 also amends Title 31, relating to health, by requiring a determination of gestational age prior to abortion.

**NO ACTION was taken on HB 954 by the House Judiciary (Non-Civil) Committee**