

House Bill 1214

By: Representatives Trammell of the 132<sup>nd</sup>, Moore of the 95<sup>th</sup>, Clark of the 108<sup>th</sup>, Robichaux of the 48<sup>th</sup>, Evans of the 83<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated,  
2 relating to general provisions regarding district attorneys, so as to create the District  
3 Attorneys Oversight Commission; to provide for the powers, composition, appointment, and  
4 confirmation of such commission; to provide for commission members' terms, vacancies, and  
5 removals; to provide for procedures and confidentiality; to provide for related matters; to  
6 provide for effective dates; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to  
10 general provisions regarding district attorneys, is amended by adding a new Code section to  
11 read as follows:

12 "15-18-32.

13 (a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution, there is hereby  
14 created the District Attorneys Oversight Commission, which shall have the power to  
15 discipline, remove, and cause involuntary retirement of district attorneys in accordance  
16 with such Paragraph. As used in this Code section, the term 'commission' means the  
17 District Attorneys Oversight Commission.

18 (b) The commission shall consist of ten members who shall be subject to confirmation by  
19 the Senate.

20 (c)(1) The commission shall be divided into a seven-member investigative panel and a  
21 three-member hearing panel.

22 (2) The investigative panel shall be responsible for:

23 (A) The investigative, prosecutorial, and administrative functions of the commission;

24 (B) Promulgating rules of the commission as set forth in subsection (h) of this Code  
25 section;

26 (C) The selection of an individual to serve as the director of the commission who shall  
 27 be an active status member of the State Bar of Georgia and who shall not engage in the  
 28 practice of law, other than to represent the commission, or serve in a judicial capacity;  
 29 and

30 (D) Authorization of employment of such additional staff as the commission deems  
 31 necessary to carry out the powers assigned to the commission.

32 (3) The hearing panel shall be responsible for:

33 (A) Adjudicating formal charges filed by the investigative panel;

34 (B) Making recommendations to the Supreme Court as to disciplinary and incapacity  
 35 orders; and

36 (C) Issuing formal advisory opinions on its own initiative or on the recommendation  
 37 of the investigative panel, subject to review by the Supreme Court, regarding the  
 38 Georgia Rules of Professional Conduct as it applies to district attorneys.

39 (d)(1) As used in this subsection, the term:

40 (A) 'Attorney' means a lawyer who has been an active status member of the State Bar  
 41 of Georgia for at least ten years and is a registered voter in this state.

42 (B) 'Citizen' means an individual who is neither an attorney nor a judge and who is a  
 43 registered voter in this state.

44 (C) 'Judge' means an elected or appointed public official who presides over a court of  
 45 record.

46 (2) The State Bar of Georgia may recommend to the respective appointing authorities a  
 47 list of the names of individuals for consideration to serve as attorney commission  
 48 members.

49 (3)(A) The seven members of the commission's investigative panel shall be appointed  
 50 as follows:

51 (i) One attorney member shall be appointed by the Governor and shall serve a term  
 52 of four years; provided, however, that the initial appointment shall be for two years,  
 53 and thereafter, successors to such member shall serve terms of four years;

54 (ii) Two members who are district attorneys shall be appointed by the Governor and  
 55 each shall serve terms of four years; provided, however, that the initial appointments  
 56 shall be for two and four years, respectively, as designated by the Governor for each  
 57 appointment, and thereafter, successors to such members shall serve terms of four  
 58 years;

59 (iii) Two members, consisting of one attorney and one citizen, shall be appointed by  
 60 the President of the Senate and each shall serve terms of four years; provided,  
 61 however, that the initial appointment of the attorney member shall be for four years

62 and the initial appointment of the citizen member shall be for one year, and thereafter,  
 63 successors to such members shall serve terms of four years; and  
 64 (iv) Two members, consisting of one attorney and one citizen, shall be appointed by  
 65 the Speaker of the House of Representatives and each shall serve terms of four years;  
 66 provided, however, that the initial appointment of the attorney member shall be for  
 67 three years and the initial appointment of the citizen member shall be for two years,  
 68 and thereafter, successors to such members shall serve terms of four years.

69 (B) The investigative panel members shall annually elect a chairperson and vice  
 70 chairperson for such panel.

71 (4)(A) The three members of the commission's hearing panel shall be appointed as  
 72 follows:

73 (i) One citizen member shall be appointed by the Governor for a term of four years  
 74 and his or her successors shall serve terms of four years; and  
 75 (ii) One district attorney member and one attorney member shall be appointed by the  
 76 Governor and each shall serve terms of four years; provided, however, that the initial  
 77 appointment of the district attorney member shall be for three years and the initial  
 78 appointment of the attorney member shall be for one year, and thereafter, successors  
 79 to such members shall serve terms of four years.

80 (B) The district attorney member shall serve as the presiding officer of such panel.

81 (5) All members' initial terms shall begin on January 1, 2021, and their successors' terms  
 82 shall begin on January 1 following their appointment.

83 (6) A commission member shall be eligible to serve so long as he or she retains his or  
 84 her status as an attorney, citizen, or district attorney, but a vacancy shall be created by  
 85 operation of law when he or she no longer has the designation for which he or she was  
 86 appointed. Any vacancy for a member shall be filled by the appointing authority, and  
 87 such appointee shall serve the balance of the vacating member's unexpired term;  
 88 provided, however, that, if the appointing authority fails to fill a vacancy within 60 days  
 89 of being notified of such vacancy by the commission, the Governor shall appoint a  
 90 replacement member from the same category of member. Any member of the  
 91 commission may serve two full terms.

92 (e)(1) The names of the appointees required by this Code section shall be submitted by  
 93 the appointing authorities to the Senate no later than the third Monday in January. Any  
 94 member appointed to the commission shall serve until the Senate confirms such  
 95 appointee, and if an individual's name is not submitted by such deadline, he or she shall  
 96 not be eligible for confirmation.

97 (2) If an appointee is not confirmed by the Senate, the appointing authority shall  
98 promptly submit another appointee's name, notwithstanding the deadline expressed in  
99 paragraph (1) of this subsection.

100 (3) If the Senate is not in session at the time an appointee's term begins or a vacancy is  
101 created, an appointee for such term or to fill such vacancy shall serve until his or her  
102 name can be submitted to the Senate and his or her appointment can be confirmed at the  
103 next regular session.

104 (f) Members and staff of the hearing panel shall not engage in any ex parte  
105 communications regarding a disciplinary or incapacity matter of a district attorney,  
106 including with members and staff of the investigative panel.

107 (g)(1) Each member of the commission shall be entitled to vote on any matter coming  
108 before his or her respective panel unless otherwise provided by rules adopted by the  
109 commission concerning recusal. The chairperson of the investigative panel and the  
110 presiding officer of the hearing panel shall retain a vote on all matters except those in  
111 which such chairperson or presiding officer has been recused. No commission member  
112 present at a panel meeting shall abstain from voting unless he or she is recused. The rules  
113 of the commission shall establish grounds for recusal and the process for allowing a  
114 temporary replacement of a commission member in such circumstance.

115 (2)(A) As used in this paragraph, the term 'for cause' shall include indictment for or  
116 conviction of a felony or any offense involving moral turpitude; misconduct,  
117 malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend  
118 three or more panel meetings or hearings in a one-year period without good and  
119 sufficient reason; or abstaining from voting, unless recused.

120 (B) Removal of a panel member for cause shall be by a unanimous vote of all of the  
121 appointing authorities for the members of that particular panel.

122 (3) A quorum of the investigative panel shall require at least four members to be present  
123 and shall consist of at least one district attorney, one attorney, and one citizen. A quorum  
124 of the hearing panel shall require all members to be present. A decision by a panel shall  
125 be by majority vote of the members present, except for minor procedural or  
126 administrative matters assigned to the director, chairperson, or presiding officer, as  
127 applicable, for a decision as provided by the rules of the commission.

128 (4)(A) Members of the commission shall serve without compensation but shall receive  
129 the same daily expense allowance as members of the General Assembly receive, as set  
130 forth in Code Section 28-1-8, for each day such member is in physical attendance at a  
131 panel meeting or hearing, plus either reimbursement for actual transportation costs  
132 while traveling by public transportation or the same mileage allowance for use of a

133 personal motor vehicle in connection with such attendance as members of the General  
134 Assembly receive.

135 (B) Notwithstanding subparagraph (A) of this paragraph, no member shall receive such  
136 expense allowance or travel reimbursement if he or she is entitled to receive an expense  
137 allowance, travel reimbursement, or salary for performance of duties as a state  
138 employee.

139 (C) Expense allowances and travel reimbursement shall be paid from moneys  
140 appropriated or otherwise available to the commission.

141 (h) The investigative panel shall promulgate rules for the commission's governance which  
142 comport with due process and are not otherwise provided by the Georgia Constitution or  
143 this Code section; provided, however, that such rules shall be effective only upon review  
144 and adoption by the Supreme Court. Such rules shall allow for a full investigation of a  
145 district attorney only upon the approval of the investigative panel, not upon the request of  
146 an individual panel member or the director. When a commission member receives  
147 information relating to the conduct of a district attorney, such member shall provide such  
148 information to the commission's director for appropriate action.

149 (i)(1) All information regarding a disciplinary or incapacity matter of a district attorney  
150 shall be kept confidential by the investigative panel and commission staff before formal  
151 charges are filed; provided, however, that, if prior to filing formal charges such judge and  
152 investigative panel agree to a satisfactory disposition of a disciplinary matter other than  
153 by a private admonition or deferred discipline agreement, a report of such disposition  
154 shall be publicly filed in the Supreme Court.

155 (2) After the filing and service of formal charges:

156 (A) With respect to an incapacity matter of a district attorney, all pleadings,  
157 information, hearings, and proceedings shall remain confidential; and

158 (B) With respect to a disciplinary matter of a district attorney, all pleadings and  
159 information shall be subject to disclosure to the public and all hearings and proceedings  
160 shall be open and available to the public except to the extent that such pleadings and  
161 information or hearings and proceedings could be properly sealed or closed by a court  
162 as provided by law.

163 (3) With respect to administrative and other matters, all records and information shall be  
164 subject to disclosure to the public and all meetings, or portions thereof, shall be open and  
165 available to the public, except to the extent such records, information, and meetings  
166 would:

167 (A) Disclose disciplinary matters of a district attorney protected in paragraph (1) of this  
168 subsection;

- 169 (B) Disclose incapacity matters of a district attorney protected in paragraph (1) or  
 170 subparagraph (A) of paragraph (2) of this subsection;
- 171 (C) Be considered a matter subject to executive session, if the commission were  
 172 considered to be an agency under Chapter 14 of Title 50; or
- 173 (D) Not be required to be publicly disclosed under Code Section 50-18-72, if the  
 174 commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.
- 175 (4) The work product of the commission and its staff and the deliberations of the  
 176 commission shall remain confidential.
- 177 (j) Notwithstanding subsection (i) of this Code section, information regarding a  
 178 disciplinary or incapacity matter of a district attorney may be disclosed or the  
 179 confidentiality of such information may be removed when:
- 180 (1) The privilege of confidentiality has been waived by the individual who was the  
 181 subject of the commission's investigation; or
- 182 (2) The commission's rules provide for disclosure:
- 183 (A) In the interest of justice and to protect the public;
- 184 (B) If an emergency situation exists; or
- 185 (C) If a district attorney is under consideration for another state or federal position.
- 186 (k) Information submitted to the commission or its staff, and testimony given in any  
 187 proceeding before the commission or one of its panels, shall be absolutely privileged, and  
 188 no civil action predicated upon such information or testimony shall be instituted against  
 189 any complainant, witness, or his or her counsel.
- 190 (l) A respondent who is recommended for public reprimand, censure, limitation on the  
 191 performance of prosecutorial duties, suspension, retirement, or removal shall be entitled  
 192 to a copy of the proposed record to be filed with the Supreme Court and, if the respondent  
 193 has objections to it, to have the record settled by the hearing panel's presiding officer. The  
 194 hearing panel's recommendation as to an order in a disciplinary or incapacity matter shall  
 195 be reviewed by the Supreme Court in accordance with its rules and the rules of the  
 196 commission.
- 197 (m) When a district attorney knows that he or she is under investigation by the commission  
 198 and a commission member is representing a party in any case which the district attorney  
 199 is prosecuting, the district attorney and his or her office shall be disqualified from handling  
 200 such matter."

201 **SECTION 2.**

202 This Act shall become effective for purposes of appointing members of the commission upon  
 203 its approval by the Governor or upon its becoming law without such approval and for all  
 204 other purposes on January 1, 2021.

205

**SECTION 3.**

206 All laws and parts of laws in conflict with this Act are repealed.