

House Bill 143

By: Representatives Boddie of the 62nd, Moore of the 95th, Clark of the 108th, Evans of the 83rd, Kausche of the 50th, 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 definitions; to provide
6 for related matters; to provide for effective dates; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

13 "15-18-32.

14 (a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution, there is hereby
15 created the District Attorneys Oversight Commission, which shall have the power to
16 discipline, remove, and cause involuntary retirement of district attorneys in accordance

17 with such Paragraph. As used in this Code section, the term 'commission' means the
18 District Attorneys Oversight Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

60 (iii) Two members, consisting of one attorney and one citizen, shall be appointed by
61 the President of the Senate and each shall serve terms of four years; provided,
62 however, that the initial appointment of the attorney member shall be for four years
63 and the initial appointment of the citizen member shall be for one year, and thereafter,
64 successors to such members shall serve terms of four years; and

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

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

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

(i) One citizen member shall be appointed by the Governor for a term of four years and his or her successors shall serve terms of four years; and

(ii) One district attorney member and one attorney member shall be appointed by the Governor and each shall serve terms of four years; provided, however, that the initial appointment of the district attorney member shall be for three years and the initial appointment of the attorney member shall be for one year, and thereafter, successors to such members shall serve terms of four years.

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

(5) All members' initial terms shall begin on January 1, 2022, and their successors' terms shall begin on January 1 following their appointment.

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

(e)(1) The names of the appointees required by this Code section shall be submitted by the appointing authorities to the Senate no later than the third Monday in January. Any member appointed to the commission shall serve until the Senate confirms such

1122 appointee, and if an individual's name is not submitted by such deadline, he or she shall
1121 not be eligible for confirmation.

1120 (2) If an appointee is not confirmed by the Senate, the appointing authority shall
1119 promptly submit another appointee's name, notwithstanding the deadline expressed in
1118 paragraph (1) of this subsection.

1117 (3) If the Senate is not in session at the time an appointee's term begins or a vacancy is
1116 created, an appointee for such term or to fill such vacancy shall serve until his or her
1115 name can be submitted to the Senate and his or her appointment can be confirmed at the
1114 next regular session.

1113 (f) Members and staff of the hearing panel shall not engage in any ex parte
1112 communications regarding a disciplinary or incapacity matter of a district attorney,
1111 including with members and staff of the investigative panel.

1110 (g)(1) Each member of the commission shall be entitled to vote on any matter coming
1109 before his or her respective panel unless otherwise provided by rules adopted by the
1108 commission concerning recusal. The chairperson of the investigative panel and the
1107 presiding officer of the hearing panel shall retain a vote on all matters except those in
1106 which such chairperson or presiding officer has been recused. No commission member
1105 present at a panel meeting shall abstain from voting unless he or she is recused. The rules
1104 of the commission shall establish grounds for recusal and the process for allowing a
1103 temporary replacement of a commission member in such circumstance.

1102 (2)(A) As used in this paragraph, the term 'for cause' shall include indictment for or
1101 conviction of a felony or any offense involving moral turpitude; misconduct,
1100 malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend
1099 three or more panel meetings or hearings in a one-year period without good and
1098 sufficient reason; or abstaining from voting, unless recused.

1097 (B) Removal of a panel member for cause shall be by a unanimous vote of all of the
1096 appointing authorities for the members of that particular panel.

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

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

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

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

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

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

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

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

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

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

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

(B) Disclose incapacity matters of a district attorney protected in paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;

(C) Be considered a matter subject to executive session, if the commission were considered to be an agency under Chapter 14 of Title 50; or

(D) Not be required to be publicly disclosed under Code Section 50-18-72, if the commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.

(4) The work product of the commission and its staff and the deliberations of the commission shall remain confidential.

(j) Notwithstanding subsection (i) of this Code section, information regarding a disciplinary or incapacity matter of a district attorney may be disclosed or the confidentiality of such information may be removed when:

(1) The privilege of confidentiality has been waived by the individual who was the subject of the commission's investigation; or

(2) The commission's rules provide for disclosure:

(A) In the interest of justice and to protect the public;

(B) If an emergency situation exists; or

(C) If a district attorney is under consideration for another state or federal position.

(k) Information submitted to the commission or its staff, and testimony given in any proceeding before the commission or one of its panels, shall be absolutely privileged, and no civil action predicated upon such information or testimony shall be instituted against any complainant, witness, or his or her counsel.

(l) A respondent who is recommended for public reprimand, censure, limitation on the performance of prosecutorial duties, suspension, retirement, or removal shall be entitled to a copy of the proposed record to be filed with the Supreme Court and, if the respondent has objections to it, to have the record settled by the hearing panel's presiding officer. The hearing panel's recommendation as to an order in a disciplinary or incapacity matter shall be reviewed by the Supreme Court in accordance with its rules and the rules of the commission.

(m) When a district attorney knows that he or she is under investigation by the commission and a commission member is representing a party in any case which the district attorney is prosecuting, the district attorney and his or her office shall be disqualified from handling such matter."

202 **SECTION 2.**

203 This Act shall become effective for purposes of appointing members of the commission upon
204 its approval by the Governor or upon its becoming law without such approval and for all
205 other purposes on January 1, 2022.

206 **SECTION 3.**

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