

House Bill 231 (COMMITTEE SUBSTITUTE)

By: Representatives Gullett of the 19th, Gaines of the 120th, Jones of the 47th, Gunter of the 8th, Petrea of the 166th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 of the Official Code of Georgia Annotated, relating to general provisions
2 regarding prosecuting attorneys, so as to provide for the duty to examine every case for
3 probable cause; create the Prosecuting Attorneys Oversight Commission; to provide for
4 definitions; to provide for the powers, composition, appointment, and confirmation of such
5 commission; to provide for commission members' terms, vacancies, and removals; to provide
6 for procedures and confidentiality; to amend Chapter 4 of Title 21 of the Official Code of
7 Georgia Annotated, relating to recall of public officers, so as to revise provisions relating to
8 grounds for recall of district attorneys of judicial circuits and solicitors-general of state
9 courts; to provide for related matters; to provide for effective dates; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, is
14 amended by revising Code Section 15-18-6, relating to duties of district attorney, as follows:

15 "15-18-6.

16 The duties of the district attorneys within their respective circuits are:

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(1) To attend each session of the superior courts unless excused by the judge thereof and to remain until the business of the state is disposed of;

(2) To attend on the grand juries, advise them in relation to matters of law, and swear and examine witnesses before them;

(3) To administer the oaths the laws require to the grand and trial jurors and to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the courts as he may require;

(4) To review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in Code Section 15-18-2;

~~(4)~~(5) To draw up all indictments or presentments, when requested by the grand jury, and to prosecute all indictable offenses;

~~(5)~~(6) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense of which the state is interested, unless otherwise specially provided for;

~~(6)~~(7) To attend before the appellate courts when any criminal case emanating from their respective circuits is tried, to argue the same, and to perform any other duty therein which the interest of the state may require;

~~(7)~~(8) To advise law enforcement officers concerning the sufficiency of evidence, warrants, and similar matters relating to the investigation and prosecution of criminal offenses;

~~(8)~~(9) To collect all money due the state in the hands of any escheators and to pay it over to the educational fund, if necessary, compelling payment by rule or order of court or other legal means;

~~(9)~~(10) To collect all claims of the state which they may be ordered to collect by the state revenue commissioner and to remit the same within 30 days after collection; and on

October 1 of every year to report to the state revenue commissioner the condition of the claims in their hands in favor of the state, particularly specifying:

(A) The amounts collected and paid, from what sources received and for what purposes, and to whom paid;

(B) What claims are unpaid and why;

(C) What judgments have been obtained, when, and in what court; and

(D) What actions are instituted, in what courts, and their present progress and future prospects;

~~(10)~~(11) To ensure disposition information is submitted in accordance with subsection (g) of Code Section 35-3-36 when a final disposition decision is made by a district attorney;

~~(11)~~(12) To assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure that the victims of crimes are apprised of the rights afforded them under the law; and

~~(12)~~(13) To perform such other duties as are or may be required by law or which necessarily appertain to their office."

SECTION 2.

Said title is amended by adding a new Code section to read as follows:

"15-18-32.

(a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution of Georgia in reference to district attorneys and Article 3 of this chapter in reference to solicitors-general of state courts, there is hereby created the Prosecuting Attorneys Oversight Commission, which shall have the power to discipline, remove, and cause involuntary retirement of appointed or elected district attorneys or solicitors-general in accordance with such Paragraph. As used in this Code section, the term 'commission' means the Prosecuting Attorneys Oversight Commission.

70 (b) The commission shall consist of eight members.

71 (c)(1) The commission shall be divided into a five-member investigative panel and a
72 three-member hearing panel.

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

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

75 (B) Investigation of alleged conduct constituting grounds for discipline under
76 subsection (h) of this Code section;

77 (C) The selection of an individual to serve as the director of the commission who shall
78 be an active status member of the State Bar of Georgia and who shall not engage in the
79 practice of law, other than to represent the commission; and

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

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

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

84 (B) Issuing disciplinary and incapacity orders;

85 (C) Issuing formal advisory opinions on its own initiative or on the recommendation
86 of the investigative panel regarding the grounds for discipline set forth under
87 subsection (h) of this Code section; and

88 (D) Issuing standards on its own initiative or on the recommendation of the
89 investigative panel. Any such standards shall elaborate, define, or provide context for
90 the grounds for discipline as set forth in subsection (h) of this Code section.

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

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

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

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

(2) The Prosecuting Attorneys' Council may recommend to the respective appointing authorities a list of the names of individuals for consideration to serve as attorney commission members.

(3)(A) The five members of the commission's investigative panel shall be appointed by the Georgia Supreme Court.

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

(4) The three members of the commission's hearing panel shall be appointed by the Georgia Supreme Court.

(5) All members shall be appointed by October 1, 2023, and their initial terms shall begin on January 1, 2024; provided, however, that the initial term of a member under this paragraph shall not be construed as counting toward the limit of two full terms of service as provided for under paragraph (6) of this subsection.

(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 Georgia Supreme Court shall appoint a replacement member from the same category of member. Any member of the commission shall serve no more than two full terms.

(e) Members and staff of the hearing panel shall not engage in any ex parte communications regarding a disciplinary or incapacity matter of a district attorney or solicitor-general, including with members and staff of the investigative panel.

123 (f)(1) Each member of the commission shall be entitled to vote on any matter coming
124 before his or her respective panel unless otherwise provided by rules adopted by the
125 commission concerning recusal. The chairperson of the investigative panel and the
126 presiding officer of the hearing panel shall retain a vote on all matters except those in
127 which such chairperson or presiding officer has been recused. No commission member
128 present at a panel meeting shall abstain from voting unless he or she is recused. The rules
129 of the commission shall establish grounds for recusal and the process for allowing a
130 temporary replacement of a commission member in such circumstance.

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

136 (B) Removal of a panel member for cause shall be by a unanimous vote of all members
137 of the commission; provided, however, that the panel member who is the subject of the
138 vote shall not vote.

139 (3) A quorum of the investigative panel shall require any three members of such panel.

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

147 (B) Notwithstanding subparagraph (A) of this paragraph, no member shall receive such
148 expense allowance or travel reimbursement if he or she is entitled to receive an expense

allowance, travel reimbursement, or salary for performance of duties as a state employee.

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

(g) The commission, with the assistance of the Prosecuting Attorneys' Council of the State of Georgia, shall promulgate standards of conduct and rules for the commission's governance which will comport with due process and enforce the provisions of subsections (h) and (i) of this Code section; provided, however, that such standards and rules shall be effective only upon review and adoption by the Supreme Court. Such standards and rules shall allow for a full investigation of a district attorney or solicitor-general only upon majority vote of the investigative panel. When a commission member receives information relating to the conduct of a district attorney or solicitor-general, such member shall provide such information to the commission's director for appropriate action. Any standards of conduct adopted shall be in aid of the judiciary in the performance of its functions and shall function jointly with the Georgia Rules of Professional Conduct of the State Bar of Georgia. The standards of conduct shall include a list of actions that will be grounds for discipline of a district attorney or solicitor-general or for his or her removal or involuntary retirement from office.

(h) The following shall be grounds for discipline of a district attorney or solicitor-general or for his or her removal or involuntary retirement from office:

(1) Mental or physical incapacity interfering with the performance of his or her duties which is, or is likely to become, permanent;

(2) Willful misconduct in office;

(3) Willful and persistent failure to perform his or her duties as provided by Code Sections 15-18-6 and 15-18-66;

(4) Conviction of a crime involving moral turpitude;

175 (5) Conduct prejudicial to the administration of justice which brings the office into
176 disrepute;

177 (6) Intentionally instructing, authorizing, or permitting an assistant district attorney or
178 assistant solicitor-general or any other staff member to commit any act constituting
179 grounds for removal under paragraphs (1) through (5) of this subsection; or

180 (7) Violation of the Georgia Rules of Professional Conduct of the State Bar of Georgia,
181 including, but not limited to, Rule 3.8 of the Georgia Rules of Professional Conduct of
182 the State Bar of Georgia regarding special responsibilities of a prosecutor.

183 (i)(1) In any complaint filed with the commission alleging a violation of subsection (h)
184 and requesting an investigation of an elected or appointed district attorney or
185 solicitor-general, the complainant shall be required to file with the commission a sworn
186 affidavit detailing the personal knowledge of the facts supporting the complaint,
187 including any interest the complainant may have in the outcome of the case. The
188 complainant may attach documents to support the complaint. Nothing in this Code
189 section shall be construed to limit the ability of the commission to bring a complaint
190 pursuant to this Code section on its own motion.

191 (2) The commission may not entertain a complaint on the basis of a charging decision,
192 plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar,
193 or recommendation regarding bond unless the affidavits and any documents attached to
194 the complaint show it is likely that the district attorney or solicitor-general made or
195 knowingly authorized the decision based on:

196 (A) Undue bias;

197 (B) An undisclosed financial interest in the outcome of the prosecution;

198 (C) An undisclosed conflict of interest, including where the district attorney or
199 solicitor-general are related by consanguinity or affinity to any party interested in the
200 result of the case or matter within the third degree as computed according to the civil
201 law;

(D) Factors that are completely unrelated to the duties of prosecution; or

(E) A stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute.

(j)(1) All information regarding a disciplinary or incapacity matter of a district attorney or solicitor-general 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 district attorney or solicitor general 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 or solicitor-general, all pleadings, information, hearings, and proceedings shall remain confidential; and

(B) With respect to a disciplinary matter of a district attorney or solicitor-general, 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 under Chapter 14 or Article 4 of Chapter 18 of Title 50 or 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 that such records, information, and meetings would:

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

(B) Disclose incapacity matters of a district attorney or solicitor-general 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.

(k) Notwithstanding subsection (j) of this Code section, information regarding a disciplinary or incapacity matter of a district attorney or solicitor-general 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 or solicitor-general is under consideration for another state or federal position.

(l) 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.

(m) A respondent who is subjected to 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

254 hearing panel's order in a disciplinary or incapacity matter shall be reviewed by the
255 Supreme Court in accordance with its rules and the rules of the commission.

256 (n) The commission shall commence by October 1, 2023, and the rules and regulations
257 promulgated by such commission shall be established no later than April 1, 2024. No
258 complaint shall be filed before April 1, 2024.

259 (o) The authority of the commission shall be limited to incapacity or discipline regarding
260 the conduct of a district attorney or solicitor-general as a holder of such office. Nothing
261 in this Code section shall be construed as diminishing the authority of the Supreme Court
262 or the State Bar of Georgia to regulate the practice of law in this state.

263 (p)In the event that a district attorney or solicitor-general is removed or involuntarily
264 retired pursuant to this Code section, such individual shall be disqualified from being
265 appointed or elected to the office of district attorney of any judicial circuit or the office of
266 solicitor-general of any county of this state for a period of ten years from the date of such
267 removal or involuntary retirement."

268 **SECTION 3.**

269 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section
270 15-18-66, relating to duties and authority regarding solicitors-general, as follows:

271 "(1) To review every individual case for which probable cause for prosecution exists, and
272 make a prosecutorial decision available under the law based on the facts and
273 circumstances of each individual case under oath of duty as provided in Code Section
274 15-18-2, and, if necessary, investigate all criminal cases which may be prosecuted in state
275 court;"

276 **SECTION 4.**

277 Chapter 4 of Title 21 of the Official Code of Georgia Annotated, relating to recall of public
278 officers, is amended by revising paragraph (7) of Code Section 21-4-3, relating to definitions,
279 as follows:

280 "(7) 'Grounds for recall' means:

281 (A) That the official has, while holding public office, conducted himself or herself in
282 a manner which relates to and adversely affects the administration of his or her office
283 and adversely affects the rights and interests of the public; and

284 (B) That the official:

285 (i) Has committed an act or acts of malfeasance while in office;

286 (ii) Has violated his or her oath of office;

287 (iii) Has committed an act of misconduct in office;

288 (iv) Is guilty of a failure to perform duties prescribed by law; or

289 (v) Has willfully misused, converted, or misappropriated, without authority, public
290 property or public funds entrusted to or associated with the elective office to which
291 the official has been elected or appointed.

292 Discretionary performance of a lawful act or a prescribed duty shall not constitute a
293 ground for recall of an elected public official; provided, however, that a judicial circuit
294 district attorney's failure to perform the duties provided for in Code Section 15-18-6 or
295 a state court solicitor-general's failure to perform the duties provided for in Code Section
296 15-18-66 shall constitute grounds for a recall of such elected official."

297 **SECTION 5.**

298 This Act shall become effective for purposes of appointing members of the commission upon
299 the approval of this Act by the Governor or upon its becoming law without such approval.

300 **SECTION 6.**

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