

Judicial Council of Georgia
Emergency Session

By Remote Conferencing

Livestream at <https://www.youtube.com/judicialcouncilofgeorgia>

Monday, February 1, 2021
2:00 p.m.

- 1. Preliminary Remarks**
(Chief Justice Harold D. Melton, Est. Time – 2 Min.)
- 2. Roll Call of Judicial Council Members**
(Cynthia H. Clanton, Judicial Council Secretary and AOC Director, Est. Time – 2 Min.)
- 3. Adoption of Minutes – January 5, 2021, Emergency Session**
(Chief Justice Harold D. Melton, Est. Time – 2 Min.)
- 4. Discussion of Statewide Judicial Emergency Orders and COVID-19 Update by Judicial Council Members**
(Chief Justice Harold D. Melton, Est. Time – 15 Min.)
 - A. Judicial COVID-19 Task Force Update**
(Justice Shawn LaGrua, Est. Time – 5 Min.)
 - B. Standing Committee on Legislation (*Action Item*)**
(Presiding Justice David E. Nahmias, Est. Time – 10 Min.)
- 5. Reports from Courts, Councils, State Bar, and AOC (Est. Time – 20 min.)**
 - A. Supreme Court**
 - B. Court of Appeals**
 - C. Business Court**
 - D. Council of Superior Court Judges**
 - E. Council of State Court Judges**
 - F. Council of Juvenile Court Judges**
 - G. Council of Probate Court Judges**
 - H. Council of Magistrate Court Judges**
 - I. Council of Municipal Court Judges**

J. State Bar of Georgia

K. Administrative Office of the Courts

6. Reports from additional Judicial Branch Agencies (Est. Time – 10 Min.)

A. Council of Accountability Court Judges

B. Georgia Commission on Dispute Resolution

C. Council of Superior Court Clerks

D. Chief Justice’s Commission on Professionalism

E. Georgia Council of Court Administrators

F. Institute of Continuing Judicial Education

G. Judicial Qualifications Commission

7. Old/New Business

(Chief Justice Harold D. Melton, Est. Time – 5 Min.)

8. Concluding Remarks and Adjournment

(Chief Justice Harold D. Melton, Est. Time – 5 Min.)

Next Judicial Council Meeting – General Session

Friday, February 12, 2021 10 a.m. – 12:30 p.m. Zoom Conferencing

Judicial Council Meeting Calendar – 2021

Friday, April 23, 2021 10 a.m. – 12:30 p.m. Zoom Conferencing
Friday, August 13, 2021 10 a.m. – 12:30 p.m. Columbus Convention & Trade Center/Columbus, GA
Friday, December 10, 2021 10 a.m. – 12:30 p.m. The Carter Center/Atlanta, GA

Please continue to check www.georgiacourts.gov (the Judicial Gateway) for the latest updates and information. Thank you and continue to be safe!

Judicial Council of Georgia
Emergency Session
Conference Call
January 5, 2021 • 2 p.m.

Members Present

Chief Justice Harold D. Melton, Chair
Presiding Justice David E. Nahmias
Chief Judge Brian Amero
Chief Judge Berryl Anderson (for Chief Judge T.J. Hudson)
Chief Judge Jeffrey S. Bagley
Judge James G. Blanchard, Jr.
Chief Judge Christopher S. Brasher
Judge Walter W. Davis
Chief Judge Lori B. Duff
Judge T. Craig Earnest (for Judge Melanie Cross)
Judge Robert Flournoy, III
Chief Judge Asha Jackson
Ms. Dawn Jones
Judge Lisa C. Jones
Judge Quinn M. Kasper
Judge Jeffrey H. Kight
Judge Thomas Lakes
Chief Judge Christopher J. McFadden
Vice Chief Judge Brian K. Rickman
Judge Fletcher Sams
Judge W. James Sizemore, Jr.
Chief Judge Sarah Wall

Chief Judge Willie C. Weaver, Sr.
Judge Alvin T. Wong

Members Absent

Judge J. Wade Padgett
Chief Judge C. Gregory Price
Judge Wesley B. Tailor
Chief Judge Kelli L. Wolk

Staff Present

Ms. Cynthia Clanton, Director
Ms. Michelle Barclay
Ms. Jessica Farah
Ms. Stephanie Hines
Ms. Cheryl Karounos
Ms. Noelle Lagueux-Alvarez
Mr. Ben Luke
Ms. Tracy Mason
Ms. Lashawn Murphy
Ms. Tiffanie Robinson
Ms. Maleia Wilson

(Guests Appended)

Call to Order and Welcome

The meeting of the Judicial Council of Georgia (Council) was called to order at 2:00 p.m. by Chief Justice Melton. He informed the Council that the meeting will be recorded, livestreamed, and open to the press and public. The Chief Justice administered the oath to Judge Robert Flournoy, III, as the newest member of the Council. He acknowledged Judge Kasper for her election as the President-Elect of the Council of Magistrate Court Judges, Chief Judge Rebecca J. Pitts as Vice-President, and Judge Bobby Smith III, for his service to the judiciary. Ms. Clanton called roll for Council members; staff and guests were instructed to submit their attendance for the purpose of the minutes.

Adoption of Minutes

Chief Justice Melton directed the Council's attention to the minutes of the Emergency Session held on December 22, 2020. A motion to approve the minutes was offered by Presiding Justice Nahmias, with a second from Judge Kasper. No discussion was offered, and the motion was approved without opposition.

Discussion of Statewide Judicial Emergency Orders and COVID-19 Update by Judicial Council Members

Chief Justice Melton highlighted the anticipated content of the upcoming Tenth Extension of Statewide Judicial Emergency Order. The draft circulated carries forward everything from the current order, including the modification that suspended jury trials for an additional 30-day period. The Order is expected to be entered on Friday, January 8, 2021. He reminded the Council to continue to utilize remote technology to the fullest extent. The Council members were asked to create systems that will allow the continuation of core critical judiciary functions, preventing the complete ceasing of operations. He referred the Council to the draft order in Section 5A, which mentions having alternative facilities available to carry out essential judicial functions. Chief Justice Melton mentioned presenting examples with precise language if needed.

Chief Justice Melton noted the Department of Public Health has encouraged the Council to inform how court employees should be in line to receive the vaccine as it becomes available; court employees are designated in Phase 1B of the vaccine distribution plan. He reported the implementation of a new subcommittee of the Judicial COVID-19 Task Force, which includes Chief Judge Russell McClelland and Chief Judge Jackson serving as the Co-Chairs, and Judge Melanie Bell. The committee will be tasked with formulating recommendations to assist the Department of Public Health with vaccine distribution for court personnel.

Chief Justice Melton acknowledged Judge LaGrua, Chair of the Judicial COVID-19 Task Force, to provide an update. She mentioned the vaccine subcommittee has already met twice; updates and suggestions will be available soon. Judge LaGrua noted a document to assist with discovery disputes has been submitted to the Chief for review. She also noted obtaining several requests concerning jury selection and guidance. Judge LaGrua informed the Council that documentation which includes recommendations for civil and criminal jury selection and guidance has been placed on the AOC's website with additional COVID-19 resources. She referred the Council to contact her or Ms. Clanton for any assistance.

Chief Justice Melton recognized Ms. Jennifer Dalton, General Counsel for the Department of Public Health, to provide an update on COVID-19. As of last week, the designation of who will receive the vaccine under Phase 1A+ has been amended to include anyone 65 and older without any consideration of health issues and first responders. The updates will affect court personnel for anyone 65 and older, which advances individuals ages 65 and older to Phase 1A+ distribution. She mentioned their website supplies a link with a list of providers who will administer vaccines. She reiterated that court employees are currently listed in Phase 1B distribution. Chief Justice Melton thanked Ms. Dalton for her assistance and encouraged the Council to provide any feedback.

Reports from Courts, Councils, State Bar, and AOC

Supreme Court. No report was provided.

Court of Appeals. No report was provided.

Business Court. No report was provided.

Council of Superior Court Judges. No report was provided.

Council of State Court Judges. No report was provided.

Council of Juvenile Court Judges. No report was provided.

Council of Probate Court Judges. No report was provided.

Council of Magistrate Court Judges. No report was provided.

Council of Municipal Court Judges. No report was provided.

State Bar of Georgia. Ms. Jones reported the State Bar, as of January 1, welcomed new Executive Director, Mr. Damon Elmore, and Chief Operating Officer, Ms. Sarah Coole. The Mid-Year Meeting begins on January 7, ending with a general plenary session on Saturday, January 9. She thanked Ms. Dalton for providing an update on COVID-19. Ms. Jones mentioned details are being distributed concerning senior lawyer succession planning to assist older Bar members with COVID or emergency health-related needs. She mentioned including the DPH updates on the Category 1A+ distribution.

Administrative Office of the Courts. Director Clanton reported the AOC remains fully functional and congratulated the Council on completing their 30th Council meeting since March 2020.

Council of Accountability Court Judges. No report was provided.

Georgia Commission on Dispute Resolution. No report was provided.

Council of Superior Court Clerks. No report was provided.

Chief Justice's Commission on Professionalism. Ms. Grier reported the CLE session on December 17 was successful and thanked everyone involved. She acknowledged Chief Judge McClelland for serving as the program chair, and Judge LaGrua, Chief Justice Melton, Judge Wong, Ms. Elizabeth Fite, and Ms. Tracy Johnson for their participation. She mentioned the Commission's anticipation in serving the judiciary this year.

Georgia Council of Court Administrators. No report was provided.

Institute of Continuing Judicial Education. No report was provided.

Judicial Qualifications Commission. No report was provided.

Old Business

No old business was offered.

New Business

No new business was offered.

Concluding Remarks

Chief Justice Melton stated that the next Emergency Session meeting date is to be determined.

Adjournment

Hearing no further business, Chief Justice Melton adjourned the meeting at 2:20 p.m.

Respectfully submitted:

Tiffanie Robinson
Executive Assistant, Judicial Council/AOC
For Cynthia H. Clanton, Director and Secretary

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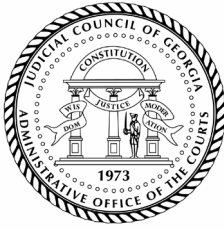
The above and foregoing minutes
were approved on the ___ day of
_____, 2021.

Harold D. Melton
Chief Justice

**Judicial Council of Georgia
Emergency Session
Conference Call
January 5, 2021 • 2 p.m.**

Guest Present

Mr. Doug Ashworth, Institute of Continuing Judicial Education
Mr. Joseph Baden, Third Judicial Administrative District
Mr. Josh Becker, Council of Accountability Court Judges
Mr. Tracy J. BeMent, Tenth Judicial Administrative District
Judge R. Violet Bennett, State Court of Wayne County
Mr. Charles “Chuck” Boring, Judicial Qualifications Commission
Mr. Bob Bray, Council of State Court Judges
Chief Judge Geronda Carter, Superior Court of Clayton County
Ms. Jennifer Dalton, Department of Public Health
Mr. Richard Denney, First Judicial Administrative District
Ms. Natalie K. Glaser, Georgia Public Defender Council
Mr. Christopher Hansard, Cobb Judicial Circuit
Ms. Lenora Hawkins-Ponzo, Fourth Judicial Administrative District
Ms. Christine B. Hayes, State Bar of Georgia
Mr. Kevin Holder, Council of Probate Court Judges
Mr. Michael Holiman, Council of Superior Court Clerks
Individual, Georgia Public Defender Council
Ms. Tracy Johnson, Georgia Commission on Dispute Resolution
Ms. Anne Kirkhope, Council of Juvenile Court Judges
Judge Shawn LaGrua, Superior Court of Fulton County
Chief Judge T. Russell McClelland, State Court of Forsyth County
Ms. Natasha MacDonald, Council of Superior Court Judges
Mr. David Mixon, Second Judicial Administrative District
Mr. Bob Nadekow, Eighth Judicial Administrative District
Mr. Jay Neal, Criminal Justice Coordinating Council
Mr. Jody Overcash, Seventh Judicial Administrative District
Chief Judge Rebecca J. Pitts, Magistrate Court of Butts County
Ms. Sharon Reiss, Council of Magistrate Court Judges
Ms. Robin Rooks, Georgia Council of Court Administrators
Chief Presiding Judge Juliette Scales, Juvenile Court of Fulton County
Judge Arthur Lee Smith, Chattahoochee Judicial Circuit
Ms. Jill Travis, Georgia Association of Criminal Defense Lawyers
Ms. Kristen Wallace, Council of Juvenile Court Judges
Ms. Cindy Wang, Department of Juvenile Justice
Ms. Emily Youngo, Council of Superior Court Judges



Judicial Council of Georgia Administrative Office of the Courts

Chief Justice Harold D. Melton
Chair

Cynthia H. Clanton
Director

Memorandum

TO: Judicial Council Members

FROM: Presiding Justice David E. Nahmias
Chair, Standing Committee on Legislation

RE: Committee Report

DATE: January 29, 2021

The Standing Committee on Legislation (Committee) met on Friday, January 22, 2021, to consider proposals from the Judicial COVID-19 Task Force. The Committee makes the following recommendations to the Judicial Council:

1) Expansion of statutory authorization for District Attorneys to use accusations as formal charging instruments
OCGA §§ 17-7-70; 17-7-70.1

The Committee recommends the Judicial Council support legislation to amend OCGA §§ 17-7-70 and 17-7-70.1 to expand statutory authority for district attorneys to use accusations as formal charging instruments, except for cases involving serious violent felonies and only 45 days or more after charges are filed, with this authority to expire one year from the date of enactment.

2) Alternative locations
OCGA § 15-6-18

The Committee recommends the Judicial Council support legislation to amend OCGA § 15-6-18 to facilitate the identification and use of alternative locations for superior and state courts as provided for during judicial emergencies under OCGA §§ 38-3-61 (c) and 15-6-17 (b); and Uniform Superior Court Rule 45.

**3) Allowance of bench trials by approval of court
Article 1 of Chapter 7 of Title 17 of the OCGA**

The Committee recommends the Judicial Council support legislation to amend Article 1 of Chapter 7 of Title 17 of the OCGA to allow a court the authority to approve an accused's waiver of the right to jury trial and proceed to trial by judge alone, notwithstanding an objection by the prosecuting attorney, with this authority to expire on April 1, 2023.

Judicial Council of Georgia
Standing Committee on Legislation
Legislative Support Request/Informational Item

Court/Council/Entity: Judicial COVID-19 Task Force

Session: 2021

Subject Matter: Expansion of statutory authorization for District Attorneys to use accusations as formal charging instruments

Code Section(s): O.C.G.A. §§ 17-7-70 and 17-7-70.1

Submitted as an: Action Item Informational Item

Overview: Describe the proposal/legislation and its purpose.

Under current Georgia law, all felony cases must be presented to a grand jury to be indicted as a formal charging instrument. However, almost every misdemeanor case—those with maximum punishments of \$1000 fines, twelve months in jail, or both—can be accused. Over the years, the legislature has previously granted District Attorneys the authority to file an accusation on a limited number of crimes in certain instances. However, the vast majority of felony cases must be presented to a grand jury before proceeding. For over six months in 2020, new grand juries could not be impaneled and, unless a defendant waived the statutory requirement, new cases could not be filed. The inability to meet resulted in a growing backlog, increasing jail populations, and decreasing case resolutions. Even now, many circuits do not have a grand jury meeting in every county. Such an issue is not unique to densely populated circuits, as large and small counties alike are struggling to return to normal court operations. Without grand juries and the ability to consider bills of indictment against the accused, the criminal justice system is significantly stifled.

“An individual has no constitutional right to appear before the grand jury to present evidence and to cross-examine witnesses. The individual is not on trial at this stage of the proceedings and therefore such a refusal denies him neither the right of confrontation nor equal protection of the laws.” *State v. Young*, 260 Ga. App. 44, 45-46, 579 S.E.2d 16, 18 (2003) quoting *In re Hall County Grand Jury Proceedings*, 175 Ga. App. 349, 351 (3) (333 S.E.2d 389) (1985). As crafted in the Georgia Code, law enforcement officers in certain instances are entitled to appear before the grand jury and offer testimony. See O.C.G.A. § 17-7-52. For other persons

accused of a crime, there is no right that they must be formally charged by a grand jury. *Lamberson v. State*, 265 Ga. 764, 462 S.E.2d 706 (1995). Unlike many other provisions of the federal Bill of Rights, however, the Grand Jury Clause of the Fifth Amendment does not apply to state prosecutions. *Johnson v. State*, 300 Ga. 252, 259, 794 S.E.2d 60, 66 (2016). See *Hurtado v. California*, 110 U. S. 516, 535 (4 SCt 111, 28 LE 232) (1884); Sara Sun Beale et al., *Grand Jury Law and Practice* § 8:2 (2d ed. updated Nov. 2015).

The passage of this bill would allow a District Attorney the ability to file an accusation for most felony matters. Crimes designated as serious violent felonies (murder or felony murder, armed robbery, kidnapping, rape, felony level aggravated child molestation, aggravated sodomy, and aggravated sexual battery) would nevertheless have to be presented to a grand jury for indictment, unless waived by the accused. Other felony crimes could be formally accused whenever there is a finding of probable cause pursuant to a commitment hearing, the accused has waived either expressly or by operation of law the right to a commitment hearing, been released on bond pending a commitment hearing, or the accused has been confined in jail for at least 45 days since his or her arrest (an amendment made by the Standing Committee on Legislation, with input from stakeholders).

Increasing the number of cases that could be accused would decrease the number of cases that must be indicted, which directly reduces the strain on a court system struggling with the issues brought by a global pandemic. Reducing the number of indictments presented to a grand jury also means fewer potential instances of virus exposure to citizens, who are compelled to serve as grand jurors, as well as witnesses who must testify before them. Additionally, this bill would allow new felony cases to be filed in a consistent manner, rather than accumulating multiple cases and then presenting them en masse to a grand jury when it meets.

Once a formal charging document is filed against a Defendant, certain rights attach, including the ability to engage in discovery. Engaging in the furtherance of the case potentially allows more cases to be resolved. Notably, this change is designed and anticipated to be temporary and would contain a sunset provision that would, after a period of time, allow the statutes to return to normal if the Legislature so desires.

The Task Force's Criminal Subcommittee formulated and submitted this proposal for consideration. Placing a sunset on the bill would allow all jurisdictions the ability to move those

impacted felony cases forward and begin to reduce some of the backload and jail populations. Allowing it to exist for a defined period of time would also provide valuable data to determine if the changes were a proper solution to such issues and if perhaps some of the changes should be maintained.

1. Priority: Is this legislation of high, medium, or low importance to your council?

This legislation is high priority.

2. Stakeholders & Constituents:

- a. Describe the constituent and stakeholder groups that may be affected by this proposal (e.g., executive branch, other governmental entities, other agencies).

All members of the court process would be impacted by this legislation.

- b. Which are likely to support this request?

Prosecutors are strongly in favor of this legislation.

The potential reduction in the number of cases that grand juries must consider would mean a cost savings to many counties, as there would be fewer days for which a grand jury must meet.

- c. Which are likely to oppose this request?

Since being amended by the Standing Committee on Legislation, it appears that there is no opposition.

- d. Which have not voiced support or opposition?

Law enforcement have not been queried directly. However, this legislation reduces their potential exposure to COVID as they would not have to frequently testify before a grand jury. It also allows officers to continue working their normal duties rather than having to report to a courthouse or other facility and wait to be called to testify; sometimes after their shift has ended or while they are on their off day, would be a welcomed change.

3. Supporting data: Summarize any supporting data, evaluations, and/or research for this request.

In early December, the Prosecuting Attorneys' Council of Georgia asked several circuits about their backlog in uncharged cases that awaited presentation to the grand jury. The Atlanta Circuit had 1300 cases in jail awaiting presentment; Cobb Circuit had 141; Clayton Circuit had 2200 unindicted cases; and the Eastern Circuit had 1100. The Gwinnett Circuit had 1842 and Macon had 524. While these numbers do not differentiate between which cases are serious violent felonies cases that would still have to go before a grand jury, any reduction in this backlog would be welcome relief to the entire court system.

- 4. Additional impact:** Will this request require a constitutional amendment or new court rule? Explain why the purpose of the bill cannot be achieved without legislation, if applicable.

As noted above, the Constitution is not impacted by this change. Because the right is statutory, a new court rule cannot override the statute.

- 5. Budget:** Will this legislation have a fiscal impact on the state? If yes, what is the projected expense? Has a White Paper been submitted to the Judicial Council Standing Committee on Budget (if applicable)? Will this legislation have a fiscal impact on counties or municipalities?

There is no fiscal impact on the state. There may be savings to the counties and municipalities in lower costs for less jury service and not having to pay officers to attend court on their off days or working beyond their normal hours.

- 6. Other Factors:** Discuss any other relevant factors that should be considered, including experience in other states or whether similar legislation has been introduced in the past.

Georgia's heavy reliance on grand jury indictment for felony cases puts it in the minority of states. Most states only require capital crimes to be indicted and some states only require indictments in murder cases.

Judicial Council DRAFT – 1.28.21

Expansion of statutory authorization for District Attorneys to use accusations as formal charging instruments

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SECTION 1

§ 17-7-70. Trial upon accusations in felony cases; trial upon accusations of felony and misdemeanor cases in which guilty plea entered and indictment waived

~~(a) In all felony cases, other than cases involving capital felonies, in which defendants have been bound over to the superior court, are confined in jail or released on bond pending a commitment hearing, or are in jail having waived a commitment hearing, the district attorney shall have authority to prefer accusations, and such defendants shall be tried on such accusations, provided that defendants going to trial under such accusations shall, in writing, waive indictment by a grand jury. Reserved.~~

SECTION 2

§ 17-7-70.1. Trial upon accusations in certain felony and misdemeanor cases; trial upon plea of guilty or nolo contendere

(a) (1) ~~Except as provided in subsection (a.1) of this Code section, in~~ felony cases involving violations of the following:

- (A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-20, 16-9-31, 16-9-33, 16-9-37, 16-10-52, and 40-5-58;
- (B) Article 1 of Chapter 8 of Title 16, relating to theft;
- (C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;
- (D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to confinement; ~~or~~
- (E) Code Section 16-11-131, relating to possession of a firearm by a convicted felon or first offender probationer; or
- (F) Code Section 16-13-30, relating to the purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana,

in which defendants have either been bound over to the superior court based on a finding of probable cause pursuant to a commitment hearing under Article 2 of this chapter or have expressly or by operation of law waived a commitment hearing, the district attorney shall have authority to prefer accusations, and the defendants shall be tried on such accusations according to the same rules of substantive and procedural laws relating to defendants who have been indicted by a grand jury.

(2) All laws relating to rights and responsibilities attendant to indicted cases shall be applicable to cases brought by accusations signed by the district attorney.

(3) The accusation need not be supported by an affidavit except in those cases in which the defendant has not been previously arrested in conjunction with the transaction

Judicial Council DRAFT – 1.28.21

Expansion of statutory authorization for District Attorneys to use accusations as formal charging instruments

35 charged in the accusation or when the accusation is to be used as the basis for the
36 issuance of an arrest warrant.

37 ~~(a.1)(1) The provisions of subsection (a) of this Code section shall apply to violations of Code~~
38 ~~Section 16-13-30 whenever there has been a finding of probable cause pursuant to a commitment~~
39 ~~hearing under Article 2 of this chapter or the accused has waived either expressly or by operation~~
40 ~~of law the right to this hearing. Upon the effective date of this Act, any felony other than a serious~~
41 ~~violent felony, as such term is defined in Code Section 17-10-6.1, in which an accused has:~~

42 (A) Been bound over to the superior court based on a finding of probable cause pursuant
43 to a commitment hearing under Article 2 of this chapter;

44 (B) Expressly or by operation of law waived a commitment hearing;

45 (C) Been released on bond pending a commitment hearing; or

46 (D) Been confined in jail for at least 45 days since his or her arrest unless such
47 timeframe has been waived in writing by the accused,

48 the district attorney shall have authority to prefer accusations, and the accused shall be tried on
49 such accusations according to the same rules of substantive and procedural laws relating to
50 defendants who have been indicted by a grand jury.

51 (2) Paragraphs (2) and (3) of subsection (a) of this Code section shall apply to this subsection.

52 (3) This subsection shall be repealed in its entirety on June 30, 2022.

53 (b) Judges of the superior court may open their courts at any time without the presence of either a
54 grand jury or a trial jury to receive and act upon pleas of guilty or nolo contendere in felony and
55 misdemeanor cases. The judge of the superior court may try the issues in such cases without a
56 jury upon an indictment or upon an accusation filed by the district attorney where the defendant
57 has waived trial by jury.

58 (c) An accusation substantially complying with the form provided in subsections (d) and (e) of
59 Code Section 17-7-71 shall in all cases be sufficient.

60 (d) The district attorney may not bring an accusation pursuant to this Code section in those cases
61 where the grand jury has heard evidence or conducted an investigation or in which a no bill has
62 been returned.

63 (e) Notwithstanding subsections (a) through (d) of this Code section, nothing in this Code section
64 shall affect the rights of public officials to appear before a grand jury as provided in Code
65 Sections 45-11-4 and 45-15-11 or peace officers to appear before a grand jury as provided in
66 Code Section 17-7-52.”

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SECTION 3

70 This Act shall become effective upon its approval by the Governor or upon its becoming law
71 without such approval.

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DRAFT

Judicial Council of Georgia
Standing Committee on Legislation
Legislative Support Request/Informational Item

Court/Council/Entity: **Judicial COVID-19 Task Force**

Session: 2021

Subject Matter: **Alternative Locations**

Code Section(s): **OCGA § 15-6-18**

Submitted as an: **Action Item** **Informational Item**

1. Overview: Describe the proposal/legislation and its purpose.

As a result of the current COVID-19 pandemic and the public health measures required for safe operation of the courts, we have learned that current court facilities in many jurisdictions cannot accommodate social distancing and other required health measures. Current guidance from the Judicial Council and public health agencies instruct that when space limitations make the regular courthouse unfit to meet social distancing requirements, courts should utilize auxiliary space in other buildings in the county such as auditoriums, gymnasiums, theaters, and ballrooms.

This proposed legislation amends OCGA § 15-6-18, to revise current law to facilitate the identification and use of alternative locations for superior and state courts as provided for during judicial emergencies pursuant to OCGA §§ 38-3-61 (c), 15-6-17 (b), and Uniform Superior Court Rule 45 to ensure selected alternative locations are appropriate and have been properly designated.

The proposed legislation requires the local government to have a contractual agreement with any alternative non-governmental facility used for court. Subsection (a). This provision has been added to ensure that the court can impose necessary restrictions and guidelines in that facility for the need and protection of criminal justice proceedings.

Subsection (c) of the current statute makes the law a population act. Because previously enacted population acts can only be repealed, they cannot be amended (except to adjust population brackets). See O.C.G.A. Section 28-1-15 and Ga. Const. Art. III, Section VI, Para. IV(b). Consequently, this proposal requires repeal and replacement.

Priority: Is this legislation of high, medium, or low importance to your council?

This legislation is high priority to superior and state courts.

2. Stakeholders & Constituents:

- a. Describe the constituent and stakeholder groups that may be affected by this proposal (e.g., executive branch, other governmental entities, other agencies).

Judicial Council of Georgia
Standing Committee on Legislation
Legislative Support Request/Informational Item

Trial courts, defendants, public defenders other criminal defense attorneys, prosecutors, crime victims, law enforcement agencies, potential jurors, county governments, and the general public.

- b. Which are likely to support this request?

Trial courts, defendants, public defenders other criminal defense attorneys, prosecutors, crime victims, law enforcement agencies, potential jurors, county governments, and the general public.

- c. Which are likely to oppose this request?

Not known.

- d. Which have not voiced support or opposition?

To be determined. The proposal has not been widely circulated.

- 3. Supporting data:** Summarize any supporting data, evaluations, and/or research for this request.

- 4. Additional impact:** Will this request require a constitutional amendment or new court rule? Explain why the purpose of the bill cannot be achieved without legislation, if applicable.

- 5. Budget:** Will this legislation have a fiscal impact on the state? If yes, what is the projected expense? Has a White Paper been submitted to the Judicial Council Standing Committee on Budget (if applicable)? Will this legislation have a fiscal impact on counties or municipalities?

Yes, this legislation will have a fiscal impact on the state and counties, in that it requires some contractual agreement in utilizing alternate spaces that are not already government property

- 6. Other Factors:** Discuss any other relevant factors that should be considered, including experience in other states or whether similar legislation has been introduced in the past.

Judicial Council – DRAFT 1.26.21
Alternative Locations

SECTION 1

NEW OCGA § 15-6-18

(a) Except as provided in subsection (b) of this Code section, if for any cause it shall be impracticable to hold any session of any superior or state court at the courthouse or other place provided by law therefor, it shall be lawful to hold such court at an alternative facility that the governing authority of the county or counties for such county or circuit, by appropriate resolution, deem would be in the best interest of the public, provided that no such court may be held at any place that is not open to and accessible by the public; provided, further that criminal jury trials shall be conducted in alternative locations so long as the governing authority has a contractual relationship with such alternative location for such use.

(b)(1) This subsection shall apply only in a county in which there exists a state court with one or more courtrooms regularly utilized by the state court outside the county site. In any such county any session of superior court may be held outside the county site in a courtroom of the state court, subject to the following conditions and limitations:

(A) The chief judge of superior court enters a written order for such session of superior court to be so held outside the county site, and such order must incorporate a written finding that it is impracticable for the session of court to be held at the county site;

(B) A judge of the state court must enter a written order consenting for such session of superior court to be held in the courtroom of the state court;

(C) The holding of superior court sessions shall not affect the place of filing of documents to be filed with the superior court, except for documents filed in open court which may be filed where the session of court is held; and

(D) Any state court making courtroom space available to the superior court under this subsection shall be authorized under the same rules to hold sessions of state court in facilities of the superior court.

(2) In each county of this state where the county site is located in an unincorporated area of the county and the governing authority of such county determines by appropriate resolution that the best interest of the citizens of such county would be served by the construction of a courthouse annex or satellite courthouse outside the county site, it shall be lawful to hold any session of superior or state court or grand jury and to conduct all other related business of the courts at such annex or satellite courthouse.

(c) All acts of a superior court or state court done at a place provided by this Code section, other than at the county courthouse or other place of holding such court as fixed by law, shall have the same force and effect as if the same had been done at the regular courthouse or other place fixed by law for the holding of such court, including the satisfaction of the requirements of Code Section 15-6-17.

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SECTION 2

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

DRAFT

Document: O.C.G.A. § 15-6-18

O.C.G.A. § 15-6-18

Copy Citation

Current through the 2020 Regular Session of the General Assembly

GA - Official Code of Georgia Annotated TITLE 15. COURTS CHAPTER 6. SUPERIOR COURTS ARTICLE 1. GENERAL PROVISIONS

§ 15-6-18. Alternative locations

(a) If for any cause it shall or may be impracticable to hold any session or sitting of any superior or state court at the courthouse or other place provided by law therefor, it shall be lawful to hold court and any session or sitting thereof at such place as the proper authorities of the county in and for which the court is to be held may from time to time provide for such purpose, provided that except as provided in subsection (b) of this Code section no session or sitting of any superior court may be held under this subsection at any place other than the county site of the county of such court.

(b) The provisions of this subsection shall apply only in a county in which there exists a state court with one or more courtrooms regularly utilized by the state court outside the county site. In any such county any session of superior court may be held outside the county site in a courtroom of the state court, subject to the following conditions and limitations:

(1) The senior judge or chief judge of superior court (such terms meaning the active judge who is senior in time of service) must enter a written order for such session of superior court to be so held outside the county site, and such order must incorporate a written finding that it is impracticable for the session of court to be held at the county site;

(2) A judge of the state court must enter a written order consenting for such session of superior court to be held in the courtroom of the state court;

(3) The holding of superior court sessions shall not affect the place of filing of documents to be filed with the superior court, except for documents filed in open court which may be filed where the session of court is held; and

(4) Any state court making courtroom space available to the superior court under this subsection shall be authorized under the same rules to hold sessions of state court in facilities of the superior court.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Code section:

(1) In each county of this state having a population of not more than 50,000 according to the United States decennial census of 1990 or any future such census, if for any cause it shall or may be impractical to hold any session or sitting of any superior or state court at the courthouse or other place provided by law therefor or if it should appear to the governing authority of the county that the best interest of the public would be served by the furnishing of alternate or additional facilities for the holding of any session or sitting of any superior or state court, it shall be lawful to hold court and any session or sitting thereof at such place or places as the governing authority of the county in and for which the court is to be held may from time to time, by appropriate resolution, provide for such purpose, provided that no session or sitting of any superior court or state court may be held under this subsection at any place that is not open to and accessible by the public; provided, further, that no criminal jury trial shall be conducted in such alternate or additional facility unless such location is a facility owned or leased by the governing authority of the county; and

(2) In each county of this state where the county site is located in an unincorporated area of the county and the governing authority of such county determines by appropriate resolution that the best interest of the citizens of such county would be served by the construction of a courthouse annex or satellite courthouse outside the county site, it shall be lawful to hold any session or sitting of superior or state court or grand jury and to conduct all other related business of the courts at such annex or satellite courthouse.

(d) All acts of a superior court or state court done at a place provided therefor by the county authorities, other than at the county courthouse or other place of holding such court as fixed by law, shall have the same force and effect as if the same had been done at the regular courthouse or other place fixed by law for the holding of such court, including the satisfaction of the requirements of Code Section 15-6-17.

History

Ga. L. 1896, p. 50, §§ 1, 2; Civil Code 1910, §§ 4840, 4841; Code 1933, §§ 24-3003, 24-3004; Ga. L. 1988, p. 259, § 1; Ga. L. 1994, p. 1052, § 2; Ga. L. 1998, p. 1159, § 2; Ga. L. 2012, p. 993, § 1/SB 50.

OFFICIAL CODE OF GEORGIA ANNOTATED

Judicial Council of Georgia
Standing Committee on Legislation
Legislative Support Request/Informational Item

Court/Council/Entity: **Judicial COVID-19 Task Force**

Session: 2021

Subject Matter: **Allowance of bench trials by approval of court**

Code Section(s): **Title 17, Chapter 7, Article 1**

Submitted as an: **Action Item** **Informational Item**

1. Overview: Describe the proposal/legislation and its purpose.

Due to the current COVID-19 pandemic and corresponding public health and judicial emergency declarations, local superior and state courts face a significant backlog of pending criminal trials. This backlog is most acute in pending jury trials. Jury trials require the assembly of larger numbers of people for jury selection and for the trial itself, and they therefore will typically be the last type of court proceeding to be reinitiated during a public health emergency, particularly in criminal cases, where constitutional requirements may limit or prevent virtual proceedings.

Recognizing that many accused persons unfortunately will be forced to choose between various fundamental rights and the right to a jury trial, the Task Force Criminal Justice Committee proposes minimizing extended pretrial detention and delays in trials by providing judges the unilateral authority to approve an accused's waiver of the right to trial by jury and proceed to trial by judge alone. This proposed legislation would amend O.C.G.A. 17-7-1 et. seq.

Grand juries resumed in October after the courts drastically curtailed operations in mid-March due to the pandemic. Jury trials were then suspended again in December 2020 to resume in mid-March 2021. When these emergency declarations end, it is anticipated that courts will continue to experience backlogs as they work to handle pending cases. Even with the scheduled vaccination rollout, we anticipate compounded delays where a jury must be empaneled to hear the case.

Before the coronavirus pandemic struck, it could take from one-to-three years from the time an initial complaint was filed for a trial to be set and a jury empaneled for trial, depending on the judicial circuit. As the Judicial Council has previously outlined regarding compliance with the statutory speedy trial requirements, we anticipate that this timeline will be significantly extended due to the current suspension of jury trials, as well as the continued abeyance of grand juries in some jurisdictions.

When restarted, jury trials will not be held at the scale or with the speed that they occurred before the emergency, due to the precautions that will need to be taken to conduct the proceedings safely during the health crisis. Yet jury trials will often be the only way to

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resolve criminal cases, as both the United States and Georgia Constitutions expressly guarantee the criminal accused the right to a jury trial to resolve the charges against them.

Under the current law and the Supreme Court's interpretation of it in *Zigan v. State*, 281 Ga. 415, 638 S.E.2d. 322 (2006), the prosecutorial veto power over the court and accused regarding bench trials is a creature of case law interpreting O.C.G.A. § 1-3-7. By amending O.C.G.A. 17-7-1 et. seq. to explicitly provide the court the authority to approve these requests during and in the judicial transition following public health and judicial emergencies, this legislation will empower the local courts to facilitate the movement of cases ensuring fairness and justice for the accused, the victims, and the community.

This proposed legislation, included at the end of this form, would be added to the current general pretrial guidelines of Article 1 of Title 17, Chapter 7 and include provisions for the steps a trial court must take before approving an accused's request for waiver. Subsection (b)(1-3). It also explicitly provides that the court retains the authority to order a trial by jury notwithstanding the accused's waiver. Finally, the proposed legislation includes a sunset provision to mirror that incorporated into the other proposed statutory changes time-linked to public health and judicial emergencies, e.g., suspension of requirement for indictments in certain cases and compliance with statutory speedy trial.

This proposed legislation would become effective upon its approval by the Governor or upon its coming law without such approval. It is essential that it become law before the current public health emergency is terminated by the Governor. In doing so, it will help the state get a handle on a backlog of criminal cases, the exact volume of which we do not have the information to accurately project at this time.

2. Priority: Is this legislation of high, medium, or low importance to your council?

This legislation is high priority to superior and state courts.

3. Stakeholders & Constituents:

- a. Describe the constituent and stakeholder groups that may be affected by this proposal (e.g., executive branch, other governmental entities, other agencies).

Trial courts, the accused, public defenders, other criminal defense attorneys, prosecutors, crime victims, law enforcement agencies, county governments, and the general public.

- b. Which are likely to support this request?

Trial courts, the accused, public defenders, other criminal defense attorneys, law enforcement agencies, county governments, and the general public.

- c. Which are likely to oppose this request?

Prosecutors and, potentially, some crime victims.

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d. Which have not voiced support or opposition?

To be determined. The proposal has not been circulated outside of the Covid-19 Task Force.

4. Supporting data: Summarize any supporting data, evaluations, and/or research for this request.

There have been numerous reports of high pending criminal case volume from across the state due to the current COVID-19 pandemic and corresponding public health and judicial emergencies. Those numbers include cases awaiting accusation or indictment, as well as those already indicted and pending resolution. The number of statewide requests for trials is not currently known, because we do not have a statewide mechanism for real-time counting of current cases.

5. Additional impact: Will this request require a constitutional amendment or new court rule? Explain why the purpose of the bill cannot be achieved without legislation, if applicable.

This request will not require a constitutional amendment or new court rule. It will, however, require legislative action to address the Supreme Court's interpretation of prosecutorial veto power over the court under O.C.G.A. § 1-3-7, as opined by the majority in *Zigan v. State*, 281 Ga. 415, 638 S.E.2d. 322 (2006). As former Chief Justice Sears explained in her dissent in *Zigan*, "there is nothing in Georgia law that requires that the State have a veto power over a defendant's request for a bench trial."

6. Budget: Will this legislation have a fiscal impact on the state? If yes, what is the projected expense? Has a White Paper been submitted to the Judicial Council Standing Committee on Budget (if applicable)? Will this legislation have a fiscal impact on counties or municipalities?

This legislation will not have a direct fiscal impact increasing the costs to the State, counties, or municipalities. It potentially may reduce the cost of pretrial detention and juror expenses for local counties.

7. Other Factors: Discuss any other relevant factors that should be considered, including experience in other states or whether similar legislation has been introduced in the past.

Judicial Council – DRAFT 1.26.21
Allowance of bench trials by approval of court

SECTION 1.

Amend Article 1 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to general provisions for pretrial proceedings, by adding a new Code section to read as follows:

17-7-4.

(a) Except as to trials conducted under Article 2 of Chapter 10 of this title, the accused in any felony or misdemeanor case may elect in writing to be tried by the court sitting without a jury by filing such request with the clerk of court and serving upon the prosecuting attorney and the judge to whom the case is assigned, or if the case is not assigned, upon the chief judge of the court in which the case is pending.

(b) When an accused elects a trial by the court sitting without a jury, the court shall, on the record,

(1) Advise the accused about the right to a trial by jury and the differences between trial by jury and trial by a court sitting without a jury; and

(2) Inquire whether the accused's election is knowing, intelligent, and voluntary.

(c) In criminal prosecutions when a jury trial has been expressly waived, the court may nevertheless order a trial with a jury. The court shall consider the prosecuting attorney's request for a jury trial, but the prosecuting attorney's objection shall not preclude the court from granting a request by the accused for a trial by the court sitting without a jury under subsection (a) of this Code section.

(d) This Code section shall stand repealed in its entirety April 1, 2023.

SECTION 2

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.