

The House Committee on Judiciary Non-civil offers the following substitute to HB 1020:

A BILL TO BE ENTITLED
AN ACT

To amend Article 5 of Chapter 11 of Title 9, Chapter 16 of Title 17, and Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to depositions and discovery in civil actions, discovery in criminal cases, and inspection of public records, respectively, so as to eliminate duplication of evidence of a violation of Part 2 of Article 3 of Chapter 12 of Title 16; to provide for controlled access to such evidence in public inspections of evidence; to change provisions relating to judicial approval being required for inspection of trial exhibits and reproduction of exhibits; to prohibit public disclosure of certain evidence under limited circumstances; to provide for penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to depositions and discovery in civil actions, is amended by adding a new Code section to read as follows:

"9-11-34.1.

Notwithstanding the provisions of Code Section 9-11-34, in any civil action based upon evidence seized in a criminal proceeding involving any violation of Part 2 of Article 3 of Chapter 12 of Title 16, a party shall not be permitted to copy any books, papers, documents, photographs, tangible objects, audio and visual tapes, films and recordings, or copies or portions thereof."

SECTION 2.

Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to discovery in criminal cases, is amended by revising paragraph (3) of subsection (a) of Code Section 17-16-4, relating to disclosure required by prosecuting attorney and defendant and inspections allowed, as follows:

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"(3)(A) Except as provided in subparagraph (B) of this paragraph, the The prosecuting attorney shall, no later than ten days prior to trial, or as otherwise ordered by the court, permit the defendant at a time agreed to by the parties or ordered by the court to inspect and copy or photograph books, papers, documents, photographs, tangible objects, audio and visual tapes, films and recordings, or copies or portions thereof and to inspect and photograph buildings or places which are within the possession, custody, or control of the state or prosecution and are intended for use by the prosecuting attorney as evidence in the prosecution's case-in-chief or rebuttal at the trial or were obtained from or belong to the defendant. Evidence that is within the possession, custody, or control of the Forensic Sciences Division of the Georgia Bureau of Investigation or other laboratory for the purpose of testing and analysis may be examined, tested, and analyzed at the facility where the evidence is being held pursuant to reasonable rules and regulations adopted by the Forensic Sciences Division of the Georgia Bureau of Investigation or the laboratory where the evidence is being held.

(B) With respect to any books, papers, documents, photographs, tangible objects, audio and visual tapes, films and recordings, or copies or portions thereof which are within the possession, custody, or control of the state or prosecution and are intended for use by the prosecuting attorney as evidence in the prosecution's case-in-chief or rebuttal at the trial of any violation of Part 2 of Article 3 of Chapter 12 of Title 16, such evidence shall, no later than ten days prior to trial, or as otherwise ordered by the court, be allowed to be inspected by the defendant but shall not be allowed to be copied."

SECTION 3.

Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to inspection of public records, is amended by revising Code Section 50-18-71.1, relating to the approval of the judge required for inspection of trial exhibits, as follows:

"50-18-71.1.

(a) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case or, if no judge has been assigned, approval of the chief judge or, if no judge has been designated chief judge, approval of the judge most senior in length of service on the court.

(b) Except as provided in subsection (d) of this Code section, in If the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following representations of the exhibit:

(1) A photograph;

1 (2) A photocopy;

2 (3) A facsimile; or

3 (4) Another reproduction.

4 (c) The provisions of subsections (b), (c), (d), and (e) of Code Section 50-18-71 shall apply
5 to fees, costs, and charges for providing a photocopy of such an exhibit. Fees for providing
6 a photograph, facsimile, or other reproduction of such an exhibit shall not exceed the cost
7 of materials or supplies and a reasonable charge for time spent producing the photograph,
8 facsimile, or other reproduction, in accordance with subsections (d) and (e) of Code Section
9 50-18-71.

10 (d) Any physical evidence that is evidence of a violation of Part 2 of Article 3 of Chapter
11 12 of Title 16, that is used as an exhibit in a criminal or civil trial, shall not be open to
12 public inspection except as provided in subsection (a) of this Code section. If the judge
13 approves inspection of such physical evidence, the judge shall designate, in writing, the
14 location where such physical evidence may be inspected, which location shall be in a
15 facility owned or operated by an agency of state or local government. If the judge permits
16 inspection, such property or material shall not be photographed, copied, or reproduced by
17 any means. Any person who violates the provisions of this subsection shall be guilty of a
18 felony and, upon conviction thereof, shall be punished by imprisonment for not less than
19 five nor more than 20 years and by a fine of not more than \$100,000.00, or both."

20 SECTION 4.

21 Said article is further amended by revising subsection (a) of Code Section 50-18-72, relating
22 to when public disclosure is not required, by striking "or" at the end of paragraph (19), by
23 striking the period and inserting in its place "; or" at the end of paragraph (20), and by adding
24 a new paragraph to read as follows:

25 "(21) Notwithstanding the provisions of paragraph (4) of this subsection, any physical
26 evidence or investigatory materials that are evidence of an alleged violation of Part 2 of
27 Article 3 of Chapter 12 of Title 16, which are in the possession, custody, or control of law
28 enforcement, prosecution, or regulatory agencies."

29 SECTION 5.

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