House Bill 24 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49th, Lindsey of the 54th, Weldon of the 3rd, Dobbs of the 53rd, Jacobs of the 80th, and others

A BILL TO BE ENTITLED

AN ACT

To amend the Official Code of Georgia Annotated so as to substantially revise, supersede, and modernize provisions relating to evidence; to provide for legislative findings; to provide for definitions; to provide for general provisions; to provide for judicial notice; to provide for parol evidence; to provide for admission of relevant evidence; to provide for testimonial privileges; to provide for competency of witnesses; to provide for opinions and expert testimony; to provide for and define hearsay; to provide for authentication and identification of writings, recordings, and photographs; to provide for the best evidence rule; to provide for establishment of lost records; to provide for medical and other confidential information; to provide for securing attendance of witnesses and production and preservation of evidence; to provide for proof generally; to amend Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, so as to move provisions relating to DNA analysis of persons convicted of certain crimes from Title 24 to Title 35; to change provisions relating to foreign language interpreters and interpreters for the hearing impaired; to amend the Official Code of Georgia Annotated so as to conform provisions to the new Title 24 and correct cross-references; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

It is the intent of the General Assembly in enacting this Act to adopt the Federal Rules of Evidence, as interpreted by the Supreme Court of the United States and the United States circuit courts of appeal as of January 1, 2013, to the extent that such interpretation is consistent with the Constitution of Georgia. Where conflicts were found to exist among the decisions of the various circuit courts of appeal interpreting the federal rules of evidence, the General Assembly considered the decisions of the 11th Circuit Court of Appeals. It is the intent of the General Assembly to revise, modernize, and reenact the general laws of this state relating to evidence while adopting, in large measure, the Federal Rules of Evidence.

The General Assembly is cognizant that there are many issues regarding evidence that are not covered by the Federal Rules of Evidence and in those situations the former provisions of Title 24 have been retained. Unless displaced by the particular provisions of this Act, the General Assembly intends that the substantive law of evidence in Georgia as it existed on December 31, 2012, be retained.

SECTION 2.

The Official Code of Georgia Annotated is amended by repealing in its entirety Title 24, relating to evidence, and enacting a new Title 24 to read as follows:

"TITLE 24

CHAPTER 1

ARTICLE 1

24-1-1.

The object of all legal investigation is the discovery of truth. Rules of evidence shall be construed to secure fairness in administration, eliminate unjustifiable expense and delay, and promote the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

24-1-2.

(a) The rules of evidence shall apply in all trials by jury in any court in this state.

(b) The rules of evidence shall apply generally to all nonjury trials and other fact-finding proceedings of any court in this state subject to the limitations set forth in subsections (c) and (d) of this Code section.

(c) The rules of evidence, except those with respect to privileges, shall not apply in the following situations:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Code Section 24-1-104;

(2) Criminal proceedings before grand juries;

(3) Proceedings for extradition or rendition;

(4) Proceedings for revoking parole;

(5) Proceedings for the issuance of warrants for arrest and search warrants except as provided by subsection (b) of Code Section 17-4-40;

(6) Proceedings with respect to release on bond;

(7) Dispositional hearings and custody hearings in juvenile court; or

(8) Contempt proceedings in which the court, pursuant to subsection (a) of Code Section 15-1-4, may act summarily.

(d)(1) In criminal commitment or preliminary hearings in any court, the rules of evidence shall apply except that hearsay shall be admissible.

(2) In in rem forfeiture proceedings, the rules of evidence shall apply except that hearsay shall be admissible in determining probable cause or reasonable cause.

(3) In presentence hearings, the rules of evidence shall apply except that hearsay and character evidence shall be admissible.

(4) In administrative hearings, the rules of evidence as applied in the trial of nonjury civil actions shall be followed, subject to special statutory rules or agency rules as authorized by law.

(e) Except as modified by statute, the common law as expounded by Georgia courts shall continue to be applied to the admission and exclusion of evidence and to procedures at trial.

ARTICLE 2

24-1-101.

Reserved.

24-1-102.

Reserved.

24-1-103.

(a) Error shall not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and:

(1) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked.

Once the court makes a definitive ruling on the record admitting or excluding any evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve such claim of error for appeal.

(b) The court shall accord the parties adequate opportunity to state grounds for objections and present offers of proof. The court may add any other or further statement which shows

the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court may direct the making of an offer of proof in question and answer form.

(c) Jury proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, including, but not limited to, making statements or offers of proof or asking questions in the hearing of the jury.

(d) Nothing in this Code section shall preclude a court from taking notice of plain errors affecting substantial rights although such errors were not brought to the attention of the court.

24-1-104.

(a) Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subsection (b) of this Code section. In making its determination, the court shall not be bound by the rules of evidence except those with respect to privileges. Preliminary questions shall be resolved by a preponderance of the evidence standard.

(b) When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be conducted out of the hearing of the jury when the interests of justice require or when an accused is a witness and requests a hearing outside the presence of the jury.

(d) The accused shall not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the proceeding.

(e) This Code section shall not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

24-1-105.

When evidence which is admissible as to one party or for one purpose but which is not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

24-1-106.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which, in fairness, should be considered contemporaneously with the writing or recorded statement.

CHAPTER 2

ARTICLE 1

24-2-201.

(a) This Code section governs only judicial notice of adjudicative facts.

(b) A judicially noticed fact shall be a fact which is not subject to reasonable dispute in that it is either:

(1) Generally known within the territorial jurisdiction of the court; or

(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) A court may take judicial notice, whether or not requested by a party.

(d) A court shall take judicial notice if requested by a party and provided with the necessary information.

(e) A party shall be entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, such request may be made after judicial notice has been taken.

(f) Judicial notice may be taken at any stage of the proceeding.

(g)(1) In a civil proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed.

(2) In a criminal proceeding, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

ARTICLE 2

24-2-220.

The existence and territorial extent of states and their forms of government; all symbols of nationality; the laws of nations; all laws and resolutions of the General Assembly and the journals of each branch thereof as published by authority; the laws of the United States and of the several states thereof as published by authority; the uniform rules of the courts; the administrative rules and regulations filed with the Secretary of State pursuant to Code Section 50-13-6; the general customs of merchants; the admiralty and maritime courts of

the world and their seals; the political makeup and history of this state and the federal government as well as the local divisions of this state; the seals of the several departments of the government of the United States and of the several states of the union; and all similar matters of legislative fact shall be judicially recognized without the introduction of proof. Judicial notice of adjudicative facts shall be governed by Code Section 24-2-201.

24-2-221.

When certified by a public officer, clerk, or keeper of county or municipal records in this state in a manner as specified for county records in Code Section 24-9-920 or in a manner as specified for municipal records in paragraph (1) or (2) of Code Section 24-9-902 and in the absence of contrary evidence, judicial notice may be taken of a certified copy of any ordinance or resolution included within a general codification required by paragraph (1) of subsection (b) of Code Section 36-80-19 as representing an ordinance or resolution duly approved by the governing authority and currently in force as presented. Any such certified copy shall be self-authenticating and shall be admissible as prima-facie proof of any such ordinance or resolution before any court or administrative body.

CHAPTER 3

24-3-1.

Parol contemporaneous evidence shall be generally inadmissible to contradict or vary the terms of a valid written instrument.

24-3-2.

If the writing does not purport to contain all the stipulations of the contract, parol evidence shall be admissible to prove other portions thereof not inconsistent with the writing; collateral undertakings between parties of the same part among themselves would not properly be looked for in the writing.

24-3-3.

(a) All contemporaneous writings shall be admissible to explain each other.

(b) Parol evidence shall be admissible to explain all ambiguities, both latent and patent.

24-3-4.

The surrounding circumstances shall always be proper subjects of proof to aid in the construction of contracts.

24-3-5.

Evidence of known and established usage shall be admissible to aid in the construction of contracts as well as to annex incidents.

24-3-6.

Parol evidence shall be admissible to rebut an equity, to discharge an entire contract, to prove a new and distinct subsequent agreement, to enlarge the time of performance, or to change the place of performance.

24-3-7.

Parol evidence shall be admissible to prove a mistake in a deed or any other contract required by law to be in writing.

24-3-8.

Parol evidence shall be admissible to show that a writing either was originally void or subsequently became void.

24-3-9.

Receipts for money shall always be only prima-facie evidence of payment and may be denied or explained by parol.

24-3-10.

Blank endorsements of negotiable paper may always be explained between the parties themselves or those taking with notice of dishonor or of the actual facts of such endorsements.

CHAPTER 4

24-4-401.

As used in this chapter, the term 'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

24-4-402.

All relevant evidence shall be admissible, except as limited by constitutional requirements or as otherwise provided by law or by other rules, as prescribed pursuant to constitutional

or statutory authority, applicable in the court in which the matter is pending. Evidence which is not relevant shall not be admissible.

24-4-403.

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

24-4-404.

(a) Evidence of a person's character or a trait of character shall not be admissible for the purpose of proving action in conformity therewith on a particular occasion, except for:

(1) Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under paragraph (2) of this subsection, evidence of the same trait of character of the accused offered by the prosecution;

(2) Subject to the limitations imposed by Code Section 24-4-412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused or by the prosecution to rebut the same; or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor; or

(3) Evidence of the character of a witness, as provided in Code Sections 24-6-607, 24-6-608, and 24-6-609.

(b) Evidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The prosecution in a criminal proceeding shall provide reasonable notice to the defense in advance of trial, unless pretrial notice is excused by the court upon good cause shown, of the general nature of any such evidence it intends to introduce at trial. Notice shall not be required when the evidence of prior crimes, wrongs, or acts is offered to prove the circumstances immediately surrounding the charged crime, motive, or prior difficulties between the accused and the alleged victim.

24-4-405.

(a) In all proceedings in which evidence of character or a trait of character of a person is admissible, proof shall be made by testimony as to reputation or by testimony in the form of an opinion.

(b) In proceedings in which character or a trait of character of a person is an essential element of a charge, claim, or defense or when an accused testifies to his or her own character, proof may also be made of specific instances of that person's conduct. The character of the accused, including specific instances of the accused's conduct, shall also be admissible in a presentencing hearing subject to the provisions of Code Section 17-10-2.

(c) On cross-examination, inquiry shall be allowable into relevant specific instances of conduct.

24-4-406.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with such habit or routine practice.

24-4-407.

In civil proceedings, when, after an injury or harm, remedial measures are taken to make such injury or harm less likely to recur, evidence of the remedial measures shall not be admissible to prove negligence or culpable conduct but may be admissible to prove product liability under subsection (b) or (c) of Code Section 51-1-11. The provisions of this Code section shall not require the exclusion of evidence of remedial measures when offered for impeachment or for another purpose, including, but not limited to, proving ownership, control, or feasibility of precautionary measures, if controverted.

24-4-408.

(a) Except as provided in Code Section 9-11-68, evidence of:

(1) Furnishing, offering, or promising to furnish; or

(2) Accepting, offering, or promising to accept

a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount shall not be admissible to prove liability for or invalidity of any claim or its amount.

(b) Evidence of conduct or statements made in compromise negotiations or mediation shall not be admissible.

(c) This Code section shall not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations or mediation. This Code section shall not require exclusion of evidence offered for another purpose, including, but not limited to, proving bias or prejudice of a witness, negating a contention of undue delay or abuse of process, or proving an effort to obstruct a criminal investigation or prosecution.

24-4-409.

Evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses occasioned by an injury shall not be admissible to prove liability for the injury.

24-4-410.

Except as otherwise provided by law, evidence of the following shall not, in any judicial or administrative proceeding, be admissible against the criminal defendant who made the plea or was a participant in the plea discussions:

(1) A plea of guilty which was later withdrawn;

(2) A plea of nolo contendere;

(3) Any statement made in the course of any proceedings in which a guilty plea or a plea of nolo contendere was entered and was later withdrawn, vacated, or set aside; or

(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty later withdrawn, vacated, or set aside;

provided, however, that the statements described in paragraphs (1) through (4) of this Code section shall be admissible in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it or in a criminal proceeding for perjury or false statement if the statement was made by the accused under oath, on the record, and in the presence of counsel or after the accused voluntarily waived his or her right to counsel.

24-4-411.

In all civil proceedings involving a claim for damages, evidence that a person was or was not insured against liability shall not be admissible except as provided in this Code section. This Code section shall not require the exclusion of evidence of insurance against liability in proceedings under Code Section 46-7-12 or when such evidence is offered for a relevant purpose, including, but not limited to, proof of agency, ownership, or control, and the court finds that the danger of unfair prejudice is substantially outweighed by the probative value of the evidence.

24-4-412.

(a) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault with the intent to rape in violation of Code Section 16-5-21; aggravated sodomy or sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code Section 16-6-3; aggravated child molestation or child molestation in violation of Code Section 16-6-4; incest in violation of Code Section 16-6-22; sexual battery in violation of Code Section 16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2, evidence relating to the past sexual behavior of the complaining witness shall not be admissible, either as direct evidence or on cross-examination of the complaining witness or other witnesses, except as provided in this Code section. For the purposes of this Code section, evidence of past sexual behavior includes, but is not limited to, evidence of the complaining witness's marital history, mode of dress, general reputation for promiscuity, nonchastity, or sexual mores contrary to the community standards.

(b) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault with the intent to rape in violation of Code Section 16-5-21; aggravated sodomy or sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code Section 16-6-3; aggravated child molestation or child molestation in violation of Code Section 16-6-4; incest in violation of Code Section 16-6-22; sexual battery in violation of Code Section 16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2, evidence relating to the past sexual behavior of the complaining witness may be introduced if the court, following the procedure described in subsection (c) of this Code section, finds that the past sexual behavior directly involved the participation of the accused and finds that the evidence expected to be introduced supports an inference that the accused could have reasonably believed that the complaining witness consented to the conduct complained of in the prosecution.

(c) The procedure for introducing evidence as described in subsection (b) of this Code section shall be as follows:

(1) At the time the defense seeks to introduce evidence which would be covered by subsection (b) of this Code section, the defense shall notify the court of such intent, whereupon the court shall conduct an in camera hearing to examine the accused's offer of proof;

(2) At the conclusion of the hearing, if the court finds that any of the evidence introduced at the hearing is admissible under subsection (b) of this Code section or is so highly material that it will substantially support a conclusion that the accused reasonably believed that the complaining witness consented to the conduct complained of and that justice mandates the admission of such evidence, the court shall by order state what

evidence may be introduced by the defense at the trial of the case and in what manner the evidence may be introduced; and

(3) The defense may then introduce evidence pursuant to the order of the court.

24-4-413.

(a) In a criminal proceeding in which the accused is accused of an offense of sexual assault, evidence of the accused's commission of another offense of sexual assault shall be admissible and may be considered for its bearing on any matter to which it is relevant.

(b) In a proceeding in which the prosecution intends to offer evidence under this Code section, the prosecutor shall disclose such evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least ten days in advance of trial, unless the time is shortened or lengthened or pretrial notice is excused by the judge upon good cause shown.

(c) This Code section shall not be the exclusive means to admit or consider evidence described in this Code section.

(d) As used in this Code section, the term 'offense of sexual assault' means any conduct or attempt or conspiracy to engage in:

(1) Conduct that would be a violation of Code Section 16-6-1, 16-6-2, 16-6-3, 16-6-5.1, 16-6-22, 16-6-22.1, or 16-6-22.2;

(2) Any crime that involves contact, without consent, between any part of the accused's body or an object and the genitals or anus of another person;

(3) Any crime that involves contact, without consent, between the genitals or anus of the accused and any part of another person's body; or

(4) Any crime that involves deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person.

24-4-414.

(a) In a criminal proceeding in which the accused is accused of an offense of child molestation, evidence of the accused's commission of another offense of child molestation shall be admissible and may be considered for its bearing on any matter to which it is relevant.

(b) In a proceeding in which the state intends to offer evidence under this Code section, the prosecuting attorney shall disclose the evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that the prosecuting attorney expects to offer, at least ten days in advance of trial, unless the time is shortened or lengthened or pretrial notice is excused by the judge upon good cause shown.

(c) This Code section shall not be the exclusive means to admit or consider evidence described under this Code section.

(d) As used in this Code section, the term 'offense of child molestation' means any conduct or attempt or conspiracy to engage in:

(1) Conduct that would be a violation of Code Section 16-6-4, 16-6-5, 16-12-100, 16-12-100.2, or 16-12-100.3;

(2) Any crime that involves contact between any part of the accused's body or an object and the genitals or anus of a child;

(3) Any crime that involves contact between the genitals or anus of the accused and any part of the body of a child; or

(4) Any crime that involves deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child.

24-4-415.

(a) In a civil or administrative proceeding in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or an offense of child molestation, evidence of that party's commission of another offense of sexual assault or another offense of child molestation shall be admissible and may be considered as provided in Code Sections 24-4-413 and 24-4-414.

(b) A party who intends to offer evidence under this Code section shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least ten days in advance of trial, unless the time is shortened or lengthened or pretrial notice is excused by the judge upon good cause shown.

(c) This Code section shall not be the exclusive means to admit or consider evidence described in this Code section.

(d) As used in this Code section, the term:

(1) 'Offense of child molestation' means any conduct or attempt or conspiracy to engage in:

(A) Conduct that would be a violation of Code Section 16-6-4, 16-6-5, 16-12-100, 16-12-100.2, or 16-12-100.3;

(B) Any crime that involves contact between any part of the accused's body or an object and the genitals or anus of a child;

(C) Any crime that involves contact between the genitals or anus of the accused and any part of the body of a child; or

(D) Any crime that involves deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child.

(2) 'Offense of sexual assault' means any conduct or attempt or conspiracy to engage in:

(A) Conduct that would be a violation of Code Section 16-6-1, 16-6-2, 16-6-3, 16-6-5.1, 16-6-22, 16-6-22.1, or 16-6-22.2;

(B) Any crime that involves contact, without consent, between any part of the accused's body or an object and the genitals or anus of another person;

(C) Any crime that involves contact, without consent, between the genitals or anus of the accused and any part of another person's body; or

(D) Any crime that involves deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person.

24-4-416.

(a) As used in this Code section, the term 'health care provider' means any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or 44 of Title 43 or any hospital, nursing home, home health agency, institution, or medical facility licensed or defined under Chapter 7 of Title 31. The term shall also include any corporation, professional corporation, partnership, limited liability company, limited liability partnership, authority, or other entity comprised of such health care providers.

(b) In any claim or civil proceeding brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities, or conduct expressing regret, apology, sympathy, commiseration, condolence, compassion, mistake, error, or a general sense of benevolence which is made by a health care provider or an employee or agent of a health care provider to the patient, a relative of the patient, or a representative of the patient and which relates to the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest.

24-4-417.

(a) In a criminal proceeding involving a prosecution for a violation of Code Section 40-6-391, evidence of the commission of another violation of Code Section 40-6-391 on a different occasion by the same accused shall be admissible when:

(1) The accused refused in the current case to take the state administered test required by Code Section 40-5-55 and such evidence is relevant to prove knowledge, plan, or absence of mistake or accident;

(2) The accused refused in the current case to provide an adequate breath sample for the state administered test required by Code Section 40-5-55 and such evidence is relevant to prove knowledge, plan, or absence of mistake or accident; or

(3) The identity of the driver is in dispute in the current case and such evidence is relevant to prove identity.

(b) In a criminal proceeding in which the state intends to offer evidence under this Code section, the prosecuting attorney shall disclose such evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that the prosecuting attorney expects to offer, at least ten days in advance of trial, unless the time is shortened or pretrial notice is excused by the judge upon good cause shown.

(c) This Code section shall not be the exclusive means to admit or consider evidence described in this Code section.

CHAPTER 5

24-5-501.

(a) There are certain admissions and communications excluded from evidence on grounds of public policy, including, but not limited to, the following:

(1) Communications between husband and wife;

(2) Communications between attorney and client;

(3) Communications among grand jurors;

(4) Secrets of state;

(5) Communications between psychiatrist and patient;

(6) Communications between licensed psychologist and patient as provided in Code Section 43-39-16;

(7) Communications between a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor and patient;

(8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this subsection; and

(9) Communications between accountant and client as provided by Code Section 43-3-32.

(b) As used in this Code section, the term:

(1) 'Psychotherapy' means the employment of psychotherapeutic techniques.

(2) 'Psychotherapeutic techniques' shall have the same meaning as provided in Code Section 43-10A-3.

24-5-502.

Every communication made by any person professing religious faith, seeking spiritual comfort, or seeking counseling to any Protestant minister of the Gospel, any priest of the Roman Catholic faith, any priest of the Greek Orthodox Catholic faith, any Jewish rabbi, or any Christian or Jewish minister or similar functionary, by whatever name called, shall be deemed privileged. No such minister, priest, rabbi, or similar functionary shall disclose any communications made to him or her by any such person professing religious faith, seeking spiritual guidance, or seeking counseling, nor shall such minister, priest, rabbi, or similar functionary be competent or compellable to testify with reference to any such communication in any court.

24-5-503.

(a) A husband and wife shall be competent but shall not be compellable to give evidence in any criminal proceeding for or against each other.

(b) The privilege created by subsection (a) of this Code section or by corresponding privileges in paragraph (1) of subsection (a) of Code Section 24-5-501 or subsection (a) of Code Section 24-5-505 shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged.

24-5-504.

Any law enforcement officer testifying in his or her official capacity in any criminal proceeding shall not be compelled to reveal his or her home address. Such officer may be required to divulge the business address of his or her employer, and the court may require any law enforcement officer to answer questions as to his or her home address whenever such fact may be material to any issue in the proceeding.

24-5-505.

(a) No party or witness shall be required to testify as to any matter which may incriminate or tend to incriminate such party or witness or which shall tend to bring infamy, disgrace, or public contempt upon such party or witness or any member of such party or witness's family.

(b) Except in proceedings in which a judgment creditor or judgment creditor's successor in interest seeks postjudgment discovery involving a judgment debtor pursuant to Code Section 9-11-69, no party or witness shall be required to testify as to any matter which shall tend to work a forfeiture of his or her estate.

(c) No official persons shall be called on to disclose any state matters of which the policy of the state and the interest of the community require concealment.

24-5-506.

(a) No person who is charged in any criminal proceeding with the commission of any criminal offense shall be compellable to give evidence for or against himself or herself.

(b) If an accused in a criminal proceeding wishes to testify and announces in open court his or her intention to do so, the accused may so testify. If an accused testifies, he or she shall be sworn as any other witness and, except as provided in Code Sections 24-6-608 and 24-6-609, may be examined and cross-examined as any other witness. The failure of an accused to testify shall create no presumption against the accused, and no comment shall be made because of such failure.

24-5-507.

(a) Whenever in the judgment of the Attorney General or any district attorney the testimony of any person or the production of evidence of any kind by any person in any criminal proceeding before a court or grand jury is necessary to the public interest, the Attorney General or the district attorney may request in writing the superior court to order such person to testify or produce the evidence. Upon order of the court, such person shall not be excused on the basis of the privilege against self-incrimination from testifying or producing any evidence required, but no testimony or other evidence required under the order or any information directly or indirectly derived from such testimony or evidence shall be used against the person in any proceeding or prosecution for a crime or offense concerning which he or she testified or produced evidence under court order. However, such person may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing, or contempt committed in testifying or failing to testify or in producing or failing to produce evidence in accordance with the order but shall not be required to produce evidence that can be used in any other court of this state, the United States, or any other state. Any order entered under this Code section shall be entered of record in the minutes of the court so as to afford a permanent record thereof, and any testimony given by a person pursuant to such order shall be transcribed and filed for permanent record in the office of the clerk of the court.

(b) If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify as set forth in this Code section, such person may be adjudged in contempt and committed to the county jail until such time as such person purges himself or herself of contempt by testifying as ordered without regard to the expiration of the grand

jury. If the grand jury before which such person was ordered to testify has been dissolved, such person may purge himself or herself by testifying before the court.

24-5-508.

Any person, company, or other entity engaged in the gathering and dissemination of news for the public through any newspaper, book, magazine, radio or television broadcast, or electronic means shall have a qualified privilege against disclosure of any information, document, or item obtained or prepared in the gathering or dissemination of news in any proceeding where the one asserting the privilege is not a party, unless it is shown that this privilege has been waived or that what is sought:

(1) Is material and relevant;

(2) Cannot be reasonably obtained by alternative means; and

(3) Is necessary to the proper preparation or presentation of the case of a party seeking the information, document, or item.

CHAPTER 6

ARTICLE 1

24-6-601.

Except as otherwise provided in this chapter, every person is competent to be a witness.

24-6-602.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of such matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. The provisions of this Code section are subject to Code Section 24-7-703 and shall not apply to party admissions.

24-6-603.

(a) Before testifying, every witness shall be required to declare that he or she will testify truthfully by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

(b) Notwithstanding the provisions of subsection (a) of this Code section, in all proceedings involving deprivation as defined by Code Section 15-11-2 and in all criminal proceedings in which a child was a victim of or witness to any crime, the child shall be competent to testify, and the child's credibility shall be determined as provided in this chapter.

24-6-604.

Except as provided in Code Sections 24-6-656 and 24-6-657 or by the rules promulgated by the Supreme Court of Georgia pursuant to Code Section 15-1-14, an interpreter shall be subject to the provisions of Code Section 24-7-702. Interpreters shall be required to take an oath or affirmation to make a true translation.

24-6-605.

The judge presiding at the trial shall not testify in that trial as a witness. No objection need be made in order to preserve this issue.

24-6-606.

(a) A member of the jury shall not testify as a witness before that jury in the trial of the case in which the juror is sitting. If a juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Upon an inquiry into the validity of a verdict or indictment, a juror shall not testify by affidavit or otherwise nor shall a juror's statements be received in evidence as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the jury deliberations or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith; provided, however, that a juror may testify on the question of whether extraneous prejudicial information was improperly brought to the juror's attention, whether any outside influence was improperly brought to bear upon any juror, or whether there was a mistake in entering the verdict onto the verdict form.

24-6-607.

The credibility of a witness may be attacked by any party, including the party calling the witness.

24-6-608.

(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to the following limitations:

(1) The evidence may refer only to character for truthfulness or untruthfulness; and

(2) Evidence of truthful character shall be admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than a conviction of a crime as provided in Code Section 24-6-609, or conduct indicative of the witness's bias toward a

party may not be proved by extrinsic evidence. Such instances may however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

(1) Concerning the witness's character for truthfulness or untruthfulness; or

(2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(c) The giving of testimony, whether by an accused or by any other witness, shall not operate as a waiver of the accused's or the witness's privilege against self-incrimination when examined with respect to matters which relate only to character for truthfulness.

24-6-609.

(a) *General rule.* For the purpose of attacking the character for truthfulness of a witness:

(1) Evidence that a witness other than an accused has been convicted of a crime shall be admitted subject to the provisions of Code Section 24-4-403 if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting the evidence outweighs its prejudicial effect to the accused; or

(2) Evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of such crime required proof or admission of an act of dishonesty or making a false statement.

(b) *Time limit.* Evidence of a conviction under this Code section shall not be admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for such conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old, as calculated in this subsection, shall not be admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) *Effect of pardon, annulment, certificate of rehabilitation, or discharge from a first offender program.* Evidence of a final adjudication of guilt and subsequent discharge under any first offender statute shall not be used to impeach any witness and evidence of a conviction shall not be admissible under this Code section if:

(1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the

person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year; or

(2) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) *Nolo contendere pleas and juvenile adjudications.* A conviction based on a plea of nolo contendere shall not be admissible to impeach any witness under this Code section. Evidence of juvenile adjudications shall not generally be admissible under this Code section. The court may, however, in a criminal proceeding allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence of the accused.

(e) *Pendency of appeal.* The pendency of an appeal shall not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal shall be admissible.

24-6-610.

Evidence of the beliefs or opinions of a witness on matters of religion shall not be admissible for the purpose of proving that by reason of the nature of the beliefs or opinions the witness's credibility is impaired or enhanced.

24-6-611.

(a) The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) A witness may be cross-examined on any matter relevant to any issue in the proceeding. The right of a thorough and sifting cross-examination shall belong to every party as to the witnesses called against the party. If several parties to the same proceeding have distinct interests, each party may exercise the right to cross-examination.

(c) Leading questions shall not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily leading questions shall be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

24-6-612.

(a) If a witness uses a writing to refresh his or her memory while testifying, an adverse party shall be entitled to have the writing produced at the hearing or trial, to inspect it, to cross-examine the witness on such writing, and to introduce in evidence those portions of such writing which relate to the testimony of the witness.

(b) If a witness uses a writing to refresh his or her memory before testifying at trial and the court in its discretion determines it is necessary in the interests of justice, an adverse party shall be entitled to have the writing produced at the trial, to inspect it, to cross-examine the witness on such writing, and to introduce in evidence those portions of such writing which relate to the testimony of the witness. If the writing used is protected by the attorney-client privilege or as attorney work product under Code Section 9-11-26, use of the writing to refresh recollection prior to the trial shall not constitute a waiver of that privilege or protection. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions of such writing not so related, and order delivery of the remainder of such writing to the party entitled to such writing. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to an order under this Code section, the court shall make any order justice requires; provided, however, that in criminal proceedings, when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

24-6-613.

(a) In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time; provided, however, upon request the same shall be shown or disclosed to opposing counsel.

(b) Except as provided in Code Section 24-8-806, extrinsic evidence of a prior inconsistent statement by a witness shall not be admissible unless the witness is first afforded an opportunity to explain or deny the prior inconsistent statement and the opposite party is afforded an opportunity to interrogate the witness on the prior inconsistent statement or the interests of justice otherwise require. This subsection shall not apply to admissions of a party-opponent as set forth in paragraph (2) of subsection (d) of Code Section 24-8-801.

(c) A prior consistent statement shall be admissible to rehabilitate a witness if the prior consistent statement logically rebuts an attack made on the witness's credibility. A general attack on a witness's credibility with evidence offered under Code Section 24-6-608 or 24-6-609 shall not permit rehabilitation under this subsection. If a prior consistent

statement is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive, the prior consistent statement shall have been made before the alleged recent fabrication or improper influence or motive arose.

24-6-614.

(a) The court may, on its own motion, call a court appointed expert, call a witness regarding the competency of any party, or call a child witness or, at the suggestion of a party, call such witnesses, and all parties shall be entitled to cross-examine such witnesses. In all other situations, the court may only call witnesses when there is an agreement of all of the parties for the court to call such witnesses and all parties shall be entitled to cross-examine such witnesses.

(b) The court may interrogate witnesses whether called by itself pursuant to subsection (a) of this Code section or by a party.

(c) Objections to the calling of witnesses by the court or to interrogation by the court may be made at the time or at the next available opportunity when the jury is not present.

24-6-615.

Except as otherwise provided in Code Section 24-6-616, at the request of a party the court shall order witnesses excluded so that each witness cannot hear the testimony of other witnesses, and it may make the order on its own motion. This Code section shall not authorize exclusion of:

(1) A party who is a natural person;

(2) An officer or employee of a party which is not a natural person designated as its representative by its attorney; or

(3) A person whose presence is shown by a party to be essential to the presentation of the party's cause.

24-6-616.

Subject to the provisions of Code Section 17-17-9, the victim of a criminal offense shall be entitled to be present in any court exercising jurisdiction over such offense.

ARTICLE 2

24-6-620.

The credibility of a witness shall be a matter to be determined by the trier of fact, and if the case is being heard by a jury, the court shall give the jury proper instructions as to the credibility of a witness.

24-6-621.

A witness may be impeached by disproving the facts testified to by the witness.

24-6-622.

The state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury.

24-6-623.

It shall be the right of a witness to be examined only as to relevant matters and to be protected from improper questions and from harsh or insulting demeanor.

ARTICLE 3

24-6-650.

It is the policy of the State of Georgia to secure the rights of hearing impaired persons who, because of impaired hearing, cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of the courts, legislative bodies, administrative agencies, licensing commissions, departments, and boards of this state and its political subdivisions unless qualified interpreters are available to assist such persons.

24-6-651.

As used in this article, the term:

(1) 'Agency' means any agency, authority, board, bureau, committee, commission, court, department, or jury of the legislative, judicial, or executive branch of government of this state or any political subdivision thereof.

(2) 'Court qualified interpreter' means any person licensed as an interpreter for the hearing impaired pursuant to Code Section 15-1-14.

(3) 'Hearing impaired person' means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications when spoken in a normal conversational tone.

(4) 'Intermediary interpreter' means any person, including any hearing impaired person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between the variance of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter.

(5) 'Proceeding' means any meeting, hearing, trial, investigation, or other proceeding of any nature conducted by an agency.

(6) 'Qualified interpreter' means any person certified as an interpreter for hearing impaired persons by the Registry of Interpreters for the Deaf or a court qualified interpreter.

24-6-652.

(a) The agency conducting any proceeding shall provide a qualified interpreter to the hearing impaired person:

(1) Whenever the hearing impaired person is a party to the proceeding or a witness before the proceeding; or

(2) Whenever a person who is below the age of 18 years is a party to the proceeding or a witness before the proceeding conducted by an agency whose parents are hearing impaired persons or whose guardian is a hearing impaired person.

(b) A hearing impaired person shall notify the agency not less than ten days, excluding weekends and holidays, prior to the date of the proceeding of the need for a qualified interpreter. If the hearing impaired person received notice of the proceeding less than ten days, excluding weekends and holidays, prior to the proceeding, such person shall notify the agency as soon as practicable after receiving such notice.

24-6-653.

(a) An arresting law enforcement agency shall provide a qualified interpreter to any hearing impaired person whenever a hearing impaired person is arrested for allegedly violating any criminal law or ordinance of this state or any political subdivision thereof.

(b)(1) Except as provided in paragraph (2) of this subsection, no interrogation, warning, informing of rights, taking of statements, or other investigatory procedures shall be undertaken upon a hearing impaired person unless a qualified interpreter has been provided or the law enforcement agency has taken such other steps as may be reasonable to accommodate such person's disability. No answer, statement, admission, or other evidence acquired through the interrogation of a hearing impaired person shall be admissible in any criminal or quasi-criminal proceedings unless such was knowingly and voluntarily given. No hearing impaired person who has been taken into custody and who is otherwise eligible for release shall be detained because of the unavailability of a qualified interpreter.

(2) If a qualified interpreter is not available, an arresting officer may interrogate or take a statement from such person, provided that if the hearing impaired person cannot hear spoken words with a hearing aid or other sound amplification device, such interrogation and answers thereto shall be in writing and shall be preserved and turned over to the court in the event such person is tried for the alleged offense.

24-6-654.

(a) A court shall provide a court qualified interpreter to any hearing impaired person whenever the hearing impaired person has been provided with a public defender or court appointed legal counsel.

(b) The court qualified interpreter authorized by this Code section shall be present at all times when the hearing impaired person is consulting with legal counsel.

24-6-655.

Whenever a hearing impaired person shall be authorized to be provided a qualified interpreter, such person may waive the right to the use of such interpreter. Any such waiver shall be in writing and shall be approved by the agency or law enforcement agency before which the hearing impaired person is to appear. In no event shall the failure of a hearing impaired person to request an interpreter be deemed to be a waiver of the hearing impaired person's right to a qualified interpreter.

24-6-656.

Whenever a hearing impaired person shall be authorized to be provided a qualified interpreter, the agency or law enforcement agency shall determine whether the qualified interpreter so provided is able to communicate accurately with and translate information to and from the hearing impaired person. If it is determined that the qualified interpreter cannot perform these functions, the agency or law enforcement agency shall obtain the services of another qualified interpreter or shall appoint an intermediary interpreter to assist the qualified interpreter in communicating with the hearing impaired person.

24-6-657.

(a) Prior to providing any service to a hearing impaired person, any qualified interpreter or intermediary interpreter shall subscribe to an oath that he or she will interpret all communications in an accurate manner to the best of his or her skill and knowledge. The Supreme Court of Georgia may by rule of court prescribe the form of the oath for interpreters and intermediary interpreters for use in court and other judicial proceedings.

(b) Whenever a hearing impaired person communicates with any other person through the use of an interpreter and under circumstances which make such communications privileged or otherwise confidential, the presence of the interpreter shall not vitiate such privilege and the interpreter shall not be required to disclose the contents of such communication.

(c) Whenever a qualified interpreter is required by this article, the agency or law enforcement agency shall not begin the proceeding or take any action until such interpreter

is in full view of and spatially situated so as to assure effective communication with the hearing impaired person.

(d) The agency or law enforcement agency may, upon its own motion or upon motion of any party, witness, or participant, order that the testimony of the hearing impaired person be electronically and visually recorded. Any such recording may be used to verify the testimony given by the hearing impaired person.

24-6-658.

Any qualified interpreter or intermediary interpreter providing service under this article shall be compensated by the agency or law enforcement agency requesting such service.

CHAPTER 7

24-7-701.

(a) If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are:

(1) Rationally based on the perception of the witness;

(2) Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and

(3) Not based on scientific, technical, or other specialized knowledge within the scope of Code Section 24-7-702.

(b) Direct testimony as to market value is in the nature of opinion evidence. A witness need not be an expert or dealer in an article or property to testify as to its value if he or she has had an opportunity to form a reasoned opinion.

24-7-702.

(a) Except as provided in Code Section 22-1-14 and in subsection (g) of this Code section, the provisions of this Code section shall apply in all civil proceedings. The opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses.

(b) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.

(c) Notwithstanding the provisions of subsection (b) of this Code section and any other provision of law which might be construed to the contrary, in professional malpractice actions, the opinions of an expert, who is otherwise qualified as to the acceptable standard of conduct of the professional whose conduct is at issue, shall be admissible only if, at the time the act or omission is alleged to have occurred, such expert:

(1) Was licensed by an appropriate regulatory agency to practice his or her profession in the state in which such expert was practicing or teaching in the profession at such time; and

(2) In the case of a medical malpractice action, had actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(A) The active practice of such area of specialty of his or her profession for at least three of the last five years, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in performing the procedure, diagnosing the condition, or rendering the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; or

(B) The teaching of his or her profession for at least three of the last five years as an employed member of the faculty of an educational institution accredited in the teaching of such profession, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in teaching others how to perform the procedure, diagnose the condition, or render the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; and

(C) Except as provided in subparagraph (D) of this paragraph:

(i) Is a member of the same profession;

(ii) Is a medical doctor testifying as to the standard of care of a defendant who is a doctor of osteopathy; or

(iii) Is a doctor of osteopathy testifying as to the standard of care of a defendant who is a medical doctor; and

(D) Notwithstanding any other provision of this Code section, an expert who is a physician and, as a result of having, during at least three of the last five years immediately preceding the time the act or omission is alleged to have occurred, supervised, taught, or instructed nurses, nurse practitioners, certified registered nurse anesthetists, nurse midwives, physician assistants, physical therapists, occupational therapists, or medical support staff, has knowledge of the standard of care of that health care provider under the circumstances at issue shall be competent to testify as to the

standard of that health care provider. However, a nurse, nurse practitioner, certified registered nurse anesthetist, nurse midwife, physician assistant, physical therapist, occupational therapist, or medical support staff shall not be competent to testify as to the standard of care of a physician.

(d) Upon motion of a party, the court may hold a pretrial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of subsections (a) and (b) of this Code section. Such hearing and ruling shall be completed no later than the final pretrial conference contemplated under Code Section 9-11-16.

(e) An affiant shall meet the requirements of this Code section in order to be deemed qualified to testify as an expert by means of the affidavit required under Code Section 9-11-9.1.

(f) It is the intent of the legislature that, in all civil proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co. v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. Ltd. v. Carmichael, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.

(g) This Code section shall not be strictly applied in proceedings conducted pursuant to Chapter 9 of Title 34 or in administrative proceedings conducted pursuant to Chapter 13 of Title 50.

24–7-703.

The facts or data in the particular proceeding upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, such facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Such facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

24-7-704.

(a) Except as provided in subsection (b) of this Code section, testimony in the form of an opinion or inference otherwise admissible shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of an accused in a criminal proceeding shall state an opinion or inference as to whether the accused did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

24-7-705.

An expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. An expert may in any event be required to disclose the underlying facts or data on cross-examination.

24-7-706.

Except as provided in Chapter 7 of Title 9 or Code Section 17-7-130.1, 17-10-66, 29-4-11, 29-5-11, 31-14-3, 31-20-3, or 44-6-166.1, the following procedures shall govern the appointment, compensation, and presentation of testimony of court appointed experts:

(1) The court on its own motion or on the motion of any party may enter an order to show cause why any expert witness should not be appointed and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. Each appointed expert witness shall be informed of his or her duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. Each appointed expert witness shall advise the parties of his or her findings, if any. Except as provided in Article 3 of Chapter 12 or Article 6 of Chapter 13 of this title, such witness's deposition may be taken by any party. Such witness may be called to testify by the court or any party. Each expert witness shall be subject to cross-examination by each party, including a party calling the witness;

(2) Appointed expert witnesses shall be entitled to reasonable compensation in whatever sum the court allows. The compensation fixed shall be payable from funds which may be provided by law in criminal proceedings and civil proceedings and proceedings involving just compensation for the taking of property. In other civil proceedings, the compensation shall be paid by the parties in such proportion and at such time as the court directs and thereafter charged in like manner as other costs;

(3) In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness; and

(4) Nothing in this Code section shall limit a party in calling expert witnesses of the party's own selection.

24-7-707.

In criminal proceedings, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses.

CHAPTER 8

ARTICLE 1

24-8-801.

As used in this chapter, the term:

(a) 'Statement' means:

(1) An oral or written assertion; or

(2) Nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) 'Declarant' means a person who makes a statement.

(c) 'Hearsay' means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) 'Hearsay' shall be subject to the following exclusions and conditions:

(1) *Prior statement by witness.*

(A) An out-of-court statement shall not be hearsay if the declarant testifies at the trial or hearing, is subject to cross-examination concerning the statement, and the statement is admissible as a prior inconsistent statement or a prior consistent statement under Code Section 24-6-613 or is otherwise admissible under this chapter.

(B) If a hearsay statement is admitted and the declarant does not testify at the trial or hearing, other out-of-court statements of the declarant shall be admissible for the limited use of impeaching or rehabilitating the credibility of the declarant, and not as substantive evidence, if the other statements qualify as prior inconsistent statements or prior consistent statements under Code Section 24-6-613.

(C) A statement shall not be hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is one of identification of a person made after perceiving the person; and

(2) *Admissions by party-opponent.*

Admissions shall not be excluded by the hearsay rule. An admission is a statement offered against a party which is:

(A) The party's own statement, in either an individual or representative capacity;

(B) A statement of which the party has manifested an adoption or belief in its truth;

(C) A statement by a person authorized by the party to make a statement concerning the subject;

(D) A statement by the party's agent or employee, but not including any agent of the state in a criminal proceeding, concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy, including a statement made during the concealment phase of a conspiracy. A conspiracy need not be charged in order to make a statement admissible under this subparagraph.

The contents of the statement shall be considered but shall not alone be sufficient to establish the declarant's authority under subparagraph (C) of this paragraph, the agency or employment relationship and scope thereof under subparagraph (D) of this paragraph, or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subparagraph (E) of this paragraph.

(e) 'Public office' means:

(1) Every state department, agency, board, bureau, commission, division, public corporation, and authority;

(2) Every county, municipal corporation, school district, or other political subdivision of this state;

(3) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of this state; and

(4) Every city, county, regional, or other authority established pursuant to the laws of this state.

(f) 'Public official' means an elected or appointed official.

(g) 'Public record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and created in the course of the operation of a public office.

24-8-802.

Hearsay shall not be admissible except as provided by this article; provided, however, that if a party does not properly object to hearsay, the objection shall be deemed waived, and the hearsay evidence shall be legal evidence and admissible.

24-8-803.

The following shall not be excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter;

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

(3) *Then existing mental, emotional, or physical condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless such statements relate to the execution, revocation, identification, or terms of the declarant's will and not including a statement of belief as to the intent of another person;

(4) *Statements for purposes of medical diagnosis or treatment.* Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;

(5) *Recorded recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but shall not itself be received as an exhibit unless offered by an adverse party;

(6) *Records of regularly conducted activity.* Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness and subject to the provisions of Chapter 7 of this title, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, if (A) made at or near the time of the described acts, events, conditions, opinions, or diagnoses; (B) made by, or from information transmitted by, a person with personal knowledge and a business duty to report; (C) kept in the course of a regularly conducted business activity; and (D) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with paragraph (11) or (12) of Code Section 24-9-902 or by any other statute permitting certification. The term 'business' as used in this paragraph includes any business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Public records and reports shall be admissible under paragraph (8) of this Code section and shall not be admissible under this paragraph;

(7) *Absence of entry in records kept in accordance with paragraph (6) of this Code section.* Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6) of this Code section, to prove the nonoccurrence or nonexistence of the matter, if the

matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness;

(8) *Public records and reports.* Except as otherwise provided by law, public records, reports, statements, or data compilations, in any form, of public offices, setting forth:

(A) The activities of the public office;

(B) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, against the accused in criminal proceedings, matters observed by police officers and other law enforcement personnel in connection with an investigation; or

(C) In civil proceedings and against the state in criminal proceedings, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness;

(9) *Records of vital statistics.* Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;

(10) *Absence of public record or entry.* To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office, evidence in the form of a certification in accordance with Code Section 24-9-902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry;

(11) *Records of religious organizations.* Statements of birth, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;

(12) *Marriage, baptismal, and similar certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;

(13) *Family records.* Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like;

(14) *Records of documents affecting an interest in property.* The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it

purports to have been executed, if the record is a record of a public office and an applicable law authorizes the recording of documents of that kind in such office;

(15) *Statements in documents affecting an interest in property.* A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

(16) *Statements in ancient documents.* Statements in a document in existence 20 years or more the authenticity of which is established;

(17) *Market reports and commercial publications.* Market quotations, tabulations, lists, directories, or other published compilations generally used and relied upon by the public or by persons in the witness's particular occupation;

(18) *Learned treatises.* To the extent called to the attention of an expert witness upon cross-examination, statements contained in published treatises, periodicals, or pamphlets, whether published electronically or in print, on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statements may be used for cross-examination of an expert witness and read into evidence but shall not be received as exhibits;

(19) *Reputation concerning personal or family history.* Reputation among members of a person's family by blood, adoption, or marriage or among a person's associates or in the community concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of the person's personal or family history;

(20) *Reputation concerning boundaries or general history.* Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which such lands are located;

(21) *Reputation as to character.* Reputation of a person's character among associates or in the community;

(22) *Judgment of previous conviction.* Evidence of a final judgment, entered after a trial or upon a plea of guilty but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but shall not affect admissibility; or

(23) *Judgment as to personal, family, or general history or boundaries.* Judgments as proof of matters of personal, family, or general history or boundaries essential to the judgment, if the same would be provable by evidence of reputation.

24-8-804.

(a) As used in this Code section, the term 'unavailable as a witness' includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) Testifies to a lack of memory of the subject matter of the declarant's statement;

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance or, in the case of exceptions under paragraph (2), (3), or (4) of subsection (b) of this Code section, the declarant's attendance or testimony, by process or other reasonable means.

A declarant shall not be deemed unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) The following shall not be excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. If deposition testimony is admissible under either the rules stated in Code Section 9-11-32 or this Code section, it shall be admissible at trial in accordance with the rules under which it was offered;

(2) In a prosecution for homicide or in a civil proceeding, a statement made by a declarant while believing that his or her death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death;

(3) A statement against interest. A statement against interest is a statement:

(A) Which a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's

proprietary or pecuniary interest or had so great a tendency to invalidate a claim by the declarant against another or to expose the declarant to civil or criminal liability; and

(B) Supported by corroborating circumstances that clearly indicate the trustworthiness of the statement if it is offered in a criminal case as a statement that tends to expose the declarant to criminal liability;

(4) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated or a statement concerning the foregoing matters and death also of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared; or

(5) A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

24-8-805.

Hearsay included within hearsay shall not be excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule.

24-8-806.

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, shall not be subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party shall be entitled to examine the declarant on the statement as if under cross-examination.

24-8-807.

A statement not specifically covered by any law but having equivalent circumstantial guarantees of trustworthiness shall not be excluded by the hearsay rule, if the court determines that:

(1) The statement is offered as evidence of a material fact;

(2) The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) The general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this Code section unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

ARTICLE 2

24-8-820.

A statement made by a child under the age of 14 years describing any act of sexual contact or physical abuse performed with or on the child by another shall be admissible in evidence by the testimony of the person to whom made if the child is available to testify in the proceedings and the court finds that the circumstances of the statement provide sufficient indicia of reliability.

24-8-821.

Without offering the same in evidence, either party may avail himself or herself of allegations or admissions made in the pleadings of the other.

24-8-822.

When an admission is given in evidence by one party, it shall be the right of the other party to have the whole admission and all the conversation connected therewith admitted into evidence.

24-8-823.

All admissions shall be scanned with care, and confessions of guilt shall be received with great caution. A confession alone, uncorroborated by any other evidence, shall not justify a conviction.

24-8-824.

To make a confession admissible, it shall have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury.

24-8-825.

The fact that a confession has been made under a spiritual exhortation, a promise of secrecy, or a promise of collateral benefit shall not exclude it.

24-8-826.

(a) Upon the trial of any civil proceeding involving injury or disease, any medical report in narrative form which has been signed and dated by an examining or treating licensed physician, dentist, orthodontist, podiatrist, physical or occupational therapist, doctor of chiropractic, psychologist, advanced practice registered nurse, social worker, professional counselor, or marriage and family therapist shall be admissible and received in evidence insofar as it purports to represent the history, examination, diagnosis, treatment, prognosis, or interpretation of tests or examinations, including the basis therefor, by the person signing the report, the same as if that person were present at trial and testifying as a witness; provided, however, that such report and notice of intention to introduce such report shall first be provided to the adverse party at least 60 days prior to trial. A statement of the qualifications of the person signing such report may be included as part of the basis for providing the information contained therein, and the opinion of the person signing the report with regard to the etiology of the injury or disease may be included as part of the diagnosis. Any adverse party may object to the admissibility of any portion of the report, other than on the ground that it is hearsay, within 15 days of being provided with the report. Further, any adverse party shall have the right to cross-examine the person signing the report and provide rebuttal testimony. The party tendering the report may also introduce testimony of the person signing the report for the purpose of supplementing the report or otherwise.

(b) The medical narrative shall be presented to the jury as depositions are presented to the jury and shall not go out with the jury as documentary evidence.

CHAPTER 9

ARTICLE 1

24-9-901.

(a) The requirement of authentication or identification as a condition precedent to admissibility shall be satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Code section:

(1) Testimony of a witness with knowledge that a matter is what it is claimed to be;

(2) Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;

(3) Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated. Such specimens shall be furnished to the opposite party no later than ten days prior to trial;

(4) Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances;

(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;

(6) Telephone conversations, by evidence that a call was made to the number assigned at the time by a telephone service provider to a particular person or business, if:

(A) In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;

(7) Evidence that a document authorized by law to be recorded or filed and in fact recorded or filed in a public office or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept;

(8) Evidence that a document or data compilation, in any form:

(A) Is in such condition as to create no suspicion concerning its authenticity;

(B) Was in a place where it, if authentic, would likely be; and

(C) Has been in existence 20 years or more at the time it is offered;

(9) Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result; or

(10) Any method of authentication or identification provided by law.

24-9-902.

Extrinsic evidence of authenticity as a condition precedent to admissibility shall not be required with respect to the following:

(1) A document bearing a seal purporting to be that of the United States or of any state, district, commonwealth, territory, or insular possession thereof or the Panama Canal Zone or the Trust Territory of the Pacific Islands or of a political subdivision, department, officer, or agency thereof or of a municipal corporation of this state and bearing a signature purporting to be an attestation or execution;

(2) A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) of this Code section having no seal, if

a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

(3) A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make such execution or attestation and accompanied by a final certification as to the genuineness of the signature, official position of the executing or attesting person, or of any foreign official whose certificate of genuineness of signature and official position relates to such execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to such execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that such documents be treated as presumptively authentic without final certification or permit such documents to be evidenced by an attested summary with or without final certification;

(4) A duplicate of an official record or report or entry therein or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with paragraph (1), (2), or (3) of this Code section or complying with any law of the United States or of this state, including Code Section 24-9-920;

(5) Books, pamphlets, or other publications purporting to be issued by a public office;

(6) Printed materials purporting to be newspapers or periodicals;

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin;

(8) Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments;

(9) Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law;

(10) Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic;

(11) The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under paragraph (6) of Code Section 24-8-803 if accompanied by a written declaration of its custodian or other qualified person certifying that the record:

(A) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of such matters;

(B) Was kept in the course of the regularly conducted activity; and

(C) Was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph shall provide written notice of such intention to all adverse parties and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge such record and declaration; or

(12) In a civil proceeding, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under paragraph (6) of Code Section 24-8-803 if accompanied by a written declaration by its custodian or other qualified person certifying that the record:

(A) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) Was kept in the course of the regularly conducted activity; and

(C) Was made by the regularly conducted activity as a regular practice.

The declaration shall be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph shall provide written notice of such intention to all adverse parties and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge such record and declaration.

24-9-903.

The testimony of a subscribing witness shall not be necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

24-9-904.

As used in this article, the term:

(1) 'Public office' shall have the same meaning as set forth in Code Section 24-8-801.

(2) 'Public officer' means any person appointed or elected to be the head of any entity included in paragraph (1) of Code Section 24-9-902.

(3) 'Telephone service provider' shall have the same meaning as 'voice service provider' as set forth in Code Section 46-5-231.

ARTICLE 2

24-9-920.

The certificate or attestation of any public officer either of this state or any county thereof or any clerk or keeper of county, consolidated government, or municipal records in this state shall give sufficient validity or authenticity to any copy or transcript of any record, document, paper or file, or other matter or thing in such public officer's respective office, or pertaining thereto, to admit the same in evidence.

24-9-921.

(a) Upon the trial of any civil proceeding involving injury or disease, the patient or the member of his or her family or other person responsible for the care of the patient shall be a competent witness to identify bills for expenses incurred in the treatment of the patient upon a showing by such a witness that the expenses were incurred in connection with the treatment of the injury, disease, or disability involved in the subject of litigation at trial and that the bills were received from:

(1) A hospital;

(2) An ambulance service;

(3) A pharmacy, drugstore, or supplier of therapeutic or orthopedic devices; or

(4) A licensed practicing physician, dentist, orthodontist, podiatrist, physical or occupational therapist, doctor of chiropractic, psychologist, advanced practice registered nurse, social worker, professional counselor, or marriage and family therapist.

(b) Such items of evidence need not be identified by the one who submits the bill, and it shall not be necessary for an expert witness to testify that the charges were reasonable and necessary. However, nothing in this Code section shall be construed to limit the right of a thorough and sifting cross-examination as to such items of evidence.

24-9-922.

The acts of the legislature of any other state, territory, or possession of the United States, the records and judicial proceedings of any court of any such state, territory, or possession, and the nonjudicial records or books kept in the public offices in any such state, territory, or possession, if properly authenticated, shall have the same full faith and credit in every court within this state as they have by law or usage in the courts of such state, territory, or possession from which they are taken.

24-9-923.

(a) As used in this Code section, the term 'unavailability of a witness' includes situations in which the authenticating witness:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the authentication;

(2) Persists in refusing to testify concerning the subject matter of the authentication despite an order of the court to do so;

(3) Testifies to a lack of memory of the subject matter of the authentication;

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the authentication has been unable to procure the attendance of the authenticating witness by process or other reasonable means.

An authenticating witness shall not be deemed unavailable as a witness if his or her exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of an authentication for the purpose of preventing the witness from attending or testifying.

(b) Subject to any other valid objection, photographs, motion pictures, video recordings, and audio recordings shall be admissible in evidence when necessitated by the unavailability of a witness who can provide personal authentication and when the court determines, based on competent evidence presented to the court, that such items tend to show reliably the fact or facts for which the items are offered.

(c) Subject to any other valid objection, photographs, motion pictures, video recordings, and audio recordings produced at a time when the device producing the items was not being operated by an individual person or was not under the personal control or in the presence of an individual operator shall be admissible in evidence when the court determines, based on competent evidence presented to the court, that such items tend to show reliably the fact or facts for which the items are offered, provided that, prior to the admission of such evidence, the date and time of such photograph, motion picture, or video recording shall be contained on such evidence, and such date and time shall be shown to have been made contemporaneously with the events depicted in such photograph, motion picture, or video recording.

(d) This Code section shall not be the exclusive method of introduction into evidence of photographs, motion pictures, video recordings, and audio recordings but shall be supplementary to any other law and lawful methods existing in this state.

24-9-924.

(a) Any court may receive and use as evidence in any proceeding information otherwise admissible from the records of the Department of Public Safety or the Department of Driver Services obtained from any terminal lawfully connected to the Georgia Crime Information Center without the need for additional certification of such records.

(b) Any court may receive and use as evidence for the purpose of imposing a sentence in any criminal proceeding information otherwise admissible from the records of the Department of Driver Services obtained from a request made in accordance with a contract with the Georgia Technology Authority for immediate on-line electronic furnishing of information.

CHAPTER 10

24-10-1001.

As used in this chapter, the term:

(1) 'Writing' or 'recording' means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, magnetic impulse, or mechanical or electronic recording or other form of data compilation.

(2) 'Photograph' includes still photographs, X-ray films, video recordings, and motion pictures.

(3) 'Original' means the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.

(4) 'Duplicate' means a counterpart produced by the same impression as the original or from the same matrix or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, chemical reproduction, or other equivalent techniques which accurately reproduce the original.

(5) 'Public record' shall have the same meaning as set forth in Code Section 24-8-801.

24-10-1002.

To prove the contents of a writing, recording, or photograph, the original writing, recording, or photograph shall be required.

24-10-1003.

A duplicate shall be admissible to the same extent as an original unless:

(1) A genuine question is raised as to the authenticity of the original; or

(2) A circumstance exists where it would be unfair to admit the duplicate in lieu of the original.

24-10-1004.

The original shall not be required and other evidence of the contents of a writing, recording, or photograph shall be admissible if:

(1) All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

(2) No original can be obtained by any available judicial process or procedure;

(3) At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) The writing, recording, or photograph is not closely related to a controlling issue.

24-10-1005.

The contents of a public record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by duplicate, certified as correct in accordance with Code Section 24-9-902 or Code Section 24-9-920 or testified to be correct by a witness who has compared it with the original. If a duplicate which complies with this Code section cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

24-10-1006.

The contents of otherwise admissible voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that the contents of such writings, recordings, or photographs be produced in court.

24-10-1007.

The contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

24-10-1008.

When the admissibility of other evidence of the contents of writings, recordings, or photographs under the rules of evidence depends upon the fulfillment of a condition of fact, the question of whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Code Section 24-1-104; provided, however, that when an issue is raised as to:

(1) Whether the asserted writing, recording, or photograph ever existed;

(2) Whether another writing, recording, or photograph produced at the trial is the original; or

(3) Whether other evidence of the contents correctly reflects the contents,

the issue is for the trier of fact to determine as in the case of other issues of fact.

CHAPTER 11

ARTICLE 1

24-11-1.

As used in this chapter, the term:

(1) 'Custodian' means the person charged with the duty of maintaining public records.

(2) 'Duplicate' means a counterpart which accurately reproduces the original.

(3) 'Public record' shall have the same meaning as set forth in Code Section 24-8-801.

24-11-2.

(a) Where any original public records have been lost, mutilated, stolen, or destroyed, the custodian may establish duplicates in accordance with the provisions of this article. When such public records are established by duplicates, they shall have all of the effect in evidence as the original records would have had.

(b) The custodian of the lost, mutilated, stolen, or destroyed public records shall bring a petition to establish such records in the superior court of the county in which the public records were located.

(c) The petition shall set forth the fact that some portion of the public records has been lost, mutilated, stolen, or destroyed, specifying as nearly as may be possible the books or parts of the books in which those records existed, and shall pray for the establishment of such records.

24-11-3.

(a) The court shall either appoint an auditor for such petition in accordance with Chapter 7 of Title 9 or shall conduct a hearing on the petition. If an auditor is appointed, the

provisions of Code Sections 9-7-1 through 9-7-16 and Code Section 9-7-21 shall apply to such proceedings. An auditor shall receive compensation for services rendered as may be allowed by the court, to be paid out of the funds of the office of the custodian whose records were lost, mutilated, stolen, or destroyed.

(b) If the court hears the petition, after receiving evidence, the court shall determine whether the purported duplicate is, in fact, the same as the original record which has been lost, mutilated, stolen, or destroyed, and it shall be discretionary with the court to order the whole or any part of such records established. The court shall give precedence to a petition filed pursuant to this article and hear the petition as speedily as possible.

(c) The duplicates which are established pursuant to this Code section, as nearly as may be possible, shall specify and conform to the original book and pages of the same on which they originally existed.

ARTICLE 2

24-11-20.

(a) Upon the loss of any original pleading, declaration, bill of indictment, special presentment, accusation, or other office paper, a duplicate may be established instanter on motion.

(b) As used in this article, the term 'office paper' means the instrument upon which a proceeding has been brought after the case has gone to trial.

24-11-21.

(a) The owner, agent of the owner, or legal representative of the owner of any bond, bill, note, draft, check, or other evidence of indebtedness which has been lost or destroyed may establish a duplicate of the same in a summary manner by filing a petition with the judge of the probate court of the county of the residence of the alleged debtor or maker, if he or she is a resident of this state; and the judge of the probate court shall be deemed a judicial officer for the purpose of this Code section. The petition shall be sworn to by the party applying and shall contain as full and accurate a description as possible of the lost paper, of the loss and mode of loss, and of the inability to find the same and why, along with a prayer for the establishment of a duplicate setting forth the duplicate desired to be established.

(b) Upon the filing of a petition, the judge shall issue a citation or notice to the alleged debtor or maker requiring the debtor or maker to appear at a day not more than ten days distant and show cause, if he or she has any, why the duplicate should not be established

in lieu of the lost original. The citation or notice shall be personally served in the manner provided in Code Section 9-11-4 at least five days before the time of the hearing.

(c) If no successful defense is made at the time and place appointed, the judge shall proceed to establish, by an order entered on the petition, the duplicate so prayed to be established, which shall have all the effect of the original. The petition, notice, and order shall be entered in a book of record specially prepared for this purpose.

(d) If the debtor or maker files a defense under oath to the effect that the original never existed as claimed, the judge shall decide the case, after giving the parties time for preparation and hearing, not to exceed 20 days. If the judge's decision is in favor of the applicant and no appeal is entered as provided in subsection (e) of this Code section, the decision shall be entered on the petition, and the duplicate so established shall have the same effect as an original. If the judge's decision is in favor of the alleged debtor or maker, the judge shall also enter his or her decision on the petition. In all cases, the proceedings shall be recorded as provided in subsection (c) of this Code section.

(e) Except as provided in Article 6 of Chapter 9 of Title 15, if either party to the proceedings provided for in this Code section is dissatisfied, such party may appeal upon giving the usual bond and security for costs, as in cases of appeal from the probate court to the superior court. The appeal shall be tried in the superior court from all the pleadings and proceedings as were before the judge of the probate court. In the superior court, the case shall be tried and determined as provided in Code Sections 24-11-23 through 24-11-26.

(f) This Code section shall not apply to evidences of indebtedness to which Title 11, the 'Uniform Commercial Code,' is applicable.

24-11-22.

When the person alleged to be a debtor or maker of a lost or destroyed paper as set forth in Code Section 24-11-21 does not reside in this state, the alleged debtor or maker may be made a party to the proceedings by publication, in a newspaper to be designated by the judge of the probate court, twice a month for two months. When the person has been made a party, this article shall apply in his or her case.

24-11-23.

(a) The owner of a lost or destroyed paper which is not an office paper, as defined in Code Section 24-11-20, who desires to establish such paper shall present to the clerk of the superior court of the county where the maker of the paper resides, if the maker is a resident of this state, a petition in writing, together with a duplicate, in substance, of the paper lost

or destroyed, as nearly as he or she can recollect, which duplicate shall be sworn to by the petitioner, the petitioner's agent, or the petitioner's attorney.

(b) The clerk shall issue a rule nisi in the name of the judge of the superior court calling upon the opposite party to show cause, if he or she has any, why the duplicate sworn to should not be established in lieu of the lost or destroyed original. If the respondent is found in this state, the rule nisi shall be served personally upon the respondent in the manner provided by Code Section 9-11-4 at least 20 days before the sitting of the court to which the rule nisi is made returnable. If the respondent cannot be found in this state, the rule nisi shall be served upon the respondent by publication in the manner provided in Code Section 9-11-4 before the final hearing of the rule nisi.

24-11-24.

In a proceeding to establish lost papers under Code Section 24-11-23, no continuance shall be granted unless it appears reasonable and just to the court; nor shall a continuance be allowed to the same party more than once, except for providential cause.

24-11-25.

When a rule nisi has been served as provided in Code Section 24-11-23, the court shall grant a rule absolute establishing the duplicate of the lost or destroyed paper sworn to, unless good and sufficient cause is shown why the rule absolute should not be granted.

24-11-26.

When the duplicate of the lost or destroyed paper is established, the clerk of the court in which it is done shall furnish the duplicate to the party who had it established, with a certified endorsement thereon of the day and term of the court when the rule absolute was granted, provided all costs of the proceeding have been paid.

24-11-27.

(a) If the paper which has been lost or destroyed is a note, bill, bond, or other instrument upon which a proceeding may be brought, the owner may institute a proceeding thereon as soon as the rule nisi has been issued as provided for in Code Section 24-11-23. The complaint shall set forth that the paper upon which the proceeding is based is lost or destroyed. In no case shall a judgment be entered in the proceeding until it is determined whether the application to establish the paper is granted or not. If the application is granted, then judgment shall be entered as in other proceedings.

(b) In a proceeding as provided for in subsection (a) of this Code section, production of the paper upon which the proceeding is based shall not be demanded until the time for

rendition of judgment in the proceeding; at that time, if the plaintiff produces a duplicate of the paper with a certified endorsement thereon by the clerk of the court in which it was established, as provided in Code Section 24-11-26, it shall be taken and considered as the original.

(c) This Code section shall not apply to instruments to which Title 11, the 'Uniform Commercial Code,' is applicable.

24-11-28.

In all proceedings for the purpose of establishing any lost or destroyed paper other than an office paper, as defined in Code Section 24-11-20, any person whose interest will be affected by the establishment of the lost paper shall, upon motion, by order of the court, be made a party respondent in the proceeding and shall be allowed all the rights of defense against the establishment of the paper as fully as if he or she was the maker of the lost paper.

24-11-29.

Other than Code Section 24-11-20, this article shall not apply to lost or destroyed papers to which Title 11, the 'Uniform Commercial Code,' is applicable.

CHAPTER 12

ARTICLE 1

24-12-1.

(a) No physician licensed under Chapter 34 of Title 43 and no hospital or health care facility, including those operated by an agency or bureau of this state or other governmental unit, shall be required to release any medical information concerning a patient except to the Department of Community Health, its divisions, agents, or successors when required in the administration of public health programs pursuant to Code Section 31-12-2 and where authorized or required by law, statute, or lawful regulation; or on written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or on appropriate court order or subpoena; provided, however, that any physician, hospital, or health care facility releasing information under written authorization or other waiver by the patient, or by his or her parents or guardian ad litem in the case of a minor, or pursuant to law, statute, or lawful regulation, or under court order or subpoena shall not be liable to the patient or any other person; provided, further, that the privilege shall be waived to the extent that the patient places his or her care and treatment or the nature and extent of his or her injuries at issue in any judicial proceeding. This Code

section shall not apply to psychiatrists or to hospitals in which the patient is being or has been treated solely for mental illness.

(b) No pharmacist licensed under Chapter 4 of Title 26 shall be required to release any medical information concerning a patient except on written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or upon appropriate court order or subpoena; provided, however, that any pharmacist releasing information under written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or upon appropriate court order or subpoena shall not be liable to the patient or any other person; provided, further, that the privilege shall be waived to the extent that the patient places his or her care and treatment or the nature and extent of his or her injuries at issue in any judicial proceeding.

24-12-2.

(a) The General Assembly finds and declares that protecting the confidentiality of research data from disclosure in judicial and administrative proceedings is essential to safeguarding the integrity of research in this state, guaranteeing the privacy of individuals who participate in research projects, and ensuring the continuation of research in science, medicine, and other fields that benefits the citizens and institutions of Georgia and other states. The protection of such research data has more than local significance, is of equal importance to all citizens of this state, is of state-wide concern, and consequently is properly a matter for regulation under the police power of this state.

(b) As used in this Code section, the term 'confidential raw research data' means medical information, interview responses, reports, statements, memoranda, or other data relating to the condition, treatment, or characteristics of any person which are gathered by or provided to a researcher:

(1) In support of a research study approved by an appropriate research oversight committee of a hospital, health care facility, or educational institution; and

(2) With the objective to develop, study, or report aggregate or anonymous information not intended to be used in any way in which the identity of an individual is material to the results.

The term shall not include published compilations of the raw research data created by the researcher or the researcher's published summaries, findings, analyses, or conclusions related to the research study.

(c) Confidential raw research data in a researcher's possession shall not be subject to subpoena, otherwise discoverable, or deemed admissible as evidence in any judicial or

administrative proceeding in any court except as otherwise provided in subsection (d) of this Code section.

(d) Confidential raw research data may be released, disclosed, subject to subpoena, otherwise discoverable, or deemed admissible as evidence in a judicial or administrative proceeding as follows:

(1) Confidential raw research data related to a person may be disclosed to that person or to another person on such person's behalf where the authority is otherwise specifically provided by law;

(2) Confidential raw research data related to a person may be disclosed to any person or legal entity designated to receive that information when that designation is made in writing by the research participant or where a designation is made in writing by a person authorized by law to act for the participant;

(3) Confidential raw research data related to a person may be disclosed to any agency or department of the federal government, this state, or any political subdivision of this state if such data are required by law or regulation to be reported to such agency or department;

(4) Confidential raw research data may be disclosed in any proceeding in which a party was a participant, researcher, or sponsor in the underlying research study, including, but not limited to, any judicial or administrative proceeding in which a research participant places his or her care, treatment, injuries, insurance coverage, or benefit plan coverage at issue; provided, however, that the identity of any research participant other than the party to the judicial or administrative proceeding shall not be disclosed, unless the researcher or sponsor is a defendant in such proceeding;

(5) Confidential raw research data may be disclosed in any judicial or administrative proceeding in which the researcher has either volunteered to testify or has been hired to testify as an expert by one of the parties to such proceeding; and

(6) In a criminal proceeding, the court shall order the production of confidential raw research data if the data are relevant to any issue in the proceeding, impose appropriate safeguards against unauthorized disclosure of the data, and admit confidential raw research data into evidence if the data are material to the defense or prosecution.

(e) Nothing in this Code section shall be construed to permit, require, or prohibit the disclosure of confidential raw research data in any setting other than a judicial or administrative proceeding that is governed by the requirements of this title.

(f) Any disclosure of confidential raw research data authorized or required by this Code section or any other law shall in no way destroy the confidential nature of that data except for the purpose for which the authorized or required disclosure is made.

ARTICLE 2

24-12-10.

As used in this article, the term:

(1) 'Confidential or privileged' means the protection afforded by law from unauthorized disclosure, whether the protection is afforded by law as developed and applied by the courts, by statute or lawful regulations, or by the requirements of the Constitutions of the State of Georgia or the United States. The term 'confidential or privileged' also includes protection afforded by law from compulsory process or testimony.

(2) 'Disclosure' means the act of transmitting or communicating medical matter to a person who would not otherwise have access thereto.

(3) 'Health care facility' means any institution or place in which health care is rendered to persons, which health care includes, but is not limited to, medical, psychiatric, acute, intermediate, rehabilitative, and long-term care.

(4) 'Laws requiring disclosure' means laws and statutes of the State of Georgia and of the United States and lawful regulations issued by any department or agency of the State of Georgia or of the United States which require the review, analysis, or use of medical matter by persons not originally having authorized access thereto. The term 'laws requiring disclosure' also includes any authorized practice of disclosure for purposes of evaluating claims for reimbursement for charges or expenses under any public or private reimbursement or insurance program.

(5) 'Limited consent to disclosure' means proper authorization given by or on behalf of a person entitled to protection from disclosure of medical matter and given for a specific purpose related to such person's health or related to such person's application for insurance or like benefits.

(6) 'Medical matter' means information respecting the medical or psychiatric condition, including without limitation the physical and the mental condition, of a natural person or persons, however recorded, obtained, or communicated.

(7) 'Nurse' means a person authorized by license issued under Chapter 26 of Title 43 as a registered professional nurse or licensed practical nurse to practice nursing.

(8) 'Physician' means any person lawfully licensed in this state to practice medicine and surgery pursuant to Chapter 34 of Title 43.

24-12-11.

The disclosure of confidential or privileged medical matter constituting all or part of a record kept by a health care facility, a nurse, or a physician, pursuant to laws requiring disclosure or pursuant to limited consent to disclosure, shall not serve to destroy or in any

way abridge the confidential or privileged character thereof, except for the purpose for which such disclosure is made.

24-12-12.

Persons to whom confidential or privileged medical matter is disclosed in the circumstances described in Code Section 24-12-11 shall utilize such matter only in connection with the purpose or purposes of such disclosure and thereafter shall keep such matter in confidence. However, nothing in this article shall prohibit the use of such matter where otherwise authorized by law.

24-12-13.

Any person, corporation, authority, or other legal entity acting in good faith shall be immune from liability for the transmission, receipt, or use of medical matter disclosed pursuant to laws requiring disclosure or pursuant to limited consent to disclosure.

24-12-14.

Nothing in this article shall be construed to prevent the customary and usual audit, discussion, and presentation of cases in connection with medical and public education.

ARTICLE 3

24-12-20.

AIDS confidential information as defined in Code Section 31-22-9.1 and disclosed or discovered within the patient-physician relationship shall be confidential and shall not be disclosed except as otherwise provided in Code Section 24-12-21.

24-12-21.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) Except as otherwise provided in this Code section:

(1) No person or legal entity which receives AIDS confidential information pursuant to this Code section or which is responsible for recording, reporting, or maintaining AIDS confidential information shall:

(A) Intentionally or knowingly disclose that information to another person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity; and

(2) No person or legal entity which receives AIDS confidential information which that person or legal entity knows was disclosed in violation of paragraph (1) of this subsection shall:

(A) Intentionally or knowingly disclose that information to another person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity.

(c) AIDS confidential information shall be disclosed to the person identified by that information or, if that person is a minor or incompetent person, to that person's parent or legal guardian.

(d) AIDS confidential information shall be disclosed to any person or legal entity designated to receive that information when that designation is made in writing by the person identified by that information or, if that person is a minor or incompetent person, by that person's parent or legal guardian.

(e) AIDS confidential information shall be disclosed to any agency or department of the federal government, this state, or any political subdivision of this state if that information is authorized or required by law to be reported to that agency or department.

(f) The results of an HIV test shall be disclosed to the person, or that person's designated representative, who ordered such tests of the body fluids or tissue of another person.

(g) When the patient of a physician has been determined to be infected with HIV and that patient's physician reasonably believes that the spouse or sexual partner or any child of the patient, spouse, or sexual partner is a person at risk of being infected with HIV by that patient, the physician may disclose to that spouse, sexual partner, or child that the patient has been determined to be infected with HIV, after first attempting to notify the patient that such disclosure is going to be made.

(h)(1) An administrator of an institution licensed as a hospital by the Department of Community Health or a physician having a patient who has been determined to be infected with HIV may disclose to the Department of Community Health:

(A) The name and address of that patient;

(B) That such patient has been determined to be infected with HIV; and

(C) The name and address of any other person whom the disclosing physician or administrator reasonably believes to be a person at risk of being infected with HIV by that patient.

(2) When mandatory and nonanonymous reporting of confirmed positive HIV tests to the Department of Community Health is determined by that department to be reasonably necessary, that department shall establish by regulation a date on and after which such reporting shall be required. On and after the date so established, each health care

provider, health care facility, or any other person or legal entity which orders an HIV test for another person shall report to the Department of Community Health the name and address of any person thereby determined to be infected with HIV. No such report shall be made regarding any confirmed positive HIV test provided at any anonymous HIV test site operated by or on behalf of the Department of Community Health.

(3) The Department of Community Health may disclose that a person has been reported, under paragraph (1) or (2) of this subsection, to have been determined to be infected with HIV to the board of health of the county in which that person resides or is located if reasonably necessary to protect the health and safety of that person or other persons who may have come in contact with the body fluids of the HIV infected person. The Department of Community Health or county board of health to which information is disclosed pursuant to this paragraph or paragraph (1) or (2) of this subsection:

(A) May contact any person named in such disclosure as having been determined to be an HIV infected person for the purpose of counseling that person and requesting therefrom the name of any other person who may be a person at risk of being infected with HIV by that HIV infected person;

(B) May contact any other person reasonably believed to be a person at risk of being infected with HIV by that HIV infected person for the purposes of disclosing that such infected person has been determined to be infected with HIV and counseling such person to submit to an HIV test; and

(C) Shall contact and provide counseling to the spouse of any HIV infected person whose name is thus disclosed if both persons are reasonably likely to have engaged in sexual intercourse or any other act determined by the Department of Community Health likely to have resulted in the transmission of HIV between such persons within the preceding seven years and if that spouse may be located and contacted without undue difficulty.

(i) Any health care provider authorized to order an HIV test may disclose AIDS confidential information regarding a patient thereof if that disclosure is made to a health care provider or health care facility which has provided, is providing, or will provide any health care service to that patient and as a result of such provision of service that health care provider or facility:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or

(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(j) A health care provider or any other person or legal entity authorized but not required to disclose AIDS confidential information pursuant to this Code section shall have no duty to make such disclosure and shall not be liable to the patient or any other person or legal entity for failing to make such disclosure. A health care provider or any other person or legal entity which discloses information as authorized or required by this Code section or as authorized or required by law or rules or regulations made pursuant thereto shall have no civil or criminal liability therefor.

(k) When any person or legal entity is authorized or required by this Code section or any other law to disclose AIDS confidential information to a person at risk of being infected with HIV and that person at risk is a minor or incompetent person, such disclosure may be made to any parent or legal guardian of the minor or incompetent person, to the minor or incompetent person, or to both the minor or incompetent person and any parent or legal guardian thereof.

(l) When an institutional care facility is the site at which a person is at risk of being infected with HIV and as a result of that risk a disclosure of AIDS confidential information to any person at risk at that site is authorized or required under this Code section or any other law, such disclosure may be made to the person at risk or to that institutional care facility's chief administrative or executive officer, or such officer's designee, in which case that officer or designee shall be authorized to make such disclosure to the person at risk.

(m) When a disclosure of AIDS confidential information is authorized or required by this Code section to be made to a physician, health care provider, or legal entity, that disclosure may be made to employees of that physician, health care provider, or legal entity who have been designated thereby to receive such information on behalf thereof. Those designated employees may thereafter disclose to and provide for the disclosure of that information among such other employees of that physician, health care provider, or legal entity, but such disclosures among those employees shall only be authorized when reasonably necessary in the ordinary course of business to carry out the purposes for which that disclosure is authorized or required to be made to that physician, health care provider, or legal entity.

(n) Any disclosure of AIDS confidential information authorized or required by this Code section or any other law and any unauthorized disclosure of such information shall in no way destroy the confidential nature of that information except for the purpose for which the authorized or required disclosure is made.

(o) Any person or legal entity which violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(p) Nothing in this Code section or any other law shall be construed to authorize the disclosure of AIDS confidential information if that disclosure is prohibited by federal law,

or regulations promulgated thereunder, nor shall anything in this Code section or any other law be construed to prohibit the disclosure of information which would be AIDS confidential information except that such information does not permit the identification of any person.

(q) A public safety agency or prosecuting attorney may obtain the results from an HIV test to which the person named in the request has submitted under Code Section 15-11-66.1, 17-10-15, 42-5-52.1, or 42-9-42.1, notwithstanding that the results may be contained in a sealed record.

(r) Any person or legal entity required by an order of a court to disclose AIDS confidential information in the custody or control of such person or legal entity shall disclose that information as required by that order.

(s) AIDS confidential information shall be disclosed as medical information pursuant to Code Section 24-12-1 or pursuant to any other law which authorizes or requires the disclosure of medical information if:

(1) The person identified by that information:

(A) Has consented in writing to that disclosure; or

(B) Has been notified of the request for disclosure of that information at least ten days prior to the time the disclosure is to be made and does not object to such disclosure prior to the time specified for that disclosure in that notice; or

(2) A superior court in an in camera hearing finds by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this paragraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal.

(t)(1) A superior court of this state may order a person or legal entity to disclose AIDS confidential information in its custody or control to:

(A) A prosecutor in connection with a prosecution for the alleged commission of reckless conduct under subsection (c) of Code Section 16-5-60;

(B) Any party in a civil proceeding; or

(C) A public safety agency or the Department of Community Health if that agency or department has an employee thereof who has, in the course of that employment, come in contact with the body fluids of the person identified by the AIDS confidential information sought in such a manner reasonably likely to cause that employee to

become an HIV infected person and provided the disclosure is necessary for the health and safety of that employee,

and, for purposes of this subsection, the term 'petitioner for disclosure' means any person or legal entity specified in subparagraph (A), (B), or (C) of this paragraph.

(2) An order may be issued against a person or legal entity responsible for recording, reporting, or maintaining AIDS confidential information to compel the disclosure of that information if the petitioner for disclosure demonstrates by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests.

(3) A petition seeking disclosure of AIDS confidential information under this subsection shall substitute a pseudonym for the true name of the person concerning whom the information is sought. The disclosure to the parties of that person's true name shall be communicated confidentially, in documents not filed with the court.

(4) Before granting any order under this subsection, the court shall provide the person concerning whom the information is sought with notice and a reasonable opportunity to participate in the proceedings if that person is not already a party.

(5) Court proceedings as to disclosure of AIDS confidential information under this subsection shall be conducted in camera unless the person concerning whom the information is sought agrees to a hearing in open court.

(6) Upon the issuance of an order that a person or legal entity be required to disclose AIDS confidential information regarding a person named in that order, that person or entity so ordered shall disclose to the ordering court any such information which is in the control or custody of that person or entity and which relates to the person named in the order for the court to make an in camera inspection thereof. If the court determines from that inspection that the person named in the order is an HIV infected person, the court shall disclose to the petitioner for disclosure that determination and shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

(7) The record of the proceedings under this subsection shall be sealed by the court.

(8) An order may not be issued under this subsection against the Department of Community Health, any county board of health, or any anonymous HIV test site operated by or on behalf of that department.

(u) A health care provider, health care facility, or other person or legal entity who, in violation of this Code section, unintentionally discloses AIDS confidential information, notwithstanding the maintenance of procedures thereby which are reasonably adopted to avoid risk of such disclosure, shall not be civilly or criminally liable, unless such disclosure was due to gross negligence or wanton and willful misconduct.

(v) AIDS confidential information may be disclosed when that disclosure is otherwise authorized or required by Code Section 42-1-6, if AIDS or HIV infection is the communicable disease at issue, or when that disclosure is otherwise authorized or required by any law which specifically refers to 'AIDS confidential information,' 'HIV test results,' or any similar language indicating a legislative intent to disclose information specifically relating to AIDS or HIV.

(w) A health care provider who has received AIDS confidential information regarding a patient from the patient's health care provider directly or indirectly under the provisions of subsection (i) of this Code section may disclose that information to a health care provider which has provided, is providing, or will provide any health care service to that patient and as a result of that provision of service that health care provider:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or

(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(x) Neither the Department of Community Health nor any county board of health shall disclose AIDS confidential information contained in its records unless such disclosure is authorized or required by this Code section or any other law, except that such information in those records shall not be a public record and shall not be subject to disclosure through subpoena, court order, or other judicial process.

(y) The protection against disclosure provided by Code Section 24-12-20 shall be waived and AIDS confidential information may be disclosed to the extent that the person identified by such information, his or her heirs, successors, assigns, or a beneficiary of such person, including, but not limited to, an executor, administrator, or personal representative of such person's estate:

(1) Files a claim or claims other entitlements under any insurance policy or benefit plan or is involved in any civil proceeding regarding such claim;

(2) Places such person's care and treatment, the nature and extent of his or her injuries, the extent of his or her damages, his or her medical condition, or the reasons for his or her death at issue in any judicial proceeding; or

(3) Is involved in a dispute regarding coverage under any insurance policy or benefit plan.

(z) AIDS confidential information may be collected, used, and disclosed by an insurer in accordance with the provisions of Chapter 39 of Title 33.

(aa) In connection with any judicial proceeding in which AIDS confidential information is disclosed as authorized or required by this Code section, the party to whom that information is thereby disclosed may subpoena any person to authenticate such AIDS confidential information, establish a chain of custody relating thereto, or otherwise testify regarding that information, including, but not limited to, testifying regarding any notifications to the patient regarding results of an HIV test. The provisions of this subsection shall apply as to records, personnel, or both of the Department of Community Health or a county board of health notwithstanding Code Section 50-18-72, but only as to test results obtained by a prosecutor under subsection (q) of this Code section and to be used thereby in a prosecution for reckless conduct under subsection (c) of Code Section 16-5-60.

(bb) AIDS confidential information may be disclosed as a part of any proceeding or procedure authorized or required pursuant to Chapter 3, 4, or 7 of Title 37, regarding a person who is alleged to be or who is mentally ill, developmentally disabled, or alcoholic or drug dependent, or as a part of any proceeding or procedure authorized or required pursuant to Title 29, regarding the guardianship of a person or that person's estate, as follows:

(1) Any person who files or transmits a petition or other document which discloses AIDS confidential information in connection with any such proceeding or procedure shall provide a cover page which contains only the type of proceeding or procedure, the court in which the proceeding or procedure is or will be pending, and the words 'CONFIDENTIAL INFORMATION' without in any way otherwise disclosing thereon the name of any individual or that such petition or other document specifically contains AIDS confidential information;

(2) AIDS confidential information shall only be disclosed pursuant to this subsection after disclosure to and with the written consent of the person identified by that information, or that person's parent or guardian if that person is a minor or has previously been adjudicated as being incompetent, or by order of court obtained in accordance with subparagraph (C) of paragraph (3) of this subsection;

(3) If any person files or transmits a petition or other document in connection with any such proceeding or procedure which discloses AIDS confidential information without obtaining consent as provided in paragraph (2) of this subsection, the court receiving such

information shall either obtain written consent as set forth in that paragraph (2) for any further use or disclosure of such information or:

(A) Return such petition or other document to the person who filed or transmitted same, with directions against further filing or transmittal of such information in connection with such proceeding or procedure except in compliance with this subsection;

(B) Delete or expunge all references to such AIDS confidential information from the particular petition or other document; or

(C)(i) If the court determines there is a compelling need for such information in connection with the particular proceeding or procedure, petition a superior court of competent jurisdiction for permission to obtain or disclose that information. If the person identified by the information is not yet represented by an attorney in the proceeding or procedure in connection with which the information is sought, the petitioning court shall appoint an attorney for such person. The petitioning court shall have both that person and that person's attorney personally served with notice of the petition and time and place of the superior court hearing thereon. Such hearing shall not be held sooner than 72 hours after service, unless the information is to be used in connection with an emergency guardianship proceeding under Code Section 29-4-14, in which event the hearing shall not be held sooner than 48 hours after service.

(ii) The superior court in which a petition is filed pursuant to division (i) of this subparagraph shall hold an in camera hearing on such petition. The purpose of the hearing shall be to determine whether there is clear and convincing evidence of a compelling need for the AIDS confidential information sought in connection with the particular proceeding or procedure which cannot be accommodated by other means. In assessing compelling need, the superior court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this subparagraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal; and

(4) The court having jurisdiction over such proceeding or procedure, when it becomes apparent that AIDS confidential information will likely be or has been disclosed in connection with such proceeding or procedure, shall take such measures as the court determines appropriate to preserve the confidentiality of the disclosed information to the maximum extent possible. Such measures shall include, without being limited to, closing

the proceeding or procedure to the public and sealing all or any part of the records of the proceeding or procedure containing AIDS confidential information. The records of any appeals taken from any such proceeding or procedure shall also be sealed. Furthermore, the court may consult with and obtain the advice of medical experts or other counsel or advisers as to the relevance and materiality of such information in such proceedings or procedures, provided that the identity of the person identified by such information is not thereby revealed.

ARTICLE 4

24-12-30.

(a) Circulation and similar records of a library which identify the user of library materials shall not be public records but shall be confidential and shall not be disclosed except:

(1) To members of the library staff in the ordinary course of business;

(2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(3) Upon appropriate court order or subpoena.

(b) Any disclosure authorized by subsection (a) of this Code section or any unauthorized disclosure of materials made confidential by subsection (a) of this Code section shall not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subsection (a) of this Code section shall not be liable therefor.

24-12-31.

No veterinarian licensed under Chapter 50 of Title 43 shall be required to disclose any information concerning the veterinarian's care of an animal except on written authorization or other waiver by the veterinarian's client or on appropriate court order or subpoena. Any veterinarian releasing information under written authorization or other waiver by the client or under court order or subpoena shall not be liable to the client or any other person. The confidentiality provided by this Code section shall be waived to the extent that the veterinarian's client places the veterinarian's care and treatment of the animal or the nature and extent of injuries to the animal at issue in any judicial proceeding. As used in this Code section, the term 'client' means the owner of the animal; or if the owner of the animal is unknown, client means the person who presents the animal to the veterinarian for care and treatment.

CHAPTER 13

ARTICLE 1

24-13-1.

A witness shall not be arrested on any civil process while attending any court to which he or she is subpoenaed or otherwise required to attend as a witness or while going to or returning from such court. An officer who holds such witness imprisoned after seeing his or her subpoena or being satisfied of the fact that such person was a witness shall be liable for false imprisonment.

24-13-2.

A witness in making a claim or proof of a claim for witness fees for attendance shall indicate the date on which he or she attended and, in the event of a continuance, shall not claim or receive witness fees for any day after the date to which the docket shows the proceeding was continued nor for any day before the continuance was granted on which he or she did not attend.

24-13-3.

(a) A witness shall not receive any witness fees for attendance on a subpoena if such witness is absent from the proceeding, or if the proceeding is continued at any time due to his or her absence, where such absence did not arise from providential cause.

(b) No witness shall receive witness fees from both parties in the same proceeding; the fees of a witness for both parties shall be apportioned equally between the parties unless the costs are all taxed against one party.

24-13-4.

A witness who claims more than is due to such witness shall forfeit all witness fees and shall pay to the injured party, in addition thereto, four times the amount so unjustly claimed.

24-13-5.

When any person is served with a subpoena for the production of evidence or a notice to produce, seeking books in his or her possession to be used as testimony on the trial of any cause, if the person makes oath that he or she cannot produce the books required without suffering a material injury in his or her business and also makes or causes to be made out a full transcript from the books of all the accounts and dealings with the opposite party, has the transcript examined and sworn to by an impartial witness, and produces the same in

court, the witness shall be deemed to have complied with the notice to produce or subpoena for the production of evidence.

24-13-6.

When the transcript provided for in Code Section 24-13-5 is produced in court, if the adverse party is dissatisfied therewith and swears that he or she believes that the books contain entries material to the adverse party which do not appear in the transcript, the court shall grant him or her a commission directed to certain persons named by the parties and approved by the court. The commission shall cause the person with possession of the books to produce the books required with the person swearing that the books produced are all that he or she has or had that answer to the description in the subpoena or notice to produce. The commission shall examine the books and transmit to the court a full and fair statement of the accounts and entries between the parties under their hand. When received by the court, the statement of the commission shall be deemed a compliance with the notice to produce or subpoena for the production of evidence.

24-13-7.

Parties interested and participating in the trial of all cases tried in the courts are authorized and empowered, on the order of the court trying the case, to withdraw from the court and record of the case all original deeds, maps, blueprints, notes, papers, and documents belonging to the parties and which are introduced in evidence on the trial, on substituting therefor, when required by the court, duplicates thereof, verified as such by the parties or their agents, representatives, or attorneys. However, if any such deeds, maps, blueprints, notes, papers, or documents shall be attacked by any party to the case as forgeries, or as not being genuine originals, it shall be in the discretion of the court to require the original deeds, maps, blueprints, notes, papers, or documents so attacked to remain on file in the court as a part of the record in the case.

ARTICLE 2

24-13-20.

This article shall apply to all civil proceedings and, insofar as consistent with the Constitution, to all criminal proceedings.

24-13-21.

(a) As used in this Code section, the term 'subpoena' includes a witness subpoena and a subpoena for the production of evidence.

(b) A subpoena shall state the name of the court, the name of the clerk, and the title of the proceeding and shall command each person to whom it is directed to attend and give testimony or produce evidence at a time and place specified by the subpoena.

(c) The clerk of court shall make subpoenas in blank available on demand by electronic or other means to parties or their counsel or to the grand jury.

(d) An attorney who is counsel of record in a proceeding may issue and sign a subpoena obtained by electronic or other means from the clerk of court as an officer of a court for any deposition, hearing, or trial held in conjunction with such proceeding.

(e) A district attorney may issue, and upon the request of the grand jury shall issue, a subpoena in grand jury proceedings.

(f) A subpoena shall be completed prior to being served.

(g) Subpoenas are enforceable as provided in Code Section 24-13-26.

(h) If an individual misuses a subpoena, he or she shall be subject to punishment for contempt of court and shall be punished by a fine of not more than $300.00 or not more than 20 days imprisonment, or both.

24-13-22.

At the request of any party, subpoenas for attendance at a hearing or trial shall be issued under the authority of the clerk of the court in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within this state.

24-13-23.

(a) A subpoena may also command the person to whom it is directed to produce the evidence designated therein.

(b) The court, upon written motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive; or

(2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the evidence.

24-13-24.

A subpoena may be served by any sheriff, by his or her deputy, or by any other person not less than 18 years of age. Proof may be shown by return or certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail or statutory overnight delivery, and the return receipt shall constitute prima-facie proof of service. Service upon a party may be made by serving his or her counsel of record.

24-13-25.

Except as provided in Code Section 24-13-28, the witness fee shall be $25.00 per diem, and execution shall be issued by the clerk upon affidavit of the witness to enforce payment thereof. The payment of witness fees shall not be demanded as a condition precedent to attendance; but, when a witness resides outside the county where the testimony is to be given, service of the subpoena, to be valid, shall be accompanied by tender of the witness fee for one day's attendance plus mileage of 45¢ per mile for traveling expenses for going from and returning to his or her place of residence by the nearest practical route. Tender of witness fees and mileage may be made by United States currency, postal money order, cashier's check, certified check, or the check of an attorney or law firm. When the subpoena is issued on behalf of this state, or an officer, agency, or political subdivision thereof, or an accused in a criminal proceeding, witness fees and mileage need not be tendered.

24-13-26.

(a) Subpoenas may be enforced by attachment for contempt and by a fine of not more than $300.00 or not more than 20 days imprisonment, or both. In all proceedings under this Code section, the court shall consider whether under the circumstances of each proceeding the subpoena was served within a reasonable time, but in any event not less than 24 hours prior to the time that appearance thereunder was required.

(b) The court may also in appropriate proceedings grant continuance of the proceeding. Where subpoenas were issued in blank, no continuance shall be granted because of failure to respond thereto when the party obtaining such subpoenas fails to present to the clerk the name and address of the witness so subpoenaed at least six hours before appearance is required.

(c) When evidence is unsuccessfully sought, secondary evidence thereof shall be admissible.

24-13-27.

Where a party desires to compel production of evidence in the possession, custody, or control of another party, in lieu of serving a subpoena under this article, the party desiring the production may serve a notice to produce upon counsel for the other party. Service may be perfected in accordance with Code Section 24-13-24, but no witness fees or mileage shall be allowed therefor. Such notices may be enforced in the manner prescribed by Code Section 24-13-26, and Code Section 24-13-23 shall also apply to such notices. The notice shall be in writing, signed by the party seeking production of the evidence, or the party's attorney, and shall be directed to the opposite party or his or her attorney.

24-13-28.

(a) As used in this Code section, the term:

(1) 'Director' means the appropriate chief of police, sheriff, director of public safety of a college or university, local fire chief, director of the Georgia Bureau of Investigation, the commanding officer of the Georgia State Patrol, the commissioner of natural resources, the superintendent of a correctional institution, or the state fire marshal.

(2) 'Law enforcement officer' means any member of a municipal or county police force, any deputy sheriff, any campus policeman as defined in Code Section 20-8-1, any member of a local fire department, any member of the Georgia State Patrol or Georgia Bureau of Investigation, any correctional officer, any person employed by the Department of Natural Resources as a law enforcement officer, or any arson investigator of the state fire marshal's office.

(3) 'Regular duty hours' means the daily shift of duty to which a law enforcement officer is assigned and shall not include paid or unpaid vacation, paid or unpaid sick leave, paid or unpaid holiday leave, or any other paid or unpaid leave status established pursuant to the personnel regulations or scheduling practices of the employing agency.

(b) Any law enforcement officer who shall be required by subpoena to attend any superior court, other courts having jurisdiction to enforce the penal laws of this state, municipal court having jurisdiction to enforce the penal laws of this state as provided by Code Section 40-13-21, juvenile court, grand jury, hearing or inquest held or called by a coroner, or magistrate court involving any criminal matter, as a witness on behalf of the state during any hours except the regular duty hours to which the officer is assigned, shall be paid for such attendance at a fixed rate to be established by the governing authority, but not less than $25.00 per diem. The claim for the witness fees shall be endorsed on the subpoena showing the dates of attendance and stating that attendance was required during the hours other than the regular duty hours to which the claimant was assigned. The claimant shall verify this statement. The dates of attendance shall be certified by the judge or the prosecuting attorney of the court attended. The director or his or her designee shall certify that the claimant has not received any overtime pay for his or her attendance and that his or her attendance was required during hours other than regular duty hours. The amount due shall be paid by the governing body authorized to dispense public funds for the operation of the court. However, no such law enforcement officer shall claim or receive more than one witness fee per day for attendance in any court or before the grand jury regardless of the number of subpoenas which the law enforcement officer may have received requiring such officer to appear in such court or before the grand jury on any one day.

(c)(1) Except as provided in paragraph (2) of this subsection, any law enforcement officer who shall be required by subpoena to attend any court of this state with respect

to any civil proceeding, as a witness concerning any matter relative to the law enforcement duties of such law enforcement officer during any hours except the regular duty hours to which the law enforcement officer is assigned, shall be paid for such attendance at a fixed rate to be established by the governing authority, but not less than $25.00 per diem. Any such law enforcement officer shall also be entitled to the mileage allowance provided in Code Section 24-13-25 when such law enforcement officer resides outside the county where the testimony is to be given. The claim for the witness fees shall be endorsed on the subpoena showing the dates of attendance and stating that attendance was required during the hours other than the regular duty hours to which the claimant was assigned. The claimant shall verify such statement. The dates of attendance shall be certified by the party obtaining the subpoena. The director or his or her designee shall certify that the claimant has not received any overtime pay for the law enforcement officer's attendance and that such law enforcement officer's attendance was required during hours other than regular duty hours.

(2) Any law enforcement officer covered by paragraph (1) of this subsection who is required by subpoena to attend any court with respect to any civil proceeding, as a witness concerning any matter which is not related to the duties of such law enforcement officer, shall be compensated as provided in Code Section 24-13-25.

(d) The fee specified by subsections (b) and (c) of this Code section shall not be paid if the law enforcement officer receives any overtime pay for time spent attending such court pursuant to the subpoena.

24-13-29.

No member of the General Assembly of Georgia shall be compelled to attend and give testimony at any hearing or trial or to produce evidence while the General Assembly is in regular or extraordinary session.

ARTICLE 3

24-13-60.

(a) When a prisoner confined in any state prison, county correctional institution, or other penal institution under the jurisdiction of the Board of Corrections, other than a prisoner under a death sentence, is needed as a witness in any judicial proceeding in any court of record in this state or when it is desired that such person stand trial on an indictment or accusation charging the prisoner with commission of a felony or misdemeanor, the judge of the court wherein the proceeding is pending shall be authorized to and shall issue an ex parte order, directed to the commissioner of corrections, requiring the prisoner's delivery

to the sheriff of the county where the prisoner is desired as a witness or accused. The sheriff or his or her deputies shall take custody of the prisoner on the date named in the order, safely keep the prisoner pending the proceeding, and return him or her to the original place of detention after the prisoner's discharge by the trial judge.

(b) If the prisoner was desired as a witness by this state in a criminal proceeding or if the prisoner's release to the sheriff was for the purpose of standing trial on criminal charges, the county wherein the proceeding was pending shall pay all expenses of transportation and keeping, including per diem and mileage of the sheriff, jail fees, and any other proper expense approved by the trial judge.

(c) If the prisoner was desired as a witness by the accused in a criminal proceeding or by either party to a civil proceeding, the costs and expenses referred to in subsection (b) of this Code section shall be borne by the party requesting the prisoner as a witness. The court shall require a deposit of money sufficient to defray same, except where the judge, after examining into the matter, determines that the prisoner's presence is required by the interests of justice and that the party requesting it is financially unable to make the deposit, in which case the expenses shall be taxed as costs of court.

(d) If a prisoner under a death sentence is needed as a witness for either the prosecution or the defense in any felony case, the requesting party may interview the proposed witness. Following such interview, the requesting party may move for a writ of habeas corpus ad testificandum. Such motion shall be accompanied by a proffer of the testimony of the proposed witness. The requesting party shall make such motion and proffer as soon as possible but shall not make such motion later than 20 days prior to the date of the trial. Nothing in this Code section shall limit the right of a party from presenting a material witness at a hearing or trial and to have compulsory process for that purpose.

24-13-61.

Any judge of the superior court may issue an order to any officer having a lawfully imprisoned person in his or her custody, requiring the production of such person before the court for the purpose of giving evidence in any criminal cause pending therein, without any formal application or writ of habeas corpus ad testificandum for that purpose.

24-13-62.

The writ of habeas corpus ad testificandum may be issued by the superior court to cause the production in court of any witness under legal imprisonment.

ARTICLE 4

24-13-90.

This article shall be known and may be cited as 'The Uniform Act to Secure the Attendance of Witnesses from Without the State.'

24-13-91.

As used in this article, the term:

(1) 'Penal institution' means a jail, prison, penitentiary, house of correction, or other place of penal detention.

(2) 'State' means any state or territory of the United States and the District of Columbia.

(3) 'Summons' means a subpoena, order, or other notice requiring the appearance of a witness.

(4) 'Witness' means a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal prosecution or proceeding held by the prosecution or the defense, including a person who is confined in a penal institution in any state.

24-13-92.

(a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person within this state is a material witness in such prosecution or grand jury investigation, and that the witness's presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which the person is found, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing. The witness shall at all times be entitled to counsel.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to such witness protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and

place specified in the summons. In any such hearing, the certificate shall be prima-facie evidence of all the facts stated therein.

(c) If such certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the witness's attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that the witness be forthwith brought before him or her for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima-facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 45¢ a mile for each mile by the ordinarily traveled route to and from the court where the prosecution is pending and $25.00 for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for in Code Section 24-13-26.

24-13-93.

(a) A judge of a state court of record in another state which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state may certify that there is a criminal proceeding or investigation by a grand jury or a criminal proceeding pending in the court, that a person who is confined in a penal institution in this state is a material witness in the proceeding or investigation, and that the witness's presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined and upon notice to the Attorney General, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him or her at the hearing.

(b) If at the hearing the judge determines that the witness is material and necessary, that the witness attending and testifying are not adverse to the interest of this state or to the health and legal rights of the witness, that the laws of the state in which the witness is required to testify will give the witness protection from arrest and the service of civil and criminal process because of any act committed prior to the witness's arrival in the state under the order, and that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which the witness will be required to pass, the judge shall issue an order, with a copy of the certificate attached, directing the witness to attend and testify, directing the person having

custody of the witness to produce the witness in the court where the criminal proceeding is pending or where the grand jury investigation is pending at a time and place specified in the order, and prescribing such conditions as the judge shall determine. The judge, in lieu of directing the person having custody of the witness to produce the witness in the requesting jurisdiction's court, may direct and require in the court's order that the requesting jurisdiction shall come to the Georgia penal institution in which the witness is confined to accept custody of the witness for physical transfer to the requesting jurisdiction; that the requesting jurisdiction shall provide proper safeguards on the witness's custody while in transit; that the requesting jurisdiction shall be liable for and shall pay all expenses incurred in producing and returning the witness, including, but not limited to, food, lodging, clothing, and medical care; and that the requesting jurisdiction shall promptly deliver the witness back to the same or another Georgia penal institution as specified by the Department of Corrections at the conclusion of his or her testimony.

(c) The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his or her testimony, proper safeguards on his or her custody, and proper financial reimbursement or prepayment by the requesting jurisdiction of all expenses incurred in the production and return of the witness and may prescribe such other conditions as the judge thinks proper or necessary. If the judge directs and requires the requesting jurisdiction to accept custody of the witness at the Georgia penal institution in which the witness is confined and to deliver the witness back to the same or another Georgia penal institution at the conclusion of the witness's testimony, no prepayment of expenses shall be necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

(d) This Code section shall not apply to any person in this state confined as insane or mentally ill or under sentence of death.

24-13-94.

(a) If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure attendance in this state.

This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in this state, the witness shall be tendered the sum of 45¢ a mile for each mile by the ordinarily traveled route to and from the court where the prosecution is pending and $25.00 for each day that the witness is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state for a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for in Code Section 24-13-26.

24-13-95.

(a) If a person confined in a penal institution in any other state is a material witness in a criminal proceeding pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify that there is a criminal proceeding or investigation by a grand jury or a criminal proceeding pending in the court, that a person who is confined in a penal institution in the other state is a material witness in the proceeding or investigation, and that the witness's presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the confined prisoner, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

(b) The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

24-13-96.

(a) If a person comes into this state in obedience to a summons directing him or her to attend and testify in this state, such person shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before such person's entrance into this state under the summons.

(b) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he or she shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before such person's entrance into this state under the summons.

24-13-97.

This article shall be interpreted and construed so as to effectuate its general purpose to make uniform the laws of the states which enact it and shall be applicable only to such states as shall enact reciprocal powers to this state relative to the matter of securing attendance of witnesses as provided in this article.

ARTICLE 5

24-13-110.

This article shall be known and may be cited as the 'Uniform Foreign Depositions Act.'

24-13-111.

Whenever any mandate, writ, or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement such court of record is required to take the testimony of a witness in this state, such witness may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

24-13-112.

This article shall be interpreted and construed so as to effectuate its general purposes to make uniform the laws of those states which enact it.

ARTICLE 6

24-13-130.

(a)(1) At any time after an accused has been charged with an offense against the laws of this state or an ordinance of any political subdivision or authority thereof, upon motion of the state or the accused, the court having jurisdiction to try the offense charged may, after notice to the parties, order that the testimony of a prospective material witness of a party be taken by deposition and that any designated evidence not privileged be produced at the same time and place.

(2) At any time after an accused has been charged with an offense of child molestation, aggravated child molestation, or physical or sexual abuse of a child, upon motion of the state or the accused, the court having jurisdiction to try the offense charged may, after notice to the parties, order that the testimony of any physician whose testimony is

relevant to such charge be taken by deposition and that any designated evidence not privileged be produced at the same time and place.

(b) The court shall not order the taking of the witness's testimony, except as provided in paragraph (2) of subsection (a) of this Code section, unless it appears to the satisfaction of the court that the testimony of the witness is material to the proceeding and the witness:

(1) Is in imminent danger of death;

(2) Has been threatened with death or great bodily harm because of the witness's status as a potential witness in a criminal trial or proceeding;

(3) Is about to leave this state and there are reasonable grounds to believe that such witness will be unable to attend the trial;

(4) Is so sick or infirm as to afford reasonable grounds to believe that such witness will be unable to attend the trial; or

(5) Is being detained as a material witness and there are reasonable grounds to believe that the witness will flee if released from detention.

(c) A motion to take a deposition of a material witness, or a physician as provided in paragraph (2) of subsection (a) of this Code section, shall be verified and shall state:

(1) The nature of the offense charged;

(2) The status of the criminal proceedings;

(3) The name of the witness and an address in Georgia where the witness may be contacted;

(4) That the testimony of the witness is material to the proceeding or that the witness is a physician as provided in paragraph (2) of subsection (a) of this Code section; and

(5) The basis for taking the deposition as provided in subsection (b) of this Code section.

(d) A motion to take a deposition shall be filed in the court having jurisdiction to try the accused for the offense charged; provided, however, that if the accused is charged with multiple offenses, only the court having jurisdiction to try the most serious charge against the accused shall have jurisdiction to hear and decide the motion to take a deposition.

(e) The party moving the court for an order pursuant to this Code section shall give not less than one day's notice of the hearing to the opposite party. A copy of the motion shall be sent to the opposing party or his or her counsel by any means which will reasonably ensure timely delivery, including transmission by facsimile or by digital or electronic means. A copy of the notice shall be attached to the motion and filed with the clerk of court.

(f) If the court is satisfied that the examination of the witness is authorized by law and necessary, the court shall enter an order setting a time period of not more than 30 days during which the deposition shall be taken.

(g) On motion of either party, the court may designate a judge who shall be available to rule on any objections to the interrogation of the witness or before whom the deposition shall be taken. The judge so designated may be a judge of any court of this state who is otherwise qualified to preside over the trial of criminal proceedings in the court having jurisdiction over the offense charged.

24-13-131.

(a) The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined.

(b) On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

(c) The officer having custody of an accused shall be notified of the time and place set for the examination and shall, unless the accused waives in writing the right to be present, produce the accused at the examination and keep the accused in the presence of the witness during the examination unless, after being warned by the judge that disruptive conduct will cause the accused's removal from the place where the deposition is being taken, the accused persists in conduct which would justify exclusion from that place.

(d) An accused not in custody shall have the right to be present at the examination; but failure of the accused to appear, absent good cause shown, after notice and tender of expenses, shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(e) Notwithstanding the provisions of subsections (c) and (d) of this Code section, if the witness is a child, the court may order that the deposition be taken in accordance with Code Section 17-8-55.

24-13-132.

(a) If an accused is financially unable to employ counsel, the court shall appoint counsel as provided in Chapter 12 of Title 17, unless the accused elects to proceed without counsel.

(b) Whenever a deposition is taken at the instance of the state, the cost of any such deposition shall be paid by the state by the Prosecuting Attorneys' Council of the State of Georgia out of such funds as may be appropriated for the operations of the district attorneys.

(c) Depositions taken at the instance of an accused shall be paid for by the accused; provided, however, that, whenever a deposition is taken at the instance of an accused who is eligible for the appointment of counsel as provided in Chapter 12 of Title 17, the court shall direct that the reasonable expenses for the taking of the deposition and of travel and

subsistence of the accused and the accused's attorney for attendance at the examination, not to exceed the limits established pursuant to Article 2 of Chapter 7 of Title 45, be paid for out of the fine and forfeiture fund of the county where venue is laid.

24-13-133.

Except as provided in Code Section 24-13-137, a deposition shall be taken and filed in the manner provided in civil proceedings, provided that (1) in no event shall a deposition be taken of an accused party without his or her consent and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. On request or waiver by the accused, the court may direct that a deposition be taken on written interrogatories in the manner provided in civil proceedings. Such request shall constitute a waiver by the accused of any objection to the taking and use of the deposition based upon its being so taken. If a judge has been designated to rule on objections or to preside over the deposition, objections to interrogation of the witness shall be made to and ruled on by such judge in the same manner as at the trial of a criminal proceeding.

24-13-134.

The state or the accused shall make available to each other, for examination and use at the taking of a deposition pursuant to this article, any statement of the witness being deposed which is in the possession of the state or the accused and which would be required to be made available if the witness were testifying at the trial.

24-13-135.

At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if the witness is unavailable. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered, and any party may offer other parts. A witness is not unavailable if the exemption, refusal to testify, claim of lack of memory, inability, or absence of such witness is due to the procurement or wrongdoing of the party offering the deposition at the hearing or trial for the purpose of preventing the witness from attending or testifying.

24-13-136.

Objections to receiving in evidence a deposition or part thereof may be made as provided in civil proceedings.

24-13-137.

(a) Any party shall have the right to require that the deposition be recorded and preserved by the use of audio-visual equipment in addition to a stenographic record. The audio-visual recording shall be transmitted to the clerk of the court which ordered the deposition and shall be made available for viewing and copying only to the prosecuting attorney and accused's attorney prior to trial. An audio-visual recording made pursuant to this Code section shall not be available for inspection or copying by the public until such audio-visual recording has been admitted into evidence during a trial or hearing in the case in which such deposition is made.

(b) An audio-visual recording made pursuant to this Code section may be admissible at a trial or hearing as an alternative to the stenographic record of the deposition.

(c) A stenographic record of the deposition contemplated in this Code section shall be made pursuant to Code Section 9-11-28.

24-13-138.

Nothing in this article shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition by agreement of the parties with the consent of the court.

24-13-139.

It is the intent of the General Assembly that depositions shall be taken in criminal proceedings only in exceptional circumstances when it is in the interests of justice that the testimony of a prospective witness be taken and preserved for use at trial. If the court finds that any party or counsel for a party is using the procedures set forth in this article for the purpose of harassment or delay, such conduct may be punished as contempt of court.

ARTICLE 7

24-13-150.

Superior courts may entertain proceedings for the perpetuation of testimony in all proceedings in which the fact to which the testimony relates cannot immediately be made the subject of investigation at law and in which, for any cause, the common-law proceeding authorized under this title is not as available, or as completely available, as a proceeding in equity.

24-13-151.

A petition for discovery merely or to perpetuate testimony shall not be sustained unless some reason is shown why the usual proceeding at law is inadequate.

24-13-152.

The possession of the property is immaterial; nor shall the proceeding be denied though all parties in interest cannot be ascertained or reached.

24-13-153.

Testimony taken in the proceedings contemplated under Code Section 24-13-150 shall be used only from the necessity of the case, but in such case may be used against all persons, whether parties to the proceeding or not.

24-13-154.

The complainant shall in all cases be taxed with the costs of proceedings to perpetuate testimony.

CHAPTER 14

ARTICLE 1

24-14-1.

The burden of proof generally lies upon the party who is asserting or affirming a fact and to the existence of whose case or defense the proof of such fact is essential. If a negation or negative affirmation is essential to a party's case or defense, the proof of such negation or negative affirmation shall lie on the party so affirming it.

24-14-2.

What amount of evidence will change the onus or burden of proof shall be a question to be decided in each case by the sound discretion of the court.

24-14-3.

Moral and reasonable certainty is all that can be expected in legal investigation. Except as provided in Code Section 51-1-29.5 or Code Section 51-12-5.1, in all civil proceedings, a preponderance of evidence shall be considered sufficient to produce mental conviction. In criminal proceedings, a greater strength of mental conviction shall be held necessary to justify a verdict of guilty.

24-14-4.

In determining where the preponderance of evidence lies, the jury may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity for knowing the facts to which they testified, the nature of the facts to which they testified, the probability or improbability of their testimony, their interest or want of interest, and their personal credibility so far as the same may legitimately appear from the trial. The jury may also consider the number of the witnesses, though the preponderance is not necessarily with the greater number.

24-14-5.

Whether dependent upon direct or circumstantial evidence, the true question in criminal cases is not whether it is possible that the conclusion at which the evidence points may be false, but whether there is sufficient evidence to satisfy the mind and conscience beyond a reasonable doubt.

24-14-6.

To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused.

24-14-7.

The existence of a fact testified to by one positive witness is to be believed, rather than that such fact did not exist because many other witnesses who had the same opportunity of observation swear that they did not see or know of its having existed. This rule shall not apply when two parties have equal facilities for seeing or hearing a thing and one swears that it occurred while the other swears that it did not.

24-14-8.

The testimony of a single witness is generally sufficient to establish a fact. However, in certain cases, including prosecutions for treason, prosecutions for perjury, and felony cases where the only witness is an accomplice, the testimony of a single witness shall not be sufficient. Nevertheless, corroborating circumstances may dispense with the necessity for the testimony of a second witness, except in prosecutions for treason.

24-14-9.

In arriving at a verdict, the jury, from facts proved, and sometimes from the absence of counter evidence, may infer the existence of other facts reasonably and logically consequent on those proved.

ARTICLE 2

24-14-20.

Presumptions are either of law or of fact. Presumptions of law are conclusions and inferences which the law draws from given facts. Presumptions of fact shall be exclusively questions for the jury, to be decided by the ordinary test of human experience.

24-14-21.

Certain presumptions of law, such as the presumption of innocence, in some cases the presumption of guilt, the presumption of continuance of life for seven years, the presumption of a mental state once proved to exist, and all similar presumptions, may be rebutted by proof.

24-14-22.

If a party has evidence in such party's power and within such party's reach by which he or she may repel a claim or charge against him or her but omits to produce it or if such party has more certain and satisfactory evidence in his or her power but relies on that which is of a weaker and inferior nature, a presumption arises that the charge or claim against such party is well founded; but this presumption may be rebutted.

24-14-23.

In the ordinary course of business, when good faith requires an answer, it is the duty of the party receiving a letter from another to answer within a reasonable time. Otherwise, the party shall be presumed to admit the propriety of the acts mentioned in the letter of the party's correspondent and to adopt them.

24-14-24.

In any proceeding to establish a right, title, or interest in or to real property that is a part of a railroad right of way, including a right of ingress or egress, where such proceeding is based upon occupancy of the railroad right of way by a person or entity other than the railroad corporation or railroad company, there shall be a presumption that any such

occupancy of the railroad right of way is with the permission of the railroad corporation or railroad company. Such presumption may be rebutted.

24-14-25.

(a) As used in this Code section:

(1) 'Bank' means any person engaged in the business of banking and includes, in addition to a commercial bank, a savings and loan association, savings bank, or credit union.

(2) 'Check' means a draft, other than a documentary draft, payable on demand and drawn on a bank, even though it is described by another term, such as 'share draft' or 'negotiable order of withdrawal.'

(b) In any dispute concerning payment by means of a check, a duplicate of the check produced in accordance with Code Section 24-10-1003, together with the original bank statement that reflects payment of the check by the bank on which it was drawn or a duplicate thereof produced in the same manner, shall create a presumption that the check has been paid.

24-14-26.

(a) Conclusive presumptions of law are termed estoppels; averments to the contrary of such presumptions shall not be allowed. Estoppels are not generally favored.

(b) Estoppels include presumptions in favor of:

(1) A record or judgment unreversed;

(2) The proper conduct of courts and judicial officers acting within their legitimate spheres;

(3) The proper conduct of other officers of the law after the lapse of time has rendered it dangerous to open the investigation of their acts in regard to mere formalities of the law;

(4) Ancient deeds and other instruments more than 30 years old, when they come from proper custody and possession has been held in accordance with them;

(5) Recitals in deeds, except payment of purchase money, as against a grantor, sui juris, acting in his or her own right, and his or her privies in estate, in blood, and in law;

(6) A landlord's title as against his or her tenant in possession;

(7) Solemn admissions made in judicio; or

(8) Admissions upon which other parties have acted, either to their own injury or to the benefit of the persons making the admissions.

Estoppels also include all similar cases where it would be more unjust and productive of evil to hear the truth than to forbear investigation.

24-14-27.

(a) Where an estoppel relates to the title to real estate, the party claiming to have been influenced by the other party's acts or declarations shall not only have been ignorant of the true title, but also ignorant of any convenient means of acquiring such knowledge.

(b) Where both parties have equal knowledge or equal means of obtaining the truth, there shall be no estoppel.

24-14-28.

Trustees and other representatives with custody of papers have ample opportunities to discover defects in the title of property in their care and shall be estopped from setting up title adverse to their trust.

24-14-29.

In order for an equitable estoppel to arise, there shall generally be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence as to amount to constructive fraud, by which another has been misled to his or her injury.

ARTICLE 3

24-14-40.

(a) Concordance of name alone is some evidence of identity. Residence, vocation, ownership of property, and other like facts may be proved. Reasonable certainty shall be all that is be required.

(b) In civil proceedings, parties shall generally be relieved from the onus of proving identity, as it is a fact generally more easily disproved than established.

24-14-41.

An officer de facto may be proved to be such by his or her acts, without the production of his or her commission or appointment.

24-14-42.

A judgment shall be admissible between any parties to show the fact of the rendition thereof; between parties and privies it is conclusive as to the matter directly in issue, until reversed or set aside.

24-14-43.

Stern's United States calendar and Stafford's office calendar shall be admissible in proof of dates for the space of time covered by them respectively without further proof.

24-14-44.

In all civil proceedings where the life expectancy of a person shall be an issue, the American Experience Mortality Tables shall be admissible as evidence of the life expectancy of such person.

24-14-45.

(a) In addition to any other lawful methods of computing the value of the life of a decedent in wrongful death cases or of determining the present value of future due earnings or amounts in proceedings involving permanent personal injuries, there shall be admissible in evidence, as competent evidence in such proceedings, either or both of the following mortality tables:

(1) The Commissioners 1958 Standard Ordinary Mortality Table; or

(2) Annuity Mortality Table for 1949, Ultimate.

(b) In addition to the provisions set out in subsection (a) of this Code section, the jury or court shall be authorized in cases of wrongful death or permanent personal injuries to use any table determined by the jury or court, whichever is the trier of fact, to be accurate in showing the value of annuities on single lives according to the mortality tables listed in subsection (a) of this Code section.

(c) The admissible evidence provided for in subsections (a) and (b) of this Code section shall not be the exclusive method which the jury or court is required to use in such proceedings but shall be supplementary to other lawful and allowable evidence and methods for such purpose.

24-14-46.

All inspection certificates issued by the United States Department of Agriculture over the signature of any inspector thereof which are admissible in courts of the United States as prima-facie evidence of the truth of the statements therein contained shall be admissible in all courts of the State of Georgia as prima-facie evidence of the truth of the statements therein contained.

24-14-47.

(a) A written finding of presumed death made by officers or employees of the United States authorized to make such findings pursuant to any law of the United States or a duly

certified copy of such finding shall be received in any court, office, or other place in this state as evidence of the death of the person therein found to be dead and the date, circumstances, and place of his or her disappearance.

(b) An official written report, record, or duly certified copy thereof that a person is missing, missing in action, interned in a neutral country, beleaguered, besieged, or captured by an enemy, dead or alive, made by an officer or employee of the United States authorized by any law of the United States to make the same shall be received in any court, office, or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, beleaguered, besieged, or captured by an enemy, dead or alive, as the case may be.

(c) For the purposes of subsections (a) and (b) of this Code section, any finding, report, record, or duly certified copy thereof purporting to have been signed by an officer or employee of the United States as is described in this Code section shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his or her authority.″

SECTION 3.

Code Section 4-11-17 of the Official Code of Georgia Annotated, relating to filing a report regarding animal cruelty, is amended by revising subsection (a) as follows:

″(a) Notwithstanding Code Section ~~24-9-29~~ 24-12-31 or any other provision of law to the contrary, any licensed veterinarian or veterinary technician having reasonable cause to believe that an animal has been subjected to animal cruelty in violation of Code Section 16-12-4 or an act prohibited under Code Section 16-12-37 may make or cause to be made a report of such violation to the Commissioner, his or her designee, an animal control officer, a law enforcement agency, or a prosecuting attorney and may appear and testify in any judicial or administrative proceeding concerning the care of an animal.″

SECTION 4.

Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to provisions applicable to the Department of Banking and Finance and financial institutions generally, is amended by revising Code Section 7-1-63, relating to retention of records, as follows:

″7-1-63.

(a) The department shall issue regulations classifying records kept by financial institutions and prescribing the period, if any, for which records of each class shall be retained and the form in which such records shall be maintained. Such periods may be permanent or for a

lesser term of years. In issuing such regulations, consideration shall be given to the objectives of this chapter and to:

(1) Evidentiary effect in actions at law and administrative proceedings in which the production of records of financial institutions might be necessary or desirable;

(2) State and federal statutes of limitation applicable to such actions or proceedings;

(3) Availability of information contained in the records of the financial institution from other sources;

(4) Requirements of electronic systems of transferring funds; and

(5) Other pertinent matters;

so that financial institutions will be required to retain records for as short a period as is commensurate with interests of customers, shareholders, and the people of this state.

(b) The regulations of the department shall not require financial institutions to maintain originals of checks or items for the payment of money or original computer tapes or original records with respect to accounts which have been inactive for a period of 12 successive months. Where a financial institution employs computers, its records may consist of legible products of computer operations.

~~(c) Any copy of a record or of a reproduction of a record stored in an electronic or photographic medium permitted to be kept in lieu of the original, under this Code section or the regulations of the department, including legible products of computer operations, shall be admissible in evidence as though it were the original.~~"

SECTION 5.

Said article is further amended by revising Code Section 7-1-94, relating to evidential value of results of examinations or investigations, as follows:

"7-1-94.

~~(a) The~~ When the record of any examination or investigation of a financial institution by the department or the report by the examiner or employee of the department who conducted such examination or investigation ~~or a copy of either, when duly certified by the department, shall, in the absence of any applicable privilege, be~~ is admissible ~~and constitute prima-facie~~ in evidence ~~of facts therein stated, but not of conclusions drawn by the examiner from such facts, in any action at law or equity in which one of the parties is the department or any officer or employee thereof, either in his official capacity or otherwise, or the financial institution subjected to examination or investigation~~ under Title 24, the department, with the permission of the court, may edit out of the record or report any portion thereof which is not pertinent to the issue in question before the court or which would tend unnecessarily to affect adversely the public confidence in the financial institution.

~~(b) The department, with the permission of the court, may edit out of any report to be admitted as evidence pursuant to subsection (a) of this Code section any portion of the report which is not pertinent to the issue in question before the court or which would tend unnecessarily to affect adversely the public confidence in the financial institution.~~"

SECTION 6.

Said article is further amended by revising Code Section 7-1-95, relating to the admissibility of department's certificates and copies, as follows:

"7-1-95.

~~When duly certified by the department, a copy of any book, paper, or document on file with it or a certificate under its seal shall be prima-facie evidence of the facts therein stated in any court of law or equity or in any investigation or proceeding authorized by law or for any other purpose and shall be admissible without any additional authentication; but in any proceeding the court or public body having jurisdiction may, on cause shown, require production of the original~~ Reserved."

SECTION 7.

Article 1 of Chapter 3 of Title 8 of the Official Code of Georgia Annotated, relating to housing authorities, is amended by revising Code Section 8-3-6, relating to resolution as conclusive evidence of authority's establishment and authority, as follows:

"8-3-6.

In any action or proceeding involving the validity or enforcement of, or otherwise relating to, any contract of an authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers under this article upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution shall be deemed sufficient if it declares that there is need for an authority and finds in substantially such terms as appear in subsection (a) of Code Section 8-3-5, no further detail being necessary, that either or both of the conditions enumerated in that subsection exist in the city or county, as the case may be. ~~A copy of such resolution duly certified by the clerk shall be admissible in evidence in any action or proceeding.~~"

SECTION 8.

Said article is further amended by revising Code Section 8-3-104, relating to resolution as conclusive evidence of an authority's establishment, as follows:

"8-3-104.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be

conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers under this part upon proof of the adoption of a resolution by the governing body of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially such terms as appear in paragraphs (1) and (2) of subsection (a) of Code Section 8-3-102, no further detail being necessary, that the conditions enumerated in those paragraphs exist. ~~A copy of such resolution of the governing body of a county duly certified by the clerk of such county shall be admissible in evidence in any suit, action, or proceeding.~~"

SECTION 9.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by revising Code Section 9-10-6, relating to juror's private knowledge, as follows:

"9-10-6.

A juror shall not act on his or her private knowledge respecting the facts, witnesses, or parties ~~unless sworn and examined as a witness in the case~~."

SECTION 10.

Said title is further amended by revising Code Section 9-10-9, relating to jurors' affidavits permitted to uphold but not impeach a verdict, as follows:

"9-10-9.

~~The affidavits of jurors may be taken to sustain but not to impeach their verdict~~ Reserved."

SECTION 11.

Said title is further amended by revising Code Section 9-11-44, relating to official records, as follows:

"9-11-44.

~~(a) *Proof of lack of record.* A written statement, signed by an officer having the custody of an official record or by his deputy, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate attesting to his custody of the official record relating to such matters, is admissible as evidence that the records of his office contain no such record or entry.~~

~~(b) *Other proof.* This Code section does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statutes or by the rules of evidence at common law~~ Reserved."

SECTION 12.

Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is amended by revising Code Section 10-1-157, relating to collecting and testing samples of petroleum products and analyses as evidence, as follows:

"10-1-157.

The Commissioner of Agriculture shall, from time to time, collect or cause to be collected samples of all petroleum products subject to regulation under this part which are sold, offered, or exposed for sale in this state and cause such samples to be tested or analyzed by the state oil chemist. ~~The state oil chemist shall certify, under oath, an analysis of each such sample and such certificate shall be competent evidence of the composition of such petroleum product in any legal proceeding.~~ The Department of Agriculture shall have the power to implement rules and regulations necessary to carry out inspection of gasoline samples as provided for by this Code section."

SECTION 13.

Said title is further amended by revising Code Section 10-1-188, relating to certified analyses as evidence, as follows:

"10-1-188.

~~A copy of the analysis made by the state oil chemist of any brake fluid certified by him shall be admitted as evidence in any court of this state on the trial of any issue involving the analysis, standards, or specifications of brake fluid as defined and covered by this part~~ Reserved."

SECTION 14.

Said title is further amended by revising Code Section 10-1-208, relating to certified analyses as evidence, as follows:

"10-1-208.

~~A copy of the analysis made by the state oil chemist of the Department of Agriculture of any antifreeze and certified by him shall be admitted as evidence in any court of this state upon trial of any issue involving the merits of antifreeze as defined and covered by this part~~ Reserved."

SECTION 15.

Said title is further amended by revising Code Section 10-1-444, relating to registration of marks, certificate, and use as evidence, as follows:

"10-1-444.

Upon compliance by the applicant with the requirements of this part, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the state and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the trademark or service mark; the date claimed for the first use of the trademark or service mark anywhere and the date claimed for the first use of the trademark or service mark in this state; the class of goods or services and a description of the goods or services on which the trademark or service mark is used; a reproduction of the trademark or service mark; the registration date; and the term of the registration.

~~Any certificate of registration issued by the Secretary of State under the provisions of this Code section or a copy thereof duly certified by the Secretary of State shall be admissible in evidence as competent and sufficient proof of the registration of such trademark or service mark in any action or judicial proceedings in any court of this state.~~"

SECTION 16.

Said title is further amended by revising Code Section 10-4-15, relating to inspections of warehouses and reports as evidence, as follows:

"10-4-15.

In addition to the general powers conferred by Code Section 10-4-5, the Commissioner and his or her duly authorized agents or employees shall have full power and authority to inspect public warehouses operated under this article, to inventory, and to check the agricultural products stored so as to ascertain the conditions of such products and to determine whether or not the business is conducted in such a manner as to protect the interest of persons who are storing or may store such products. The inspectors shall make sworn reports of their findings to the Commissioner, who shall hold and keep such reports in the records of his or her office. ~~Such reports when sworn to shall be public records and shall be admissible as evidence.~~ Such inspections shall be made as often as deemed necessary by the Commissioner, but not less than twice during any license period and, in addition, as often as requested by the warehouseman."

SECTION 17.

Said title is further amended by revising Code Section 10-6-64, relating to agent may be a witness, credibility, and admissibility of agent's declarations, as follows:

"10-6-64.

~~The agent shall be a competent witness either for or against his principal. His interest shall go to his credit. The declarations of the agent as to the business transacted by him shall not be admissible against his principal unless they were a part of the negotiation constituting the res gestae, or else the agent is dead~~ Reserved."

SECTION 18.

Said title is further amended by revising Code Section 10-14-27, relating to evidence in civil or criminal actions under Chapter 14, as follows:

"10-14-27.

~~(a) In any action, civil or criminal, a certificate signed and sealed by the Secretary of State, stating compliance or noncompliance with the provisions of this chapter, shall constitute prima-facie evidence of such compliance or noncompliance with the provisions of this chapter and shall be admissible in any such action.~~

~~(b) In any action, civil or criminal, copies, photostatic or otherwise, certified by the Secretary of State of any documents filed in his or her office and of any of his or her records shall be admissible with the same effect as the original of such documents or records would have if actually produced~~ Reserved."

SECTION 19.

Code Section 14-9A-117 of the Official Code of Georgia Annotated, relating to certified copies admissible in evidence, is amended as follows:

"14-9A-117.

~~A certified copy of the certificate, power of attorney, and affidavits required to be filed under Code Sections 14-9A-115 and 14-9A-116 shall be admissible in evidence in all courts and places whatever~~ Reserved."

SECTION 20.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising Code Section 15-1-14, relating to participation in the Consortium for State Court Interpreter Certification, as follows:

"15-1-14.

(a) The Supreme Court of Georgia shall establish rules and requirements for foreign language interpreters and interpreters for the hearing impaired utilized in the courts of this state and provide for the administration and enforcement of such rules. The Administrative Office of the Courts shall administer such rules, requirements, and enforcement.

(b) The Supreme Court may establish fees to be paid by persons desiring certification to cover the costs of certifying, regulating, and training court qualified interpreters.

(c) The Supreme Court may enter into and participate in the Consortium for ~~State Court Interpreter Certification established August 2, 1997, as amended August 1, 1998,~~ Language Access in the Courts and in other similar multistate agreements and cooperative programs for the training, testing, and certification of interpreters. Such consortia, multistate agreements, and cooperative programs may:

(1) Utilize the auspices and services of the National Center for State Courts;

(2) Provide for the common development, sharing, and distribution of tests, standards, educational materials, and programs and related work, and further provide for the copyright and other protection of intellectual property;

(3) Charge fees for membership and other services and retain funds;

(4) Provide for governance and management; and

(5) Perform such other services and functions as may be reasonably related to such purposes and functions."

SECTION 21.

Said title is further amended by revising Code Section 15-11-79.1, relating to the use and disposition of evidence, as follows:

"15-11-79.1.

Except as provided in subsection (d) of Code Section 24-6-609, the ~~The~~ disposition of a child and evidence adduced in a hearing in the juvenile court may not be used against such child in any proceeding in any court other than for a proceeding for delinquency or unruliness, whether before or after reaching majority, except in the establishment of conditions of bail, plea negotiations, and sentencing in felony offenses; and, in such excepted cases, such records of dispositions and evidence shall be available to district attorneys and superior court judges and the accused and may be used in the same manner as adult records."

SECTION 22.

Said title is further amended by revising subsection (b) of Code Section 15-11-84, relating to sharing of confidential information, as follows:

"(b) Governmental entities and state, county, municipal, or consolidated government departments, boards, or agencies shall exchange with each other all information not held as confidential pursuant to federal law and relating to a child which may aid a governmental entity in the assessment, treatment, intervention, or rehabilitation of a child, notwithstanding Code Section 15-1-15~~,~~ or 15-11-9.1, subsection (d) of Code Section

15-11-10, or Code Section 15-11-66.1, 15-11-75, 15-11-81, 15-11-82, 15-11-174, 20-2-751.2, 20-14-40, ~~24-9-40.1, 24-9-41, 24-9-42~~ 24-12-10, 24-12-11, 24-12-20, 26-4-5, 26-4-80, 26-5-17, 31-5-5, 31-33-6, 37-1-53, 37-2-9.1, 42-5-36, 42-8-40, 42-8-106, 49-5-40, 49-5-41, 49-5-41.1, 49-5-44, 49-5-45, 49-5-183, 49-5-184, 49-5-185, or 49-5-186, in order to serve the best interest of the child. Information which is shared pursuant to this subsection shall not be utilized to assist in the prosecution of the child in juvenile court or superior court or utilized to the detriment of the child."

SECTION 23.

Said title is further amended by revising paragraph (2) of subsection (c) of Code Section 15-18-14.1, relating to district attorney investigators, as follows:

"(2) Assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure that victims of crime are apprised of the rights afforded them under Chapter 14 of Title 17~~, relating to restitution to victims of crime~~; Chapter 17 of Title 17, the 'Crime Victims' Bill of Rights'; Chapter 18 of Title 17~~, relating to providing a written statement of information to victims of rape or forcible sodomy~~; and Code Section 24-6-616 ~~24-9-61.1, relating to the presence of crime victims in the courtroom~~;"

SECTION 24.

Said title is further amended by revising paragraph (2) of subsection (b) of Code Section 15-18-15, relating to chief assistant district attorney, as follows:

"(2) If the district attorney will be temporarily absent from the judicial circuit such that he or she is not available to perform the duties of his or her office, the district attorney may authorize, in writing, the chief assistant district attorney to exercise any of the powers, duties, and responsibilities of the district attorney during such absence, including but not limited to such powers and duties as the district attorney may have pursuant to this title, Code Section 16-11-64, and Code Section ~~24-9-28~~ 24-5-507 and the laws of this state relating to the validation of bonds."

SECTION 25.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising subsection (e) of Code Section 16-5-27, relating to female genital mutilation, as follows:

"(e) The statutory privileges provided by Chapter ~~9~~ 5 of Title 24 shall not apply to proceedings in which one of the parties to the privilege is charged with a crime against a female under 18 years of age, but such person shall be compellable to give evidence only on the specific act for which the ~~defendant~~ accused is charged."

SECTION 26.

Said title is further amended by revising Code Section 16-12-55, relating to certification of tax-exempt status of organization and evidentiary nature of certificate, is amended as follows:

"16-12-55.

The director shall upon the request of any prosecuting attorney or his or her designee certify the status of any organization as to that organization's exemption from payment of state income taxes as a nonprofit organization. The director shall also upon request issue a certificate indicating whether any particular organization holds a currently valid license to operate a bingo game. ~~Such certificates properly executed shall be admissible in evidence in any prosecution and~~ Code Section 48-7-60, relative to the disclosure of income tax information, shall not apply to the furnishing of such certificate."

SECTION 27.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by adding a new Code section to Article 2 of Chapter 4, relating to arrest by law enforcement officers generally, to read as follows:

"17-4-30.

In the event a hearing impaired person is arrested for any alleged violation of a criminal law of this state, the arresting officer shall comply with the provisions of Article 3 of Chapter 6 of Title 24."

SECTION 28.

Said title is further amended by revising paragraph (4) of subsection (b) of Code Section 17-4-40, relating to persons who may issue warrants for arrest of offenders against penal laws, as follows:

"(4) At the warrant application hearing, the rules ~~regarding admission~~ of evidence at a commitment hearing shall apply as set forth in paragraph (1) of subsection (d) of Code Section 24-1-2. The person seeking the warrant shall have the customary rights of presentation of evidence and cross-examination of witnesses. The person whose arrest is sought may cross-examine the person or persons applying for the warrant and any other witnesses testifying in support of the application at the hearing. The person whose arrest is sought may present evidence that probable cause does not exist for his or her arrest. The judge or other officer shall have the right to limit the presentation of evidence and the cross-examination of witnesses to the issue of probable cause."

SECTION 29.

Said title is further amended by revising Code Section 17-7-25, relating to the power of the court to compel attendance of witnesses, as follows:

"17-7-25.

A court of inquiry shall have the same power to compel the attendance of witnesses as in other criminal cases, as set forth in and subject to all of the provisions of Chapter ~~10~~ 13 of Title 24, at any location where the court shall conduct a hearing, provided that notice is given at least 24 hours prior to the hearing. A court of inquiry may order the arrest of witnesses if required to compel their attendance."

SECTION 30.

Said title is further amended by revising Code Section 17-7-28, relating to hearing of evidence by court of inquiry and the right of a defendant to testify, as follows:

"17-7-28.

The court of inquiry shall hear all legal evidence submitted by either party. If the ~~defendant~~ accused wishes to testify and announces in open court before the court of inquiry his or her intention to do so, ~~he~~ the accused may testify in his or her own behalf. If ~~he so~~ the accused elects to testify, he or she shall be sworn as any other witness and may be examined and cross-examined as any other witness~~, except that no evidence of general bad character or prior convictions shall be admissible unless and until the defendant first puts his character into issue~~. The rules of evidence shall apply except that hearsay shall be admissible. The failure of ~~a defendant~~ an accused to testify shall create no presumption against ~~him~~ the accused, and no comment may be made because of such failure."

SECTION 31.

Said title is further amended by revising subsection (b) of Code Section 17-7-93, relating to reading of indictment or accusation and recording of 'guilty' pleas and pronouncement of judgment, as follows:

"(b) If the person pleads 'guilty,' the plea shall be immediately recorded on the minutes of the court by the clerk, together with the arraignment; and the court shall pronounce the judgment of the law upon the person in the same manner as if he or she had been convicted of the offense by the verdict of a jury. At any time before judgment is pronounced, the accused person may withdraw the plea of 'guilty' and plead 'not guilty.'~~, and the former plea shall not be admissible as evidence against him at his trial.~~"

SECTION 32.

Said title is further amended by revising Code Section 17-9-20, relating to action by juror on private knowledge as to facts, witnesses, or parties, as follows:

"17-9-20.

A juror shall not act on his or her private knowledge respecting the facts, witnesses, or parties ~~unless he is sworn and examined as a witness in the case~~."

SECTION 33.

Said title is further amended by revising Code Section 17-9-41, relating to the use of affidavits of jurors relating to verdict, as follows:

"17-9-41.

~~The affidavits of jurors may be taken to sustain but not to impeach their verdict~~ Reserved."

SECTION 34.

Said title is further amended by revising subparagraph (b)(3)(C) of Code Section 17-16-4, relating to disclosure required by prosecuting attorney and defendant, as follows:

"(C) The defendant shall, no later than five days before the trial commences, serve upon the prosecuting attorney a list of witnesses that the defendant intends to call as a witness in the presentence hearing. No later than the announcement of the verdict of the jury or if the defendant has waived a jury trial at the time the verdict is published by the court, the defendant shall produce for the opposing party any statement of such witnesses that is in the possession, custody, or control of the defendants or the defendant's counsel that relates to the subject matter of the testimony of such witnesses unless such statement is protected from disclosure by the privilege contained in paragraph (5), (6), (7), or (8) of subsection (a) of Code Section ~~24-9-21~~ 24-5-501."

SECTION 35.

Said title is further amended by revising subsection (b) of Code Section 17-17-9, relating to exclusion of a testifying victim from criminal proceedings, as follows:

"(b) A victim of a criminal offense who has been or may be subpoenaed to testify at such hearing or trial shall be exempt from the provisions of Code Section ~~24-9-61~~ 24-6-616 requiring sequestration; provided, however, that the court shall require that the victim be scheduled to testify as early as practical in the proceedings."

SECTION 36.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by revising subsection (d) of Code Section 20-2-940, relating to grounds and procedure for terminating or suspending contract of employment, as follows:

"(d) *Counsel; testimony.* Any teacher, principal, or other person against whom such charges listed in subsection (a) of this Code section have been brought shall be entitled to be represented by counsel and, upon request, shall be entitled to have subpoenas or other compulsory process issued for attendance of witnesses and the production of documents and other evidence. Such subpoenas and compulsory process shall be issued in the name of the local board and shall be signed by the ~~chairman~~ chairperson or ~~vice-chairman~~ vice chairperson of the local board. In all other respects, such subpoenas and other compulsory process shall be subject ~~to Part 1 of~~ Article 2 of Chapter ~~10~~ 13 of Title 24~~, as now or hereafter amended~~."

SECTION 37.

Said title is further amended by revising Code Section 20-2-991, relating to liability insurance for performance of duties authorized and the admissibility of insurance in evidence, as follows:

"20-2-991.

In addition to other compensation paid to members of the State Board of Education, the State School Superintendent, and employees of the state board, and to members of boards of education, school superintendents, teachers, principals, officers, and employees of boards of control of cooperative educational service agencies, and other administrators and employees of county and other local public school systems, the state board, the boards of control of cooperative educational service agencies, and the several boards of education of counties, cities, and independent school systems, whenever created, are authorized, in their discretion, to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the members of the state board, State School Superintendent, employees of the state board, officers and employees of boards of control of cooperative educational service agencies, and the members of the boards of education, superintendents, teachers, principals, and other administrators and employees against damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common-law, or other statutory rights, whether state, federal, or both. Such boards may expend state, county, federal, and local funds, or any combination thereof, for such purposes. The amount of such insurance or indemnity shall be in the discretion of the respective board. No action shall be maintained against the person or company issuing such insurance or

contracting for such indemnity until final judgment has first been entered against the individual covered by such policy or contract~~, and the existence of such insurance or indemnity shall not be disclosed or suggested in any action brought against such individual~~."

SECTION 38.

Code Section 22-1-14 of the Official Code of Georgia Annotated, relating to valuation of condemned property, is amended as follows:

"22-1-14.

(a) When property is condemned under this title or any other title of this Code, the value of the condemned property may be determined through lay or expert testimony and its admissibility shall be addressed to the sound discretion of the court.

(b) If any party to a condemnation proceeding seeks to introduce expert testimony as to the issue of just and adequate compensation, Code Section ~~24-9-67.1~~ 24-7-702 shall not apply."

SECTION 39.

Code Section 26-4-80 of the Official Code of Georgia Annotated, relating to dispensing and electronically transmitted drug orders, is amended by revising subsection (d) as follows:

"(d) Information contained in the patient medication record or profile shall be considered confidential information as defined in this title. Confidential information may be released to the patient or the patient's authorized representative, the prescriber or other licensed health care practitioners then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized to receive such information. In accordance with Code Section ~~24-9-40~~ 24-12-1, confidential information may be released to others only on the written release of the patient, court order, or subpoena."

SECTION 40.

Code Section 28-1-16 of the Official Code of Georgia Annotated, relating to issuance of subpoenas by the Superior Court of Fulton County on behalf of the Committees on Ethics of the Senate and House of Representatives, is amended by revising subsection (e) as follows:

"(e) A subpoena issued under this Code section may be served at any place in ~~the~~ this state and in any manner authorized in Code Section ~~24-10-23~~ 24-13-24. Fees and mileage shall be paid and tendered as provided in Code Section ~~24-10-24~~ 24-13-25, notwithstanding the general exemption of the state from tender of fees and mileage, and shall be in the form of

a check issued by the Legislative Fiscal Office upon the written request of the chairperson or acting chairperson."

SECTION 41.

Code Section 29-9-13.1 of the Official Code of Georgia Annotated, relating to authentication of documents, is amended as follows:

"29-9-13.1.

Whenever it is required that a document which is to be filed in the court be authenticated or exemplified, such requirement shall be met by complying with the provisions of Code Section ~~24-7-24~~ 24-9-922 and paragraphs (1) through (4) of Code Section 24-9-902 and such full faith and credit shall be given to the document as is provided in that Code section."

SECTION 42.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising Code Section 31-5-5, relating to contents of official record as evidence and classification of privileged materials, as follows:

"31-5-5.

~~(a) Any order, rule, regulation, or any other document, record, or entry contained in the official record or minutes of the department or of any county board of health shall be admissible in evidence in any proceeding before any court or other tribunal in this state where otherwise admissible and not privileged or confidential under this Code section when certified as true and correct by and duly authorized by the director at the county level and the examiner at the state level. It shall be the duty of the director or examiner, who shall be custodian of such records, to furnish and certify copies of the record or other evidence upon payment of reasonable costs therefor. Nothing in this Code section shall be construed as applying to Code Section 12-5-175.~~

~~(b)~~ The department and county boards of health are authorized by regulation to classify as confidential and privileged documents, reports and other information and data obtained by them from persons, firms, corporations, municipalities, counties, and other public authorities and political subdivisions, where such matters relate to secret processes, formulas, and methods or where such matters were obtained or furnished on a confidential basis. All matters so classified shall not be subject to public inspection or discovery and shall not be subject to production or disclosure in any court of law or elsewhere until and unless the judge of the court of competent jurisdiction, after in camera inspection, determines that the public interest requires such production and disclosure or that such production and disclosure may be necessary in the ~~interest~~ interests of justice."

SECTION 43.

Said title is further amended by revising Code Section 31-10-26, relating to certified copies of vital records, issuance, evidentiary effect, and use for other purposes, as follows:

"31-10-26.

(a) In accordance with Code Section 31-10-25 and the regulations adopted pursuant thereto:

(1) The state registrar or local custodian of vital records appointed by the state registrar to issue certified copies upon receipt of a written application shall issue a certified copy of a vital record in that registrar's or custodian's custody or abstract thereof to any applicant having a direct and tangible interest in the vital record, except that certified copies of certificates shall only be issued to:

(A) The person whose record of birth is registered;

(B) Either parent, guardian, or temporary guardian of the person whose record of birth or death is registered;

(C) The living legal spouse or next of kin or the legal representative or the person who in good faith has applied and produced a record of such application to become the legal representative of the person whose record of birth or death is registered;

(D) The court of competent jurisdiction upon its order or subpoena; or

(E) Any governmental agency, state or federal, provided that such certificate shall be needed for official purposes.

(2) Each certified copy issued shall show the date of registration and ~~copies~~ duplicates issued from records marked 'delayed' or 'amended' shall be similarly marked and show the effective date. The documentary evidence used to establish a delayed certificate of birth shall be shown on all ~~copies~~ duplicates issued. All forms and procedures used in the issuance of certified copies of vital records in ~~the~~ this state shall be provided or approved by the state registrar.

(b) ~~A certified copy of a vital record or any part thereof, issued in accordance with subsection (a) of this Code section, shall be considered for all purposes the same as the original and shall be prima-facie evidence of the facts stated therein, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.~~

~~(c)~~ The federal agency responsible for national vital statistics may be furnished such ~~copies~~ duplicates or data from the system of vital records as it may require for national statistics, provided such federal agency shares in the cost of collecting, processing, and transmitting such data and provided further that such data shall not be used for other than statistical purposes by the federal agency unless so authorized by the state registrar.

~~(d)~~(c) The state registrar may, by agreement, transmit ~~copies~~ duplicates of records and other reports required by this chapter to offices of vital records outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the ~~copies~~ duplicates be used for statistical and administrative purposes only and the agreement shall further provide for the retention and disposition of such ~~copies~~ duplicates. ~~Copies~~ Duplicates received by the department from offices of vital statistics in other states shall be handled in the same manner as prescribed in this Code section.

~~(c)~~(d) No person shall prepare or issue any certificate which purports to be an original, certified copy or ~~copy~~ duplicate of a vital record except as authorized in this chapter or regulations adopted under this chapter.

~~(f)~~(e) No ~~copies~~ duplicates or parts thereof of a vital record shall be reproduced or information ~~copies~~ copied for commercial or speculative purposes. This subsection shall not apply to published results of research."

SECTION 44.

Said title is further amended by revising paragraph (3) of subsection (c) of Code Section 31-21-3, relating to death of person with infectious or communicable disease, as follows:

"(3) That disclosure is made by a physician pursuant to Code Section ~~24-9-40~~ 24-12-1 or any other law authorizing a physician to disclose otherwise privileged information;"

SECTION 45.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by revising Code Section 33-2-2, relating to seal of Commissioner and admissibility in evidence of sealed documents, as follows:

"33-2-2.

The Commissioner shall have an official seal of such design as he or she shall select with the approval of the Governor. ~~Every certificate and other document or paper executed by the Commissioner in the pursuance of any authority conferred upon him by law and sealed with the seal of his office and all copies or photographic copies of papers certified by him and authenticated by said seal shall in all cases be evidence 'in equal and like manner' as the original thereof and shall in all cases be primary evidence of the contents of the original and shall be admissible in any court in this state.~~"

SECTION 46.

Said title is further amended by revising subsection (b) of Code Section 33-20A-37, relating to the effect of favorable determinations, as follows:

"(b) A determination by the independent review organization in favor of a managed care entity shall create a rebuttable presumption in any subsequent action that the managed care entity's prior determination was appropriate ~~and shall constitute a medical record for purposes of Code Section 24-7-8~~."

SECTION 47.

Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, is amended by revising subsection (a) of Code Section 34-9-60, relating to rule-making and subpoena powers, as follows:

"(a) The board may make rules, not inconsistent with this chapter, for carrying out this chapter. Processes and procedure under this chapter shall be as summary and simple as reasonably possible; provided, however, that, in any proceeding under this chapter where the parties are represented by counsel, the board may require, by rule or regulation, on forms provided by the board, the filing of statements of contentions and points of agreement. The board may promulgate policies, rules, and regulations concerning the electronic submission to and transmission from the board of documents and filings. The board, any member of the board, or any administrative law judge shall have the power for the purposes of this chapter to issue and enforce subpoenas, to administer or cause to have administered oaths, and to examine or cause to be examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Article 2 of Chapter ~~10~~ 13 of Title 24 shall govern the issuance and enforcement of subpoenas pursuant to this Code section, except that the board, any member of the board, or any administrative law judge shall carry out the functions of the court and the executive director shall carry out the functions of the clerk of the court. The board shall not, however, have the power to order imprisonment as a means of enforcing a subpoena. The board shall have the power to issue writs of fieri facias in order to collect fines imposed pursuant to this Code section and such writs may be enforced in the same manner as a similar writ issued by a superior court."

SECTION 48.

Said title is further amended by revising paragraph (5) of subsection (e) of Code Section 34-9-102, relating to hearings before administrative law judges, as follows:

"(5) Code Section ~~24-3-18~~ 24-8-826 shall not apply to workers' compensation claims filed under this chapter."

SECTION 49.

Said title is further amended by revising paragraph (4) of subsection (b) of Code Section 34-9-108, relating to approval of attorney's fees by the board, as follows:

"(4) Upon a determination that proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, the administrative law judge or the board may, in addition to reasonable attorney's fees, award to the adverse party in whole or in part reasonable litigation expenses against the offending party. Reasonable litigation expenses under this subsection are limited to witness fees and mileage pursuant to Code Section ~~24-10-24~~ 24-13-25; reasonable expert witness fees subject to the fee schedule; reasonable deposition transcript costs; and the cost of the hearing transcript."

SECTION 50.

Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia Bureau of Investigation, is amended by adding a new article to read as follows:

"ARTICLE 6A

35-3-160.

(a) As used in this article, the term:

(1) 'Department' means the Department of Corrections.

(2) 'Division' means the Division of Forensic Services of the Georgia Bureau of Investigation.

(3) 'State correctional facility' means a penal institution under the jurisdiction of the department, including inmate work camps and inmate boot camps; provided, however, that such term shall not include a probation detention center, probation diversion center, or probation boot camp under the jurisdiction of the department.

(b) Any person convicted of:

(1) Rape in violation of Code Section 16-6-1;

(2) Sodomy or aggravated sodomy in violation of Code Section 16-6-2;

(3) Statutory rape in violation of Code Section 16-6-3;

(4) Child molestation or aggravated child molestation in violation of Code Section 16-6-4;

(5) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(6) Sexual assault against persons in custody, sexual assault against a person detained or a patient in a hospital or other institution, or sexual assault by a practitioner of psychotherapy against a patient in violation of Code Section 16-6-5.1;

(7) Bestiality in violation of Code Section 16-6-6;

(8) Necrophilia in violation of Code Section 16-6-7; or

(9) Incest in violation of Code Section 16-6-22

shall have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. In addition, on and after July 1, 2000, any person convicted of a felony and incarcerated in a state correctional facility shall at the time of entering the prison system have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. The provisions and requirements of this Code section shall also apply to any person who has been convicted of a felony prior to July 1, 2000, and who currently is incarcerated in a state correctional facility in this state for such offense. The provisions and requirements of this Code section shall also apply to any person who has been convicted of a felony in this state on or after July 1, 2000, and who is incarcerated in a private correctional facility in this state for such offense pursuant to a contract with the department upon entering the facility, and for any person convicted of a felony prior to July 1, 2000, and who is incarcerated in a private correctional facility in this state pursuant to contract with the department. The analysis shall be performed by the division. The division shall be authorized to contract with individuals or organizations for services to perform such analysis. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the bureau in a DNA data bank and shall be made available only as provided in Code Section 35-3-163.

(c)(1) On and after July 1, 2007, any person who is placed on probation shall have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person if such person is convicted of a felony violation of:

(A) Chapter 5 of Title 16;

(B) Rape in violation of Code Section 16-6-1;

(C) Sodomy or aggravated sodomy in violation of Code Section 16-6-2;

(D) Statutory rape in violation of Code Section 16-6-3;

(E) Child molestation or aggravated child molestation in violation of Code Section 16-6-4;

(F) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(G) Sexual assault against persons in custody, sexual assault against a person detained or a patient in a hospital or other institution, or sexual assault by a practitioner of psychotherapy against a patient in violation of Code Section 16-6-5.1;

(H) Bestiality in violation of Code Section 16-6-6;

(I) Necrophilia in violation of Code Section 16-6-7;

(J) Incest in violation of Code Section 16-6-22;

(K) Burglary in violation of Code Section 16-7-1;

(L) Robbery in violation of Code Section 16-8-40;

(M) Armed robbery in violation of Code Section 16-8-41;

(N) Impersonating a peace officer or public officer or employee in violation of Code Section 16-10-23;

(O) Obstruction or hindering any law enforcement officer in violation of Code Section 16-10-24;

(P) Article 4 of Chapter 11 of Title 16; or

(Q) Chapter 13 of Title 16.

(2) The analysis shall be performed by the division. The division shall be authorized to contract with individuals or organizations for services to perform such analysis. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the bureau in a DNA data bank and shall be made available only as provided in Code Section 35-3-163. The department shall be responsible for collecting such sample.

35-3-161.

(a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving unit or at such other place as is designated by the department. Each sample required pursuant to Code Section 35-3-160 from persons who are to be released from a state correctional facility or private correctional facility shall be withdrawn within the 12 months preceding such person's release at a place designated by the department. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn as a condition of probation. The division shall publish in its quality manuals the procedures for the collection and transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a department facility shall implement the provisions of this Code section as part of the regular processing of offenders.

(b) Samples collected by oral swab or by a noninvasive procedure may be collected by any individual who has been trained in the procedure. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any sample of blood to be submitted for analysis. No civil liability shall attach to any person authorized to take a sample as provided in this article as a result of the act of taking a sample from any person submitting thereto, provided the sample was taken according to recognized medically accepted procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all samples of blood. The containers for blood samples, oral swabs, and the samples obtained by noninvasive procedures shall be sealed and labeled with the subject's name, social security number, date of birth, race, and gender plus the name of the person collecting the sample and the date and place of collection. The containers shall be secured to prevent tampering with the contents. The steps set forth in this subsection relating to the taking, handling, identification, and disposition of samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the division not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and 35-3-163.

35-3-162.

Whether or not the results of an analysis are to be included in the data bank, the bureau shall conduct the DNA analysis in accordance with procedures adopted by the bureau to determine identification characteristics specific to the individual whose sample is being analyzed. The director of the bureau or his or her designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the sample was received and examined, and a statement that the seal on the container containing the sample had not been broken or otherwise tampered with. The remainder of a sample submitted for analysis and inclusion in the data bank pursuant to Code Section 35-3-160 may be divided, if possible, labeled as provided for the original sample, and securely stored by the bureau in accordance with specific procedures of the bureau to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or for retesting by the bureau to validate or update the original analysis. A report of the results of a DNA analysis conducted by the bureau as authorized, including the identifying information, shall be made and maintained at the bureau. Except as specifically provided in this Code section and Code Section 35-3-163, the results of the analysis shall be securely stored and shall remain confidential.

35-3-163.

(a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file the results of DNA identification characteristics of samples submitted pursuant to Code Section 35-3-160 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the characteristics from

two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon request from a prosecutor or law enforcement agency, the bureau may compare a DNA profile from an analysis of a sample from a suspect in a criminal investigation where the sample was obtained through a search warrant, consent of the suspect, court order, or other lawful means to DNA profiles lawfully collected and maintained by the bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank except upon conviction as provided in this article.

(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(2) The name of the convicted offender whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes.

(3) Upon a showing by the accused in a criminal proceeding that access to the DNA data bank is material to the investigation, preparation, or presentation of a defense at trial or in a motion for a new trial, a superior court having proper jurisdiction over such criminal proceeding shall direct the bureau to compare a DNA profile which has been generated by the accused through an independent test against the data bank, provided that such DNA profile has been generated in accordance with standards for forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131.

(d) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

(e) The bureau may create a separate statistical data base comprised of DNA profiles of samples of persons whose identity is unknown. Nothing in this Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating the information in the statistical data base with law enforcement or criminal justice agencies within or outside this state.

(f) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of this state.

35-3-164.

(a) Any person who, without authority, disseminates information contained in the data bank shall be guilty of a misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor of a high and aggravated nature.

(b) Except for purposes of law enforcement or as authorized by this article, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the division for analysis shall be guilty of a felony.

35-3-165.

A person whose DNA profile has been included in the data bank pursuant to this article may request that it be expunged on the grounds that the conviction on which the authority for including his or her DNA profile was based has been reversed and the case dismissed. The bureau shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of a written request that such data be expunged, pursuant to this Code section, and a certified copy of the court order reversing and dismissing the conviction."

SECTION 51.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by revising paragraph (2) of Code Section 36-74-25, relating to powers of enforcement boards created on or after January 1, 2003, as follows:

"(2) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section ~~24-10-23~~ 24-13-24 to serve subpoenas;"

SECTION 52.

Said title is further amended by revising paragraph (2) of Code Section 36-74-45, relating to powers of enforcement boards created prior to January 1, 2003, as follows:

"(2) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section ~~24-10-23~~ 24-13-24 to serve subpoenas;"

SECTION 53.

Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by revising subsections (b) and (c) of Code Section 37-3-166, relating to treatment of clinical records, when release is permitted, and scope of privileged communications, as follows:

"(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section ~~24-9-21, 24-9-40,~~ 24-5-501, 24-12-1, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section ~~24-9-21, 24-9-40,~~ 24-5-501, 24-12-1, or 43-39-16."

SECTION 54.

Said title is further amended by revising subsections (b) and (c) of Code Section 37-4-125, relating to treatment of clinical records and scope of privileged communications, as follows:

"(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the client shall be authorized to give evidence as to any matter concerning the client, including evidence as to communications otherwise privileged under Code Section ~~24-9-21, 24-9-40,~~ 24-5-501, 24-12-1, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged client information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by subsection (a) of this Code section shall not be liable to the client or any other person, notwithstanding any contrary provision of Code Section ~~24-9-21, 24-9-40,~~ 24-5-501, 24-12-1, or 43-39-16."

SECTION 55.

Said title is further amended by revising subsections (b) and (c) of Code Section 37-7-166, relating to maintenance, confidentiality, and release of clinical records and disclosure of confidential or privileged patient information, as follows:

"(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section ~~24-9-21, 24-9-40,~~ 24-5-501, 24-12-1, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section ~~24-9-21, 24-9-40,~~ 24-5-501, 24-12-1, or 43-39-16."

SECTION 56.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by revising subsection (b) of Code Section 40-2-74, relating to special license plates for persons with disabilities, as follows:

"(b) A hearing impaired person otherwise qualified under this subsection shall be eligible to have issued to him or her a specially designated disabled person's license plate in accordance with this Code section. As used in this Code section, 'hearing impaired person' shall have the same meaning as defined in Code Section ~~24-9-101~~ 24-6-651, except that the term 'hearing impaired person' shall not include any person who is not qualified for a driver's license pursuant to Code Section 40-5-35~~, relating to reports by physicians and vision specialists in connection with the issuance or revocation of drivers' licenses, as now or hereafter amended~~. For purposes of this subsection, presentation of an identification card for persons with disabilities issued pursuant to Article 8 of Chapter 5 of this title shall constitute proof of hearing impairment."

SECTION 57.

Said title is further amended by revising paragraph (1) of subsection (d) of Code Section 40-5-2, relating to keeping of records of applications for licenses and information on licensees, as follows:

"(d)(1) The commissioner shall designate members of the department to be the official custodians of the records of the department. No disclosure or release of operating records

or personal information shall be made without the signed written approval of a designated custodian; except that such approval shall not be required for any release or disclosure through the GeorgiaNet Division of the Georgia Technology Authority pursuant to the signed written consent of the driver, provided that any such signed written consent shall be retained for a period of not less than four years by the party requesting the information; and except that such approval shall not be required for any release or disclosure of information made electronically through the GeorgiaNet Division of the Georgia Technology Authority in accordance with a contract authorized by subparagraph (c)(1)(B) of this Code section. The custodians may certify copies or compilations, including extracts thereof, of the records of the department. ~~When so certified, such records shall be admissible as evidence in any civil or criminal proceeding as proof of the contents thereof~~."

SECTION 58.

Said title is further amended by revising subsection (d) of Code Section 40-5-58, relating to habitual violators, as follows:

"(d) Notwithstanding any contrary provisions of Code Section 17-7-95 or 24-4-410, for the purposes of this Code section, any plea of nolo contendere entered and accepted after January 1, 1976, shall be considered a conviction."

SECTION 59.

Said title is further amended by revising subsection (d) of Code Section 40-6-10, relating to insurance requirements for operation of motor vehicles generally, as follows:

"(d) Except for vehicles insured under a fleet policy as defined in Code Section 40-2-137 or under a plan of self-insurance approved by the Commissioner of Insurance, insurance coverage information from records of the department shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section ~~24-3-17~~ 24-9-924 for the purposes of this Code section."

SECTION 60.

Said title is further amended by revising paragraph (1) of subsection (d) of Code Section 40-6-11, relating to insurance requirements for operation of motorcycles, as follows:

"(d)(1) Insurance coverage information from records of the department shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section ~~24-3-17~~ 24-9-924 for the purposes of this Code section."

SECTION 61.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by revising subsection (c) of Code Section 42-5-52.2, relating to testing of prison inmates for HIV, as follows:

"(c) Each person tested as provided in subsection (b) of this Code section shall be notified by the department in writing of the results of such testing prior to his or her release. Prior to the release of any person testing positive for HIV, the appropriate information as required by Code Sections ~~24-9-47~~ 24-12-21 and 31-22-9.2 or other law shall be provided by the department to the Department of Community Health. Prior to the release of any person testing positive for HIV, the department shall also provide to such person in writing contact information regarding medical, educational, and counseling services available through the Department of Community Health. Any person testing positive for HIV shall be provided instruction relating to living with HIV, the prevention of the spread of such virus, and the legal consequences of infecting unknowing partners."

SECTION 62.

Said title is further amended by revising Code Section 42-6-4, relating to the effect of failure to meet time limit for trial after delivery of inmate pursuant to Code Section 24-10-60, as follows:

"42-6-4.

If an inmate is not brought to trial upon a pending indictment or accusation within two terms of court after delivery of the inmate to the sheriff or a deputy sheriff pursuant to subsection (a) of Code Section ~~24-10-60~~ 24-13-60, provided no continuance has been granted, all detainers based upon the pending indictments or accusations shall be stricken and dismissed from the records of the department."

SECTION 63.

Said title is further amended by revising subsection (a) of Code Section 42-6-5, relating to the temporary custody of inmate requesting disposition of pending indictment or accusation, as follows:

"(a) In response to the request of an inmate for final disposition of any pending indictment or accusation made pursuant to Code Section 42-6-3 or pursuant to an order of a court entered pursuant to subsection (a) of Code Section ~~24-10-60~~ 24-13-60, the department shall offer to deliver temporary custody of the inmate to the sheriff or a deputy sheriff of the county in which the indictment or accusation is pending against the inmate. The judge of the court in which the proceedings are pending is authorized to and shall issue an ex parte

order directed to the department requiring the delivery of the inmate to the sheriff or a deputy sheriff of the county in which the trial is to be held."

SECTION 64.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by revising paragraph (5) of subsection (b) of Code Section 43-3-24, relating to issuance of permits to practice accountancy, as follows:

"(5) An individual qualifying for the practice privilege under paragraph (1) of this subsection may provide expert witness services in this state and shall be deemed to be in compliance with ~~paragraph (1) of subsection (c) of~~ Code Section ~~24-9-67.1~~ 24-7-702 for purposes of such services."

SECTION 65.

Said title is further amended by revising Code Section 43-6-6, relating to The Georgia Auctioneers Commission seal and receipt of copies of records and papers as evidence, as follows:

"43-6-6.

The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words 'State Auctioneers Commission, State of Georgia' and such other devices as the commission may desire included thereon, by which it shall authenticate the acts of the commission. ~~Copies of all records and papers in the office of the commission certified by the signature of the commission chairman and the seal of the commission shall be received in evidence in all cases equally and with like effect as the originals.~~"

SECTION 66.

Said title is further amended by revising paragraph (11) of subsection (a) of Code Section 43-9-12, relating to The Georgia Board of Chiropractic Examiners' refusal, suspension, or revocation of licenses, as follows:

"(11)(A) Become unable to practice chiropractic with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(B) In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by licensed health care providers designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section ~~24-9-21~~ 24-5-501. Every person who shall accept the privilege of practicing

chiropractic in this state or who shall file an application for a license to practice chiropractic in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing chiropractic under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of chiropractic with reasonable skill and safety to patients.

(C) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section ~~24-9-21~~ 24-5-501. Every person who shall accept the privilege of practicing chiropractic in this state or who shall file an application to practice chiropractic in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitutes a privileged communication.

(D) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (B) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (C) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding."

SECTION 67.

Said title is further amended by revising Code Section 43-11-12, relating to public inspection of the Georgia Board of Dentistry's records, as follows:

"43-11-12.

It shall be the duty of the division director to keep at his or her office the minutes of the board, together with all the books and records of the board, which books and records shall, except as provided in subsection (k) of Code Section 43-1-2, be public records open to inspection by the public except on Sundays and legal holidays. ~~A copy of all or any part~~

~~of any record or book certified by the division director, with the seal of the board attached, shall be primary evidence in any court; and it shall be the duty of the division director to furnish to any person making application therefor a copy of any part or all of any record or book of the board upon the applicant's paying a fee prescribed by the division director. All of such copies shall be certified by the division director and be under the seal of the board.~~"

SECTION 68.

Said title is further amended by revising Code Section 43-18-8, relating to official records and affidavits of the State Board of Registration for Professional Geologists as evidence, as follows:

"43-19-8.

~~All official records of the board, or affidavits by the division director as to the content of such records, shall be prima-facie evidence of all matters required to be kept therein~~ Reserved."

SECTION 69.

Said title is further amended by revising Code Section 43-23-3, relating to the seal of the Georgia Board of Landscape Architects and copies of records and papers as evidence, as follows:

"43-23-3.

~~(a)~~ The board shall adopt a seal, which may be either an engraved or an ink stamped seal, with the words 'Board of Landscape Architects, State of Georgia' or such other device as the board may desire included thereon, by which it shall authenticate the acts of the board.

~~(b) Copies of all records and papers in the office of the board, certified by the signature of the chairman of the board, shall be received in evidence in all cases equally and with like effect as the originals.~~"

SECTION 70.

Said title is further amended by revising Code Section 43-28-6, relating to service of process and documents on division director and records of the State Board of Occupational Therapy as prima-facie evidence, as follows:

"43-28-6.

~~(a)~~ All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office.

~~(b) All official records of the board or affidavits by the division director certifying the content of such records shall be prima-facie evidence of all matters required to be kept therein.~~"

SECTION 71.

Said title is further amended by revising Code Section 43-29-4, relating to the State Board of Dispensing Opticians' records and seal, as follows:

"43-29-4.

(a) The board shall have an official seal and shall keep a record of its proceedings and a register of persons whose licenses have been revoked.

(b) The records of the board shall be open to public inspection, and it shall keep on file all examination papers for a period of 90 days after each examination. ~~A transcript of an entry in such records, certified by the division director under the seal of the board, shall be evidence of the facts stated therein.~~"

SECTION 72.

Said title is further amended by revising Code Section 43-33-9, relating to the State Board of Physical Therapy's records as prima-facie evidence, as follows:

"43-33-9.

The division director shall be secretary of the board and shall perform such other administrative duties as may be prescribed by the board. In a contested case, the division director on behalf of the board shall have the power to subpoena, throughout ~~the~~ this state, witnesses, designated documents, papers, books, accounts, letters, photographs, objects, or other tangible things. All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office. ~~All official records of the board or affidavits by the division director certifying the content of such records shall be prima-facie evidence of all matters required to be kept therein.~~"

SECTION 73.

Said title is further amended by revising paragraph (2) of subsection (a) of Code Section 43-33-18, relating to refusal to grant or restore licenses, as follows:

"(2) Displayed an inability or has become unable to practice as a physical therapist or as a physical therapist assistant with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by an appropriate practitioner of the healing arts designated by the board. The expense of such mental or physical examination shall be borne by the licensee or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to Code Section ~~24-9-21~~ 24-5-501. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application for a license to practice physical therapy in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing physical therapy under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of physical therapy with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section ~~24-9-21~~ 24-5-501. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application to practice physical therapy in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication; and

(C) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding;″

SECTION 74.

Said title is further amended by revising paragraph (13) of subsection (a) of Code Section 43-34-8, relating to the Georgia Composite Medical Board's authority to refuse license or discipline physicians, as follows:

"(13) Become unable to practice pursuant to this chapter with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee, certificate holder, permit holder, or applicant to submit to a mental or physical examination by physicians designated by the board. The expense of this examination shall be borne by the licensee, certificate holder, or permit holder or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section ~~24-9-21~~ 24-5-501. Every person who shall accept the privilege of practicing a profession regulated under this chapter or who shall file an application for a license to practice a profession regulated under this chapter in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee, certificate holder, or permit holder or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee, certificate holder, permit holder, or applicant who is prohibited from practicing pursuant to this chapter under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin practice pursuant to this chapter with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board and any entity which has entered into a contract with the board pursuant to Code Section 43-34-5.1, if specifically provided for in such contract, may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee, certificate holder, or permit holder or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section ~~24-9-21~~ 24-5-501. Every person who shall accept the privilege of practicing pursuant to this chapter in this state or who shall file an application to practice pursuant to this chapter in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have

waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitute a privileged communication; and

(C) If any licensee, certificate holder, or permit holder or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee, certificate holder, or permit holder or applicant obtained pursuant to subparagraph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee, certificate holder, or permit holder or applicant in any other type of proceeding;″

SECTION 75.

Said title is further amended by revising subsection (a) of Code Section 43-40-6, relating to the seal and records of the Georgia Real Estate Commission, as follows:

″(a) The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words 'State Real Estate Commission, State of Georgia,' and such other device as the commission may desire included thereon, by which it shall authenticate the acts of the commission. ~~Copies of all records and papers in the office of the commission, certified by the signature of the real estate commissioner or the commissioner's designee and the seal of the commission, shall be received in evidence in all cases equally and with like effect as the originals.~~″

SECTION 76.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by revising Code Section 44-2-5, relating to recording execution and deed after sheriff's sale and evidence of execution where original is lost, as follows:

″44-2-5.

A purchaser at a sheriff's sale may have the execution under which the property was sold recorded with his <u>or her</u> deed together with all the entries on the execution. ~~In the event of the loss or destruction of the original execution, a copy of the record shall be admitted in evidence~~.″

SECTION 77.

Said title is further amended by revising Code Section 44-2-20, relating to recorded affidavits relating to land as notice of facts cited therein and the admissibility of such affidavits in evidence, as follows:

″44-2-20.

(a) Recorded affidavits shall be notice of the facts therein recited, whether taken at the time of a conveyance of land or not, where such affidavits show:

(1) The relationship of parties or other persons to conveyances of land;

(2) The relationship of any parties to any conveyance with other parties whose names are shown in the chain of title to lands;

(3) The age or ages of any person or persons connected with the chain of title;

(4) Whether the land embraced in any conveyance or any part of such land or right therein has been in the actual possession of any party or parties connected with the chain of title;

(5) The payment of debts of an unadministered estate;

(6) The fact or date of death of any person connected with such title;

(7) Where such affidavits relate to the identity of parties whose names may be shown differently in chains of title;

(8) Where such affidavits show the ownership or adverse possession of lands or that other persons have not owned such lands nor been in possession of same; or

(9) Where such affidavits state any other fact or circumstance affecting title to land or any right, title, interest in, or lien or encumbrance upon land.

Any such affidavits may be made by any person, whether connected with the chain of title or not.

(b) ~~In any litigation over any of the lands referred to and described in any of the affidavits referred to in subsection (a) of this Code section in any court in this state or in any proceedings in any such court involving the title to such lands wherein the facts recited in such affidavits may be material, the affidavits or certified copies of the record thereof shall be admissible in evidence and there shall be a rebuttable presumption that the statements in said affidavits are true. The affidavits or certified copies thereof shall only be admissible as evidence in the event the parties making the affidavits are deceased; they are nonresidents of the state; their residences are unknown to the parties offering the affidavits; or they are too old, infirm, or sick to attend court~~ Reserved.

(c) Affidavits referred to in ~~subsections~~ subsection (a) ~~and (b)~~ of this Code section shall be filed by the clerk of the superior court of the county where the land is located and shall contain a caption referring to the current owner and to a deed or other recorded instrument in the chain of title of the affected land. The clerk of the superior court shall record such affidavits, shall enter on the deed or other recorded instrument so referred to the book and page number on which such affidavit may be recorded, and shall index same in the name of the purported owner as shown by such caption in both grantor and grantee indexes in

deed records as conveyances of lands are recorded and indexed; and ~~he~~ the clerk shall receive the same compensation therefor as for recording deeds to lands."

SECTION 78.

Said title is further amended by revising Code Section 44-2-23, relating to when deed serves as evidence, as follows:

"44-2-23.

~~A recorded deed shall be admitted in evidence in any court without further proof unless the maker of the deed, one of his heirs, or the opposite party in the action files an affidavit that the deed is a forgery to the best of his knowledge and belief. Upon the filing of the affidavit, the genuineness of the alleged deed shall become an issue to be determined in the action~~ Reserved."

SECTION 79.

Said title is further amended by revising Code Section 44-2-101, relating to referral of case to examiner, as follows:

"44-2-101.

Upon the filing of a petition as provided in this article, the clerk shall at once notify the judge who shall refer the action to one of the general examiners or to a special examiner. It shall then become the duty of the examiner to make up a preliminary report containing an abstract of the title to the land from public records and all other evidence of a trustworthy nature that can reasonably be obtained by ~~him~~ the examiner, which abstract shall contain:

(1) Extracts from the records and other matters referred to therein which are complete enough to enable the court to decide the questions involved;

(2) A statement of the facts relating to the possession of the lands; and

(3) The names and addresses, so far as the examiner is able to ascertain, of all persons interested in the land as well as all adjoining owners showing their several apparent or possible interests and indicating upon whom and in what manner process should be served or notices given in accordance with this article.

The preliminary report of the examiner shall be filed in the office of the clerk of the superior court on or before the return day of the court as stated in the process unless the time for filing the report is extended by the court. ~~The report shall be prima-facie evidence of the contents thereof.~~"

SECTION 80.

Said title is further amended by revising Code Section 44-4-3, relating to the duty of surveyors and processioners, as follows:

"44-4-3.

It shall be the duty of the county surveyor and the processioners to take all due precautions to arrive at the true lines and to trace out and plainly mark the same. The surveyor shall make out and certify a plat of the true lines and deliver a copy thereof to the applicant; and, in all future boundary disputes with any owner of adjoining lands who had due notice of the processioning, the certified plat and the lines so marked shall be prima facie correct~~; and the certified plat shall be admissible in evidence without further proof~~."

SECTION 81.

Said title is further amended by revising Code Section 44-4-6, relating to general reputation as evidence, as follows:

"44-4-6.

~~General reputation in the neighborhood shall be evidence as to ancient landmarks of more than 30 years' standing.~~ Acquiescence for seven years by acts or declarations of adjoining landowners shall establish a dividing line."

SECTION 82.

Said title is further amended by revising Code Section 44-5-45, relating to when ancient deed admissible without proof of execution, as follows:

"44-5-45.

~~A deed more than 30 years old which, upon inspection, has the appearance of genuineness and which comes from the proper custody is admissible in evidence without proof of execution if possession of the property has been consistent with such deed~~ Reserved."

SECTION 83.

Said title is further amended by revising Code Section 44-13-11, relating to approval of application and transmittal of copy of exempted real property to other counties, as follows:

"44-13-11.

If, at the time and place appointed for passing upon the application, no objection is raised by any creditor of the applicant, the judge of the probate court shall endorse upon the schedule and upon the plat: 'Approved this the ____ day of _____, ____,' filling the blanks, and shall sign the schedule and plat officially and hand ~~them~~ such application to the clerk of the superior court of ~~his~~ the clerk's county; and, when land out of ~~his~~ the clerk's county is exempted, the judge shall transmit a certified copy of the exempted real property

to the clerk of the superior court of each county in which exempted land is located. Each clerk of the superior court of a county in which exempted land is located shall record the exempted real property in a book to be kept for that purpose ~~in his office, which record or a certified transcript thereof shall be competent evidence in all the courts of this state~~."

SECTION 84.

Said title is further amended by revising Code Section 44-14-38, relating to admission of mortgages into evidence, as follows:

"44-14-38.

~~When duly executed and recorded, mortgages shall be admitted into evidence under the same rules as recorded deeds~~ Reserved."

SECTION 85.

Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended by revising Code Section 45-9-1, relating to general provisions and disclosure or insurance or indemnification in legal actions, as follows:

"45-9-1.

(a) In addition to any other compensation which may be paid to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the executive, judicial, or legislative branch of government of this state, each such agency, board, bureau, commission, department, or authority is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity or to formulate sound programs of self-insurance utilizing funds available to such agency, board, bureau, commission, department, or authority, insuring or indemnifying such officers, officials, or employees to the extent that they are not immune from liability against personal liability for damages arising out of the performance of their duties or in any way connected therewith. Such policies of liability insurance, contracts of indemnity, or programs of self-insurance may also provide for reimbursement to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of ~~the~~ this state for reasonable legal fees and other expenses incurred in the successful defense of any criminal proceeding, including, but not limited to, any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action whether formal or informal where such action arises out of the performance of his or her official duties. In addition, in the case of an officer, official, or employee who is required to maintain a professional license, such reimbursement may also be provided for legal fees and other expenses so incurred in the successful defense of a charge arising out of the performance of his or her official duties in proceedings before a professional licensing

board, disciplinary board or commission, or other similar body. Legal fees and other expenses shall be subject to adjustment by and the approval of the Attorney General.

(b) Such agencies, boards, bureaus, commissions, departments, or authorities may expend federal and state or other available funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of such agency, board, bureau, commission, department, or authority.

(c) For the purpose of this article, the term 'agency' shall specifically include, but shall not be limited to, public retirement systems of state-wide application established by the laws of this state, but shall not include counties or municipalities; provided, however, that the employees of community service boards, county departments of health, and county departments of family and children services as well as the members of the boards of said departments shall be considered to be state employees or officials for the purpose of this article. In order to facilitate the administration of liability coverage or other insurance coverages provided the community service boards, the Department of Behavioral Health and Developmental Disabilities shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of family and children services, the Department of Human Services shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of health, the Department of Community Health shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services.

~~(d) The existence of such insurance or indemnification shall not be disclosed or suggested in any action brought against such individual.~~"

SECTION 86.

Said title is further amended by revising Code Section 45-9-20, relating to authorization of purchase of insurance, as follows:

"45-9-20.

In addition to any other compensation which may be paid to members of the governing bodies of municipalities, counties, and other public bodies, and to supervisors, administrators, employees, or other elected or appointed public officers, each municipality, county, and other public body of this state is authorized, in its discretion, to purchase

policies of liability insurance or contracts of indemnity insuring or indemnifying the members of such governing bodies and such supervisors, administrators, employees, or other elected or appointed officers against personal liability for damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common law, or other statutory rights, whether state, federal, or local. Such municipalities, counties, and other public bodies may expend state, federal, and local funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of the governing body of such municipality, county, or other public body. No action shall be maintained against the person or company issuing such insurance or contracting for such indemnity until final judgment has first been entered against the individual covered by such policy or contract~~, and the existence of such insurance or indemnity shall not be disclosed or suggested in any action brought against such individual~~.″

SECTION 87.

Said title is further amended by revising Code Section 45-14-5, relating to the Commissioner of Insurance, Safety Fire Commissioner, Industrial Loan Commissioner, and the Comptroller General's seal and sealed copies treated as originals, as follows:

″45-14-5.

The Commissioner of Insurance, Safety Fire Commissioner, Industrial Loan Commissioner, and the Comptroller General shall have an official seal for each office of such design as he or she shall select with the approval of the Governor. ~~Every certificate and other document or paper executed by the Commissioner of Insurance, Safety Fire Commissioner, Industrial Loan Commissioner, or the Comptroller General in the pursuance of any authority conferred upon that office by law and sealed with the seal of that office and all copies or photographic copies of papers certified by him and authenticated by said seal shall in all cases be evidence 'in equal and like manner' as the original thereof and in all cases be primary evidence of the contents of the original and shall be admissible in any court in this state.~~″

SECTION 88.

Said title is further amended by revising Code Section 45-16-43, relating to receipt as evidence of records, findings, and reports of medical examiners' inquiries, as follows:

″45-16-43.

~~Reports of medical examiners' inquiries performed as provided in this article and copies of records, photographs, laboratory findings, and reports in the office of the director of the division, when duly attested by said director, shall be received as evidence in any court or~~

~~other proceeding for any purpose for which the original could be received without any proof of the official character of the person whose name is signed thereto~~ Reserved.″

SECTION 89.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended by revising Code Section 46-2-53, relating to reports, rate schedules, orders, rules, or regulations of commission as admissible evidence in court proceedings, as follows:

″46-2-53.

~~The printed reports of the commission, published by its authority, shall be admissible as evidence in any court in this state without further proof. The schedules of rates made by the commission, and any order passed or rule or regulation prescribed by the commission, shall be admissible in evidence in any court in this state upon the certificate of the secretary of the commission~~ Reserved.″

SECTION 90.

Said title is further amended by revising Code Section 46-3-175, relating to receipt of certificates and certified copies in evidence, as follows:

″46-3-175.

~~(a) All certificates issued by the Secretary of State in accordance with this article and all copies of documents filed in his office in accordance with this article, when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima-facie evidence of the facts stated therein. A certificate by the Secretary of State under the seal of his office as to the existence or nonexistence of facts relating to electric membership corporations or foreign electric cooperatives shall be taken and received in all courts, public offices, and official bodies as prima-facie evidence of the existence or nonexistence of the facts stated therein.~~

~~(b)~~ The Secretary of State, at any time, upon the request of any person, shall make and certify additional copies of any document filed with his or her office and of the certificate, if any, issued by the Secretary of State in connection with the filing of the document, under this article, upon payment to ~~him~~ the Secretary of State of the fee provided for in Code Section 46-3-502.″

SECTION 91.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising Code Section 48-2-14, relating to the state revenue commissioner's official seal, as follows:

"48-2-14.

The commissioner shall have an official seal of such device as he or she shall select, subject to the approval of the Governor. ~~Any certificate or other legal document or paper executed by the commissioner in the exercise of any authority conferred upon him by law, which paper is sealed with the seal of his office, and all copies or photographic copies of papers certified by him and authenticated by the seal shall be evidence equally in all cases and, in like manner as the original of the document or paper, shall be primary evidence in all cases of the contents of the original, and shall be admissible in any court in this state.~~"

SECTION 92.

Said title is further amended by revising subsection (d) of Code Section 48-5-138, relating to the cashbook to be kept by tax collectors and tax commissioners, as follows:

"(d) The tax collector or tax commissioner shall make and file an accounting as required by Code Section 48-5-154. The record book shall be preserved by the tax collector or tax commissioner in the tax collector's or tax commissioner's office. ~~The record book or a transcript of the record book, when properly authenticated, shall be admitted in evidence in courts of this state as evidence of the payment of taxes.~~ The commissioner shall furnish the tax collectors and tax commissioners the book required pursuant to this Code section at the state's expense."

SECTION 93.

Code Section 49-5-183.1 of the Official Code of Georgia Annotated, relating to notice to alleged child abuser of classification and procedure, is amended by revising subsection (i) as follows:

"(i) No child under the age of 14 shall be compelled to appear to testify at any hearing held pursuant to this Code section. If a child under the age of 14 testifies voluntarily, such testimony shall be given in compliance with procedures analogous to those contained in Code Section 17-8-55. Nothing in this article shall prohibit introducing a child's statement in a hearing held pursuant to this Code section if the statement meets the criteria of Code Section ~~24-3-16~~ 24-8-820."

SECTION 94.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by revising Code Section 50-5A-4, relating to bond to be recorded and filed and certified copy is admissible in evidence, as follows:

"50-5A-4.

The bond of the state treasurer, when duly executed and approved, shall be recorded in the Secretary of State's office and filed in the office of the Governor. ~~A copy of the bond, when certified by one of the Governor's secretaries under the seal of the office of the Governor, or a certified copy taken from the records of the Secretary of State's office shall be received in evidence in any court in lieu of the original.~~"

SECTION 95.

Said title is further amended by revising Code Section 50-18-96, relating to copies of records as primary evidence, as follows:

"50-18-96.

~~Photostatic copies of records produced from microfilm and print-out copies of computer records shall be received in any court of this state as primary evidence of the recitals contained therein~~ Reserved."

SECTION 96.

Code Section 52-6-8 of the Official Code of Georgia Annotated, relating to keeping of records by the Board of Pilotage Commissioners, is amended as follows:

"52-6-8.

The commissioners shall preserve in a neatly bound book a record of all their acts and of all the rules and regulations adopted by them for the direction and government of pilots. The commissioners ~~They~~ shall designate one of their number as ~~chairman~~ chairperson and cause a record thereof to be made. The commissioners ~~They~~ shall also preserve upon their records a list of the names of all persons appointed pilots by them, as well as a list of the names of those whose licenses have been suspended or revoked or who have been retired. All persons interested shall have access to and be permitted to have ~~copies~~ duplicates of ~~the~~ such records~~; and copies thereof certified by the chairman or secretary shall be presumptive evidence of the facts therein stated~~."

SECTION 97.

Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and estates, is amended by revising subsection (b) of Code Section 53-5-33, relating to requisites for admission to ancillary probate, as follows:

"(b) For purposes of ancillary probate of out-of-state wills, when the out-of-state will has been admitted to probate or established in the domiciliary jurisdiction, the will may be admitted to ancillary probate in solemn form upon production of a properly certified copy of the will and a properly authenticated copy of the final proceedings in the jurisdiction in

which the will was probated or established, certified according to Code Section ~~24-7-24~~ 24-9-922, and may be attacked or resisted on the same grounds as other judicial proceedings from a state of the United States."

SECTION 98.

Said title is further amended by revising paragraph (1) of subsection (a) of Code Section 53-5-35, relating to muniments of title to realty, as follows:

"(1) Such a will is accompanied by properly authenticated copies of the record admitting the will to probate in another state, certified according to Code Section ~~24-7-24~~ 24-9-922; and"

SECTION 99.

Said title is further amended by revising Code Section 53-5-43, relating to evidence of authority, as follows:

"53-5-43.

A copy of letters, or like documentation authenticated in accordance with Code Section ~~24-7-24~~ 24-9-922, evidencing the qualification of the personal representative of the decedent who died domiciled outside this state, shall constitute prima-facie evidence of the authority of the personal representative to act in this state. Whenever a personal representative shall execute and deliver any deed of assent or conveyance with respect to real property located within this state, the personal representative shall attach to such deed as an exhibit the authenticated copy of the letters, and a certified copy of the will in the case of a testate decedent. The clerks of the superior courts of this state shall not be authorized to accept for filing and recording any deed given by such personal representative that does not conform to the foregoing requirements. Unless a third party has actual knowledge of the existence or pendency of ancillary probate or administration with respect to the decedent within this state, the third party who is dealing with the personal representative in reliance on the personal representative's letters and, in the case of a testate decedent, the out-of-state or foreign will, shall be fully protected."

SECTION 100.

Said title is further amended by revising Code Section 53-11-11, relating to authentication or exemplification of document, as follows:

"53-11-11.

Whenever it is required that a document to be filed in the probate court be authenticated or exemplified, such requirement shall be met by complying with the provisions of Code

Section ~~24-7-24~~ 24-7-922 and such full faith and credit shall be given to the document as is provided in that Code section."

SECTION 101.

This Act shall become effective on January 1, 2013, and shall apply to any motion made or hearing or trial commenced on or after such date.

SECTION 102.

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