

The House Committee on Judiciary Non-Civil offers the following substitute to HB 231:

A BILL TO BE ENTITLED  
AN ACT

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

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

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

15 "15-18-6.

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

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- 17 (1) To attend each session of the superior courts unless excused by the judge thereof and  
18 to remain until the business of the state is disposed of;
- 19 (2) To attend on the grand juries, advise them in relation to matters of law, and swear and  
20 examine witnesses before them;
- 21 (3) To administer the oaths the laws require to the grand and trial jurors and to the  
22 bailiffs or other officers of the court and otherwise to aid the presiding judge in  
23 organizing the courts as he may require;
- 24 (4) To review every individual case for which probable cause for prosecution exists, and  
25 make a prosecutorial decision available under the law based on the facts and  
26 circumstances of each individual case under oath of duty as provided in Code Section  
27 15-18-2;
- 28 ~~(4)~~(5) To draw up all indictments or presentments, when requested by the grand jury, and  
29 to prosecute all indictable offenses;
- 30 ~~(5)~~(6) To prosecute civil actions to enforce any civil penalty set forth in Code Section  
31 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense  
32 of which the state is interested, unless otherwise specially provided for;
- 33 ~~(6)~~(7) To attend before the appellate courts when any criminal case emanating from their  
34 respective circuits is tried, to argue the same, and to perform any other duty therein which  
35 the interest of the state may require;
- 36 ~~(7)~~(8) To advise law enforcement officers concerning the sufficiency of evidence,  
37 warrants, and similar matters relating to the investigation and prosecution of criminal  
38 offenses;
- 39 ~~(8)~~(9) To collect all money due the state in the hands of any escheators and to pay it over  
40 to the educational fund, if necessary, compelling payment by rule or order of court or  
41 other legal means;
- 42 ~~(9)~~(10) To collect all claims of the state which they may be ordered to collect by the state  
43 revenue commissioner and to remit the same within 30 days after collection; and on

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

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

48 (B) What claims are unpaid and why;

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

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

52 ~~(10)~~(11) To ensure disposition information is submitted in accordance with subsection  
 53 (g) of Code Section 35-3-36 when a final disposition decision is made by a district  
 54 attorney;

55 ~~(11)~~(12) To assist victims and witnesses of crimes through the complexities of the  
 56 criminal justice system and ensure that the victims of crimes are apprised of the rights  
 57 afforded them under the law; and

58 ~~(12)~~(13) To perform such other duties as are or may be required by law or which  
 59 necessarily appertain to their office."

## 60 SECTION 2.

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

62 "15-18-32.

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

- 70 (b) The commission shall consist of eight members.
- 71 (c)(1) The commission shall be divided into a five-member investigative panel and a  
72 three-member hearing panel.
- 73 (2) The investigative panel shall be responsible for:
- 74 (A) The investigative, prosecutorial, and administrative functions of the commission;  
75 (B) Investigation of alleged conduct constituting grounds for discipline under  
76 subsection (h) of this Code section;
- 77 (C) The selection of an individual to serve as the director of the commission who shall  
78 be an active status member of the State Bar of Georgia and who shall not engage in the  
79 practice of law, other than to represent the commission; and
- 80 (D) Authorization of employment of such additional staff as the commission deems  
81 necessary to carry out the powers assigned to the commission.
- 82 (3) The hearing panel shall be responsible for:
- 83 (A) Adjudicating formal charges filed by the investigative panel;  
84 (B) Issuing disciplinary and incapacity orders;  
85 (C) Issuing formal advisory opinions on its own initiative or on the recommendation  
86 of the investigative panel regarding the grounds for discipline set forth under  
87 subsection (h) of this Code section; and
- 88 (D) Issuing standards on its own initiative or on the recommendation of the  
89 investigative panel. Any such standards shall elaborate, define, or provide context for  
90 the grounds for discipline as set forth in subsection (h) of this Code section.
- 91 (d)(1) As used in this subsection, the term:
- 92 (A) 'Attorney' means a lawyer who has been an active status member of the State Bar  
93 of Georgia for at least ten years and is a registered voter in this state.
- 94 (B) 'Citizen' means an individual who is neither an attorney nor a judge and who is a  
95 registered voter in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171 (2) Willful misconduct in office;

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

174 (4) Conviction of a crime involving moral turpitude;

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

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

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

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

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

196 (A) Undue bias;

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

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

202 (D) Factors that are completely unrelated to the duties of prosecution; or  
203 (E) A stated policy, written or otherwise, which demonstrates that the district attorney  
204 or solicitor-general categorically refuses to prosecute any offense or offenses of which  
205 he or she is required by law to prosecute.

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

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

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

216 (B) With respect to a disciplinary matter of a district attorney or solicitor-general, all  
217 pleadings and information shall be subject to disclosure to the public, and all hearings  
218 and proceedings shall be open and available to the public, except to the extent that such  
219 pleadings and information or hearings and proceedings could be properly sealed or  
220 closed under Chapter 14 or Article 4 of Chapter 18 of Title 50 or by a court as provided  
221 by law.

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

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

228 (B) Disclose incapacity matters of a district attorney or solicitor-general protected in  
229 paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;  
230 (C) Be considered a matter subject to executive session, if the commission were  
231 considered to be an agency under Chapter 14 of Title 50; or  
232 (D) Not be required to be publicly disclosed under Code Section 50-18-72, if the  
233 commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.  
234 (4) The work product of the commission and its staff and the deliberations of the  
235 commission shall remain confidential.  
236 (k) Notwithstanding subsection (j) of this Code section, information regarding a  
237 disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed  
238 or the confidentiality of such information may be removed when:  
239 (1) The privilege of confidentiality has been waived by the individual who was the  
240 subject of the commission's investigation; or  
241 (2) The commission's rules provide for disclosure:  
242 (A) In the interest of justice and to protect the public;  
243 (B) If an emergency situation exists; or  
244 (C) If a district attorney or solicitor-general is under consideration for another state or  
245 federal position.  
246 (l) Information submitted to the commission or its staff, and testimony given in any  
247 proceeding before the commission or one of its panels, shall be absolutely privileged, and  
248 no civil action predicated upon such information or testimony shall be instituted against  
249 any complainant, witness, or his or her counsel.  
250 (m) A respondent who is subjected to public reprimand, censure, limitation on the  
251 performance of prosecutorial duties, suspension, retirement, or removal shall be entitled  
252 to a copy of the proposed record to be filed with the Supreme Court and, if the respondent  
253 has objections to it, to have the record settled by the hearing panel's presiding officer. The

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

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

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

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

268 **SECTION 3.**

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

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

276 **SECTION 4.**

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

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

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

284 (B) That the official:

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

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

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

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

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

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

297 **SECTION 5.**

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

300 **SECTION 6.**

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