

STATE OF GEORGIA

**CRIMINAL JUSTICE  
LEGISLATIVE REVIEW**  
1988-89 Session of the General Assembly

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OFFICE OF THE GOVERNOR  
CRIMINAL JUSTICE COORDINATING COUNCIL

CRIMINAL JUSTICE LEGISLATIVE REVIEW  
STATE OF GEORGIA  
1989 SESSION OF THE GENERAL ASSEMBLY

PREPARED BY THE  
OFFICE OF THE GOVERNOR  
CRIMINAL JUSTICE COORDINATING COUNCIL

JOE FRANK HARRIS  
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JUNE 1989

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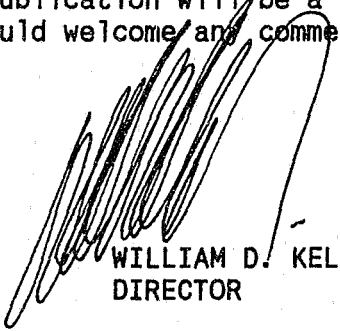
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### FOREWARD

The Criminal Justice Coordinating Council is pleased to present the eighth annual edition of the Criminal Justice Legislative Review, which contains a summary of significant criminal justice legislation enacted by the 1989 Session of the Georgia General Assembly. This publication is intended to provide criminal justice practitioners, state and local government officials, and interested citizens an opportunity to review the content of such legislation.

Special acknowledgement is given to Donald Roshack, who served as an intern for the Coordinating Council. His diligence was invaluable in the analysis of the legislation. In addition, special acknowledgement is due the Georgia General Assembly's Office of Legislative Counsel. Its annual publication, "Summary of General Statutes Enacted" was helpful in the preparation of summaries for the Criminal Justice Legislative Review. Also, we would like to thank the criminal justice agencies and organizations throughout the state which were responsive to our inquiries concerning the impact of certain pieces of legislation.

It is our hope that this publication will be a useful resource to its readers. As always, we would welcome any comments regarding its effectiveness.



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## INTRODUCTION

The 1989 Session of the General Assembly considered only new legislation. Laws and resolutions resulting from this legislation, which have an impact on a statewide basis upon the criminal justice system, are reviewed in this publication.

The House of Representatives considered a total of 1,136 bills. Of these, 563 were passed, 555 were signed into law by Governor Harris, and 61 are reviewed in this publication. The House also considered 559 resolutions. Of these resolutions, 459 were adopted and 27 were signed by Governor Harris. A total of 3 resolutions are reviewed in this publication.

The Senate considered a total of 406 bills. 151 bills were passed and 149 bills were signed into law by Governor Harris. 34 of these new laws are reviewed in this publication. Additionally, the Senate considered 275 resolutions. Of these, 239 were adopted and 18 were signed by Governor Harris. A total of 4 resolutions are reviewed in this publication.

The legislation contained in this publication is divided into five sections which are: (1) Public Safety, Agencies, and Personnel; (2) Judicial Administration and Procedures; (3) Corrections; (4) Criminal Sanctions and Crimes; and (5) Children and Youth/Juvenile Justice. Each of these sections contain legislation and resolutions from the Senate and legislation and resolutions from the House. All bills and resolutions are listed in numerical order.

An index of all bills and resolutions contained in this publication is included.

# **PUBLIC SAFETY AGENCIES AND PERSONNEL**

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SENATE LEGISLATION

S.B. 27 - EMISSIONS INSPECTIONS; STICKER REPLACEMENT WHEN  
WINDSHIELD IS REPLACED - ACT 643

S.B. 27 amends OCGA Section 40-8-158. It creates a procedure for obtaining a replacement emission sticker, with the same expiration date as the previous sticker, by executing an affidavit within fifteen days of windshield replacement. The affidavit, furnished by the Commissioner of Public Safety, shall contain information said Commissioner may require and shall state that the vehicle's windshield was replaced. Also, it provides that an inspection station shall charge 50 cents to issue the sticker and that a vehicle without an emission inspection sticker may be operated on the highway fifteen days after windshield replacement, provided that proof of the replacement date is carried in the vehicle.

S.B. 27 should allow persons to conveniently obtain a replacement emission sticker after a windshield replacement.

\*\*\*\*

S.B. 85 - INDEMNIFICATION; REMOVE PROVISION OF LAW RELATING TO  
SUBROGATION - ACT 619

S.B. 85 amends OCGA Section 45-9-87. It repeals the provisions subrogating the state to a cause of action of the applicant against the person or persons responsible for the death or permanent disability of the public safety officer.

Under the current law, the Georgia State Indemnification Commission is authorized to indemnify certain public officers and employees for death or permanent disability which occurs while they are engaged in the performance of their duties. S.B. 85 removes the provision requiring the state to be subrogated to the cause of action of the applicant against the person or persons responsible for such death or permanent disability.

\*\*\*\*

S.B. 101 - CRIMINAL JUSTICE COORDINATING COUNCIL; STATE SCHOOL  
SUPERINTENDENT; MEMBERSHIP - ACT 620

S.B. 101 amends OCGA Section 35-6A-3. It provides that the State School Superintendent shall be an ex-officio member, beginning July 1, 1989, of the Criminal Justice Coordinating Council.

S.B. 101 should ensure the representation of the state school system's concerns on the Criminal Justice Coordinating Council and should initiate more frequent liaison for efforts between education and criminal justice interests in Georgia.

\*\*\*\*

S.B. 102 - QUALIFICATIONS; INTERNS; RIGHT OF EXAMINEES; RECORDS -  
ACT 518

S.B. 102 amends OCGA Sections 43-36-6, 43-36-7 and 43-36-15, all relating to polygraph examinations and enacts 43-36-16.1. It provides that a person with a high school diploma or general education development (GED) and at least five years experience as an investigator or detective with a municipal, county or federal agency, is eligible to become a licensed polygraph examiner. It authorizes the State Board of Polygraph Examiners to determine the number of examinations a person must administer during a polygraph examiner internship before he may take the polygraph examiners' exam. It also grants the Board discretion to recognize a polygraph examiner applicant as being properly trained and experienced (but not licensed) by accepting an internship which he served under the supervision of a polygraph examiner whom the Board deems to have had sufficient training and experience with a state, federal, or municipal agency. It removes the requirement that a polygraph examiner who supervises a polygraph examiner intern must operate a polygraph or otherwise be involved in polygraph work for 75% of his current employment time. It requires a polygraph examiner to preserve and keep a file for a minimum of three years (instead of two years) after administering a polygraph test. Such a file shall include all opinions, reports, charts, question lists and all other records relating to the polygraph examination. And it provides that the provisions of OCGA Section 43-36 apply to all polygraph examinations conducted in Georgia, except where otherwise regulated under the federal Employee Polygraph Protection of 1988 (P.C. 100-347, 29 U.S.C. 2001, et. seq.).

S.B. 102 should adapt state polygraph law to federal guidelines by requiring the files of a polygraph examination to be preserved for three years. And it should allow persons who do not have a bachelor's degree, but who are qualified by other means, to become licensed polygraph examiners.

\*\*\*\*

S.B. 122 - GEORGIA PEACE OFFICER STANDARDS AND TRAINING COUNCIL;  
LAW ENFORCEMENT CHIEF EXECUTIVE TRAINING CLASS; CHIEFS  
OF POLICE - ACT 673

S.B. 122 enacts OCGA Section 35-8-20.1. It requires newly appointed police chiefs or department heads of law enforcement units whose terms of employment begin after December 31, 1989, to complete 40 hours of law enforcement chief executive training at the next scheduled law enforcement chief executive training class sponsored by the Georgia Association of Chiefs of Police. Such training exempts chiefs or department heads, for the year in which it is completed, from training required by subsection (a) of OCGA Section 35-8-20 but will be in addition to other training. Failure to comply with these class requirements will result in the loss of the power of arrest. S.B. 122 authorizes the Georgia Peace Officer Standards and Training Council to spend its funds to pay the cost of providing such training, excepting salary and travel expenses of trainees; these will be born by the law enforcement unit by which the chief or department head is employed. And, it provides that a newly appointed police chief or department head may be exempted, but not excluded, when the Peace Officer Standards and Training Council deems one to be unable to complete such training due to medical disability, providential cause or other reason deemed sufficient by the Council.

S.B. 122 should provide assistance to and insure better preparedness of newly appointed police chiefs and department heads of law enforcement units in the exercise of their duties.

\*\*\*\*

S.B. 200 - DRIVING WHILE LICENSE SUSPENDED OR REVOKED; RECKLESS  
DRIVING; PENALTIES - ACT 400

S.B. 200 amends OCGA Sections 40-5-121 and 40-6-390. It provides that a person who drives a motor vehicle on a public highway, when his privilege to do so is suspended or revoked, commits a misdemeanor punishable by imprisonment not to exceed twelve months, or a fine not to exceed \$1,000, or both. (This provision does not apply to habitual violators under OCGA Section 40-5-58). It also provides that a person who commits the offense of reckless driving shall be punished by imprisonment not to exceed twelve months, or a fine not to exceed \$1,000, or both.

S.B. 200 increases the penalties for driving with a suspended or revoked license and, therefore, should provide a deterrent for those persons whose privilege to operate a motor vehicle has been suspended or revoked, from operating a motor vehicle.

\*\*\*\*

S.B. 260 - DEPUTY COMMISSIONER; APPOINTMENT AND DUTIES - ACT 628

S.B. 260 amends OCGA Section 35-2-7 by removing the requirement that the Department of Public Safety's deputy commissioner, who may be appointed by the department's commissioner, serve a four-year term.

S.B. 260 will give the deputy commissioner more freedom to resign or continue his position, thus it should help attract a wider array of persons to the position.

\*\*\*\*

S.B. 275 - DEAD BODIES AND BODILY PARTS UNLAWFULLY REMOVED FROM  
GRAVES - ACT 404

S.B. 275 amends OCGA Section 31-21-44. It prohibits a person to receive, retain, dispose of, or possess a human corpse or bodily

part of a human corpse unlawfully removed from a grave or other place of interment excepting, however, persons performing their lawful duties relating to the possession or disposition of corpses.

S.B. 275 should deter persons from unlawfully removing corpses from graves.

\*\*\*\*

S.B. 319 - MEDICAL EXAMINERS; CERTAIN EXAMINATIONS; FEES - ACT 419

S.B. 319 amends OCGA Sections 45-16-22 and 45-16-32. The Act requires the coroner instead of the peace officer in charge of an investigation to file certain reports of post-mortem examinations and investigations and eliminates the fees to which certain peace officers were entitled for filing such reports. It provides that for a post-mortem examination not requiring body dissection, a medical examiner shall receive \$100, and for post-mortem examination requiring dissection, he shall receive \$300 for a partial post-mortem examination and autopsy, and \$400 for a complete post-mortem examination and autopsy.

S.B. 319 is housekeeping in nature and should insure that medical examiners are justly compensated for performing said examinations and autopsies.

\*\*\*\*

S.B. 347 - CHEMICAL TESTS FOR PERSONS INVOLVED IN SERIOUS TRAFFIC ACCIDENTS; DELETION OF LICENSE SUSPENSIONS - ACT 11

S.B. 347 amends OCGA Sections 40-5-55 and 40-5-63. It requires a law enforcement officer to administer, as soon as possible, a drug/alcohol test or tests (subject to OCGA Section 40-6-392) to a person who had been operating a motor vehicle when he was involved in a traffic accident that resulted in fatalities or serious injuries. If such person refuses to take the chemical tests, the Department of Public Safety shall suspend his driver's license, in accordance with OCGA

Sections 40-5 and 50-13, upon receipt of a sworn report from a law enforcement officer that the person had been in physical control or driving a motor vehicle involved in the traffic accident that resulted in fatalities or serious injuries. It also provides that the license suspension of a person who refused to submit to such tests, but who, within 180 days of the date of arrest, pleads guilty to DUI (as Section 40-6-391 defines), shall be deleted upon receipt of such plea and receipt by the Department, authorization from the prosecutor, or where there is no prosecutor, from the judge authorizing the deletion.

S.B. 347 should promote the apprehension of persons involved in serious traffic accidents while under the influence of drugs or alcohol.

\*\*\*\*

S.R. 201 - SENATE STUDY COMMITTEE ON TRAFFIC INFRACTIONS; CREATE

S.R. 201 creates the Senate Study Committee on Traffic Infractions to examine the issues relating to traffic infractions (offenses, which do not result in death, injury or property damage). To determine the types of offenses which may be classified as "traffic infractions" the Committee may meet with local law enforcement personnel (and may consult with the Department of Public Safety) to determine the feasibility of compulsory attendance of driver improvement clinics in lieu of other penalties for said offenses. The Committee may also consult with officials from other states which have enacted alternative methods to adjudication in order to dispose of civil traffic cases. The Committee shall be composed of six senators, appointed by the Senate President, who shall designate one of his appointees as chairman. The Committee may report its findings and recommend acts and bills as it deems appropriate before it dissolves on December 1, 1989.

S.R. 201 may result in the creation of alternative(s) to handle "traffic infractions" thus lessening the caseload of traffic courts and allowing parties of traffic infractions to resolve disputes expeditiously.

\*\*\*\*



S.R. 218 - RIGHTS OF PEACE OFFICERS WHILE UNDER INVESTIGATION  
STUDY COMMITTEE: CREATE

S.R. 218 creates the Senate Study Committee on Rights of Peace Officers while under investigation. The Committee will examine the prospect of establishing procedural safeguards for peace officers under investigation for alleged misconduct and will determine the feasibility of establishing professional criteria under state law for the receipt and processing of complaints against peace officers. The Committee, composed of the chairman and members of the Senate Public Safety Committee, may also recommend acts and bills before it dissolves on December 1, 1989.

S.R. 218 should lead to the thoughtful consideration of the rights of peace officers under investigation and may begin a process of establishing procedural safeguards for officers under investigations and/or a formal methodology for handling complaints against officers.

HOUSE LEGISLATION

H.B. 4 - ALCOHOLICS AND INTOXICATED PERSONS; TREATMENT; DATE OF  
LAW - ACT 450

H.B. 4 amends OCGA Section 37-8-53 by changing the effective date from July 1, 1989 to July 1, 1995 of Articles 1, 2 and 3 of OCGA Section 37-8, relating to the treatment of alcoholics and intoxicated persons.

H.B. 4 is a result of the General Assembly not providing funding for the implementation of the Act.

\*\*\*\*

H.B. 58 - PHARMACISTS; PHARMACIES OPERATED BY COLLEGES OF PHARMACY -  
ACT 454

H.B. 58 enacts OCGA Section 26-4-120.1. It requires colleges of pharmacy to attain a special pharmacy permit from the State Board of Pharmacy in order to purchase, receive, possess or dispose of drugs. The application for the permit must include the name of a registered pharmacist who shall be responsible for maintaining records regarding the purchase, receipt, possession and disposal of drugs used for education and research. A holder of such permit is prohibited from selling or dispensing drugs.

H.B. 58 should make the State Board of Pharmacy's monitoring of college of pharmacy drug use less difficult by formalizing the process.

\*\*\*\*

H.B. 64 - SERIOUS INJURY BY VEHICLE; RECKLESS DRIVING - ACT 344

H.B. 64 amends OCGA Section 40-6-394. It provides that a person may be charged with a criminal offense of serious injury by vehicle when he does, without malice, serious bodily injury to another while driving recklessly, eluding an officer, or failing to render reasonable aid and

assistance to the other party of his accident. It provides that the offense, a felony, shall be punishable by imprisonment for no less than one year and no more than five years.

H.B. 64 should deter persons from driving negligently, as well as from leaving the scene of an accident in which they are involved.

\*\*\*\*

H.B. 69 - CONTROLLED SUBSTANCES AND DANGEROUS DRUGS - ACT 345

H.B. 69 amends OCGA Sections 16-13-25, 16-13-26, 16-13-27, 16-13-28, 16-13-29, 16-13-29.1 and 16-13-71. It changes the listings of controlled substances and dangerous drugs by providing exceptions, exemptions and exclusions.

H.B. 69 is a continuation of the annual practice of updating the listings of controlled substances and dangerous drugs in order to ensure that the lists are inclusive of all substances and drugs subject to abuse and void of substances and drugs which do not present a potential for abuse or danger. It reflects increased medical knowledge concerning harmful effects of new drugs and should adapt Georgia's laws on controlled substances to similar federal laws and/or regulations.

\*\*\*\*

H.B. 125 - GEORGIA PEACE OFFICER STANDARDS AND TRAINING COUNCIL;  
EXECUTIVE DIRECTOR; INVESTIGATORS; SUBPOENAS - ACT 457

H.B. 125 amends OCGA Section 35-8-6 relating to the Georgia Peace Officer Standards and Training Council and the appointment of an executive director. It provides that the executive director and investigators appointed by him must meet all employment and training requirements of a peace officer (as defined in Section 35-8-2). Investigators of the Council shall have the same powers as other peace officers and access to any writing, document, or other material deemed by the Council's chairman or director to be related to the fitness of any peace officer or applicant in the practice of lawful duties. Also,

it authorizes the chairman or executive director of the Council to issue subpoenas to compel such access. If the subpoena is disobeyed, the Council may seek enforcement through the superior court of the county where the disobeyer resides.

H.B. 125 should allow the Council to function more independently, thus allowing it to function more expeditiously.

\*\*\*\*

H.B. 128 - SCHOOL CROSSING GUARDS; POWERS - ACT 458

H.B. 128 enacts OCGA Section 20-2-1131 and amends OCGA Section 40-6-2. It authorizes an on-duty school crossing guard (empowered by a local law enforcement agency) to direct and regulate the flow of traffic at school crossings or within a reduced speed zone. Failure to comply with any lawful order or direction of such a guard is a misdemeanor.

H.B. 128 should enable school crossing guards to effectively perform their duties, thus enhancing the safety of those passing through a school crossing or reduced speed zone.

\*\*\*\*

H.B. 130 - DRIVER'S LICENSES; UNIFORM COMMERCIAL DRIVER'S LICENSE -  
ACT 460

H.B. 130 enacts OCGA Section 40-5-7 in order to provide for the issuance of prohibitions on the use of commercial drivers' licenses. The Act makes numerous changes to OCGA Chapter 40-5, relating to drivers' licenses, to conform to the "Uniform Commercial Driver's License Act."

Because H.B. 130 provides commercial driver's licensing and testing standards and disqualifies persons who have committed serious traffic violations from obtaining a commercial driver's license, it should, ultimately, reduce the number of auto accidents caused by the negligent operation of commercial vehicles. Additionally, it will adapt Georgia traffic and motor vehicle law to the federal Commercial Motor Vehicle

Safety Act of 1986, Title XII of Public Law; therefore, it should protect the state from losing federal Department of Transportation funds as a result of nonconformity with said Federal Act.

\*\*\*\*

H.B. 131 - CERTIFICATES OF TITLE; ODOMETER READINGS; LIENS - ACT 601

H.B. 131 rescinds OCGA Section 48-10-3.1 relating to temporary registration permits, enacts 40-2-60.1 and amends 40-2-43, 40-2-72, 40-2-77, 40-2-78, 40-3-2, 40-3-25 and 40-3-25.1. It provides that the Commissioner of the Department of Public Safety shall not issue a license plate or revalidation decal for a "salvaged" or "rebuilt" motor vehicle, as defined by OCGA Section 40-3, unless the vehicle owner submits satisfactory proof to the Commissioner that the motor vehicle inspection required by OCGA Section 40-3-35.1 has been performed and the vehicle has been determined to fully comply with the law. It provides procedures and requirements for the issuance of distinctive motor vehicle license plates to the Governor, Lieutenant Governor, House Speaker and the federal senators and congresspersons; these distinctive plates shall be exempt from the county decal display requirement. Additionally, it provides procedures and requirements for the issuance of specialized disabled persons motor vehicle license plates, which may be obtained for vehicles in which disabled persons often ride or drive, by the co-owner of a disabled person's vehicle, or the disabled person's spouse, parent, or legal guardian. Further, it provides, notwithstanding other provisions of law that the odometer reading of any motor vehicle which is more than ten model years old will not be required to be recorded on the vehicle's title certification.

H.B. 131 creates and amends provisions relating to motor vehicle registration; most importantly, it provides that a license plate or revalidation decal shall not be issued for a rebuilt or salvaged vehicle unless the vehicle satisfies the legal safety requirements: this should reduce the likelihood that such a vehicle will pose a safety hazard when operated within the state.

\*\*\*\*

H.B. 146 - DRIVERS' LICENSES; POINTS FOR CERTAIN OFFENSES; SUSPENSION  
REVOCATION - ACT 462

H.B. 146 amends OCGA Section 40-5-57 by amending the points-assessment schedule: the offense of reckless driving bears four points, instead of seven points; exceeding the speed limit by 14 miles per hour or more, but less than 19 miles per hour bears two points; exceeding the speed limit by 19 miles per hour or more but less than 24 miles per hour bears three points; exceeding the speed limit by 24 miles per hour but less than 34 miles per hour bears four points; exceeding the speed limit by 34 miles per hour or more bears six points and driving too fast for conditions bears no penalty.

H.B. 146 should insure that the points-assessment schedule is fair and will effectively deter future driving violations.

\*\*\*\*

H.B. 208 - WINDOWS; LIGHT TRANSMISSION; AFFIXING MATERIALS TO WINDOWS;  
MATERIALS SHIPPED INTO THE STATE; LABELING - ACT 553

H.B. 208 amends OCGA Section 40-8-73.1. It defines "light reflectance" as the ratio of the amount of total light reflected by a material to the amount of total light falling upon the material. It prohibits operation of a motor vehicle that has material and glazing applied or affixed to the rear windshield, or side or door windows, when that material reduces light transmission through the windshield or window(s) to less than 32% or increases light reflectance to more than 20%. To this prohibition it adds additional exceptions, e.g., a multipurpose passenger vehicle (as H.B. 208 defines), a motor vehicle not registered in Georgia, and a limousine owned or leased by a public or private entity. It requires a manufacturer furnishing Georgia with reflective or reductive light transmission materials to apply for and receive approval and registration of its product(s) from the Commissioner of Public Safety. Such application shall contain a label which specifies that such material has been certified by said Commissioner and which may be attached to a windshield or window having such material. Manufacturers of such material must provide written instructions and notification regarding such labels to the purchaser, who may not alter or reproduce the label, and is required to display the label in a visible place of a windshield or window.

H.B. 208 should provide a reliable means to detect motor vehicle windshields and windows having shading material in violation of Georgia law. It should, since it places a limit on the light which may be reflected by material affixed to motor vehicle windshields and windows, enhance the safety of vehicles traveling in opposite directions. Additionally, by prohibiting the use of windshield and window shading materials which are difficult to see through, it should enhance police officer safety, as they will be able more easily to see inside of vehicles which they are investigating.

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H.B. 209 - DRUGS; MEDICAL TREATMENTS; DIAGNOSTIC STUDIES; AUTHORITY OF NURSES AND PHYSICIANS' ASSISTANTS TO ORDER OR ADMINISTER - ACT 359

H.B. 209 amends OCGA Sections 26-4-4, 43-26-4 and 43-34-103 and enacts 43-34-26.1. It authorizes the Georgia Board of Nursing to promulgate rules and regulations governing nurses performing under a nurse protocol (as OCGA 43-34-26.1 provides). It defines the following terms: administer, dispense, order, job description, dispensing procedure, nurse, nurse protocol, physicians' assistant, controlled substance, drug, and dangerous drug. It empowers a physician to authorize, under certain conditions, a nurse or physicians' assistant to order controlled substances, dangerous drugs, medical treatments, and diagnostic studies, and to dispense dangerous drugs, medical treatments and diagnostic studies. Also, it empowers the Composite State Board of Medical Examiners to promulgate rules and regulations governing the implementation of this bill and to establish criteria and standards governing physicians, physicians' assistants, job descriptions, and nurse protocols.

H.B. 209 should yield formal requirements and procedures by which a physician may delegate the powers to order and dispense drugs, medical treatments, and diagnostic studies. Thus, it should, ultimately, reduce the likelihood that a physician will delegate these powers unlawfully and unethically.

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H.B. 238 - GEORGIA PEACE OFFICER STANDARDS AND TRAINING ACT; "RETIRED PEACE OFFICER" REDEFINED - ACT 467

H.B. 238 amends OCGA Section 35-8-2 relating to definitions regarding the employment and training of peace officers. It provides that a "retired peace officer" can be a law enforcement officer who has retired from federal service and has satisfied all criteria required by the Georgia Peace Officer Standards and Training Council. Such classification of a retired federal law enforcement officer does not exempt him from satisfying minimum employment and training requirements of OCGA Section 17-6, if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

H.B. 239 should clarify the term "retired peace officer" and result in the efficient handling of federal peace officers applying for state certification as a retired or active peace officer.

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H.B. 261 - HANDICAPPED PARKING LAW; NONAMBULATORY PERMANENTLY HANDICAPPED PERSONS; PARKING PLACES - ACT 470

H.B. 261 enacts OCGA Section 40-6-224.1 and amends Section 40-6-225. It defines "nonambulatory permanently handicapped person" as a person who is permanently handicapped as a result of a loss, or a loss of the use, of one or both legs, or who is dependent upon crutches, a walker, or wheel chair for locomotion. It authorizes business entities to designate nonambulatory parking places which will be in addition to handicapped parking places required by law. It prohibits a person to park a car, except an emergency vehicle, in a nonambulatory parking area. As well, it prohibits one to stop or stand his person in said areas, unless he is assisting a nonambulatory permanently handicapped person to enter or get out of a vehicle.

H.B. 261 should promote the establishment of nonambulatory parking places by private entities, thus ultimately enhancing a nonambulatory permanently handicapped person's access to private business.

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H.B. 265 - FLYING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS - ACT 364

H.B. 265 enacts OCGA Section 6-2-5.1. It provides that no person may operate an aircraft within eight hours after consuming alcoholic beverage, while under the influence of alcohol, while using a drug that affects such person's faculties, or while there is 0.04 percent or more of alcohol in one's blood. It also provides that a person suspected of violating OCGA 6-2-5.1 shall take, at the request of a law enforcement officer, a chemical blood analysis test subject to the restrictions of subsection (a) of OCGA Section 40-6-392, to determine the level of alcohol and/or drugs in the suspect's blood. And it provides that a person who violates OCGA Section 6-2-5.1 commits a misdemeanor punishable by a maximum fine of \$2,000.

H.B. 265 should deter persons from operating an aircraft while under the influence of alcohol and/or drugs, thus providing protection for the public.

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H.B. 280 - MOTORCYCLE OPERATORS; HEADSETS AND HEADPHONES - ACT 639

H.B. 280 amends OCGA Section 40-6-250 by legalizing the use of a headset or headphone for communication purposes while operating a motorcycle, provided, however, that the motorcyclist headset or headphone does not impair his vision or hearing.

H.B. 280 will allow motorcycle riders to benefit from the use of headphones for communication purposes.

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H.B. 324 - COLLEGE AND UNIVERSITY CAMPUS LAW ENFORCEMENT AGENCIES;  
RADAR SPEED DETECTION DEVICES - ACT 474

H.B. 324 amends OCGA Section 40-14 by authorizing college and university law enforcement agencies to use radar speed detection devices; such use will be subject to the conditions of OCGA Section 40-14.

H.B. 324 will grant colleges and universities the option to use radar speed detection devices in order to control and deter speeding.

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H.B. 399 - TRAFFIC CITATIONS NOT PROPER IDENTIFICATION FOR PURCHASE OF ALCOHOLIC BEVERAGES - ACT 608

H.B. 399 amends OCGA Section 3-3-23, which provides that the presentation of a traffic citation and complaint form may not constitute "proper identification" for the purpose of buying alcoholic beverages.

H.B. 399 should prevent the sale of alcoholic beverages to those under twenty-one who misrepresent their age and/or identity with a traffic citation or complaint form.

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H.B. 403 - ABSENTEE ELECTORS; ELECTORS 75 OR HANDICAPPED VOTING WITHOUT WAITING IN LINE; CAMPAIGN ACTIVITIES AND PUBLIC OPINION POLLS NEAR POLLING PLACES - ACT 573

H.B. 403 enacts OCGA Sections 21-2-409.1 and 21-3-318.1 and amends 21-2-380, 21-2-414, 21-3-280 and 21-3-321. It provides that a person who is 75 years of age or older may, for both state and municipal purposes, vote as an "absentee elector". Also, it provides that in state and municipal primaries and elections, an elector who is 75 years of age or older, or who is handicapped and requires assistance to vote (as OCGA Section 21-2-409 provides) shall, upon request to a poll officer, vote immediately at the next available voting compartment or booth; notice of this privilege shall be displayed in voting areas. Additionally, it reduces substantially the distance which certain activities; e.g., petitioning and vote soliciting, are required to be from the polling area.

H.B. 403 will grant the elderly, who may vote as absentee electors, and handicapped persons the privilege in state and municipal primaries and elections, to vote without a substantial wait. It also provides distance requirements for campaign workers and pollsters.

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H.B. 409 - FUNERAL PROCESSIONS; RIGHT OF WAY; PENALTIES - ACT 702

H.B. 409 amends OCGA Section 40-6-76. It prohibits (misdemeanor punishable by \$100) a person to operate a vehicle so as to attempt to pass vehicles in a funeral procession on a two-lane highway, to join a funeral procession by operating the vehicle's headlights for the purpose of securing the right of way granted, by law, to a funeral procession, or to otherwise interrupt said procession, except when authorized to do so by a traffic officer or when such vehicle is an emergency vehicle giving an audible or visual signal.

H.B. 409 should help ensure the safety of those participating in a funeral procession.

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H.B. 430 - CRIMINAL JUSTICE COORDINATING COUNCIL; MEMBERSHIP - ACT 370

H.B. 430 amends OCGA Section 35-6A-3 by requiring that an additional member with expertise on crime victim assistance programs be appointed by the Governor for a four-year term to the Criminal Justice Coordinating Council, beginning July 1, 1989.

H.B. 430 is a response to the needs of victims by ensuring representation of a victims' advocate on the Criminal Justice Coordinating Council. The Criminal Justice Coordinating Council is responsible for the administration of the Federal Victims of Crime Act Grant Program; therefore, the victims' advocate will represent victim assistance programs in decisions relating to distribution of grant funds.

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H.B. 601 - DRIVERS' LICENSES; RETENTION OF SUSPENDED, CANCELED OR REVOKED LICENSES - ACT 488

H.B. 601 enacts OCGA Sections 40-5-140 through 40-5-149 and amends OCGA

Section 40-5-61. It provides procedures and requirements for the issuance and obtainment of a handicapped identification card. Also, it prohibits (misdemeanor) a person: 1) to use a fictitious name in an application for a handicapped identification card, or to knowingly make a false statement or conceal a material fact, or otherwise commit fraud in such an application; 2) to display or cause to be displayed or have in his possession a fictitious or fraudulently altered handicapped identification card; 3) to lend his handicapped identification card to another person or to knowingly permit another to use said card; and 4) to display or represent as his own any handicapped identification card not issued to him.

H.B. 601 should provide for the reliable identification of handicapped persons. As well, the handicapped identification cards will provide valuable information; e.g., medical data, about their holders in the event of an emergency.

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H.B. 719 - LOW PHOSPHORUS HOUSEHOLD LAUNDRY DETERGENTS; SALE - ACT 386

H.B. 719 enacts OCGA Section 12-5-27.1. It requires a local government entity who has been ordered (by the Environmental Protection Division of the Department of Natural Resources) to reduce the phosphorus level of the wastewater it discharges into Georgia waters, to consider mandating the retail sale of low phosphorus household laundry detergent as a part of its phosphorus reduction plan. When such retail sale is shown to be a cost-efficient component of the entity's phosphorus reduction plan (which must be approved by the Division), the local government entity shall mandate retail sale of such detergent by passing an ordinance that places a 0.5 percent limit, by weight, on the household laundry detergents sold in the entity's jurisdiction.

H.B. 719 responds to the substantive damage to Georgia waters and environments thereof caused by a high level of phosphorus, a catalyst to algae growth. It should reduce the amount of phosphorus in the wastewater of certain municipalities, thus, ultimately, helping to reduce the excessive and harmful algae growth in Georgia waters.

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H.B. 810 - DRUG CRIMES: BUILDINGS AND STRUCTURES IN WHICH COMMITTED:  
POWERS OF COUNTIES AND MUNICIPALITIES - ACT 597

H.B. 810 amends OCGA Sections 41-2-7, 41-2-8, 41-2-9, 41-2-10 and 41-2-11. It provides a definition for the term "drug crimes" and it authorizes a county or municipal government to exercise its police power to repair, close, or demolish, through the procedure prescribed in OCGA Section 41-2-8 through 41-2-17 a vacant, dilapidated dwelling, building or structure in which drug crimes are being committed.

H.B. 810 should provide a useful tool for county and municipal administrations to combat drug trafficking and may result in the repair, closure, or destruction of a number of constructions wherein drug crimes occur.

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H.R. 316 - JOINT TITLE 40 STUDY COMMITTEE: CREATE

H.R. 316 creates the Joint Title 40 Study Committee to examine the conditions and issues pertaining to Georgia's motor vehicle and traffic laws. The Committee shall be composed of the chairpersons of the House Judiciary Committee, Senate Judiciary Committee, House Motor Vehicles Committee, and Senate Transportation Committee; one state court solicitor and one district attorney, both chosen by the Prosecuting Attorney's Council; and one state court or superior court judge chosen by the Judicial Council. The House Speaker shall designate the Study Committee's chairperson from its membership and the Lieutenant Governor shall designate the vice chairperson from the same. The Committee may report its findings and recommend acts or bills the Committee deems appropriate before it dissolves on December 1, 1989.

H.R. 316 should result in the thoughtful consideration of Georgia's motor vehicle and traffic laws and may result in new traffic legislation.

# **JUDICIAL ADMINISTRATION AND PROCEDURES**

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SENATE LEGISLATION

S.B. 104 - COUNCIL OF PROBATE COURT JUDGES; CONTRACTS FOR EDUCATIONAL MATERIAL - ACT 621

S.B. 104 amends OCGA Section 15-19-15. It permits the Council of Probate Judges of Georgia to contract, through its officers, for the production of educational material with a person or firm including any member of the Council. The Council shall compensate the member for producing such material, if it has the funds and if the terms of the contract are disclosed to the full Council, the general public and news media. And, the Council may authorize, by requesting, the Administrative Office of the Courts to act as an agent of the Council for the purpose of supervising and implementing the contract.

S.B. 104 should create an easy procedure through which the Council of Probate Judges may contract with its members to have desired educational material produced. Simultaneously, it should insure that the procedure is not abused, since it requires pre-payment disclosure of the contract terms and a supervisory option.

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S.B. 116 - AGRICULTURE; DEPARTMENT OF; INSPECTION WARRANTS - ACT 412

S.B. 116 enacts OCGA Section 2-2-11. It provides procedures and conditions by which the Commissioner of Agriculture or any person authorized to make inspections for him, may obtain and execute an inspection warrant to examine areas specified on an affidavit approved by a judicial officer.

S.B. 116 should promote the lawfulness of inspections conducted under the authority of the Commissioner of Agriculture.

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S.B. 139 - MAGISTRATE COURTS; JURISDICTION OVER WAIVERS OF EXTRADITION -  
ACT 397

S.B. 139 amends OCGA Section 15-10-2. It gives the magistrate courts jurisdiction over the execution (or subscription) and acceptance of written waivers of extradition in the same manner prescribed in OCGA Section 17-13-46.

S.B. 139 should insure that magistrate courts handle a significant share of extradition matters, thus lessening the workload of other courts.

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S.B. 142 - SUPERIOR COURTS; SOUTHERN JUDICIAL CIRCUIT; ADDITIONAL JUDGE  
- ACT 328

S.B. 142 amends OCGA Section 15-6-2 by adding a fourth judgeship to the Superior Court of the Southern Judicial Circuit and authorizing the court to appoint an additional court reporter. A person will be elected to the judgeship in the November 1990 state general election and quadrennially thereafter. In the meantime, the Governor shall appoint someone to fill the judgeship from July 1, 1989 to December 31, 1990.

S.B. 142 should reduce the workload of the Southern Judicial Circuit's three superior court judges and the court reporters. Additionally, it should reduce any case backlog and expedite the disposition of cases.

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S.B. 167 - SUPERIOR COURTS; ATLANTIC JUDICIAL CIRCUIT; ADDITIONAL JUDGE  
- ACT 329

S.B. 167 amends OCGA Section 15-6-2 by adding a fourth judgeship to the superior court of the Atlantic Judicial Circuit and authorizing the court to appoint an additional court reporter. A person will be elected to the judgeship in the November 1990 state general election and quadrennially thereafter. In the meantime, the Governor shall appoint someone to fill the judgeship from July 1, 1989 to December 31, 1990.



S.B. 167 should reduce the workload of the Atlantic Judicial Circuit's three superior court judges and the court reporters. Additionally, it should reduce any case backlog and expedite disposition of cases.

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S.B. 183 - SUPERIOR COURTS; CLERKS; RECORDS, BOOKS, DOCKETS, AND INDICES; FEES - ACT 414

S.B. 183 amends OCGA Sections 15-6-61, 15-6-65, 15-6-66, 15-6-68, 15-6-77 and 15-6-87. It authorizes a superior court clerk to consolidate or combine books, dockets, and indices and to use electronic or automated methods or systems of record keeping. And it adds child support cases to the list of "domestic civil cases", thus allowing a superior court clerk to charge a fee for services rendered to parties of child support cases, provided that such services are consistent with the provisions of OCGA Section 15-6-77 and the fee collected is deposited in the county treasury.

S.B. 183 will enable county governments to receive compensation for services provided to parties of child support cases and should enable superior court clerks and superior courts, in general, to benefit from advances in information systems.

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S.B. 186 - LIENS ON PROPERTY PAID FOR WITH BAD CHECKS - ACT 521

S.B. 186 amends OCGA Section 44-14-516 by providing that the payee of any bad check shall have a lien, for the face value of the bad check, on the merchandise or the services rendered on merchandise for which the check was written. Such a lien shall have the same position as a mechanic's lien and shall be perfected in the same manner as a mechanic's lien. A "bad check", as S.B. 186 provides, is a check drawn for merchandise or services rendered on merchandise: 1) when the drawer had no account with drawee (a bank or depository) at the time the check was drawn; or 2) when the drawee cannot, upon the payee's presentation of the check within thirty days of the payee's acceptance of the check, make the check payment because of a lack of funds in the drawer's

account, and then, the drawer or someone for him fails to pay the amount of the check to the payee within ten days after receiving notice that the drawee refused to honor the check; or 3) if such notice of check dishonor is returned to the sender, undelivered, when it was mailed within a reasonable time after the check's dishonor and to the address printed on the check or given by the drawer of the time of the check issuance.

S.B. 186 provides a standard definition of a "bad check" and thus should allow the expedient determination of the existence of a bad check and provide protection for holders thereof.

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S.B. 216 - CHILDREN; COMPETENCY TO TESTIFY IN CRIMINAL CASES - ACT 674

S.B. 216 amends OCGA Section 24-9-5 by providing that a child who was a victim of or witness to child molestation or any other crime shall be competent to testify in court. Excepting other provisions of law, the trier of fact shall determine the competency of such a court witness.

S.B. 216 provides an arrangement whereby a child who was a victim of or witness to child molestation may testify in court against the criminal suspect, increasing the likelihood of conviction and punishment of child molesters.

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S.B. 255 - OFFENSES BAILABLE ONLY BEFORE A JUDGE OF THE SUPERIOR COURT; PROCEDURE; HEARINGS - ACT 685

S.B. 255 amends OCGA Section 17-6-1 relating to bail hearings. Relative to the bail hearing of a person accused of an offense bailable only before a superior court judge, it requires the municipal court to notify the superior court when the individual so accused has been detained in a municipal jail for 30 days without a bail hearing. (The former law required the municipal court to notify the superior court when the individual so accused has been detained in a municipal jail for 48 hours without a bail hearing.)

S.B. 255 provides that a person accused of an offense bailable only before the superior court may arrange a bail hearing through two methods: 1) his lawyer may have the hearing scheduled; 2) the superior court may schedule it after receiving notice from the municipal court. Under the former law, both methods were often, simultaneously utilized, thus leading to two hearings on an individual's request for bail. By relaxing the municipal court notification requirement to 30 days, the bill should give the accused ample time to have his request for bail judged before the municipal court notifies the superior court that the accused is being detained in a municipal jail. This should safeguard against the holding of a second, unnecessary bail hearing. Simultaneously, by providing the 30-day notification requirement, the bill should ensure that persons accused of an offense bailable only before the superior court are given a bail hearing within a reasonable time - the Code Section's original purpose.

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S.B. 273 - TRAFFIC MISDEMEANOR TRIALS IN PROBATE COURTS; DISTRICT ATTORNEYS AND STATE COURT SOLICITORS; DUTIES - ACT 402

S.B. 273 amends OCGA Section 40-13-21 by authorizing a probate court judge for a traffic misdemeanor trial to request the district attorney of the court's circuit or the state court solicitor of the county to conduct the trial on behalf of the state. If, for any reason, the district attorney or solicitor is unable to assist in the trial, S.B. 273 empowers him to designate a member of his staff to conduct the trial for the state.

S.B. 273 grants a probate court the option to request assistance from the district attorney of the court's circuit and the state court solicitor. It should provide said government attorneys sufficient discretion so that they can provide the requested assistance.

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S.B. 372 - CHIEF MAGISTRATES; MINIMUM COMPENSATION - ACT 423

S.B. 372 amends OCGA Section 15-10-23 by prescribing minimum salary

levels according to county population (as reported in the latest United States decennial census) for chief magistrates of Georgia's counties, except where local law provides a chief magistrate's compensation or where a probate judge serves as the chief magistrate.

S.B. 372 should insure that county chief magistrates will receive equitable compensation and it should help county governments retain current chief magistrates.

HOUSE LEGISLATION

H.B. 19 - CLERKS; NOTICES OF DATES OF ARRAIGNMENTS - ACT 338

H.B. 19 amends OCGA Section 17-7-91. It requires, in any criminal case, the clerk of the court to mail notification of the accused's arraignment date to the accused and his attorney of record, if known. The clerk must mail such notice at least five days before the accused's arraignment date (the previous requirement was three days).

H.B. 19 should give those accused of crime and their attorneys more time to prepare for an arraignment.

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H.B. 55 - COURT OF APPEALS; JUDGES; COMPENSATION - ACT 334

H.B. 55 amends OCGA Section 45-7-4. It changes the annual salary of each justice of the Supreme Court from \$78,550 to \$90,514 and the annual salary of each judge of the Court of Appeals from \$77,980 to \$89,931. It also provides that the cost-of-living adjustment provisions of OCGA Section 45-7-4 shall not apply to Supreme Court justices and judges of the Courts of Appeals.

H.B. 55 should help attract highly qualified persons to state judgeships and help the state retain current judges.

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H.B. 96 - JURORS AND COURT BAILIFFS; COMPENSATION - ACT 348

H.B. 96 amends OCGA Section 15-12-7. It provides a new maximum daily compensation limit, \$60, that a county grand jury may designate for bailiffs of superior, state and special courts located within the county of the grand jury. It also provides a new maximum daily allowance limit, \$35, which said grand jury may design for jurors serving within

its county. And it provides that after January 1, 1991, any increase in the compensation of such bailiffs and jurors must be approved by the county governing authority. For the interim period before January 1, 1991, it provides that no county grand jury may increase bailiff compensation or juror allowance unless the county chief executive or his designee has gone before the grand jury and described the probable fiscal impact of the increase.

H.B. 96 should give county governing authorities, before and after January 1, 1991, more power to determine a bailiff's compensation and a juror's allowance. This should result in the more thoughtful consideration, by a grand jury, of the fiscal impact such determinations have on their county.

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H.B. 107 - EXECUTIVE PROBATE JUDGES COUNCIL OF GEORGIA; MEMBERSHIP;  
TERMS; MEETINGS - ACT 350

H.B. 107 amends OCGA Sections 15-9-102 and 15-9-104. It provides that the Executive Probate Judges Council shall be composed of three state-at-large members chosen by the Council of Probate Court Judges (CPCJ) at their annual spring business meeting, and six probate court judges (one from each of the six judicial administrative districts) chosen by the probate judges of the respective districts immediately before the annual spring business meeting of the CPCJ. The state-at-large members shall be chosen for three-year staggered terms. It also provides that the president of the CPCJ, if not a district or at-large member of the Executive Probate Judges Council (EPJC), shall be an ex-officio voting member of the EPJC. And it requires the Executive Council to meet immediately after the annual spring business meeting of the CPCJ.

H.B. 207 should provide for the coordination of the Council of Probate Court Judges and the Executive Probate Judges Council. Additionally, it should provide for a representative and diverse EPJC membership.

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H.B. 108 - CHIEF MAGISTRATES AND MAGISTRATES; BONDS; OATHS;  
CERTIFICATES - ACT 351

H.B. 108 amends OCGA Sections 45-4-13 and 45-4-17. It adds official bonds for county taxes, issued by chief magistrates and magistrates to the list of bonds which must be approved by the probate court judge, filed in his office, and recorded by him. Also, it requires the probate court judge, as for other bonds, to complete the requirements of OCGA Section 45-4-17, relating to the certification of the taking of oaths and the issuance of bonds.

H.B. 108 should ensure that bonds given by chief magistrates and magistrates are accounted for and issued lawfully.

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H.B. 139 - CHILD AND SPOUSAL SUPPORT; ENFORCEMENT; GUIDELINES;  
INCOME DEDUCTION ORDERS; WAGE ASSIGNMENTS; INSURANCE -  
ACT 543

H.B. 139 amends OCGA Sections 19-6-15, 19-6-30, 19-11-12, 19-11-15, 19-11-20 and 19-11-23 and enacts Sections 19-6-31, 19-6-32 and 19-6-33. It revises extensively the provisions relative to the enforcement of child and spousal support obligations and implements certain provisions of the federal Family Support Act of 1988. It provides guidelines for the computation of child support based on gross income, provides for the issuance and enforcement of income deduction orders, and provides for the inclusion of accident and sickness insurance coverage in certain support obligations. It provides for periodic review of IV-D child support agency orders.

H.B. 139 should ensure that the Georgia law provisions relative to child and spousal support obligations are equitable and clear.

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H.B. 187 - BONDS OR RECOGNIZANCES; FORFEITURE - ACT 463

H.B. 187 amends OCGA Sections 17-6-71 and 17-6-72, both relating to

the proceedings for the forfeiture of bonds or recognizances. The judge shall, at the end of the court day, order an execution hearing to be held not sooner than 75 days nor later than 100 days after the failure to appear. The Act provides for notice to the surety, specifies conditions not warranting forfeiture of bond, and provides practices and procedures relating to forfeitures of bonds and recognizances.

H.B. 187 should ensure that the provisions relating to the proceedings regarding the forfeiture of bonds and recognizances are clear and that the procedure derived therefrom is performed in a timely manner.

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H.B. 229 - RAPE CASES; INADMISSIBILITY OF CERTAIN EVIDENCE;  
EXCEPTIONS - ACT 362

H.B. 229 amends OCGA Section 24-2-3. It provides two possible exceptions to the prohibition against the introduction, in a rape trial, of the past sexual behavior of a complaining witness. Past sexual behavior is admissible when the trial court, after a private hearing (as defined in OCGA Section 24-2-3) finds that the past sexual behavior of the complaining witness directly involved the accused and that the evidence expected to be introduced supports an inference that the accused could have reasonably believed the complaining witness consented to the crime complained of in the prosecution. Past sexual behavior is admissible if the court finds the information introduced in the private hearing to be so highly material that it will substantially support the conclusion that the accused reasonably believed the complaining witness consented to the conduct complained of and that justice mandates its admission.

H.B. 229 provides thresholds more difficult to satisfy than the previous law, for the admission in a rape trial of a complaining witness' past sexual behavior. It should insure that a complaining witness' past sexual behavior is only admitted under certain circumstances.

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H.B. 259 - PROBATE COURTS; CERTAIN COUNTIES; CONCURRENT  
JURISDICTION WITH SUPERIOR COURTS OVER APPOINTMENT OF  
TRUSTEES AND ACCEPTANCE OF A TRUSTEE'S RESIGNATION - ACT  
560

H.B. 259 amends OCGA Section 15-9-127. It expands the jurisdiction of certain probate courts to include concurrent jurisdiction, with the superior courts, over the appointment and acceptance of resignation of trustees. "Probate court", as used here, is a probate court in a county having a population over 100,000 according to the United States decennial census of 1980, or any future such census.

H.B. 259 should lessen the heavy caseload of superior courts and increase the caseload of probate courts.

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H.B. 274 - STATE BOARD OF WORKERS' COMPENSATION; MEMBERS AND  
ADMINISTRATIVE LAW JUDGES; COMPENSATION; APPEALS;  
REHABILITATION SUPPLIERS - ACT 472

H.B. 274 amends OCGA Sections 34-9-52, 34-9-105, 34-9-200.1 and 45-7-4. It provides that the chairman and each member of the State Board of Workers' Compensation shall receive an annual salary equal to 90 percent of the base annual salary provided as of January 1, 1989, for each judge of the Court of Appeals. It provides that each administrative law judge of the Board shall receive an annual salary equal to the annual salary received by such administrative law judge as of January 1, 1989, plus \$6,000 provided, however, that the salary of such administrative judges shall not exceed a superior court judge's. It provides that a Board decision, on appeal to the Superior Court, shall be affirmed: when the appeal has been heard within 60 days from the date the notice of appeal was filed, and if the court has failed to enter an order within 20 days of the date of the appeal's hearing. It gives the Board authority over rehabilitation suppliers, by, among other things, empowering the Board to revoke a rehabilitation supplier's registration through a hearing before administrative law judges, and to establish educational standards and qualifications for such suppliers. And it provides a definition for "catastrophic injury".

H.B. 274 should, ultimately, lead to improvement in the quality of rehabilitation suppliers and the treatment they give, since the Board has been given a supervisory role over such suppliers. By providing a formal procedure, it should allow appeals of Board decisions to be made to the Superior Court as expeditiously and effectively as possible. And it should provide equitable compensation for Board members and administrative law judges.

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H.B. 306 - SUPERIOR COURTS; EASTERN JUDICIAL CIRCUIT; ADDITIONAL JUDGE  
- ACT 330

H.B. 306 amends OCGA Section 15-6-2 by adding a fifth judgeship to the superior court of the Eastern Judicial Circuit. A person will be elected to the judgeship in the November 1990 state general election and quadrennially thereafter. In the meantime, the Governor shall appoint someone to fill the position from January 1, 1990, to December 31, 1990.

H.B. 306 should reduce the workload of the Eastern Judicial Circuit's four superior court judges. Additionally, it should reduce any case backlog and expedite the disposition of cases.

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H.B. 322 - NOTICE TO DEFENDANT AND DEFENDANT'S ATTORNEY - ACT 473

H.B. 322 amends OCGA Section 17-8-3. It requires a prosecuting attorney to notify, within thirty days, the defendant and the defendant's attorney of record of an entry of nolle prosequi. Such notice may be given by sending written notification, through regular mail, to the defendant's last known address and to his attorney of record, or may be given personally. If a prosecutor wants to enter nolle prosequi after the case has been submitted to the jury, he must obtain the defendant's consent.

H. 322 should result in the timely notification of the defendant and his attorney if government decides to discontinue prosecution.

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H.B. 356 - SEARCHES OF LAW OFFICES; PROCEDURE; WARRANTS; SPECIAL MASTERS  
- ACT 680

H.B. 356 enacts OCGA Section 17-5-32, relating to searches with warrants. It defines "documentary evidence" as including, but not limited to, "writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, x-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, and papers of any type of description". Notwithstanding other provisions of law, it prohibits the issuance of a search warrant for documentary evidence possessed by an attorney who is not a criminal suspect unless the application for the warrant specifies that the place to be searched is in the possession or custody of an attorney and shows the existence of probable cause to believe that documentary evidence will be destroyed or hidden if a search warrant is not issued. It also provides procedures for the issuance and execution of such a warrant: 1) such a warrant shall be issued only by the superior court and, when practicable, during normal business hours. When applying for the warrant, the prosecutor or law enforcement officer must submit a written search plan designed to minimize the intrusiveness of the search and 2) when such a warrant is issued, the court shall appoint a special master to accompany the warrant server. The special master shall be an attorney who is a member of the State Bar of Georgia and who has been selected from a list of qualified attorneys the Bar shall maintain. Upon the warrant's service, the special master will inform the party served of the specific items sought and that the party has the option to voluntarily provide the items requested. If the party fails, in the special master's judgement, to provide the items, the special master will search for the items in the areas designated on the search warrant. While searching, the special master must make reasonable efforts to minimize the intrusiveness of the search. And though the prosecutor or law enforcement officer serving the warrant cannot participate in the search, he may accompany the special master during the search; 3) if the party who served the warrant states that a seized item should not be disclosed, it shall be sealed by the special master and taken to the superior court for a suppression hearing; and 4) if after reasonable efforts, the warrant server was unable to locate the party who apparently possessed the items seized, the special master shall seal and return to the superior court any items which appear to be privileged.

H.B. 356 will place stringent conditions on the searches of attorneys' offices. Consequently, it should compel a government investigator to

obtain a subpoena in order to secure information possessed by an attorney, instead of searching the attorney's office, and thus, it should reduce the likelihood that a government investigator will conduct an unwarranted and unfocused search of an attorney's office that exposes confidential information.

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H.B. 380 - HEARSAY; RECORDS OF THE DEPARTMENT OF PUBLIC SAFETY;  
TERMINALS CONNECTED TO THE GEORGIA CRIME INFORMATION CENTER;  
PARTIES TO SUITS - ACT 571

H.B. 380 amends OCGA Sections 24-3-17 and 35-3-34. It provides that any court may receive and use as evidence information which is otherwise admissible from Department of Public Safety records and which was obtained from a computer terminal lawfully connected to the Georgia Crime Information Center. It also authorizes the Center to make criminal history records available to a party of a criminal action upon receipt of a written request from that party or his attorney. The request must contain the style of the action, the name of the person whose records are requested, and a statement that the named person is a party of prospective witness in the party's case.

H.B. 380 insures that parties have access to reliable and relevant information possessed by the Georgia Crime Information Center.

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H.B. 443 - MUNICIPAL COURTS; JURISDICTION OF TRAFFIC OFFENSES - ACT 481

H.B. 443 amends OCGA Section 40-13-21 by granting municipal courts jurisdiction regardless of the existence of a city, county, or state court in the municipality to try and dispose of misdemeanor traffic offenses arising under state law, except violations of OCGA Section 40-6-393, and to impose punishment under state law for such traffic offenses, provided that the defendant has waived a jury trial and the offense occurred within the court's territorial limits.

H.B. 443 will grant municipal courts and the municipality, in essence, an ability to determine the punishment imposed upon persons committing state misdemeanor traffic offenses within the municipal courts' territorial limits. It should also lessen the caseload of state traffic courts, if municipal courts exercise jurisdiction over state misdemeanor traffic offenses.

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H.B. 466 - VOLUNTARY SURRENDER PROGRAM; BONDS ON PERSONAL RECOGNIZANCE; EXPENSES; PENALTIES - ACT 483

H.B. 466 enacts OCGA Section 17-10-9.1. It provides that a sentencing court may release, for not more than 120 days after conviction, a person who has pled nolo contendere or guilty or has been convicted of a state offense. Such release shall be on bond or personal recognizance, supervised by the court's probation officer, and the sole prerogative of the sentencing judge, whose decision to so release may not be appealed. After the time of release has expired, the person released shall voluntarily surrender to a designated facility. If he fails to surrender, he may be charged with the offense of bail jumping (as OCGA Section 16-10-51 provides). Before release, the judge shall take into account the nature of the crime and conclude that the granting of release will pose no threat to society. H.B. 466 also authorizes the Department of Corrections to promulgate rules and regulations governing the implementation of these provisions.

H.B. 466 should help reduce the number of inmates in prison and correctional facilities. In particular, it gives courts a useful instrument for imposing the "special alternative incarceration" program (SHOCK) which is outlined by OCGA Section 42-8-35.1. It permits a judge to sentence prisoners to 90 days of structured incarceration as a condition of probation. Recently, prisoners have been sentenced to SHOCK and incarcerated for periods before being subjected to SHOCK. H.B. 466 should reduce the number of SHOCK probationers who spend unnecessary time in crowded prisons while awaiting entry into the program. Additionally, it should allow convicted persons who pose no threat to society to take care of personal affairs before beginning a prison sentence.

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H.B. 495 - BAIL JUMPING; NOTICES; BENCH WARRANTS; FAILURE TO APPEAR;  
ACCUSATIONS - ACT 487

H.B. 495 amends OCGA Section 16-10-51 and 17-7-90. It adds "otherwise being notified personally in writing by a court official" to the list of notices sufficient to yield a presumption that a person who has been released on bail and then failed to appear at the required time in court has willfully eluded a court trial or "jumped" bail. Also, it removes the offense of converting leased personal property (as OCGA Section 16-8-9 defines) from the list of misdemeanors, which can lead to a felony conviction for out-of-state bail jumping. And it provides that a bench warrant shall be issued for the arrest of an accused upon the prosecutor's filing of an accusation supported by an affidavit or for the arrest of an accused who has failed to appear in court, as required: when actual notice had been given to him in open court, when notification had been mailed to his last known address, or when written personal notification had been otherwise delivered to him by a court official.

By clarifying the provisions relating to sufficient notice of a person's court date when one has been released on bail, H.B. 495 should provide for the swift determination that a person has jumped bail. In addition, it should promote the apprehension, when necessary, of persons who have jumped bail, since it authorizes courts to issue bench warrants for such persons.

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H.B. 524 - JURY LISTS AND BOXES; SELECTIONS OF JURORS - ACT 424

H.B. 524 amends OCGA Sections 15-12-40 and 15-12-42 by authorizing the chief judge of the county superior court, with the concurrence of the other judge or judges of the superior court, to institute a plan (in place of the nonmechanical procedure provided in subsection (a) of OCGA 15-12-42) for the selection of the county grand and trial boxes from the trial or grand jury lists established by the board of jury commissioners by mechanical or electronic procedures.

H.B. 524 reorganizes the provisions relating to jury selection and the compilation and revision thereof. It's housekeeping measures should clarify the procedures authorized for the selection of jurors.

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H.B. 559 - SUPERIOR COURTS; CHATTAHOOCHEE JUDICIAL CIRCUIT; ADDITIONAL  
JUDGE - ACT 331

H.B. 559 amends OCGA Section 15-6-2 by adding a fifth judgeship to the superior court of the Chattahoochee Judicial Circuit and authorizing the court to appoint an additional court reporter. A person will be elected to the judgeship in the November 1990 state general election and quadrennially thereafter. In the meantime, the Governor shall appoint someone to fill the judgeship from July 1, 1989 to December 31, 1990.

H.B. 559 should reduce the workload of the Chattahoochee Judicial Circuit's four superior court judges and the court reporters. Additionally, it should reduce any case backlog and expedite the disposition of cases.

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H.B. 590 - DEPOSIT OF CHAUFFEUR'S OR DRIVER'S LICENSE IN LIEU OF BAIL -  
ACT 429

H.B. 590 amends OCGA Section 17-6-2, relating to acceptance of bail in misdemeanor cases generally. It authorizes the sheriff of a county wherein a misdemeanor violation occurred, to accept, unless otherwise ordered by a judicial officer, an accused's chauffeur's or driver's license as collateral for bail up to and including the amount of \$1,000, provided, however: the accused has been incarcerated for at least five days, his license is not suspended, expired or revoked, and he is not charged with a violation of OCGA Section 40-6-391, relating to DUI. If an individual so posts his license as bail, he shall execute an acknowledgement and agreement with the State containing the following: that the individual shall appear on the scheduled date in court to answer to the charges and that failure to so appear shall result in immediate license suspension (by the Department of Public Safety) which will not preclude an independent prosecution under OCGA 16-10-51, relating to bail jumping. It also provides that an individual's license so suspended shall only be reinstated after he submits to the Department of Public Safety a restoration fee of \$25, together with a certified notice, from the clerk of the originating court, that the case has been disposed of or rescheduled and the original monetary bail has been deposited. To reschedule such a case, the court may charge the

defendant an amount not to exceed \$100. It further provides that in the trial of an individual charged with the offense of driving with a suspended license, where his license was suspended under OCGA Section 17-6-2, prima-facie evidence that the individual knew his license was suspended, shall consist of a copy of the acknowledgement and agreement executed by the individual together with certification by the court clerk of the individual's failure to appear.

H.B. 590 responds to the Georgia prison overcrowding problem by providing another low cost alternative to incarceration. However, the bill may create administrative problems for the Department of Public Safety, since funding has not been provided.

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H.B. 599 - GRAND JURIES; SELECTION OF BOARDS, AUTHORITIES OR ENTITIES;  
NOTICES - ACT 381

H.B. 599 amends OCGA Section 15-12-81. It requires any board, authority or entity whose members are elected, selected or appointed by the county grand jury to notify, in writing, the superior court clerk that the grand jury will elect, select or appoint a person to its membership. Such notice must be given at least ninety days before the election, selection or appointment. Upon receiving the notice, the superior court clerk shall publish it in the official county periodical once a week for two weeks during a period prior to sixty days before the choosing. H.B. 599 also provides that if a vacancy occurs on such a board, authority or entity due to death, resignation, or removal, notice of the upcoming choosing shall be given to the superior court clerk within ten days of the creation of the vacancy. The superior court clerk shall then publish the notice in the official county periodical once a week for two weeks during a period prior to ten days before the choosing. The county governing authority shall promptly pay the costs of the advertisement upon receiving the bill for it.

H.B. 599 should insure that the people of a county have timely access to dates of choosing by a grand jury.

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H.B. 721 - SUPERIOR COURTS; ATLANTA JUDICIAL CIRCUIT; ADDITIONAL JUDGE -  
ACT 332

H.B. 721 amends OCGA Section 15-6-2 by adding a thirteenth judgeship to the superior court of the Atlanta Judicial Circuit. A person will be elected to the judgeship in the November 1990 state general election and quadrennially thereafter. In the meantime, the Governor shall appoint someone to fill the position from July 1, 1989, to December, 1990.

H.B. 721 should reduce the workload of the Atlanta Judicial Circuit's twelve superior court judges. Additionally, it should reduce any case backlog and expedite the disposition of cases.

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H.B. 743 - MAGISTRATE COURTS; CIVIL JURISDICTION - ACT 387

H.B. 743 amends OCGA Section 15-10-2. It changes the civil jurisdiction of magistrate courts by allowing such courts to try civil claims, including garnishment and attachment suits not reserved solely for superior court, in which the amount demanded or property value claimed does not exceed \$5,000 (the former threshold was \$3,000). No prejudgment attachment may be granted in such cases.

H.B. 743 expands the civil jurisdiction of magistrate courts and, thus, should add significantly to their caseloads.

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H.B. 922 - SUPERIOR COURTS; CHEROKEE JUDICIAL CIRCUIT; ADDITIONAL JUDGE  
- ACT 333

H.B. 922 amends OCGA Section 15-6-2 by adding a third judgeship to the superior court of the Cherokee Judicial Circuit and authorizing the court to appoint an additional court reporter. A person will be elected to the judgeship in the November 1990 state general election and quadrennially thereafter. In the meantime, the Governor shall appoint someone to fill the judgeship from July 1, 1989 to December 31, 1990.

H.B. 922 should reduce the workload of the Cherokee Judicial Circuit's two superior court judges and court reporters. Additionally, it should reduce any case backlog and expedite the disposition of cases.

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H.R. 317 - JOINT EVIDENCE STUDY COMMITTEE; CREATE

H.R. 317 creates the Joint Evidence Study Committee, which will examine the Report of the Georgia Evidence Study Committee (S.B. 336) and make recommendations thereon. Such study shall include, but not be limited to, whether it would be clearer, more comprehensive, and/or in the best interest of the state bench, bar, and general public to adopt in whole, in part or with modifications, the provisions of the Federal Rules of Evidence. The Speaker of the House of Representatives shall appoint five members, one of which he shall designate as co-chair, to the Committee. The President of the Senate shall appoint five members and designate the other co-chair from his appointees; the Committee may elect other officers from its membership. The President of the State Bar of Georgia shall appoint five members to the Committee. Each Committee member will be authorized to meet for fifteen days to execute the Committee's objectives; additional days may be authorized by the House Speaker and Senate President. The Committee's co-chairs may create subcommittees. And, the Committee may recommend acts or bills and report on its findings before it dissolves on December 1, 1989.

H.R. 317 should result in a better understanding of the effects of maintaining independent state rules of evidence and the probable impact of a partial or complete adoption of provisions of the Federal Rules of Evidence. Also, it may lead to amendments to S.B. 336.

# **CORRECTIONS**

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SENATE LEGISLATION

S.B. 26 - JAIL CONSTRUCTION AND STAFFING ACT; ENACTMENT - ACT 691

S.B. 26 enacts OCGA Sections 15-21-90 through 15-21-95. It provides that if a governing authority of a county adopts Article 5 by resolution, any superior, state, probate, magistrate, municipal, or other court of such county shall impose an additional penalty of 10% of the original fine for each criminal or traffic violation of state law and shall charge an additional sum of 10% of the original bail or bond for each case. The funds generated by this practice will be placed into a "county jail fund" which shall be used solely and exclusively by the county governing authority or authorities for the purpose of constructing, operating and staffing county jails, county correctional facilities and county detention facilities or for the purpose of contracting for such facilities with other counties, the state, municipalities, or other political subdivisions, as authorized by Article IX, Section III, Paragraph I of the Georgia Constitution.

S.B. 26 provides a viable option whereby county governing authorities may raise funds to construct county confinement facilities. Among other arrangements, it may lead to an increase in the number of joint regional jails, which are operated for and by several counties (OCGA Section 42-4-50).

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S.B. 66 - ESCAPE; REVOCATION OF PROBATION - ACT 393

S.B. 66 amends OCGA Section 16-10-52 by providing that revocation of probation for the offense of escape does not preclude an independent criminal prosecution for the offense of escape.

S.B. 66 should add to the deterrent against prison escapes.

S.B. 67 - PROBATION; WORK OR COMMUNITY SERVICE IN LIEU OF  
INCARCERATION - ACT 394

S.B. 67 amends OCGA Section 42-8-72 relating to community service as a condition of probation. It authorizes a judge to order a 40 hour per week work detail or add community service hours to original court-ordered hours as a disciplinary act in lieu of incarceration.

S.B. 67 should result in an increase in the number of community service hours imposed upon probation offenders, therefore keeping non-dangerous offenders out of crowded correctional facilities.

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S.B. 257 - GEORGIA BUILDING AUTHORITY (PENAL) BONDS - ACT 418

S.B. 257 amends OCGA Sections 42-3-6 and 42-10-4. It authorizes the Georgia Building Authority (Penal) to issue \$100 million, instead of \$20 million, in negotiable revenue bonds for the purpose of constructing penal and/or correctional facilities (as OCGA Section 42-3-2 defines). Also, it prohibits the Department of Corrections to contract with the Georgia Correctional Industries Administration for the purpose of having the Administration's capital outlay funds transferred to the Department, except when such action has been explicitly authorized by a line item. Further, it approves and ratifies the Administration's construction of the DeKalb County warehouse and other facilities.

S.B. 257 may result in the construction of new county and regional jails since the amount of negotiable revenue bonds which may be issued for that purpose is now \$100 million. Additionally, it clarifies the powers of the Georgia Correctional Industries Administration.

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## HOUSE LEGISLATION

### H.B. 499 - OVERCROWDING; STATE OF EMERGENCY; FACILITIES - ACT 27

H.B. 499 enacts OCGA Section 42-2-14. It authorizes the Governor, upon certification by the Commissioner of Corrections and approval by the Director of the Office of Planning and Budget that the state prison system has exceeded its capacity for at least ninety consecutive days, to declare the prison or jail situation a state of emergency. Upon declaration of such emergency, the Department of Corrections may establish permanent or temporary confinement facilities for the Department's utilization, provided, however, that steps taken by the Department to establish said facilities are within appropriations made by the General Assembly. It also provides that, with the Governor's approval, the Department may waive, in order to facilitate rapid construction of such facilities, the following: OCGA Section 17-3, except the bonding requirements and OCGA Section 50-5. If such actions are taken, H.B. 499 requires the Department to furnish the Governor and General Assembly with a detailed report specifying the facilities construction or procured, the requirements waived and the reasons therefore.

H.B. 499 should, accompanied by funds appropriated by the General Assembly, enable the Department of Corrections to more adequately deal with emergency situations. The waiver of the requirements of OCGA Section 17-3 and OCGA Section 50-5 will enable the Department to have necessary beds on line quicker so that they may be utilized more efficiently. The use of temporary or emergency confinement facilities will serve to help improve conditions of confinement by relieving overcrowding and could help the state avoid emergency mass releases, as well as the possibility of civil suits being brought by inmates against the state. The loss of a civil suit could possibly result in judicial orders to change confinement conditions including massive appropriations and possibly a federal takeover of institutions.

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### H.B. 616 - SUSPENSION OF RUNNING OF PROBATED SENTENCES - ACT 431

H.B. 616 amends OCGA Section 42-8-36. It provides that a person's

probated sentence shall be suspended, immediately, when a warrant for the probationer, returned by its issuer or server, shows non est investus, or when an affidavit submitted by one's probation supervisor to the court states that the probationer has absconded and cannot be found. If either occurs, the running of the probated sentence shall be suspended until the probationer reports to his probation supervisor and is taken into custody in this state, or is otherwise available to the court.

H.B. 616 should increase the accountability of probationers to probation supervisors, thus ultimately decreasing probation violations.

# **CRIMINAL SANCTIONS/CRIMES**

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SENATE LEGISLATION

S.B. 50 - STOLEN MOTOR VEHICLES; BY-HAND DELIVERY OF  
AFFIDAVITS; FALSE STATEMENTS - ACT 392

S.B. 50 enacts OCGA Section 33-1-15. It requires an insurer to accept by-hand delivery of an affidavit which has been executed by the insured and which affirms that the insured's motor vehicle was stolen. Also, it provides that a person who knowingly and willingly makes a false statement in such an affidavit commits a felony punishable by imprisonment for not less than one year nor more than five years or by a fine not more than \$10,000, or both.

S.B. 50 provides a deterrent to any persons who may knowingly and willfully make a false statement in an affidavit regarding a stolen motor vehicle.

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S.B. 188 - MULTIPLE CHECKS; PRINTING FICTITIOUS CHECKS - ACT  
655

S.B. 188 amends OCGA Section 16-9-20 and enacts Section 16-9-21. It provides that, with respect to the crime of the issuance of a bad check, a single notice is sufficient to cover all bad checks delivered within a ten-day period to a single entity. It changes the penalties for issuing a bad check and provides that compliance with subsection (a) of OCGA 16-9-20 is conclusive evidence that a criminal action was brought upon probable cause and without malice. And it prohibits a person to print checks drawn on any financial institution and to negotiate a check with knowledge that any information printed on the check is false or erroneous.

S.B. 188 should add to the deterrent against the issuance, negotiation and manufacture of bad checks.

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S.R. 199 - DRUG ABUSE AND DRUG TRAFFICKING STUDY  
COMMITTEE: CREATE

S.R. 199 creates the Drug Abuse and Drug Trafficking Study Committee to examine ways and means to combat drug abuse and trafficking in Georgia. It will be composed of five Senators appointed by the Senate President, who shall also designate a member of the committee as chairperson. The Committee may recommend acts and bills it deems appropriate before it dissolves on December 1, 1989.

S. R. 199 should result in a better understanding of the state and national drug problem and may lead to further state action in regard to the drug problem.

## HOUSE LEGISLATION

### H.B. 5 - BUSINESS OPPORTUNITIES - SALE; DEFINITION -ACT 336

H.B. 5 amends OCGA Section 10-1-410 by changing the definition of "business opportunity" and providing that such term shall not include the sale of a business opportunity where the seller has a net worth on a consolidated basis of not less than \$15 million and satisfies certain conditions.

H.B. 5 should ensure that definition of "business opportunity" and the criminal prohibitions thereto as OCGA Section 10-1-410 provides) are only applicable to appropriate transactions.

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### H.B. 30 - CONTROLLED SUBSTANCES AND MARIJUANA; TRAFFICKING; PENALTIES - ACT 661

H.B. 30 amends OCGA Section 16-13-31, which prohibits trafficking of certain controlled substances and marijuana. Regarding cocaine trafficking, it creates harsher mandatory fines for convicted persons. Regarding marijuana trafficking, it provides the same. And it changes the maximum fine allowable for a violation of OCGA Section 16-13-31 from \$500,000 to \$1,000,000.

The provisions of H.B. 30 demonstrate that state's commitment to eliminate drug abuse and should support the eradication of illegal drug trafficking in the state.

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### H.B. 32 - BIRTHDATE; GIVING FALSE BIRTHDATE TO OFFICER - ACT 339

H.B. 32 amends OCGA Section 16-10-25 to provide that a person commits a misdemeanor by giving with intent to mislead a false date of birth to a law enforcement officer.

H.B. 32 should strengthen government's ability to enforce the alcohol consumption age requirement by deterring the use of false identification.

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H.B. 71 - CONTROLLED SUBSTANCES; ANABOLIC STEROIDS - ACT 346

H.B. 71 enacts OCGA Section 16-13-71.1 and amends 16-13-79, relating to controlled substances. It defines "anabolic steroid" as the naturally occurring androgens or derivative of androstane and testosterone and its esters, and provides sanctions for the distribution thereof. Any person who distributes or possesses with intent to distribute any anabolic steroid for use different than that prescribed by a licensed physician or veterinarian shall be punished by imprisonment for not less than one year nor more than three, or by a fine not to exceed \$5,000, or both. Any person who distributes or possesses with intent to distribute to anyone under the age of 18 an anabolic steroid for human use inconsistent with a licensed practitioner's treatment of a disease shall be punished by imprisonment for not less than one year nor more than six years or by a fine not to exceed \$10,000, or both.

H.B. 71 should mobilize state and local government efforts to combat the distribution of anabolic steroids to young persons who often sustain permanent physical injury from the use of such substances.

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H.B. 92 - FORECLOSURE FRAUD; CHANGE CODE REFERENCE - ACT 6

H.B. 92 amends OCGA Section 16-9-60. It provides that the offense of foreclosure fraud, a felony, is punishable by imprisonment for not less than one year nor more than three years, or by a fine not less than \$1,000 nor more than \$5,000, or both.

H.B. 92 changes an incorrect reference within the Code Section and should clarify the penalties mandated for the offense of foreclosure fraud.

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H.B. 166 - ELECTRONIC COMMUNICATION DEVICES; PROHIBITED AT SCHOOLS - ACT  
636

H.B. 166 enacts OCGA Section 20-2-1182 and 20-2-1183 which provides that any person other than a student at a public school who has been advised that minor children are present and who continues to upbraid, insult, or abuse a public school teacher, administrator, or bus driver, while on the premises of any public school or public school bus, may be ordered to leave the school premises or school bus. The Act also prohibits students from carrying certain electronic communications devices in a public school except as permitted by the local board of education. Upon conviction, such person shall be assessed a fine not to exceed \$500.

H.B. 166 should compel persons to refrain from abusing public school officials while on school property and in the presence of the school's pupils.

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H.B. 432 - COUNTIES/MUNICIPALITIES; REWARDS IN FELONY CASES;  
AUTHORIZATION - ACT 371

H.B. 432 amends OCGA Section 45-12-35 by authorizing counties and municipalities to offer rewards for detection and apprehension of perpetrators of felonies in cases where the Governor has first offered an award. Such rewards offered by counties and municipalities must not exceed \$10,000 or twice the amount offered by the Governor, whichever is less.

H.B. 432 should mobilize local citizens in the war against crime, increase state and local cooperation in the cause and ultimately lead to the apprehension of more felons.

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H.B. 529 - STATE GOVERNMENT; USE OR DISPLAY OF STATE SEAL; PROHIBITIONS  
- ACT 586

H.B. 529 enacts OCGA Section 50-3-32. It defines "election" as

including any primary election, run-off election, special election, general election and recall election, and authorizes constitutional officers, officers elected state-wide, executive heads of state departments or agencies, General Assembly members, and executive directors of state authorities, to use or display the Great Seal of Georgia or facsimile thereof for state purposes or in connection with a campaign poster, sign, or advertisement for an election. And it prohibits (misdemeanor) a person, firm, corporation, or campaign committee to use or display the Great Seal or facsimile thereof on or in connection with an election campaign poster, sign, or advertisement so as to falsely suggest that the person on whose behalf it is used is a holder of public office.

H.B. 529 should clarify the lawful uses of the Great Seal of Georgia for certain state officials and should deter individuals and organizations from falsely suggesting that an election candidate is a state official.

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H.B. 634 - BUYING OR SELLING HUMAN FETUS OR ANY PART THEREOF PROHIBITED  
- ACT 433

H.B. 634 amends OCGA Section 16-12-160 by prohibiting the purchase or selling of a human fetus or body parts thereof, notwithstanding, however, the exceptions provided by subsection (b) of OCGA Section 16-12-160. One who violates OCGA Section 16-16-160 commits a felony punishable by imprisonment for not less than one year nor more than five years, or by a fine not to exceed \$5,000, or both.

H.B. 634 should deter the commercial purchase and selling of human fetuses and body parts.

H.R. 365 - DRUG ABUSE AND DRUG TRAFFICKING STUDY COMMITTEE; CREATE

H.R. 365 creates the Drug Abuse and Drug Trafficking Study Committee to examine ways and means to combat drug abuse and trafficking in Georgia. The Committee will be composed of five members of the House of Representatives appointed by the Speaker, who shall also designate a member of the Committee as chairperson. The Study Committee may recommend actions or legislation it deems appropriate before it dissolves on December 1, 1989.

H.B. 365 should result in a better understanding of the state and national drug problem and may lead to further state action against drug abuse.

# **CHILDREN AND YOUTH/JUVENILE JUSTICE**

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SENATE LEGISLATION

S.B. 63 - CHILD SUPPORT: PROBATION DEPARTMENTS AND SUPERVISORS NOT  
TO COLLECT - ACT 409

S.B. 63 amends OCGA Sections 19-11-65, 19-11-80 and 42-8-32. It removes the power of a state superior court, when acting as the responding court to a duty-of-support suit (OCGA Section 19-11), to delegate the responsibility for collecting certain civil support payments, including those payments imposed under the terms of a registered order, to the court's probation department. Alternatively, it provides that the superior court may assure compliance with such orders (e.g., relating to child or spousal support) by delegating the responsibility to the Department of Human Resources or a county agency (Section 19-11-65). Likewise, it provides (by amending OCGA Section 42-8-32) that probation supervisors shall not be directed, by the superior court, to collect any funds in cases arising under Article 2 of Chapter 11 of Title 19 of the OCGA.

Because the probation departments are directly supervised by the Department of Corrections (DOC), the Department is necessarily involved in and responsible for collecting the civil support payments arising under Article 2 of Chapter 11 of Title 19. S.B. 63 removes the statutory authority of a superior court to require the probation department to collect such civil support payments, and, thus, the bill should permit DOC to concentrate primarily on criminal matters.

Before S.B. 63 was passed, the Department of Human Resources began to take on many of the 18,000 civil collection cases for which DOC, through its probation department, had been responsible. Currently, DOC is responsible for about 8,000 such collection cases. S.B. 63 should enable this transition to continue and be completed.

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S.B. 65 - CHILD ABANDONMENT, RELATIVE TO SUSPENSION OF SENTENCES - ACT  
410

S.B. 65 amends OCGA Section 19-10-1 relating to the abandonment of a child and penalties therefor, and Section 42-8-34, relating to probation hearings and determinations. It rescinds subsection (d) of OCGA Section

42-8-34 which outlines a procedure through which a trial court may, in an offense of child abandonment prosecution yielding a conviction, suspend prison sentence service to provide for the support, by the defendant, of the child or children abandoned during the child's or children's minority. Simultaneously, it redesignates subsection (d) as subsection (j) of OCGA Section 19-10-1.

S.B. 65 is housekeeping in nature. It should ensure that a sentence conditionally suspended for the purpose of providing child support is not misinterpreted to be a probated sentence. Also, it is part of the effort aimed at removing the provisions relating to civil support responsibilities from the probate codes so as to permit the Department of Corrections to concentrate on criminal matters.

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S.B. 180 - DETENTION OF JUVENILES; PLACES - ACT 686

S.B. 180 amends OCGA Section 15-11-20. It provides that a child alleged to be delinquent may be detained only in a licensed foster home or a home approved by the court, a facility operated by a licensed child welfare agency, or a detention home or center for delinquent children which is under the direction or supervision of the court, other public authority, or a private agency approved by the court. It also authorizes the juvenile court to detain in jail a juvenile during all phases of the delinquency proceedings against him (e.g., commitment hearing, indictment, and transfer for criminal prosecution) when the juvenile is alleged to have committed a delinquent act which, if tried by adult standards, would be punishable by a death or life sentence and when the juvenile court reasonably believes that public safety and protection require such detention. The juvenile must be in a room separate and removed from rooms for adults and constructed in a way that no physical contact can occur between the child and an adult offender. If a child is to be detained within the confines of a jail, the official in charge of the adult detention center may detain the child not longer than six hours, in a temporary holding area outside the jail while the child's transfer to the court-designated detention site is pending. "Jail" as used here shall include not only the cells, but also any other secured jail areas in which adult offenders are held or through which they are transported.

S.B. 180 adds to and clarifies the existing procedure whereby an accused juvenile may be held, if necessary, in an adult detention facility during juvenile proceedings. These changes should protect a juvenile so detained from an excessive confinement period while he is awaiting transfer to a court-designated site and from being harmed by exposure to or contact with adult offenders.

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S.B. 287 - SUPERIOR COURTS; DISTRICT ATTORNEY; DUTIES IN JUVENILE COURTS - ACT 528

S.B. 287 amends OCGA Section 15-11-28. It provides that the state district attorney or a member of his staff must conduct delinquency proceedings in which the petition has been filed, if the juvenile court requests the State to conduct the proceedings and if the state is not already represented by a solicitor of the juvenile court. If the district attorney or a member of his staff does conduct such delinquency proceedings, the juvenile court clerk and probation officers shall help the district attorney and his staff members obtain information about the proceedings. The district attorney or his staff member shall have complete access to all court files, probation files, hearing transcripts, delinquency reports and other juvenile court records which may be of assistance during the course of the proceedings.

S.B. 287 grants juvenile courts the option to give a case to the district attorney's office and should ensure that when the juvenile court does so, the district attorney and his staff will have sufficient access to relevant court records.

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S.B. 350 - EDUCATION OF CHILDREN OR YOUTH IN CUSTODY OF DEPARTMENT OF CORRECTIONS OR DEPARTMENT OF HUMAN RESOURCES - ACT 682

S.B. 350 amends OCGA Section 20-2-133, relating to free public instruction and exceptions thereto. It provides that certain children in the physical custody of the Department of Corrections (DOC) or the Department of Human Resources (DHR) shall not be eligible for enrollment in the local unit of administration's educational program. Likewise, it

provides that such a local system shall not be responsible for providing education services to a child unable to leave a DOC or DHR facility (such a situation usually results from a court-imposed sentence or from special educational needs). Also, it provides for the transfer of medical and educational records to a local unit of administration if such a child is transferred into a DOC or DHR facility within the system's district.

By providing for notification of the transfer of such children and clarifying the provisions of the Quality Basic Education Act, S.B. 350 should ensure that local school systems are aware of their obligations and responsibilities to provide educational programs.

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S.B. 371 - DETENTION OF JUVENILES; BASIC PRINCIPLES - ACT 534

S.B. 371 enacts OCGA Section 15-11-18.1. It provides that the freedom of an accused juvenile should only be curtailed upon a finding of clear and convincing evidence supporting restraint. If such evidence is lacking, the preferred act is unconditional release. It also provides, however, that interim (prior to adjudication) control or detention of an accused juvenile may be considered in order to protect the jurisdiction and process of the court, to reduce the likelihood of the juvenile inflicting serious bodily harm on others, or to protect the juvenile, upon his request, from imminent bodily harm. If an accused juvenile cannot be unconditionally released and is conditionally released before adjudication, the conditions of the release, as S.B. 371 provides, should minimally interfere with the juvenile's liberty.

S.B. 371 should provide criteria juvenile courts will seek to satisfy before and during the interim restraint of an accused juvenile and in the promotion of the juvenile's welfare. It should also provide safeguards for accused juveniles who cannot be unconditionally released and are conditionally released or detained before adjudication. The enactment of S.B. 371 makes Georgia one of the first states to have statutory pretrial detention standards.

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S.R. 220 - YOUTH CONSERVATION AND SERVICE CORPS STUDY; CREATE

S.R. 220 creates the Senate Youth Conservation and Service Corps Study Committee. Georgia has over fifty local and state youth services or conservation corps, which involve private and public funds and over 7,000 youths which sponsor a broad range of work and service; e.g. building playgrounds, feeding the homeless, and rehabilitating housing. It also notes that such corps pay their participants nominal salaries but offer them a chance to gain work experience, serve the community, and add meaning and direction to their lives. The Committee will study the conditions, needs, issues, and problems of such corps and may recommend acts or bills the Committee deems appropriate before it dissolves on December 1, 1989. The Committee shall be composed of three citizens with expertise and knowledge on children and youth issues and five senators; these eight members shall be appointed by the Senate President, who shall also designate the chairperson from his appointees. The Committee's membership shall also include one representative from each of the following departments: natural resources, human resources, corrections, and labor.

S.R. 220 should result in the collection of information that will help the state promote further youth conservation and service corps. And it may lead to increased interaction, cooperation and/or coordination between state programs and such youth corps.

HOUSE LEGISLATION

H.B. 29 - ABANDONMENT; RECKLESS ABANDONMENT OF A CHILD - ACT 666

H.B. 29 enacts OCGA Section 16-5-72, creating the offense of reckless abandonment of a child. A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of one year commits a felony, punishable by imprisonment not less than ten years and no more than twenty-five years when he willfully and voluntarily physically abandons such child with the intent of severing all custodial duties and responsibilities and leaving the child in a condition resulting in said child's death.

H.B. 29 should compel persons with the unexpected burden of child to seek help and employ alternative solutions to their situation other than abandonment of the child.

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H.B. 111 - DESIGNATED FELONY ACTS; CONFINEMENT PERIODS - ACT 13

H.B. 111 amends OCGA Section 15-11-37 relating to the handling of juveniles found to have committed a designated felony act. It provides that the time such a juvenile spends in secure detention after the date of a dispositional order and prior to his placement in a youth development center shall be counted toward the period set by the dispositional order.

H.B. 111 should ensure that juveniles found to have committed a designated felony act are not detained unfairly (intentionally or unintentionally) and for longer than the period prescribed in a dispositional order.

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H.B. 469 - FAMILY VIOLENCE CENTERS; COUNTY AND MUNICIPAL GRANTS - ACT 578

H.B. 469 amends OCGA Section 19-13-22 by authorizing counties and municipalities of Georgia to grant their funds to family violence

centers licensed by the Department of Human Resources.

H.B. 469 should increase local funding to licensed family violence centers and thus result in greater cooperation and coordination between local governments and such centers.

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