

House Bill 635 (AS PASSED HOUSE AND SENATE)

By: Representatives Leverett of the 33rd, Wilensky of the 79th, and Efstration of the 104th

A BILL TO BE ENTITLED

AN ACT

1 To revise certain procedural and administrative matters of the courts; to amend Title 15 and
2 Article 1 of Chapter 32 of Title 36 of the Official Code of Georgia Annotated, relating to
3 courts and general provisions regarding municipal courts, respectively, so as to provide that
4 each judge of the superior court, state court, probate court, and municipal court and each
5 magistrate shall have authority to perform any lawful judicial act regardless of where he or
6 she is physically located at the time of such act; to amend Title 17 of the Official Code of
7 Georgia Annotated, relating to criminal procedure, so as to provide for the issuance of arrest
8 warrants by a judge regardless of where such judge is physically located; to revise standards
9 for holding a court of inquiry; to amend Article 1 of Chapter 6 of Title 15 of the Official
10 Code of Georgia Annotated, relating to general provisions regarding superior courts, so as
11 to revise when superior courts are authorized to use alternative locations; to provide for
12 criteria; to amend Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating
13 to pretrial proceedings, so as to provide for trials by a court sitting without a jury under
14 certain circumstances; to provide for exceptions; to provide for requirements and procedures;
15 to provide for an automatic repeal; to revise authority for trial upon accusations; to provide
16 for a definition; to provide for a sunset date for trial upon accusations in certain instances;
17 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
18 for other purposes.

H. B. 635

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **PART I**
21 **SECTION 1-1.**

22 Title 15 of the Official Code of Georgia Annotated, relating to general provisions regarding
23 courts, is amended by revising Code Section 15-6-16, relating to no authority when absent
24 from state, as follows:

25 "15-6-16.

26 ~~No~~ Each judge of the superior courts court shall have authority to perform any judicial act
27 ~~required of him by law when he is beyond the jurisdiction of this state~~ which he or she is
28 lawfully entitled to perform, regardless of where such judge is located when such judicial
29 act is performed."

30 **SECTION 1-2.**

31 Said title is further amended by adding a new subsection to Code Section 15-7-4, relating to
32 jurisdiction, to read as follows:

33 "(c) Each judge of the state court shall have authority to perform any judicial act which he
34 or she is lawfully entitled to perform, regardless of where such judge is located when such
35 judicial act is performed."

36 **SECTION 1-3.**

37 Said title is further amended by adding a new subsection to Code Section 15-9-30, relating
38 to subject matter jurisdiction, powers and duties generally, and copy of Official Code of
39 Georgia Annotated furnished for each judge, to read as follows:

40 "(d) Each judge of the probate court shall have authority to perform any judicial act which
41 he or she is lawfully entitled to perform, regardless of where such judge is located when
42 such judicial act is performed."

43 **SECTION 1-4.**

44 Said title is further amended by revising Code Section 15-9-82, relating to terms of court and
45 place for court, as follows:

46 "15-9-82.

47 (a) The probate court shall be held at the place prescribed for the superior court or in the
48 office of the judge of the probate court in each county, by the judge thereof, on the first
49 Monday in January, April, July, and October and shall continue in session from day to day
50 as the business of the court may require. If the first Monday in a given term should happen
51 to fall on a legal holiday, the probate courts throughout this state shall convene on the
52 following day.

53 (b) Nothing in this Code section shall be construed to restrict the judge of the probate court
54 from having the authority to engage in any judicial act which he or she is lawfully entitled
55 to perform, regardless of where the judge is located when the act is performed."

56 **SECTION 1-5.**

57 Said title is further amended by revising Code Section 15-10-2, relating to general
58 jurisdiction, as follows:

59 "15-10-2.

60 (a) Each magistrate court and each magistrate thereof shall have jurisdiction and power
61 over the following matters:

- 62 (1) The hearing of applications for and the issuance of arrest and search warrants;
63 (2) Issuance of warrants and related proceedings as provided in Article 4 of Chapter 6
64 of Title 17, relating to bonds for good behavior and bonds to keep the peace;

- 65 (3) The holding of courts of inquiry;
- 66 (4) The trial of charges of violations of county ordinances and penal ordinances of state
67 authorities;
- 68 (5) The trial of civil claims including garnishment and attachment in which exclusive
69 jurisdiction is not vested in the superior court and the amount demanded or the value of
70 the property claimed does not exceed \$15,000.00, provided that no prejudgment
71 attachment may be granted;
- 72 (6) The issuance of summons, trial of issues, and issuance of writs and judgments in
73 dispossessory proceedings and distress warrant proceedings as provided in Articles 3 and
74 4 of Chapter 7 of Title 44;
- 75 (7) The punishment of contempts by fine not exceeding \$200.00 or by imprisonment not
76 exceeding ten days or both;
- 77 (8) The administration of any oath which is not required by law to be administered by
78 some other officer;
- 79 (9) The granting of bail in all cases where the granting of bail is not exclusively
80 committed to some other court or officer;
- 81 (10) The issuing of subpoenas to compel attendance of witnesses in the magistrate court
82 and subpoenas for the production of documentary evidence before the magistrate court;
- 83 (11) Such other matters as are committed to their jurisdiction by other general laws;
- 84 (12) The trial and sentencing of misdemeanor violations of Code Section 16-9-20,
85 relating to criminal issuance of bad checks, as provided by Article 10 of this chapter;
- 86 (13) The execution or subscribing and the acceptance of written waivers of extradition
87 in the same manner provided for in Code Section 17-13-46;
- 88 (14) The trial and sentencing of misdemeanor violations of other Code sections as
89 provided by Article 13 of this chapter;
- 90 (15) The foreclosure of liens on animals as established in Title 4;

91 (16) The foreclosure of liens on abandoned mobile homes as established in Article 6 of
92 Chapter 7 of Title 44; and

93 (17) The foreclosure of liens on abandoned motor vehicles as established in Article 1A
94 of Chapter 11 of Title 40, 'The Abandoned Motor Vehicle Act.'

95 (b) Each magistrate shall have authority to perform any judicial act which he or she is
96 lawfully entitled to perform, regardless of where such magistrate is located when such
97 judicial act is performed."

98 **SECTION 1-6.**

99 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
100 amended by revising subsection (a) of Code Section 17-4-47, relating to issuance of warrants
101 by video conference, testimony, initial bond hearings, and oaths , as follows:

102 "(a) A judge of any court in this state authorized to issue arrest warrants pursuant to Code
103 Section 17-4-40 may, as an alternative to other laws relating to the issuance of arrest
104 warrants, conduct such applications for the issuance of arrest warrants by video conference.
105 The issuance of an arrest warrant by video conference shall be valid irrespective of the
106 physical location of the judge at the time of the video conference, provided that the judge
107 issuing the warrant is authorized by law to issue such warrant, ~~and, at the time such warrant~~
108 ~~is issued, he or she is physically located within this state."~~

109 **SECTION 1-7.**

110 Said title is further amended by revising subsection (a) of Code Section 17-5-21.1, relating
111 to issuance of search warrants by video conference, as follows:

112 "(a) A judge of any court in this state authorized to issue search warrants pursuant to Code
113 Section 17-5-21 may, as an alternative to other laws relating to the issuance of search
114 warrants, conduct such applications for the issuance of search warrants by video
115 conference. The issuance of a search warrant by video conference shall be valid

116 irrespective of the physical location of the judge at the time of the video conference,
117 provided that the judge issuing the warrant is authorized by law to issue such warrant, ~~and,~~
118 ~~at the time such warrant is issued, he or she is physically located within this state."~~

119 **SECTION 1-8.**

120 Said title is further amended by revising Code Section 17-7-20, relating to persons who may
121 hold court of inquiry and procedure where offense committed in county which is member of
122 regional jail authority, as follows:

123 "17-7-20.

124 Any judge of a superior or state court, judge of the probate court, magistrate, or officer of
125 a municipality who has the criminal jurisdiction of a magistrate may hold a court of inquiry
126 to examine ~~into~~ an accusation against a person legally arrested and brought before him or
127 her. The time and place of the inquiry shall be determined by such judicial officer. ~~Should~~
128 ~~the county in which the offense is alleged to have been committed be a member of a~~
129 ~~regional jail authority created under Article 5 of Chapter 4 of Title 42, the 'Regional Jail~~
130 ~~Authorities Act,' the Such judge may order the court of inquiry to be conducted~~
131 ~~alternatively in the county in which the offense is alleged to have been committed or in~~
132 ~~facilities available at the regional jail or by audio-visual communication between the two~~
133 ~~locations and between~~ the accused, the court, the attorneys, and the witnesses."

134 **SECTION 1-9.**

135 Article 1 of Chapter 32 of Title 36 of the Official Code of Georgia Annotated, relating to
136 general provisions regarding municipal courts, is amended by revising Code Section
137 36-32-12, relating to municipal court held outside municipality, as follows:

138 "36-32-12.

139 Notwithstanding any other contrary provision of law, local or general, sessions of a
140 municipal court may be held outside the municipality for which the municipal court is

141 established if such sessions are held within a county in which the municipality is located
142 or has its legal situs. Nothing in this code section shall be construed to restrict the judge
143 of a municipal court from having authority to engage in any judicial act which he or she
144 is lawfully entitled to perform, regardless of where the judge is located when the act is
145 performed."

146 **PART II.**

147 **SECTION 2-1.**

148 Article 1 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to
149 general provisions regarding superior courts, is amended by repealing Code Section 15-6-18,
150 relating to alternative locations, in its entirety and replacing such Code section with a new
151 Code Section 15-6-18 to read as follows:

152 "15-6-18.

153 (a) Except as provided in subsection (b) of this Code section, if for any cause it shall be
154 impracticable to hold any session of any superior or state court at the courthouse or other
155 place provided by law therefor, it shall be lawful to hold such court at an alternative facility
156 that the governing authority of the county or counties for such county or circuit, by
157 appropriate resolution, deem would be in the best interest of the public with considerations
158 for transportation burden being paramount; provided, however, that:

159 (1) No such court may be held at any place that is outside the county or an adjoining
160 county or that is not open to and accessible by the public, including, but not limited to,
161 members of the public who:

162 (A) Have a physical or mental impairment that substantially limits one or more major
163 life activities;

164 (B) Have a record of such an impairment; or

165 (C) Are regarded as having such an impairment; and

166 (2) Criminal jury trials may be conducted in alternative locations so long as the
167 governing authority owns the facility or has a contractual relationship with such
168 alternative location for such use.

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

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

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

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

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

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

190 (c) All acts of a superior court or state court done at a place provided by this Code section,
191 other than at the county courthouse or other place of holding such court as fixed by law,
192 shall have the same force and effect as if the same had been done at the regular courthouse

193 or other place fixed by law for the holding of such court, including the satisfaction of the
194 requirements of Code Section 15-6-17."

195 **PART III.**

196 **SECTION 3-1.**

197 Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to pretrial
198 proceedings, is amended by adding a new Code section in Article 1, relating to general
199 provisions, to read as follows:

200 "17-7-4.

201 (a) As used in this Code section, the term 'serious violent felony' shall have the same
202 meaning as provided for under Code Section 17-10-6.1.

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

209 (c) When an accused elects a trial by the court sitting without a jury, the court shall, on the
210 record:

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

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

214 (d) In criminal prosecutions when a jury trial has been expressly waived, the court may
215 nevertheless order a trial with a jury. The court shall consider the prosecuting attorney's
216 request for a jury trial, but the prosecuting attorney's objection shall not preclude the court

217 from granting a request by the accused for a trial by the court sitting without a jury under
218 subsection (b) of this Code section.

219 (e) This Code section shall stand repealed in its entirety on June 30, 2022."

220

SECTION 3-2.

221 Said chapter is further amended by revising Code Section 17-7-70, relating to trial upon
222 accusations in felony cases and trial upon accusations of felony and misdemeanor cases in
223 which guilty plea entered and indictment waived, as follows:

224 "17-7-70.

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

231 ~~(b) Judges of the superior court may open their courts at any time without the presence of~~
232 ~~either a grand jury or a trial jury to receive and act upon pleas of guilty in misdemeanor~~
233 ~~cases and in felony cases, except those punishable by death or life imprisonment, when the~~
234 ~~judge and the defendant consent thereto. The judge may try the issues in such cases without~~
235 ~~a jury upon an accusation filed by the district attorney where the defendant has waived~~
236 ~~indictment and consented thereto in writing and counsel is present in court representing the~~
237 ~~defendant either by virtue of his or her employment or by appointment by the court."~~

238

SECTION 3-3.

239 Said chapter is further amended by revising Code Section 17-7-70.1, relating to trial upon
240 accusations in certain felony and misdemeanor cases and trial upon plea of guilty or nolo
241 contendere, as follows:

242 "17-7-70.1.

243 (a)(1) In felony cases involving violations of the following:

244 (A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-20, 16-9-31, 16-9-33,
245 16-9-37, 16-10-52, and 40-5-58;

246 (B) Article 1 of Chapter 8 of Title 16, relating to theft;

247 (C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;

248 (D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to
249 confinement; ~~or~~

250 (E) Code Section 16-11-131, relating to possession of a firearm by a convicted felon
251 or first offender probationer; or

252 (F) Code Section 16-13-30, relating to the purchase, possession, manufacture,
253 distribution, or sale of controlled substances or marijuana,

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

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

262 (3) The accusation need not be supported by an affidavit except in those cases in which
263 the defendant has not been previously arrested in conjunction with the transaction
264 charged in the accusation or when the accusation is to be used as the basis for the
265 issuance of an arrest warrant.

266 (a.1)(1) As used in this subsection, the term 'serious violent felony' shall have the same
267 meaning as provided for under Code Section 17-10-6.1.

268 (2) Notwithstanding any other law to the contrary, the district attorney shall have
269 authority to prefer accusations, and the accused shall be tried on such accusations
270 according to the same rules of substantive and procedural laws relating to defendants who
271 have been indicted by a grand jury for any felony, other than a serious violent felony, in
272 which an accused has ~~The provisions of subsection (a) of this Code section shall apply~~
273 ~~to violations of Code Section 16-13-30 whenever there has been a finding of probable~~
274 ~~cause pursuant to a commitment hearing under Article 2 of this chapter or the accused has~~
275 ~~waived either expressly or by operation of law the right to this hearing:~~

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

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

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

280 (D) Been confined in jail for at least 45 days since his or her arrest, unless such time
281 frame has been waived in writing by the accused.

282 (3) Paragraphs (2) and (3) of subsection (a) of this Code section shall apply to
283 accusations provided for under this subsection.

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

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

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

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

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

299 **PART IV.**

300 **SECTION 4-1.**

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

303 **SECTION 4-2.**

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