

House Bill 229

By: Representatives Gaines of the 120<sup>th</sup>, Gullett of the 19<sup>th</sup>, Wiedower of the 121<sup>st</sup>, Hilton of the 48<sup>th</sup>, Petrea of the 166<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to  
2 prosecuting attorneys, so as to provide for the duty to examine every case for probable cause;  
3 to amend Chapter 4 of Title 21 of the Official Code of Georgia Annotated, relating to recall  
4 of public officers, so as to revise provisions relating to grounds for recall of district attorneys  
5 of judicial circuits and solicitors-general of state courts; to revise the number of electors  
6 needed to demand recall of a district attorney of a judicial circuit or solicitor-general of a  
7 state court; to revise the number of official sponsors necessary for a recall of a district  
8 attorney of a judicial circuit or solicitor-general of a state court; to provide for related  
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

15 "15-18-6.

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

H. B. 229

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

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

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

48 (B) What claims are unpaid and why;

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

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

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

54 ~~(11)~~(12) To assist victims and witnesses of crimes through the complexities of the  
 55 criminal justice system and ensure that the victims of crimes are apprised of the rights  
 56 afforded them under the law; and

57 ~~(12)~~(13) To perform such other duties as are or may be required by law or which  
 58 necessarily appertain to their office."

59 **SECTION 2.**

60 Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section  
 61 15-18-66, relating to duties and authority regarding solicitors-general, as follows:

62 "(1) To review every individual case for which probable cause for prosecution exists, and  
 63 make a prosecutorial decision available under the law based on the facts and  
 64 circumstances of each individual case under oath of duty as provided in Code Section  
 65 15-18-2, and, if necessary, investigate all criminal cases which may be prosecuted in state  
 66 court;"

67

**SECTION 3.**

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

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

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

75 (B) That the official:

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

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

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

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

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

83 Discretionary performance of a lawful act or a prescribed duty shall not constitute a  
84 ground for recall of an elected public official; provided, however, that a judicial circuit  
85 district attorney's failure to perform the duties provided for in Code Section 15-18-6 or  
86 a state court solicitor-general's failure to perform the duties provided for in Code Section  
87 15-18-66 shall constitute grounds for a recall of such elected official."

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**SECTION 4.**

89 Said chapter is further amended by revising Code Section 21-4-4, relating to officers subject  
90 to recall, number of electors needed to demand recall, limitation on number of public officials  
91 who may be subjects of a particular recall petition, and grounds for recall, as follows:

92 "21-4-4.

93 (a) Every public official who holds elective office, either by election or by appointment,  
94 is subject to recall from office by electors who are registered and qualified to vote in the  
95 recall election and who reside in the electoral district from which candidates are elected to  
96 that office:

97 (1) In the case of a state officer whose electoral district encompasses the entire state, the  
98 number of electors necessary to petition the recall of the officer shall be equal to at  
99 least 15 percent of the number of electors who were registered and qualified to vote at the  
100 last preceding election for any candidate offering for the office held by the officer. At  
101 least one-fifteenth of the number of electors necessary to petition the recall of the officer  
102 must reside in each of the United States congressional districts in the state as said  
103 congressional districts may now or hereafter exist; ~~or~~

104 (2) In the case of a state officer whose electoral district encompasses only a part of the  
105 state or in the case of a local officer, the number of electors necessary to petition the recall  
106 of the officer shall be equal to at least 30 percent of the number of electors registered and  
107 qualified to vote at the last preceding election for any candidate offering for the office  
108 held by the officer; or

109 (3) In the case of a district attorney of a judicial circuit or the solicitor-general of a state  
110 court, the number of electors necessary to petition the recall of the officer shall be equal  
111 to at least 2 percent of the number of electors registered and qualified to vote at the last  
112 preceding election for any candidate offering for the office held by the officer.

113 (b) No recall petition shall demand the recall of more than one public official.

114 (c) Every public official who holds elective office, either by election or by appointment,  
115 is subject to recall on the grounds that such public official has, while holding any public  
116 office, conducted himself or herself in a manner which relates to and adversely affects the  
117 administration of his or her current office and adversely affects the rights and interests of

118 the public if one or more additional grounds for recall exist as set forth in subparagraph (B)  
119 of paragraph (7) of Code Section 21-4-3."

120 **SECTION 5.**

121 Said chapter is further amended by revising subsection (c) of and adding a new subsection  
122 to Code Section 21-4-5, relating to recall petition - application for and time of filing,  
123 sponsors, withdrawal of signature, duties of election superintendent, and printing and  
124 distribution of recall petition forms by Secretary of State, to read as follows:

125 "(c) ~~The~~ Except as provided in subsection (c.1) of this Code section, the number of official  
126 sponsors necessary to file an application for a recall petition must be equal in number to at  
127 least 100 electors or equal in number to at least 10 percent of the number of electors who  
128 were registered to vote at the last preceding election for any of the candidates offering for  
129 the office held by the public official sought to be recalled, whichever is smaller.

130 (c.1) For the office of district attorney of a judicial circuit or solicitor-general of a state  
131 court, the number of official sponsors necessary to file an application for a recall petition  
132 must be least 50 electors who were registered to vote at the last preceding election for any  
133 of the candidates offering for the office held by the public official sought to be recalled."

134 **SECTION 6.**

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