

ADOPTED

Senator McKoon of the 29th offered the following amendment:

1 *Amend the Senate Judiciary, Non-civil Committee substitute to HB 78 (LC 29 5672S) by*
 2 *replacing lines 1 through 3 with the following:*

3 To amend Title 16, Title 24, Chapter 5 of Title 30, and Article 4 of Chapter 8 of Title 31 of
 4 the Official Code of Georgia Annotated, relating to crimes and offenses, evidence, protection
 5 of

6 *By inserting after the semicolon on line 16 the following:*

7 to change provisions relating to using a writing to refresh memory;

8 *By replacing lines 156 through 158 with the following:*

9 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
 10 revising subsection (b) of Code Section 24-6-612, relating to writing used to refresh memory,
 11 as follows:

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

29

SECTION 1-4A.

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Said title is further amended by revising subsections (b) and (c) of Code Section 24-13-130,

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relating to when depositions to preserve testimony in criminal proceedings may be taken, as

32

follows: