

The Senate Committee on Judiciary offered the following substitute to SB 344:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 24-13-60 of the Official Code of Georgia Annotated, relating to  
2 order requiring prisoner's delivery to serve as witness or criminal defendant generally,  
3 expenses, and prisoner under death sentence as witness, so as to provide that certain  
4 proceedings may be conducted by video conference; to provide for requirements for such  
5 proceedings; to authorize judges to order a prisoner's appearance in court; to provide that  
6 attorney-client privilege shall be preserved; to provide for the maintenance of certain records;  
7 to amend Article 6 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated,  
8 relating to Division of Forensic Sciences, so as to provide that employees of the state crime  
9 lab or associated laboratories may appear by video teleconference in certain proceedings in  
10 court; to provide for requirements for such appearances; to provide for notice and  
11 continuances; to provide for related matters; to provide for an effective date and  
12 applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Code Section 24-13-60 of the Official Code of Georgia Annotated, relating to order requiring  
16 prisoner's delivery to serve as witness or criminal defendant generally, expenses, and prisoner  
17 under death sentence as witness, is amended by adding a new subsection to read as follows:

18 "(e)(1) When a prisoner is confined in any prison or correctional institution under the  
19 jurisdiction of the Board of Corrections or any county correctional institution, he or she  
20 may appear for any of the foregoing proceedings via video conference:

21 (A) Determination of indigence and appointment of counsel;

22 (B) Hearings on appearance and appeal bonds;

23 (C) Initial appearance hearings;

24 (D) Probable cause hearings;

25 (E) Arraignment or waiver of arraignment;

26 (F) Pretrial motion hearings;

- 27 (G) Entry of pleas in criminal cases;  
28 (H) Impositions of sentences upon pleas of guilty or nolo contendere;  
29 (I) Probation revocation hearings;  
30 (J) Post-sentencing proceedings in criminal cases, including hearings on motions for  
31 new trial and habeas corpus petitions and pretrial diversion and post-sentencing  
32 compliance hearings;  
33 (K) Acceptance of the special plea of mental incompetence. Such proceeding shall not  
34 include the special jury trial to determine competence;  
35 (L) Situations involving offenders with highly sensitive medical problems or who pose  
36 a high security risk;  
37 (M) All proceedings in any civil case;  
38 (N) All matters pending before the Office of State Administrative Hearings;  
39 (O) All matters pending before the Georgia Tax Tribunal; and  
40 (P) All matters pending before the Georgia State-wide Business Court.  
41 (2)(A) A party seeking to use testimony pursuant to paragraph (1) of this subsection  
42 shall give written notice to opposing counsel within ten days of the scheduled hearing  
43 date. The opposing side may object in writing any time after being given notice, but  
44 at least five days prior to the hearing. If objection is made, the judge may require the  
45 prisoner's personal appearance in court to testify. The state shall diligently investigate  
46 the prisoner's availability and report to the court. If the prisoner is not available on a  
47 timely basis, the court may grant a continuance.  
48 (B) Except as provided for under subparagraph (A) of this paragraph, a judge may  
49 order a defendant's personal appearance in court for any hearing.  
50 (3) Provision shall be made to preserve the confidentiality of attorney-client  
51 communications and privilege in accordance with Georgia law for any proceedings  
52 provided for under paragraph (1) of this subsection. Prior to and in all criminal  
53 proceedings provided for in paragraph (1) of this subsection, the defendant and defense  
54 counsel shall be provided with a private means of communication when in different  
55 locations.  
56 (4) A record of any proceedings conducted by video conference shall be made in the  
57 same manner as all such similar proceedings not conducted by video conference.  
58 However, upon the consent of all parties, that portion of the proceedings conducted by  
59 video conference may be recorded by an audio-visual recording system and such  
60 recording shall be part of the record of the case and transmitted to courts of appeal as if  
61 part of a transcript.  
62 (5) Any video conferencing system utilized under this subsection shall conform to the  
63 following minimum requirements:

- 64 (A) All participants shall be able to see, hear, and communicate with each other  
 65 simultaneously;
- 66 (B) All participants shall be able to see, hear, and otherwise observe any physical  
 67 evidence or exhibits presented during the proceeding, either by video, facsimile, or  
 68 other method;
- 69 (C) Video quality shall be adequate to allow participants to observe each other's  
 70 demeanor and nonverbal communications; and
- 71 (D) The location from which the judge is presiding shall be accessible to the public to  
 72 the same extent as such proceeding would be if not conducted by video conference.  
 73 Subject to the right of the judge to sequester witnesses, the court shall accommodate  
 74 any request by interested parties to observe the entire proceeding. As used in this  
 75 subparagraph, the term 'interested parties' means victims, family members of victims,  
 76 and other parties found by the court to have particularized interest in the proceedings.
- 77 (6) Except for pretrial and post-sentencing matters, nothing in this subsection shall be  
 78 construed as providing for the use of testimony pursuant to paragraph (1) of this  
 79 subsection in criminal proceedings.
- 80 (7) Nothing in this subsection shall be construed as limiting the court's authority to  
 81 promulgate rules on the use of video conferencing that do not conflict with this  
 82 subsection."

83

**SECTION 2.**

84 Article 6 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to  
 85 Division of Forensic Sciences, is amended by adding a new Code section to read as follows:

86 "35-3-154.2.

87 (a) An employee of the state crime lab or an employee of a laboratory with which the state  
 88 crime lab has a contract for the provision of laboratory or scientific examination or analysis  
 89 may appear for any of the following proceedings via video conference:

- 90 (1) Determination of indigence and appointment of counsel;  
 91 (2) Hearings on appearance and appeal bonds;  
 92 (3) Initial appearance hearings;  
 93 (4) Probable cause hearings;  
 94 (5) Arraignment or waiver of arraignment;  
 95 (6) Pretrial motion hearings;  
 96 (7) Entry of pleas in criminal cases;  
 97 (8) Impositions of sentences upon pleas of guilty or nolo contendere;  
 98 (9) Probation revocation hearings;

- 99 (10) Post-sentencing proceedings in criminal cases, including hearings on motions for  
100 new trial and habeas corpus petitions and pretrial diversion and post-sentencing  
101 compliance hearings;
- 102 (11) Acceptance of the special plea of mental incompetence. Such proceeding shall not  
103 include the special jury trial to determine competence;
- 104 (12) Situations involving offenders with highly sensitive medical problems or who pose  
105 a high security risk;
- 106 (13) All proceedings in any civil case;
- 107 (14) All matters pending before the Office of State Administrative Hearings;
- 108 (15) All matters pending before the Georgia Tax Tribunal; and
- 109 (16) All matters pending before the Georgia State-wide Business Court.
- 110 (b) A record of any proceedings conducted by video conference shall be made in the same  
111 manner as all such similar proceedings not conducted by video conference. However, upon  
112 the consent of all parties, that portion of the proceedings conducted by video conference  
113 may be recorded by an audio-visual recording system and such recording shall be part of  
114 the record of the case and transmitted to courts of appeal as if part of a transcript.
- 115 (c) Provision shall be made to preserve the confidentiality of attorney-client  
116 communications and privilege in accordance with Georgia law for any proceedings  
117 provided for under subsection (a) of this Code section.
- 118 (d) Any video conferencing system utilized under this subsection shall conform to the  
119 following minimum requirements:
- 120 (1) All participants shall be able to see, hear, and communicate with each other  
121 simultaneously;
- 122 (2) All participants shall be able to see, hear, and otherwise observe any physical  
123 evidence or exhibits presented during the proceeding, either by video, facsimile, or other  
124 method;
- 125 (3) Video quality shall be adequate to allow participants to observe each other's  
126 demeanor and nonverbal communications; and
- 127 (4) The location from which the judge is presiding shall be accessible to the public to the  
128 same extent as such proceeding would if not conducted by video conference. The court  
129 shall accommodate any request by interested parties to observe the entire proceeding  
130 subject to the right of the judge to sequester witnesses.
- 131 (e) A party seeking to use testimony pursuant to subsection (a) of this Code section shall  
132 give written notice to opposing counsel within ten days of the scheduled hearing date. The  
133 opposing side may object in writing any time after being given notice, but at least five days  
134 prior to the hearing. If objection is made, the judge may require the employee to be present

135 to testify. The state shall diligently investigate the witness's availability and report to the  
136 court. If the witness is not available on a timely basis, the court may grant a continuance.  
137 (f) Except for pretrial and post-sentencing matters, nothing in this Code section shall be  
138 construed as providing for the use of testimony pursuant to subsection (a) of this Code  
139 section in criminal proceedings.  
140 (g) Nothing in this Code section shall be construed as limiting the court's authority to  
141 promulgate rules on the use of video conferencing that do not conflict with this Code  
142 section."

143 **SECTION 3.**

144 This Act shall become effective on July 1, 2020, and shall apply to all offenses committed  
145 on or after such date.

146 **SECTION 4.**

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