

Senate Bill 344

By: Senators Mullis of the 53rd, Miller of the 49th, Dugan of the 30th, Gooch of the 51st, Kennedy of the 18th and others

AS PASSED SENATE

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

63 (5) Any video conferencing system utilized under this subsection shall conform to the
 64 following minimum requirements:

65 (A) All participants shall be able to see, hear, and communicate with each other
 66 simultaneously;

67 (B) All participants shall be able to see, hear, and otherwise observe any physical
 68 evidence or exhibits presented during the proceeding, either by video, facsimile, or
 69 other method;

70 (C) Video quality shall be adequate to allow participants to observe each other's
 71 demeanor and nonverbal communications; and

72 (D) The location from which the judge is presiding shall be accessible to the public to
 73 the same extent as such proceeding would be if not conducted by video conference.

74 Subject to the right of the judge to sequester witnesses, the court shall accommodate
 75 any request by interested parties to observe the entire proceeding. As used in this
 76 subparagraph, the term 'interested parties' means victims, family members of victims,
 77 and other parties found by the court to have particularized interest in the proceedings.

78 (6) Except for pretrial and post-sentencing matters, nothing in this subsection shall be
 79 construed as providing for the use of testimony pursuant to paragraph (1) of this
 80 subsection in criminal proceedings.

81 (7) Nothing in this subsection shall be construed as limiting the court's authority to
 82 promulgate rules on the use of video conferencing that do not conflict with this
 83 subsection."

84 **SECTION 2.**

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

87 "35-3-154.2.

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

91 (1) Determination of indigence and appointment of counsel;

92 (2) Hearings on appearance and appeal bonds;

93 (3) Initial appearance hearings;

94 (4) Probable cause hearings;

95 (5) Arraignment or waiver of arraignment;

96 (6) Pretrial motion hearings;

97 (7) Entry of pleas in criminal cases;

98 (8) Impositions of sentences upon pleas of guilty or nolo contendere;

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

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

144 **SECTION 3.**

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

147 **SECTION 4.**

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