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HB 233 – Civil Practice: Georgia Uniform Civil Forfeiture Procedure Act

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CIVIL PRACTICE

Georgia Uniform Civil Forfeiture Procedure Act: Amend Title 9 of the Official Code of Georgia Annotated, Relating to Civil Practice, so as to Provide a Comprehensive Civil Forfeiture Procedure; Provide for a Short Title; Provide for Definitions; Provide for Jurisdiction and Venue; Provide for Innocent Owners; Provide for Seizure of Property; Provide for Notice and Time Frames for Notice to Interested Parties; Provide for Forfeiture Liens; Provide for Storage of Property; Provide for Quasi-Judicial Forfeiture, In Rem Forfeiture, and In Personam Forfeiture; Provide for Temporary Relief and Stays of Criminal Proceedings; Provide for Intervention by Certain Parties under Certain Circumstances; Provide for Presumptions and the Burden of Proof; Provide for the Disposition of Seized Property and Reporting; Provide for the Effect of Federal Law Forfeitures; Amend Section 60 of Part 1 of Article 4 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated, Relating to the Qualifications for Grand Jurors, so as to Prohibit Certain Individuals from Serving as Grand Jurors; Prohibit Quashing of Indictments when Ineligible Grand Jurors Serve on a Grand Jury; Amend Title 16 of the Official Code of Georgia Annotated, Relating to Crimes And Offenses, so as to Conform Provisions to the New Chapter 16 of Title 9, Correct Cross-References, and Remove Obsolete or Improper References to Forfeiture; Amend Titles 3, 5, 7, 10, 12, 15, 17, 27, 36, 38, 40, 45, 46, 48, 49, and 52 of the Official Code of Georgia Annotated, Relating to Alcoholic Beverages, Appeal and Error, Banking and Finance, Commerce and Trade, Conservation and Natural Resources, Courts, Criminal Procedure, Game and Fish, Local Government, Military, Emergency Management, and Veterans Affairs, Motor Vehicles and Traffic, Public Officers and Employees, Public Utilities and Public Transportation, Revenue and Taxation, Social Services, and Waters of the State, Ports, and Watercraft, Respectively, so as to Conform Provisions to the New Chapter 16 of Title 9, Correct Cross-References, and Remove Obsolete or Improper References to Forfeiture; Provide for Related

***Matters; Provide for an Effective Date and Applicability; Repeal
Conflicting Laws; and for Other Purposes***

CODE SECTIONS: O.C.G.A. §§ 3-10-10, -11, -12
(amended); 4-3-8 (amended); 5-5-41
(amended); 7-1-11, -916 (amended);
9-16-1, -2,-3, -4, -5, -6, -7, -8, -9, -10,
-11, -12, -13, -14, -15, -16, -17, -18,
-19, -20, -21 -22 (new); 10-1-454
(amended); 10-13A-8 (amended);
12-4-48 (amended); 12-5-133
(amended); 12-5-137 (amended);
12-8-2 (amended); 15-6-95 (amended);
15-12-60 (amended); 15-21-2, -3, -4,
-5, -7, -8, -9, -13, -50, -51, -52, -54,
-55, -56, -57, -58 (amended);
16-5-44.1, -46 (amended); 16-6-13.2,
-13.3 (new); 16-7-95 (amended);
16-8-5.2, -60, -85, -106 (amended);
16-9-4 (amended); 16-11-11
(amended); 16-12-24, -30 (amended);
16-12-32 (new); 16-12-100 (amended);
16-13-30.1, -30.2, -30.4, -32, -32.1,
-48.1 (amended); 16-13-49, -53, -58
(amended); 16-14-1, -2, -3, -4, -5, -6,
-7, -8, -10, -11, -12, -13, -14, -15
(amended); 16-15-5 (amended);
16-16-2 (amended); 17-5-51, -52,
-52.1, -54 (amended); 24-13-132
(amended); 27-1-14 (amended);
27-3-12, -26 (amended); 27-4-133,
-134, -137 (amended); 36-15-9
(amended); 36-30-9 (amended);
36-31-8 (amended); 36-32-6, -7, -8, -9,
-10, -10.1 (amended); 36-35-6
(amended); 36-80-21 (amended);
38-2-464 (amended); 40-5-124
(amended); 40-6-391.2 (amended);

2015]

LEGISLATIVE REVIEW

3

	40-11-20 (amended); 40-11-21 (new); 40-11-22, -24 (amended); 40-13-22 (amended); 40-16-7 (amended); 42-9-45 (amended); 45-15-10 (amended); 46-9-253 (amended); 48-4-61 (amended); 49-4-146.3 (amended); 52-7-7.3, -7.4 (amended)
BILL NUMBER:	HB 233
ACT NUMBER:	98
GEORGIA LAWS:	2015 Ga. Laws 693
SUMMARY:	The Act provides a comprehensive civil forfeiture procedure. The Act also amends sections relating to the qualifications for grand jurors, so as to prohibit certain individuals from serving as grand jurors and to prohibit the quashing of indictments when ineligible grand jurors serve on a grand jury. The Act also amends sections relating to crimes, offenses, and regulations to conform those Code sections with the new civil forfeiture legislation.
EFFECTIVE DATE:	July 1, 2015

History

Civil asset forfeiture in America predates independence from England.¹ By 1696, the English Crown had codified its power to issue “writs of assistance” allowing customs officials to enter colonial homes or vessels and confiscate smuggled goods.² In a February 1691 hearing discussing the legitimacy of writs of assistance, Boston merchants characterized writs as “the worst

1. Sarah Stillman, *Taken*, THE NEW YORKER, Aug. 12, 2013, at 48, *available at* 2013 WLNR 20611866.

2. *Id.*; James M. Farrell, *The Child Independence is Born: James Otis and Writs of Assistance* 6, 11 (2014) (unpublished scholarship, University of New Hampshire: Scholars' Repository), *available at* http://scholars.unh.edu/comm_facpub/5/.

instruments of arbitrary power,” as the writs could issue to any revenue or customs officer (or their subordinates) in perpetuity, and authorized searches unsupported by any oath attesting to the suspected presence of contraband.³ Thus, these writs were “among the key grievances that triggered the American Revolution.”⁴ Ultimately, following the American Revolution, those opposing the writs called for these writs to be abolished through “judicial nullification of parliamentary law” because they were contrary to the Constitution.⁵ The Bill of Rights prohibits “unreasonable searches and seizures”⁶ and declares that no one will be deprived of “life, liberty, or property, without due process of law.”⁷ Although the deprivation of property without due process runs contrary to the Bill of Rights, the United States Supreme Court held that civil asset forfeiture was necessary to enforce piracy, customs, and admiralty laws, as the vessel owner could be overseas and thus out of reach of an *in personam* action.⁸ Proceeding *in rem*—treating “[t]he vessel which commits the aggression . . . as the offender”—required “[no] reference whatsoever to the character or the conduct of the owner.”⁹

In rem procedures are the heart of civil asset forfeiture.¹⁰ Unlike criminal forfeiture (an *in personam* action where a person stands trial and forfeits property only after conviction), civil forfeiture charges the property itself with breaking the law.¹¹ Because civil forfeiture is

3. Farrell, *supra* note 2, at 19–21.

4. Eric Blumenson & Eva Nilson, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. CHI. L. REV. 35, 75 (1998).

5. Farrell, *supra* note 2, at 22.

6. U.S. CONST. amend. IV.

7. U.S. CONST. amend. V.

8. *Harmony v. United States*, 43 U.S. 210, 233 (1844). An *in personam* action is brought against a natural or legal person, rather than against property, and involves determining personal rights and obligations. See BLACK'S LAW DICTIONARY 36, 912 (10th ed. 2014).

9. *Harmony*, 43 U.S. at 233. An *in rem* action names real or personal property as defendant, determines the status of the property, and adjudicates the rights of persons generally with respect to the property. See BLACK'S LAW DICTIONARY 36, 913 (10th ed. 2014).

10. See *Harmony*, 43 U.S. at 233; see also *Cisco v. State*, 285 Ga. 656, 659, 680 S.E.2d 831, 834 (2009) (citing *United States v. Bajakajian*, 524 U.S. 321, 330 (1998)) (stating that “[t]he United States Supreme Court has recognized that civil asset forfeiture, with its biblical roots and common law development in medieval England, has for centuries been an *in rem* proceeding against property, operating under the legal fiction that the seized property, and not the property's owner, is the guilty party.”); FED. BUREAU OF INVESTIGATION, WHITE-COLLAR CRIME: ASSET FORFEITURE, https://www.fbi.gov/about-us/investigate/white_collar/asset-forfeiture (last visited Sept. 29, 2015).

11. *Georgia Legislators Must Reform the State's Civil Forfeiture Laws to Protect Due Process and Private Property Rights*, INST. FOR JUST., <https://www.ij.org/georgia-civil-forfeiture-legislative->

an *in rem* procedure against property, the action proceeds without regard to the owner’s due process rights.¹² For example, property has no right to court-appointed counsel; the owner must take on the expense of representation, which may outweigh the value of recovering forfeited items.¹³ Further, there is no presumption of innocence for the property; the owner must prove valid ownership of the assets.¹⁴ Finally, in an *in personam* criminal proceeding, the state must prove the person’s guilt beyond a reasonable doubt before depriving him of property; however, in an *in rem* civil action, the state must only prove by a preponderance of the evidence that the property is connected to illegal activities.¹⁵

Modern civil asset forfeiture first emerged in the 1970s, when the federal government enacted statutes allowing law enforcement to seize property from drug lords and crime bosses.¹⁶ Congress enlarged these laws to enable seizure of money and goods involved in illegal drug production, and later expanded them to include anything authorities thought drug money was used in purchasing.¹⁷ In 1984, Congress passed the Comprehensive Crime Control Act.¹⁸ This Act established the “Department of Justice Assets Forfeiture Fund,” through which local police, who assisted the federal government in seizing assets, could keep a large percentage of the seized assets.¹⁹ After the federal government’s system proved successful, states began to follow the federal government’s example by enacting their own civil forfeiture laws.²⁰ But while federal agents targeted assets of

backgrounder-2 (last visited Sept. 29, 2015) [hereinafter *Georgia Legislators Must Reform*].

12. *Id.* Proceedings against property are captioned as such: “*State of Georgia v. \$1,324.00 in U.S. Currency or The United States of America v. One 2002 Toyota Sequoia.*” *Id.*

13. Benson Varghese, *Presumed Guilty Until Proven Innocent: What You Didn’t Know About Asset Forfeitures in Texas*, VARGHESE SUMMERSETT (Sept. 1, 2014), <https://www.versustexas.com/criminal/asset-forfeitures-in-texas/>.

14. *Id.*

15. *See id.*

16. *See* Michael Sallah et al., *Stop and Seize*, WASH. POST (Sept. 6, 2014), <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.

17. *See* 21 U.S.C. § 881(a)(6) (1994) (authorizing forfeiture of proceeds from drug offenses); 21 U.S.C. § 881(a)(7) (1994) (authorizing forfeiture of any property used “to commit, or to facilitate the commission of,” a drug offense).

18. Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976.

19. *See* 28 U.S.C. § 524(c)(1) (2015).

20. Scott Bullock, *Policing for Profit, Asset Forfeiture Report: Foreword*, INST. FOR JUST., <http://www.ij.org/foreword-2> (last visited Sept. 29, 2015); *see, e.g.*, KY. REV. STAT. ANN. § 218A.420 (West, Westlaw through 2015).

white-collar criminals, organized-crime barons, and dictators, state forfeiture cases generally dealt with less serious offenders and smaller amounts of money.²¹ For example, in 2011, fifty-eight local, county, and state police departments in Georgia netted \$2.76 million in forfeitures, but over half of the taken items were worth less than \$650.²²

States also varied widely in the rules they promulgated.²³ On the federal level, reforms were on the rise,²⁴ while state and local level controls on asset seizure procedures, reporting, and spending remained loosely implemented.²⁵ Minimal oversight typically means police can seize and spend assets, often without reporting the asset's source or disposition.²⁶ Activist groups, like Georgians for Forfeiture Reform, have called for legislative changes to improve reporting requirements, seeking more transparency and public accountability.²⁷ However, Georgians are already supposed to have access to statewide forfeiture data by virtue of legislation passed in 2010 that required each agency to electronically report seizures to the University of Georgia's Carl Vinson Institute for Government website.²⁸ The information in this reports database is sparse, however, because a lack of clarity in reporting procedures and lack of consequences for poor reporting.²⁹

Pursuant to this 2010 law, law enforcement agencies were required to make yearly reports available to the public; however, district

21. Stillman, *supra* note 1.

22. Dick M. Carpenter II & Lee McGrath, *Rotten Reporting in the Peach State: Civil Forfeiture in Georgia Leaves the Public in the Dark*, INST. FOR JUST. 2, 7 (Jan. 2013), http://ij.org/images/pdf_folder/other_pubs/rotten-reporting.pdf.

23. See Jefferson Holcomb, Tombislav Kovandzic & Marian Williams, *Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States*, 39 J. CRIM. JUST. 273, 273–85 (2011).

24. See Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Public Law No. 106-185, 114 Stat. 202.

25. See Stillman, *supra* note 1.

26. See *id.*

27. *AFP Set to Launch Georgians for Forfeiture Reform Coalition on Feb 12th*, AFP GEORGIA (Feb. 5, 2014), <http://americansforprosperity.org/georgia/article/afp-set-to-launch-georgians-for-forfeiture-reform-coalition-on-feb-12th/>.

28. 2010 Ga. Laws 519, § 1, at 520 (codified at O.C.G.A. § 36-80-21(d)–(f) (2010)).

29. See Tyler Jett, *Georgia Tightens Rules for Property Forfeiture*, CHATTANOOGA TIMES FREE PRESS, Apr. 18, 2015, available at 2015 WLNR 11329142 (reporting that only three of the fifteen law enforcement agencies in the Lookout Mountain Judicial Circuit made the mandatory reports to the Institute).

attorneys were not.³⁰ District attorneys' offices could receive up to ten percent of the proceeds from forfeitures they were involved in and could spend the money on "any and all necessary expenses for the operation of the office"³¹ As such, the lack of transparency and broad spending discretion led to scandals over how forfeited assets were used.³² In contrast, when seized funds are placed in a neutral account (like a state general operating fund or a public education account) states can generally avoid major forfeiture-abuse scandals.³³ Problems tend to arise in states like Georgia because there are so few restrictions on how law enforcement agencies can use forfeiture proceeds.³⁴

Georgia's civil-forfeiture laws were ranked among the worst in the country by the "merry band of libertarian litigators" at the Institute for Justice.³⁵ In the Institute for Justice's 2010 report, *Policing for Profit*, Georgia received a "D-," the lowest grade given.³⁶ Like Georgia, several states around the country are attempting reform with varying degrees of success.³⁷ In Maryland and Wyoming, the Governors vetoed bills that would have increased accountability for law enforcement agencies by increasing their transparency to the public.³⁸ Both Governors acknowledged that civil asset forfeiture laws are abused in some places but believe their forfeiture programs

30. Willoughby Mariano, *DA Spent Funds on Galas, Meals*, ATLANTA J.-CONST., June 9, 2013, at A1, available at 2013 WLNR 14150861.

31. O.C.G.A. § 16-13-49(u)(4)(B) (2011).

32. See Mariano, *supra* note 30.

33. Stillman, *supra* note 1.

34. *Id.*

35. *About IJ*, INST. FOR JUST., <http://ij.org/> (last visited Sept. 29, 2015); Marian Williams, Jefferson Holcomb, & Tomislav Kovandzic, *Policing for Profit: Asset Forfeiture Report: Part I*, INST. FOR JUST. (Mar. 2010), <http://www.ij.org/part-i-policing-for-profit-2>.

36. *Policing for Profit: Asset Forfeiture Report: Grade Detail*, INST. FOR JUST. (Mar. 2010), <http://www.ij.org/asset-forfeiture-report-grade-detail>. Georgia tied for last place with Michigan, Texas, Virginia, and West Virginia. *Id.*

37. See generally Jacob Gershman, *Legislation to Curb Civil Forfeiture Advances in States*, WALL ST. J. L. BLOG (Mar. 25, 2015, 11:48 AM), <http://blogs.wsj.com/law/2015/03/25/legislation-to-curb-civil-forfeiture-advances-in-states/>.

38. Scott Shackford, *Maryland Governor Vetoes Asset Forfeiture Reform, Marijuana Decriminalization Bills*, REASON.COM HIT & RUN BLOG (May 22, 2015, 5:45 PM), <http://reason.com/blog/2015/05/22/maryland-governor-vetoes-asset-forfeiture>; Ben Neary, *Gov. Mead Vetoes Asset Forfeiture Bill*, CASPER STAR TRIB. (Feb. 17, 2015 7:05 PM), http://trib.com/news/state-and-regional/govt-and-politics/gov-mead-vetoes-asset-forfeiture-bill/article_f1f2f2f2-4d18-5240-b947-3fc34edb3319.html.

ensure that criminals do not keep their profits.³⁹ Other states, like New Mexico and Montana, have passed sweeping reforms.⁴⁰ Montana now requires police to convict a property owner before permanent forfeiture is permissible.⁴¹ New Mexico abolished civil asset forfeiture altogether.⁴²

Georgia Representatives attempted to abolish civil forfeiture, similar to New Mexico, during the 2011–2012 legislative session, but the bill died in the House.⁴³ Representative Wendell Willard (R-51st), introduced a more moderate civil forfeiture proposal during the 2013–2014 session, which would have elevated the level of proof required to seize property from a “preponderance of evidence” standard to “clear and convincing evidence”⁴⁴ and would have reduced the estimated value of seized property that merits automatic judicial review from \$25,000 to \$5,000.⁴⁵ Putnam County Sheriff and leader of the Georgia Sheriff’s Association, Howard Sills, strongly opposed the bill.⁴⁶ “That bill would have only benefited, in my personal and professional opinion, criminals and the lawyers who represent them,” he said.⁴⁷ Facing the bill’s likely defeat, Representative Willard decided to postpone the vote.⁴⁸

Representative Willard reintroduced a modified bill in 2014, retaining the preponderance of the evidence standard and a \$25,000 automatic review level.⁴⁹ Along with these concessions to law enforcement officials, the bill contained procedural protections for

39. See Shackford, *supra* note 38; Neary, *supra* note 38.

40. Casey Harper, *BREAKING: New Mexico Gov Abolishes Civil Asset Forfeiture*, DAILY CALLER NEWS FOUND. (Apr. 10, 2015, 2:18 PM), <http://dailycaller.com/2015/04/10/breaking-new-mexico-gov-abolishes-civil-asset-forfeiture-bill/>; Nick Wing, *Montana Governor Signs Law To Protect Innocent People From Having Their Property Seized By Police*, HUFF POST POLITICS (May 6, 2015, 2:37 PM), http://www.huffingtonpost.com/2015/05/06/montana-civil-asset-forfeiture_n_7222258.html.

41. Wing, *supra* note 40.

42. Harper, *supra* note 40.

43. House Bill (HB) 36, as introduced, 2011 Ga. Gen. Assem.

44. HB 1 (LC 29 5600S), § 1-1, p. 15, ln. 512–13, 2013 Ga. Gen. Assem.

45. *Id.* § 1-1, p. 8, ln. 253.

46. Ray Henry, *In Ga., a Push to Change Civil Forfeiture Laws*, ATHENS BANNER-HERALD, June 15, 2013, available at <http://onlineathens.com/local-news/2013-06-15/ga-push-change-civil-forfeiture-laws>.

47. *Id.*

48. *Id.*

49. Mike Klein, *Civil Asset Forfeiture Reform Gets a Facelift*, GA. PUB. POL’Y FOUND. (Jan. 22, 2014), <http://www.georgiapolicy.org/2014/01/civil-asset-forfeiture-reform-undergoes-a-legislative-facelift/>.

innocent owners and established a penalty for an agency’s failure to file the required reports—exclusion from collecting civil forfeiture funds until they are in compliance.⁵⁰ In spite of these concessions, the Georgia Sherriff’s Association remained opposed and again brought the bill down.⁵¹

Increased attention on spending scandals and procedural problems has helped the push for civil forfeiture reform. “We certainly had at least a perception that our laws . . . created a profit incentive,” said Representative Alex Atwood (R-179th), a sponsor of HB 233, which was introduced in the 2015–2016 Regular Legislative Session.⁵² “If you have citizens whose goods are being taken inappropriately, or an innocent person being deprived of what they legitimately earned, and not getting that returned to them in a timely manner, that troubles me.”⁵³ As a former federal agent, Representative Atwood successfully bridged the gap between the lawmakers and the law enforcement groups that opposed prior attempts at civil asset forfeiture reform.⁵⁴ “I’m one of the ones the guys [they] would call out at night to come get property, drug dealers, and everything else. So I was not insensitive to what law enforcement [] needed to do.”⁵⁵

Bill Tracking of HB 233

Consideration and Passage by the House

Representatives Alex Atwood (R-179th), Mike Dudgeon (R-25th), Harry Geisinger (R-48th), Emory Dunahoo (R-30th), and Rick Jasperse (R-11th) sponsored HB 233.⁵⁶ The House read the bill for the first time on February 9, 2015.⁵⁷ The House read the bill for the

50. *Id.*

51. Jason Snead & Andrew Kloster, *Georgia Fails to Pass Civil Forfeiture Reform*, THE DAILY SIGNAL (Mar. 12, 2014), <http://dailysignal.com/2014/03/12/georgia-fails-pass-civil-forfeiture-reform/>.

52. Georgia General Assembly, HB 233, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/233>; Gershman, *supra* note 37.

53. Telephone Interview with Rep. Alex Atwood (R-179th) (June 26, 2015).

54. *Id.*

55. *Id.*

56. Georgia General Assembly, HB 233, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/233>.

57. State of Georgia Final Composite Status Sheet, HB 233, May 14, 2015.

second time on February 10, 2015.⁵⁸ Speaker David Ralston (R-7th) assigned the bill to the House Judiciary Committee, which favorably reported it by substitute on February 25, 2015.⁵⁹ The House read the bill for the third time, and passed and adopted it by substitute on March 2, 2015.⁶⁰ The substitute removed reference to other repealed Code sections.⁶¹ The House passed HB 233 by a vote of 154 to 0.⁶²

Consideration and Passage by the Senate

Senator Jesse Stone (R-23rd) sponsored HB 233 in the Senate.⁶³ The bill was first read on March 3, 2015, and was assigned to the Senate Judiciary Non-Civil Committee.⁶⁴ The Senate Committee favorably reported the bill on March 19, 2015.⁶⁵ The bill was read the second time on March 20, 2015, and for the third time on March 31, 2015.⁶⁶ Senators Stone and Harold Jones II (D-22nd) offered a floor amendment that prohibits certain individuals from serving as grand jurors and prohibits quashing indictments if it is later determined that an ineligible grand juror was serving at the time of the return of the indictment.⁶⁷ On March 31, 2015, the Senate passed HB 233 by a vote of 47 to 0.⁶⁸ On April 2, 2015, the House agreed to the Senate amendment by a vote of 170 to 0.⁶⁹ HB 233 was sent to Governor Nathan Deal (R) on April 14, 2015, and he signed it into law on May 6, 2015.⁷⁰

58. *Id.*

59. *Id.*

60. *Id.*

61. *See generally* HB 233 (HCS), 2015 Ga. Gen. Assem.

62. Georgia House of Representatives Voting Record, HB 233 (Mar. 2, 2015).

63. Georgia General Assembly, HB 233, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/233>.

64. State of Georgia Final Composite Status Sheet, HB 233, May 14, 2015.

65. *Id.*

66. *Id.*

67. HB 233 (SFA), § 1A-1, p. 28–29, ln. 980–1000, 2015 Ga. Gen. Assem. This version of the bill, the House Committee substitute as amended by the Senate, represents the final version of the bill that was passed into law. State of Georgia Final Composite Status Sheet, HB 233, May 14, 2015.

68. Georgia Senate Voting Record, HB 233 (Mar. 31, 2015).

69. Georgia House of Representatives Voting Record, HB 233 (Apr. 2, 2015).

70. State of Georgia Final Composite Status Sheet, HB 233, May 14, 2015.

The Act

The Act is entitled the “Georgia Uniform Civil Forfeiture Procedure Act”⁷¹ and amends Title 9 of the Official Code of Georgia Annotated as it relates to civil forfeiture in order to provide a more comprehensive civil forfeiture process.⁷² Further, the Act amends Code section 15-12-60, as it relates to the qualifications for grand jurors.⁷³ The Act also amends Title 16 of the Code relating to crimes and offenses.⁷⁴ Finally, the Act amends Titles 3, 5, 7, 10, 12, 15, 17, 27, 36, 38, 40, 45, 46, 48, 49, and 52 of the Code to align Code sections with the provisions set forth in the Act.⁷⁵

Part I

Part I of the Act is entitled “Civil Forfeiture Procedure.”⁷⁶ Section 1-1 amends Title 9 of the Official Code to add Chapter 16.⁷⁷ The Georgia Code now includes the following sections: section 9-16-1 which gives the title for the new chapter;⁷⁸ section 9-16-2 contains definitions for the terms in the new chapter.⁷⁹ Section 9-16-3 dictates the jurisdiction’s parameters for a civil forfeiture proceeding, stating that for an *in rem* action, the proceeding may be brought in the “judicial circuit where the property is located,” and for an *in personam* action, the proceeding may be brought “in the judicial circuit in which the defendant resides.”⁸⁰ Code section 9-16-3(a)(3) states that a civil forfeiture proceeding may be brought by “the state attorney having jurisdiction over any offense which arose out of the same conduct which made the property subject to forfeiture.”⁸¹ Code section 9-16-4 states that a complaint for forfeiture shall be tried in the county where the property is located if the proceeding is *in rem*,

71. O.C.G.A. § 9-16-1 (2015).

72. O.C.G.A. § 9-16-1 et. seq. (2015); 2015 Ga. Laws 693, at 693–94.

73. 2015 Ga. Laws 693, at 694.

74. *Id.*

75. *Id.*

76. 2015 Ga. Laws 693, § 1-1, at 694.

77. O.C.G.A. § 9-16-1 et. seq. (2015).

78. O.C.G.A. § 9-16-1 (2015).

79. O.C.G.A. § 9-16-2 (2015).

80. O.C.G.A. § 9-16-3 (2015).

81. O.C.G.A. § 9-16-3(a)(3) (2015).

and as provided in “Article VI, Section II of the Constitution” if the proceeding is *in personam*.⁸²

Code section 9-16-5 states that if a vehicle registered to a person who is not present at the “scene of the seizure” is to be seized, the seizing officer must make a reasonable effort to find the owner and inform them of the seizure.⁸³ Code section 9-16-6 states that an officer may seize property if done either through a validly executed search warrant, or if there is probable cause to believe that the property is subject to forfeiture.⁸⁴ Further, subsection (c) states that the court’s jurisdiction will not be altered, even if the seizure was made in violation of the Georgia Constitution or United States Constitution, if the seizure was made with “process or in a good faith belief of probable cause.”⁸⁵ Code section 9-16-7 contains three subsections.⁸⁶ Subsection (a) states that when an officer seizes property, the seizing officer must, in writing and within thirty days of the seizure, conduct an inventory of the property and provide it to the district attorney in the county with jurisdiction over the proceeding.⁸⁷ Subsection (b) states that, within sixty days from the date of seizure, the state attorney shall either initiate a “quasi-judicial” forfeiture⁸⁸ or “file a complaint for forfeiture.”⁸⁹ Subsection (c) states that if a state attorney fails to comply with this subsection, then the seized property must be returned to the owner upon request.⁹⁰

Code section 9-16-8 dictates the requirements for a forfeiture lien.⁹¹ The lien will constitute notice to persons claiming an interest in the property.⁹² The lien must contain the name of each person with “a known interest in the seized property,”⁹³ and a description of the property.⁹⁴ If judgment is entered in favor of the State, then the State

82. O.C.G.A. § 9-16-4 (2015).

83. O.C.G.A. § 9-16-5 (2015).

84. O.C.G.A. § 9-16-6 (2015).

85. O.C.G.A. § 9-16-6(c) (2015).

86. O.C.G.A. § 9-16-7 (2015).

87. O.C.G.A. § 9-16-7(a) (2015).

88. O.C.G.A. § 9-16-7(b)(1) (2015).

89. O.C.G.A. § 9-16-7(b)(2) (2015).

90. O.C.G.A. § 9-16-7(c) (2015).

91. O.C.G.A. § 9-16-8 (2015).

92. O.C.G.A. § 9-16-8(a) (2015).

93. O.C.G.A. § 9-16-8(a)(1) (2015).

94. O.C.G.A. § 9-16-8(a)(2) (2015).

may execute the forfeiture lien just like any judgment.⁹⁵ Lastly, a trustee who receives notice of a forfeiture lien shall furnish, within ten days, the names and addresses of the legal and beneficial property owners,⁹⁶ and a copy of the trust agreement.⁹⁷ If a trustee fails to do this, he or she is guilty of a misdemeanor.⁹⁸

Code section 9-16-9 dictates that property seized under this chapter shall not be subject to replevin.⁹⁹ Code section 9-16-10 dictates what a state attorney may do with seized property.¹⁰⁰ Specifically, a state attorney may do one of the following: remove the property to “a place designated by the superior court”;¹⁰¹ place the property under “constructive seizure” by posting notice at the applicable courthouse;¹⁰² remove the property to a storage area;¹⁰³ have another governmental agency take custody of the property;¹⁰⁴ or require the sheriff to take custody of the property.¹⁰⁵ Upon motion, the court may order the property sold if its value is depreciating or if it is perishable.¹⁰⁶ If the property is currency, and not needed for evidentiary purposes, then, within sixty days of seizure, the currency shall be deposited into a separate, interest-bearing account at a financial institution within the applicable county.¹⁰⁷ If the property is a negotiable instrument, then, within sixty days of seizure, it shall be secured in a financial institution in the applicable county.¹⁰⁸ All interest gained on these accounts shall be paid to the County Drug Abuse Treatment and Education Fund.¹⁰⁹

Code section 9-16-11 dictates the procedure for posting and serving a notice of forfeiture.¹¹⁰ If the estimated value of the property

95. O.C.G.A. § 9-16-8(d) (2015).

96. O.C.G.A. § 9-16-8(e)(1)–(2) (2015).

97. O.C.G.A. § 9-16-8(e)(3) (2015).

98. O.C.G.A. § 9-16-8(f) (2015).

99. O.C.G.A. § 9-16-9(a) (2015).

100. O.C.G.A. § 9-16-10 (2015).

101. O.C.G.A. § 9-16-10(a)(1) (2015).

102. O.C.G.A. § 9-16-10(a)(2) (2015).

103. O.C.G.A. § 9-16-10(a)(3) (2015).

104. O.C.G.A. § 9-16-10(a)(4) (2015).

105. O.C.G.A. § 9-16-10(a)(5) (2015).

106. O.C.G.A. § 9-16-10(b)(1) (2015).

107. O.C.G.A. § 9-16-10(c)(1) (2015).

108. O.C.G.A. § 9-16-10(c)(2) (2015).

109. O.C.G.A. § 9-16-10(c)(3) (2015).

110. O.C.G.A. § 9-16-11 (2015).

is less than \$25,000, then a state attorney must post notice at the applicable county courthouse.¹¹¹ The notice must provide a description of the property,¹¹² the date and place of seizure,¹¹³ the conduct giving rise to the seizure,¹¹⁴ the alleged violation of law,¹¹⁵ and a statement that the owner has thirty days to make a claim on the property.¹¹⁶ Such claims must include the name of the claimant, the claimant's address, a description of the claimant's interest in the property, and any documentation that supports the claim.¹¹⁷ The state attorney must serve this notice upon an owner if the owner is known, or, if the owner is unknown, publish the notice for two weeks in the county's "legal organ."¹¹⁸ If any claim is served, then the state attorney must file a complaint for forfeiture within thirty days of receiving the claim.¹¹⁹ Any property not claimed either within thirty days of service of notice or the second publication is forfeited.¹²⁰

Code section 9-16-12 describes the procedure for actions *in rem*.¹²¹ For an action *in rem*, the property itself is named as the defendant in the complaint.¹²² A copy of the complaint and summons must be served on any person known to have any interest in the property.¹²³ If a real-property interest holder is unknown, then notice must be published in the legal organ of the county for two weeks.¹²⁴ The county sheriff, by court order, may seize tangible property.¹²⁵ A person with an ownership interest in the property may file an answer to the complaint within thirty days of service of the summons and complaint.¹²⁶ Once an answer is filed, a bench trial will be held

111. O.C.G.A. § 9-16-11(a) (2015).

112. O.C.G.A. § 9-16-11(a)(1) (2015).

113. O.C.G.A. § 9-16-11(a)(2) (2015).

114. O.C.G.A. § 9-16-11(a)(3) (2015).

115. O.C.G.A. § 9-16-11(a)(4) (2015).

116. O.C.G.A. § 9-16-11(a)(5) (2015).

117. *Id.*

118. O.C.G.A. § 9-16-11(b) (2015).

119. O.C.G.A. § 9-16-11(c)(1) (2015).

120. O.C.G.A. § 9-16-11(c)(4) (2015).

121. O.C.G.A. § 9-16-12 (2015).

122. O.C.G.A. § 9-16-12(a) (2015).

123. O.C.G.A. § 9-16-12(b)(1) (2015).

124. O.C.G.A. § 9-16-12(b)(3) (2015).

125. O.C.G.A. § 9-16-12(b)(4) (2015).

126. O.C.G.A. § 9-16-12(c)(1) (2015).

within sixty days.¹²⁷ If no answer is filed, the state attorney may seek a default judgment.¹²⁸

Code section 9-16-13 describes the procedure for actions *in personam*.¹²⁹ The complaint must provide, among other requirements, a description of the property, the reasons it was seized, and conclude with a prayer for execution of the forfeiture.¹³⁰ The complaint must be served upon the named party, or if the party is unknown, then published in the legal organ of the county for two consecutive weeks.¹³¹ An answer must be filed within thirty days of service or within thirty days of the last date of publication; a bench trial will be held within sixty days of the filing of the answer.¹³²

Code section 9-16-14 describes the interim procedures that a court may take to preserve property during the forfeiture proceedings.¹³³ Specifically, the court may issue a restraining order or injunction if the state attorney believes that there is probable cause that the property will be subject to forfeiture.¹³⁴ Further, the court may order the property be sold to satisfy any specified interest of any interested party upon motion and hearing.¹³⁵

Code section 9-16-15 states that the court may stay a civil forfeiture proceeding during “the pendency of criminal proceedings.”¹³⁶ An acquittal or dismissal, however, does not preclude civil forfeiture.¹³⁷ A defendant who is convicted of the criminal offense cannot later deny the essential allegations of the criminal offense.¹³⁸ Code section 9-16-16 gives the definition for an “injured person” and gives them the right to intervene in the civil forfeiture proceeding to claim the forfeited property.¹³⁹

Code section 9-16-17 details the state’s burden of proof in civil forfeiture proceedings, and the circumstances in which a person’s

127. O.C.G.A. § 9-16-12(f) (2015).

128. O.C.G.A. § 9-16-12(e) (2015).

129. O.C.G.A. § 9-16-13 (2015).

130. O.C.G.A. § 9-16-13(a) (2015).

131. O.C.G.A. § 9-16-13(b) (2015).

132. O.C.G.A. § 9-16-13(c), (f) (2015).

133. O.C.G.A. § 9-16-14 (2015).

134. O.C.G.A. § 9-16-14(1) (2015).

135. O.C.G.A. § 9-16-14(5) (2015).

136. O.C.G.A. § 9-16-15(a) (2015).

137. O.C.G.A. § 9-16-15(b) (2015).

138. O.C.G.A. § 9-16-15(c) (2015).

139. O.C.G.A. § 9-16-16(a)–(b) (2015).

property interest is not subject to forfeiture.¹⁴⁰ The state must show by a preponderance of the evidence that the property is subject to forfeiture.¹⁴¹ Property is not subject to forfeiture if, among others, the property owner did not know of or participate in the criminal activity in question, did not stand to benefit from the criminal conduct, or did not hold the property for someone whose conduct gave rise to the forfeiture.¹⁴² Further, Code section 9-16-18 provides that the state's interest attaches to the property at the time of the conduct that gave rise to the forfeiture, and if the property is transferred to another person subsequently, the state may seize it.¹⁴³

Code section 9-16-19 describes the procedures for the destruction or sale of forfeited property.¹⁴⁴ Any property that is to be destroyed or is harmful to the public shall be forwarded to the Division of Forensic Sciences of the Georgia Bureau of Investigations for destruction or scientific use.¹⁴⁵ When real property is forfeited, the title is put into the name of the state and may be disposed of in any "commercially reasonable manner."¹⁴⁶ Funds from the sale of property shall be used first to pay court costs to the party incurring such costs.¹⁴⁷ Next, 10% is paid to the district attorney's office for its effort in completing the forfeiture proceedings.¹⁴⁸ Next, the law enforcement agencies and multijurisdictional task forces will receive pro rata shares for their roles in seizing the property.¹⁴⁹ The next step is a distribution for the representation or treatment of indigent defendants, if applicable.¹⁵⁰ If there are funds left, then they will be distributed to the agency that assisted in the criminal prosecution.¹⁵¹

140. O.C.G.A. § 9-16-17(a)(1) (2015).

141. *Id.*

142. O.C.G.A. § 9-16-17(a)(2) (2015).

143. O.C.G.A. § 9-16-18(a) (2015).

144. O.C.G.A. § 9-16-19(b)-(c) (2015).

145. O.C.G.A. § 9-16-19(b) (2015).

146. O.C.G.A. § 9-16-19(d)(5) (2015).

147. O.C.G.A. § 9-16-19(f)(3)(A) (2015).

148. O.C.G.A. § 9-16-19(f)(3)(B) (2015).

149. O.C.G.A. § 9-16-19(f)(3)(C) (2015).

150. *See* O.C.G.A. § 9-16-19(f)(3)(D) (2015). "If there remains currency in the pool . . . it may be distributed as further set forth in division (4)(A)(iii) or (4)(B)(ii) of this subsection, as applicable." *Id.* These subsections address representation of indigent defendants, treatment for the purpose of deterring further criminal behavior, and contribution to Georgia's victim assistance. O.C.G.A. § 9-16-19(f)(4)(A)(iii) (2015); O.C.G.A. § 9-16-19(f)(4)(B)(ii) (2015).

151. O.C.G.A. § 9-16-19(f)(3)(E) (2015).

The remainder of this section dictates the reporting requirements for each type of agency receiving funds from the forfeited property pool.¹⁵² Code section 9-16-20 states that a court may order the forfeiture of property of a defendant up to the value of the forfeited property if the forfeited property cannot be found or has been transferred or comingled with other property.¹⁵³ Further, no one with a claim in interest in the property may commence a suit outside of the provisions within this chapter.¹⁵⁴ Lastly, a civil forfeiture proceeding must be commenced within four years of the last action giving rise to the forfeiture.¹⁵⁵

Code section 9-16-21 states that seized property may be used by state law enforcement agencies as authorized by federal law or regulations.¹⁵⁶ If federal law or regulations are silent, then the property will be disposed of as detailed in Code section 9-16-19.¹⁵⁷

Part I-A

Part I-A, Section 1A-1 amends Code section 15-12-60 relating to the qualifications of grand jurors.¹⁵⁸ Specifically, this Code section amends subsection (c), and adds a new subsection (d).¹⁵⁹ Subsection (c) changes the word “person” to “individual” and adds provisions for when certain individuals should be excluded from grand jury service.¹⁶⁰ Specifically, any of the following disqualify an individual as a grand juror: felony conviction in state or federal court whose civil rights have not been restored,¹⁶¹ judicial determination of mental incompetence,¹⁶² a felony offense and enrollment in a pre-trial release program,¹⁶³ an uncompleted felony sentence,¹⁶⁴ anyone

152. O.C.G.A. § 9-16-19(f)(4)–(g)(7) (2015).

153. O.C.G.A. § 9-16-20(a) (2015).

154. O.C.G.A. § 9-16-20(d) (2015).

155. O.C.G.A. § 9-16-20(e) (2015).

156. O.C.G.A. § 9-16-21(a) (2015).

157. *Id.*

158. 2015 Ga. Laws 693, § 1A-1, at 718.

159. O.C.G.A. § 15-12-60(c)–(d) (2015).

160. *Compare* O.C.G.A. § 15-12-60 (2014), *with* O.C.G.A. § 15-12-60(c) (2015).

161. O.C.G.A. § 15-12-60(c)(1) (2015).

162. O.C.G.A. § 15-12-60(c)(2) (2015).

163. O.C.G.A. § 15-12-60(c)(3) (2015).

164. O.C.G.A. § 15-12-60(c)(4) (2015).

serving a sentence for a felony offense,¹⁶⁵ or participation in a drug court division or similar division for a felony offense.¹⁶⁶ If after beginning service as a grand juror, he or she is found to be ineligible serving, any indictments generated during that service are not automatically void.¹⁶⁷

Part II

Part II of the Act amends Title 16 of the Official Code of Georgia Annotated to conform it to the new civil forfeiture procedures.¹⁶⁸ In Sections 2-1 through 2-27 of the Act, any mention of previous forfeiture procedures in Title 16 were removed and replaced with language that dictates that any property subject to the forfeiture under these sections is contraband, and must be forfeited in accordance with the procedures in Chapter 16 of Title 9.¹⁶⁹ Further, verbiage is changed to make clear that the words “proceeds” and “property” are to be treated the same under these provisions.¹⁷⁰

Part III

Part III of the Act amends Titles 3, 5, 7, 10, 12, 15, 17, 27, 36, 38, 40, 45, 46, 48, 49, and 52 to incorporate correct terminology.¹⁷¹ Specifically, any conflicting language is removed, and replaced with verbiage that states that all forfeiture procedures must conform with Chapter 16 of Title 9.¹⁷²

165. O.C.G.A. § 15-12-60(c)(5) (2015).

166. O.C.G.A. § 15-12-60(c)(6) (2015).

167. O.C.G.A. § 15-12-60(d) (2015).

168. *See, e.g.*, 2015 Ga. Laws 693, § 2-1, at 719.

169. *See* 2015 Ga. Laws 693, §§ 2-1 to 2-27, at 719–36.

170. *Id.*

171. 2015 Ga. Laws 693, at 736.

172. *See* 2015 Ga. Laws 693, §§ 3-1 to 3-19, at 736–46.

*Analysis**Intended Consequences of the Act*

On both the state and federal levels, civil forfeiture reform is an area of national concern that has been the subject of debate for years.¹⁷³ The intended consequences of the Act are to reign in forfeiture procedures that allowed funds to be used to pay for things like “tickets to black-tie galas, sporting events and office parties.”¹⁷⁴ Further, Scott Key, Legislative Chair of the Georgia Association of Criminal Defense Lawyers, noted the process in which assets were forfeited was “tragic” as a “person loses before he knows what hit him because he either didn’t file an answer or failed to follow some arcane technical procedure from within the forfeiture code.”¹⁷⁵ But now, with the addition of the Code sections the Act promulgates, civil asset forfeiture is likely to be “less corrupt.”¹⁷⁶

There are several key sections of the Act that curb different types of corruption.¹⁷⁷ First, in Code section 9-16-5, when a car is seized, “the seizing officer . . . shall make a reasonable effort to determine the name of the registered owner”¹⁷⁸ Mr. Key noted that he has “seen many moms and dads lose vehicles without ever getting served or otherwise getting notice of a pending forfeiture.”¹⁷⁹

Further, Code section 9-16-12(c)(2) provides new procedures for amending a deficient answer to the forfeiture complaint.¹⁸⁰ Specifically, the state attorney may file for a motion for a more definite statement that must point out the deficiencies in the

173. See Radley Balko, *How Much Civil Asset Forfeiture Will Holder’s New Policy Actually Prevent?*, WASH. POST (Jan. 20, 2015), <http://www.washingtonpost.com/news/the-watch/wp/2015/01/20/how-much-civil-asset-forfeiture-will-holders-new-policy-actually-prevent/>.

174. Gershman, *supra* note 37; see Telephone Interview with Chuck Spahos, Exec. Dir., Prosecuting Attorneys’ Council of Ga. (July 20, 2015) [hereinafter Spahos Interview] (noting that one of the important provision in the Act was to create transparency).

175. Scott Key, *My Take on Georgia’s Forfeiture Legislation*, GA. CRIM. APP. L. BLOG (Feb. 16, 2015), <http://www.georgiacriminalappellateblog.com/legislation/my-take-on-georgias-forfeiture-legislation/>.

176. *Id.* (“Under the new statute, the stealing is going to get a bit more fair and possibly much less corrupt.”).

177. *See id.*

178. O.C.G.A. § 9-16-5 (2015).

179. *See Key, supra* note 175.

180. O.C.G.A. § 9-16-12(c)(2) (2015).

complaint.¹⁸¹ Commentators note that this may be the “best improvement of all.”¹⁸² Next, Code section 9-16-19(g)(2) provides a mechanism for annual reporting, and makes the forfeiture fund “less of a slush fund.”¹⁸³ Specifically, the annual report must “clearly identify the use of such property, proceeds, and income” and be “appropriately completed and legible.”¹⁸⁴

Lastly, Code section 9-16-19(f)(4)(A)(ii) makes it illegal to use funds “to pay salaries or rewards to law enforcement personnel.”¹⁸⁵ This particular section is of great importance because of a scandal involving former Douglas County District Attorney, David McDade, and his misappropriation of forfeiture funds.¹⁸⁶ Mr. McDade used forfeiture funds to pay for an SUV for his office manager, a \$90,000 paid internship to his daughter to transcribe interviews, and trips to conferences around the country.¹⁸⁷ After an investigation by the Georgia Bureau of Investigations, Mr. McDade was not prosecuted and only paid back \$4,000 to the county.¹⁸⁸ The ACLU of Georgia also noted that the changes to forfeiture procedures, distribution of funds, and reporting safeguards are all positive features of the Act.¹⁸⁹

The Act also intends to fix procedural problems that Georgia faced with civil forfeiture because many statutes had different forfeiture procedures and some had none at all.¹⁹⁰ Chuck Spahos, Executive Director of the Prosecuting Attorneys’ Council of Georgia, noted that the Act is “a much improved process for Georgia” and while the actual effect of the law is still yet to be seen, many interested parties are optimistic.¹⁹¹

181. *Id.*

182. *See Key, supra* note 175.

183. *Key, supra* note 175 (internal quotation marks omitted); O.C.G.A. § 9-16-19(g)(2) (2015).

184. O.C.G.A. § 9-16-19(g)(2) (2015).

185. O.C.G.A. § 9-16-19(f)(4)(A)(ii) (2015).

186. *See Key, supra* note 175 (referring to this Code section as the “David McDade Memorial Passage”); *see also* Radley Balko, *Good Riddance, Mr. McDade*, WASH. POST (Apr. 4, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/04/04/good-riddance-mr-mcdade/>.

187. Balko, *supra* note 186.

188. *Id.*

189. Marvin Lim, *2015 Legislative Agenda*, AM. C.L. UNION OF GA. (Jan. 2015), http://www.acluga.org/files/9514/2453/6634/ACLU-GA_Legislative_Agenda_-_2-20-2015.pdf [hereinafter *ACLU Legislative Agenda*] (highlighting the 2015 legislative agenda in Georgia).

190. *See Spahos Interview, supra* note 174.

191. *Id.*

Unresolved Issues

While the Act fixes several of the aforementioned issues, there are still areas that have not been remedied by this legislation. The ACLU of Georgia notes several drawbacks of the Act.¹⁹² First, the state's burden of proof is still only a preponderance of the evidence.¹⁹³ This low burden still leaves the potential to take an innocent person's property. Second, the cap for the amount that can be taken by a particular participating law enforcement agency is still very high, and "there is no restriction on [how] forfeiture assets can be spent."¹⁹⁴ While some of this is true, as noted above, there are now new restrictions on spending that would help prevent another David McDade-type problem.¹⁹⁵ Third, as noted by Scott Key, there is not enough of a disincentive for the "outright theft of private property."¹⁹⁶ Mr. Key suggests that the "system would be less corrupt if the seized assets could all go to a centralized statewide pool of funds As long as the seizing agency has the first claim on the property, there's an incentive for corruption."¹⁹⁷ Considering the corruption that has occurred in Georgia because of illegal spending of forfeited funds, Mr. Key's suggestion is not a bad one; but even he notes that the "sheriff's and police chief's lobby is too powerful to do anything about this."¹⁹⁸

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192. See *ACLU Legislative Agenda*, *supra* note 189.

193. *Id.*

194. *Id.* But see O.C.G.A. § 9-16-19(f)(4)(A)(ii) (2015).

195. See, e.g., O.C.G.A. § 9-16-19(f)(4)(A)(ii) (2015).

196. Key, *supra* note 175.

197. *Id.*

198. *Id.*

