

2022

SB 441: Criminal Records Responsibility Act

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LAW ENFORCEMENT OFFICERS AND AGENCIES

Georgia Bureau of Investigation: Amend Title 15 of the Official Code of Georgia Annotated, Relating to Courts in General, so as to Provide for the Reestablishment of the Criminal Case Data Exchange Board as an Advisory Board to the Council of Superior Court Clerks of Georgia; Provide for Membership, Selection of Officers, Meetings, and Duties of such Board; Provide for Continuation in Office of Current Members; Provide for Duties of the Council of Superior Court Clerks of Georgia; Provide for Transmission of Data to the Georgia Crime Information Center; Provide for Definitions; Provide for Implementation; Provide that a Superior Court Shall Ensure that its Operations do not Conflict with the Uniform Standards Issued by the Council of Superior Court Clerks of Georgia; Provide for Annual Reports by the Council Detailing Activities and Progress of Groups within the Criminal Case Data Exchange Board; Amend Title 35 of the Official Code of Georgia Annotated, Relating to Law Enforcement Officers and Agencies, so as to Provide the Georgia Bureau of Investigation with Original Jurisdiction to Investigate Election Fraud and Election Crimes; Provide the Georgia Bureau of Investigation with Subpoena Power to Further such Investigations; Provide for Penalty; Provide for Compliance with Data Transmission Requirements; Repeal Provisions Concerning the Criminal Case Data Exchange Board; Provide for Required Reports; Amend Chapter 25 of Title 50 of the Official Code of Georgia Annotated, Relating to the Georgia Technology Authority, so as to Provide for Release of Funds from the Technology Empowerment Fund, Subject to Certain Conditions; Provide for Legislative Findings and Intent; Provide for a Short Title; Provide for Related Matters; to Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 15-6-11, -50.2 (amended);
15-6-50.3 (new); 15-6-61 (amended);
15-7-5 (amended); 15-18-6, -66
(amended); 35-3-4 (amended); 35-3-4.5

	(new); 35-3-32, -33, -36 (amended); 35-6A-2, (amended), 35-6A-13, -14 (repealed); 50-25-7.1 (amended)
BILL NUMBER:	SB 441
ACT NUMBER:	717
GEORGIA LAWS:	2022 Ga. Laws 121
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	The Act contains two distinct components. First, the Act reforms Georgia's criminal records reporting system. Second, the Act grants the Georgia Bureau of Investigation authority to initiate investigations into election fraud.

History

On February 3, 2022, Lieutenant Governor Geoff Duncan (R) appeared on Georgia Public Broadcasting's Lawmakers telecast to discuss the new slate of bills introduced in the Senate.¹ Capitol correspondent Donna Lowry commented that one bill in particular seemed long overdue.² Initially, Senate Bill (SB) 441 was offered as a fix for the "alarming gaps" plaguing the state's judicial system.³ On April 26, 2022, the Atlanta Journal-Constitution (AJC) reported on one such "gap."⁴ Approximately 7 million entries in the Georgia Crime Information Center (GCIC) computer system are lacking a final disposition.⁵ This gap can lead to troubling results.⁶ For example, a

1. *Lawmakers Day 11* (GPTV broadcast, Feb. 3, 2022) (remarks by LG Geoff Duncan (R)), <https://www.gpb.org/television/show/lawmakers/season/52/lawmakers-day-11-020322> [<https://perma.cc/Z4VQ-BR7F>].

2. *Id.* (remarks by Donna Lowry, Capitol correspondent for GPB's Lawmakers).

3. Press Release, Office of the Lieutenant Governor, "Criminal Record Responsibility Act" Clears General Assembly (Apr. 4, 2022) [hereinafter Press Release], <https://ltgov.georgia.gov/press-releases/2022-04-04/criminal-record-responsibility-act-clears-general-assembly> [<https://perma.cc/9ZBC-LQY4>].

4. Editorial Board, Opinion, *A Confused Justice System. A Fearful Public.*, ATLANTA J.-CONST. (Apr. 26, 2022), <https://www.ajc.com/opinion/opinion-better-data-is-big-part-of-fighting-crime/CPAPOVYYP5BFLMIEZR7TPSUOJQ/> [<https://perma.cc/3YTA-AVHR>].

5. *Id.*

6. *See id.*

Fulton County Magistrate Court Judge granted bond to a man with an extensive criminal history after he was arrested for allegedly shooting a police officer.⁷ When Fulton County District Attorney Fani Willis publicly criticized the decision, the judge acknowledged that she had been unaware of the suspect's lengthy criminal history and subsequently raised the bond amount from \$400,000 to \$2 million.⁸

According to the AJC, the 7 million entries account for more than 25% of all criminal charges statewide.⁹ Fulton County alone is responsible for more than 1.5 million pending criminal charges.¹⁰ Only 40% of Fulton County's charges entered into the state's database have final outcomes listed.¹¹ Still, it was not until the AJC began reporting on the failure of the "status quo" that politicians moved to fix it.¹²

Fifty-five Senators sponsored SB 441, the Criminal Records Responsibility Act.¹³ The bill's hallmark was the creation of a Criminal Case Data Exchange Board tasked with "oversee[ing] a statewide electronic reporting process for criminal justice agencies, clerks of court, probation and parole supervision offices."¹⁴ However, SB 441 lost Democratic support when House Republicans added a provision to the bill granting the Georgia Bureau of Investigation (GBI) "original jurisdiction to investigate election fraud and election crimes."¹⁵ Prior to the amendment, the GBI could only respond to requests for investigations into elections from the attorney general or the Office of the Georgia Secretary of State, not initiate its own investigations.¹⁶

7. *Id.*

8. *Id.*

9. *Id.*

10. Editorial Board, *supra* note 4.

11. *Id.*

12. *Id.*

13. Georgia General Assembly, SB 441, Bill Tracking [hereinafter SB 441, Bill Tracking], <https://www.legis.ga.gov/legislation/61690> [https://perma.cc/HDS3-BSA6].

14. Press Release, *supra* note 3; see SB 441, as introduced, 2022 Ga. Gen. Assemb.

15. SB 441 (LC 47 1862S), p. 1, l. 13, 2022 Ga. Gen. Assemb.; Greg Bluestein, *New Georgia Law Allows GBI to Investigate Elections*, ATLANTA J.-CONST. (Apr. 27, 2022), <https://www.ajc.com/politics/new-georgia-law-allows-gbi-to-investigate-elections/2JDSHPY4U5FHNJDUKTEUKT35PA/> [https://perma.cc/Y9A7-WJMA].

16. Tammy Joyner, *Election Officials Warn of GBI's Impending Insertion in Election Process*, ATLANTA CIVIC CIRCLE (Apr. 8, 2022), <https://atlantaciviccircle.org/2022/04/08/election-officials-warn-of-gbis-impending-insertion-in-election-process/> [https://perma.cc/Z7V5-24AV].

The AJC characterized the amendment, which Republicans lifted from failed House Bill (HB) 1464, as “the latest Republican-led effort to change election rules after Democratic victories.”¹⁷ One year earlier, Governor Brian Kemp (R) signed SB 202, the Election Integrity Act of 2021, into law.¹⁸ Passed amidst former President Donald Trump’s (R) ongoing claims that “the Georgia election was stolen,” the omnibus bill changed absentee voting and early voting by limiting the use of ballot drop-boxes and implementing new voter ID requirements.¹⁹ A provision making it illegal to distribute food and water to people waiting in line to vote proved even more controversial.²⁰ Prominent Georgia-based corporations such as Delta and Coca-Cola openly criticized SB 202.²¹ The voting law gained national attention when Major League Baseball (MLB) moved its All-Star Game from Georgia to Colorado.²² MLB Commissioner Rob Manfred defended the league’s decision stating that “Major League Baseball fundamentally supports voting rights for all Americans and opposes restrictions to the ballot box.”²³ Undeterred by public pressure, Governor Kemp continued to claim that SB 202 would promote free, fair, and secure elections.²⁴

The debate over SB 441 played out in a similar fashion. Republicans claimed that new election rules will increase voters’ confidence in the electoral system.²⁵ Democrats, on the other hand, fear that the GBI’s

17. Bluestein, *supra* note 15; Adam Edelman, *Georgia Legislators Gut Controversial Elections Bill*, NBC NEWS (Mar. 30, 2022, 12:43 PM), <https://www.nbcnews.com/politics/georgia-lawmakers-gut-controversial-elections-bill-rcna22198> [<https://perma.cc/B6Q2-M62Q>]; Georgia General Assembly, HB 1464, Bill Tracking [hereinafter HB 1464, Bill Tracking], <https://www.legis.ga.gov/legislation/62422> [<https://perma.cc/7Z32-YMTC>].

18. Stephen Fowler, *What Does Georgia’s New Voting Law SB 202 Do?*, GPB NEWS, <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do> [<https://perma.cc/X2XU-P3AL>] (Mar. 27, 2021, 10:08 PM).

19. Patricia Murphy, Opinion, *Donald Trump Is Back, and He’s Still Lying About the Last Election*, ATLANTA J.-CONST. (July 26, 2022), <https://www.ajc.com/politics/opinion-donald-trump-is-back-and-hes-still-lying-about-the-last-election/WQPO7KPT35D6JHMEDXNGILNTBA/> [<https://perma.cc/92P8-PRLH>]; Alexandra Hutzler, *‘Baseball is Back’: Conservative Group Touts Georgia Voting Law, Slams MLB in New Ad*, NEWSWEEK (Oct. 29, 2021, 10:22 AM), <https://www.newsweek.com/baseball-back-conservative-group-touts-georgia-voting-law-slams-mlb-new-ad-1643866> [<https://perma.cc/3NF5-FXED>].

20. Hutzler, *supra* note 19.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. Bluestein, *supra* note 15.

“sweeping new powers” will further suppress voter turnout by intimidating voters with the threat of law enforcement.²⁶ In an impassioned floor speech, Representative Derek Mallow (D-163rd) argued that empowering the GBI to conduct voter fraud investigations “has nothing to do with election integrity or security” and more to do with Donald Trump’s “big lie.”²⁷ Nevertheless, Speaker of the House David Ralston (R-7th) insisted that SB 441 “[was] not about ‘sour grapes’ from the 2020 election.”²⁸

Bill Tracking of SB 441

Consideration and Passage by the Senate

Senator Bo Hatchett (R-50th) sponsored SB 441, with Senators Steve Gooch (R-51st), Butch Miller (R-49th), Russ Goodman (R-8th), Gloria Butler (D-55th), and many others on both sides of the aisle cosponsoring.²⁹ The Senate read the bill for the first time on February 3, 2022, and Lieutenant Governor Geoff Duncan (R) referred it to the Senate Judiciary Committee the same day.³⁰ The Senate Judiciary Committee favorably reported the bill by substitute on March 3, 2022.³¹ The substitute added the name of the bill, the Criminal Records Responsibility Act, and provided for uniform rules of transmission and quarterly reports to be generated by clerks and sent annually to the Governor and other high-ranking officials in the Georgia government.³² The Senate read the bill for the second time on March 4, 2022, and for the third and final time on March 8, 2022.³³ That same day, the Senate passed SB 441 unanimously by a vote of 53 to 0, with one senator abstaining.³⁴ As he announced the bill’s passage,

26. Video Recording of House Proceedings at 3 hr., 5 min., 8 sec. (Mar. 15, 2022, PM 2) [hereinafter House Video PM 2] (remarks by Rep. Derek Mallow (D-163rd)), https://www.youtube.com/watch?v=wjvuhwwlvKA&list=PLIgKJe7_xdLX5VWVrtpbG6FqYKcefKgW&index=39 [<https://perma.cc/5DDG-QWBL>].

27. *Id.* at 3 hr., 9 min., 46 sec.; see Bluestein, *supra* note 15.

28. Bluestein, *supra* note 15.

29. SB 441, Bill Tracking, *supra* note 13.

30. *Id.*; State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

31. State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

32. SB 441 (SCS), § 2, p. 2, l. 39, 2022 Ga. Gen. Assemb.; *id.* § 4, pp. 3–4, ll. 56–69.

33. State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

34. *Id.*; Georgia Senate Voting Record, SB 441, #599 (Mar. 8, 2022).

Lieutenant Governor Duncan thanked Senator Hatchett for his hard work “getting it across the finish line.”³⁵

Consideration and Passage by the House of Representatives

Representative James Burchett (R-176th) sponsored SB 441 in the House.³⁶ The House first read the bill on March 9, 2022, and Speaker of the House David Ralston (R-7th) referred it to the House Judiciary Non-Civil Committee on the same day.³⁷ On March 11, 2022, the House read SB 441 for the second time.³⁸ On April 4, 2022, during a House Judiciary Non-Civil Committee meeting, Representative Chuck Efstration (R-104th) proposed amending SB 441 to include a provision granting the GBI original jurisdiction to investigate Georgia elections.³⁹ Representative Josh McLaurin (D-51st) moved to strike the new GBI provision from the bill.⁴⁰ Representative McLaurin’s attempt failed, however, and the House Judiciary Non-Civil Committee favorably reported the bill by substitute.⁴¹ Later that day, the House read the bill for the third time and adopted the House Rules Committee substitute with no objections.⁴² The House Rules Committee substitute changed the Criminal Case Data Exchange Board’s deadline for “promulgat[ing] uniform standards for the creation and transmission of electronic criminal history data by and between local and state criminal justice agencies” from September 1, 2022, to January 1, 2023.⁴³ The substitute, however, required the board to “prepare a report on the board’s progress in developing uniform

35. Video Recording of Senate Proceedings at 2 hr., 10 min., 30 sec. (Mar. 8, 2022) (remarks by LG Geoff Duncan), https://www.youtube.com/watch?v=XQzBA3yBR-0&list=PLBFF_azbJKIwJbIXFXrkqijgnXRXz4MqG&index=26 [<https://perma.cc/D63W-V4ZJ>].

36. SB 441, Bill Tracking, *supra* note 13.

37. *Id.*; State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

38. State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

39. See Video Recording of House Judiciary Non-Civil Committee Meeting at 25 min., 43 sec. (Apr. 4, 2022) (remarks by Rep. Chuck Efstration (R-104th)), https://www.youtube.com/watch?v=VEeenVQwMeo&list=PLIgKJe7_xdLUj_4itZHDKzH-Fwh_HfEFb&index=387 [<https://perma.cc/3GME-UQXT>].

40. *See id.* at 28 min., 18 sec. (remarks by Rep. Josh McLaurin (D-51st)).

41. *Id.* at 28 min., 45 sec. (remarks by Chairperson James Burchett (R-176th)); State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

42. State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

43. Compare SB 441 (LC 47 1862S), § 5, p. 6, ll. 129–31, 2022 Ga. Gen. Assemb., with SB 441 (LC 34 5840S), § 5, p. 6, ll. 129–31, 2022 Ga. Gen. Assemb.

standards” by September 1, 2022.⁴⁴ On April 4, 2022, the House passed SB 441, as amended, by a vote of 98 to 69, with three House members abstaining.⁴⁵

Final Passage by the Senate

The Senate agreed to the House substitute and passed SB 441 by a vote of 33 to 22 on April 4, 2022, with a split along party lines.⁴⁶ The Senate sent the bill to Governor Brian Kemp (R) on April 7, 2022, and Governor Kemp signed it into law on April 27, 2022, as Act 717.⁴⁷ The Act became effective on July 1, 2022.⁴⁸

Bill Tracking of HB 1464

Consideration and Passage by the House

Representative James Burchett (R-176th) sponsored HB 1464—the bill which attempted to grant the GBI original jurisdiction to investigate election fraud and related crimes—along with Representatives John LaHood (R-175th), Lynn Smith (R-70th), Bonnie Rich (R-97th), John Corbett (R-174th), and Steven Meeks (R-178th).⁴⁹ The House first read HB 1464 on March 1, 2022, and Speaker of the House David Ralston (R-7th) referred it to the House Special Committee on Election Integrity.⁵⁰ On March 3, 2022, the House read the bill for the second time.⁵¹ The House Special Committee on Election Integrity favorably reported the bill by substitute on March 11, 2022.⁵² The substitute included several provisions relating to the conduct of elections, most important of which would give the GBI the ability to investigate election fraud without an invitation from other

44. SB 441 (LC 34 5840S), § 5, p. 6, ll. 134–40.

45. State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022; Georgia House of Representatives Voting Record, SB 441, #897 (Apr. 4, 2022).

46. State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022; Georgia Senate Voting Record, SB 441, #871 (Apr. 4, 2022).

47. State of Georgia Final Composite Status Sheet, SB 441, May 19, 2022.

48. SB 441, Bill Tracking, *supra* note 13.

49. HB 1464, Bill Tracking, *supra* note 17.

50. *Id.*; State of Georgia Final Composite Status Sheet, HB 1464, May 19, 2022.

51. State of Georgia Final Composite Status Sheet, HB 1464, May 19, 2022.

52. *Id.*

officials.⁵³ The substitute also added many provisions relating to the certification and validation of absentee ballots.⁵⁴ The House read HB 1464 for the third time on March 15, 2022, and passed the bill by a vote of 98 to 73, with two representatives abstaining.⁵⁵ Immediately after the vote, Representative Park Cannon (D-58th) motioned to reconsider HB 1464.⁵⁶ However, the motion failed by a vote of 70 to 101, again with two representatives not voting.⁵⁷

Consideration by the Senate

Senator Max Burns (R-23rd) sponsored HB 1464 in the Senate.⁵⁸ On March 16, 2022, the Senate read the bill for the first time and Lieutenant Governor Geoff Duncan (R) referred it to the Senate Ethics Committee that day.⁵⁹ On March 30, 2022, the Senate Ethics Committee favorably reported HB 1464 by substitute.⁶⁰ The substitute stripped all elements of the original proposal save one provision, “expanding how long voters can take off from their jobs to vote during the state’s early-voting period.”⁶¹ Later that day, the Senate read the bill for the second time.⁶² Ultimately, the bill died in the Senate without receiving a vote.⁶³

The Act

The Act amends several portions of the Official Code of Georgia Annotated, but it primarily focuses on enhancing and modernizing the state’s criminal case data system.⁶⁴ A major ongoing controversy lies in Section 10, where the Georgia General Assembly took language

53. HB 1464 (HCS), p. 1, ll. 14–16, 2022 Ga. Gen. Assemb.

54. *Id.* at § 8, pp. 13–23, ll. 320–574.

55. State of Georgia Final Composite Status Sheet, HB 1464, May 19, 2022; Georgia House of Representatives Voting Record, HB 1464, #747 (Mar. 15, 2022).

56. House Video PM 2, *supra* note 26, at 3 hr., 50 min., 18 sec. (remarks by Rep. Park Cannon (D-58th)).

57. Georgia House of Representatives Voting Record, HB 1464, #748 (Mar. 15, 2022).

58. HB 1464, Bill Tracking, *supra* note 17.

59. *Id.*; State of Georgia Final Composite Status Sheet, HB 1464, May 19, 2022.

60. State of Georgia Final Composite Status Sheet, HB 1464, May 19, 2022.

61. Edelman, *supra* note 17; HB 1464 (SCS), § 1, pp.1–2, ll. 6–20, 2022 Ga. Gen. Assemb.

62. State of Georgia Final Composite Status Sheet, HB 1464, May 19, 2022.

63. *Id.*

64. See 2022 Ga. Laws 121, § 1, at 122.

from the failed HB 1464 to grant the GBI original jurisdiction to investigate election crimes.⁶⁵

Section 1

Section 1 lays the groundwork for overhauling the state’s criminal case data system by declaring the current system “not adequate.”⁶⁶ The Act asserts that too many criminal charges have “languished for years” and that the incomplete system harms citizens and businesses alike.⁶⁷ Thus, the Act states that a more uniform system is required.⁶⁸

Section 2

Section 2 titles the Act the Criminal Records Responsibility Act.⁶⁹

Section 3

Section 3 revises subsection (a) of Code section 15-6-11 to require superior courts to follow the rules promulgated by the Criminal Case Data Exchange Board that are in effect as of June 30, 2022, rather than January 1, 2019.⁷⁰ The Act further provides that the standards adopted under paragraph (5) of subsection (h) of Code section 15-6-50.3 shall be submitted to the Council of Superior Court Judges and that “[t]he chief superior court judge of each judicial circuit shall assist the superior court clerk with the implementation of such uniform standards.”⁷¹

65. *Georgia Legislature Passes Bill Empowering Election Investigations*, DEMOCRACY DOCKET (July 1, 2022), <https://www.democracymarket.com/news-alerts/georgia-legislature-passes-bill-empowering-election-investigations/> [https://perma.cc/PDT8-QWFU]; 2022 Ga. Laws 121, § 10, at 128–29.

66. 2022 Ga. Laws 121, § 1, at 122.

67. *Id.*

68. *Id.*

69. 2022 Ga. Laws 121, § 2, at 122.

70. *Compare* O.C.G.A. § 15-6-11(a) (2021), *with* 2022 Ga. Laws 121 § 3, at 122 (codified at O.C.G.A. § 15-6-11(a) (2022)).

71. 2022 Ga. Laws 121 § 3, at 122 (codified at O.C.G.A. § 15-6-11(a) (2022)).

Section 4

Section 4 amends Code section 15-6-50.2 to require the Council of Superior Court Clerks of Georgia to issue uniform standards of operation for the Criminal Case Data Exchange Board that are consistent with the standards listed in Code section 15-6-50.3.⁷² Subsection (g) requires the Council to prepare an annual report detailing the board's activities and mail or electronically transmit the report to the Governor, Lieutenant Governor, Speaker of the House, and Chief Justice of the Georgia Supreme Court.⁷³

Section 5

Section 5 amends Article 2 of Chapter 6 by adding Code section 15-6-50.3.⁷⁴ Section 5 defines terms related to the Board and explicitly details membership requirements.⁷⁵ Specifically, it determines who the nineteen board members are and sets forth the membership terms in situations of death, resignation, or disqualification.⁷⁶ Section 5 also lists the Board's goals.⁷⁷ The section concludes by reaffirming that all data "collected or transmitted via the criminal case information exchange shall remain the responsibility of the [GCIC]."⁷⁸

Section 6

Section 6 revises subparagraph (a)(4)(B) of Code section 15-6-61.⁷⁹ The revision clarifies that the rules for the criminal case management system are promulgated by the Council of Superior Court Clerks of Georgia rather than the Criminal Case Data Exchange Board.⁸⁰ Section 6 also revises paragraph (18) of subsection (a) of Code section 15-6-61

72. 2022 Ga. Laws 121, § 4, at 123 (codified at § 15-6-50.2(f)).

73. § 15-6-50.2(g).

74. 2022 Ga. Laws 121, § 5, at 123–25 (codified at § 15-6-50.3).

75. *Id.*

76. 2022 Ga. Laws 121, § 5, at 123–24 (codified at § 15-6-50.3(c)–(e)).

77. 2022 Ga. Laws 121, § 5, at 124–25 (codified at § 15-6-50.3(h)).

78. 2022 Ga. Laws 121, § 5, at 125 (codified at § 15-6-50.3(i)).

79. 2022 Ga. Laws 121, § 6, at 125–26 (codified at § 15-6-61(a)(4)(B)).

80. Compare O.C.G.A. § 15-6-61(a)(4)(B) (2021), with 2022 Ga. Laws 121, § 6, at 125–26 (codified at O.C.G.A. § 15-6-61(a)(4)(B) (2022)).

to ensure that the court clerk sends the data to the GCIC in a form consistent with the standards of the Council of Superior Court Clerks of Georgia.⁸¹

Section 7

In Section 7, the Act revises Code section 15-7-5 to require state courts to follow the rules promulgated by the Criminal Case Data Exchange Board that are in effect as of June 30, 2022, rather than January 1, 2019.⁸² This revision further provides that the standards adopted under paragraph (5) of subsection (h) of Code section 15-6-50.3 shall be submitted to the Council of Superior Court Judges and that the chief state court judge of each county will “assist the state court clerk with the implementation of such uniform standards” of data submission.⁸³

Section 8

Section 8 of the Act alters district attorneys’ duties under Code section 15-18-6 by requiring that “disposition information is submitted [to the system] in accordance with subsection (g) of Code [s]ection 35-3-36 when a final disposition decision is made by a district attorney.”⁸⁴

Section 9

Section 9 of the Act amends Code section 15-18-66 to similarly require solicitors-general to, among other things, “ensure disposition information is submitted in accordance with subsection (g) of Code [s]ection 35-3-36 when a final disposition decision is made by a solicitor-general.”⁸⁵

81. 2022 Ga. Laws 121, § 6, at 125–26 (codified at O.C.G.A. § 15-6-61(a)(18) (2022)).

82. *Compare* O.C.G.A. § 15-7-5(a)(1) (2021), *with* 2022 Ga. Laws 121, § 7, at 126 (codified at O.C.G.A. § 15-7-5(a)(1) (2022)).

83. 2022 Ga. Laws 121, § 7, at 126 (codified at O.C.G.A. § 15-7-5(a)(2) (2022)).

84. 2022 Ga. Laws 121, § 8, at 126–27 (codified at § 15-18-6(10)).

85. 2022 Ga. Laws 121, § 9, at 127 (codified at § 15-18-66(a)(4)).

Section 10

Section 10 amends Code section 35-3-4 to allow the GBI to “[i]dentify and investigate violations of Chapter 2 of Title 21 involving elections which if established are sufficient to change or place in doubt the results of an election.”⁸⁶

Section 11

Section 11 creates Code section 35-3-4.5, which allows “the director, assistant director, or deputy director . . . to issue a subpoena, with the consent of the [a]ttorney [g]eneral, to compel the production of books, papers, or other tangible items, including records and documents contained within or generated by a computer” when investigating an election violation.⁸⁷

Section 12

Section 12 amends subsection (b) of Code section 35-3-32, revising the duties of the GCIC Council.⁸⁸ The duties now include assisting with “updating the policies under which the center is to be operated, to the extent that such policies are necessary to comply with the uniform standards promulgated pursuant to paragraph (5) of subsection (b) of Code [s]ection 15-6-50.3.”⁸⁹

Section 13

Section 13 adds paragraph (16.1) to subsection (a) of Code section 35-3-33, requiring the GCIC to issue quarterly reports to each superior court clerk in the state.⁹⁰ Additionally, upon request by any clerk, judge, or prosecuting attorney, the GCIC must provide “a report

86. 2022 Ga. Laws 121, § 10 at 129 (codified at § 35-3-4(a)(16)).

87. 2022 Ga. Laws 121, § 11, at 129 (codified at § 35-3-4.5(a)).

88. 2022 Ga. Laws 121, § 12, at 130 (codified at § 35-3-32).

89. § 35-3-32(b).

90. 2022 Ga. Laws 121, § 13, at 130 (codified at § 35-3-33(a)(16.1)).

detailing the number of open criminal charges, time expired restricted charges, and closed criminal charges for each county, respectively.”⁹¹

Section 14

Section 14 of the Act amends subsection (g) of Code section 35-3-36 to require that all criminal justice agencies in Georgia “transmit to the center the information described in Code [s]ection 35-3-33 within 30 days of the creation or receipt of such information.”⁹² Further, the instructions must be consistent with promulgated uniform standards.⁹³

Section 15

Section 15 of the Act revises Code section 35-6A-2 to clarify that, throughout the chapter, “the term ‘council’ means the Criminal Justice Coordinating Council.”⁹⁴

Section 16

Section 16 repeals Code section 35-6A-13, “relating to the Criminal Case Data Exchange Board, membership, and operation.”⁹⁵

Section 17

Section 17 repeals Code section 35-6A-14, “relating to the role of the Criminal Case Data Exchange Board and public access.”⁹⁶

Section 18

Section 18 amends Code section 50-25-7.1 by adding subsection (e) to authorize the “release [of] funds . . . for the purpose of installing or

91. § 35-3-33(a)(16.1).

92. 2022 Ga. Laws 121, § 14, at 130–31 (codified at § 35-3-36(g)).

93. § 35-3-36(g).

94. 2022 Ga. Laws 121, § 15, at 131 (codified at § 35-6A-2(b)).

95. 2022 Ga. Laws 121, § 16, at 131 (formerly found at O.C.G.A. § 35-6A-13 (2021)).

96. 2022 Ga. Laws 121, § 17, at 131 (formerly found at O.C.G.A. § 35-6A-14 (2021)).

upgrading criminal justice information systems” to allow criminal justice agencies to comply “with their respective obligations to provide information and data to the [GCIC].”⁹⁷

Analysis

SB 441 is a tale of two bills. On one hand, the bill proved that Democrats and Republicans could put aside their differences and band together for a common cause. In a press release after the Act’s passage, Lieutenant Governor Geoff Duncan (R) praised the Act for “reaffirming Georgia’s commitment to enhancing public safety.”⁹⁸ The press release failed to mention, however, that the Act passed the House and the Senate on pure party-line votes, proving that even when the two parties agree on a fundamental threat to our democracy, such as the waning trust in the electoral system, they fundamentally disagree on how to fix it.⁹⁹

Representative James Burchett (R-176th), the sponsor of HB 1464—the stalled bill that proposed granting the GBI original jurisdiction to investigate election fraud—acknowledged that elections have become “one of the most politicized issues across the country.”¹⁰⁰ He insisted, however, that Republicans are “try[ing] to find some middle ground.”¹⁰¹ But some of the media did not see it that way.¹⁰² News outlets claimed that SB 441 would empower the GBI “to hunt for election crimes and voter fraud,” characterizing the legislation as the “next wave of attempts to change election rules following Democrat Joe Biden’s narrow victory in Georgia in 2020.”¹⁰³ Democrats criticized the bill further, claiming it will “embolden

97. 2022 Ga. Laws 121, § 18, at 131–32 (codified at O.C.G.A. § 50-25-7.1(e) (2022)).

98. Press Release, *supra* note 3.

99. *See id.*; see Adam Edelman, *Georgia Legislators Pass Bill to Allow State Police to Investigate Voter Fraud*, NBC NEWS (Apr. 5, 2022, 12:14 PM), <https://www.nbcnews.com/politics/georgia-lawmakers-pass-bill-allowing-state-police-investigate-voter-fr-rcna22924> [https://perma.cc/B3CW-RVEG].

100. Edelman, *supra* note 17.

101. *Id.*

102. See Mark Niese, *Georgia Elections Bill Backs Ballot Inspections and GBI Investigations*, ATLANTA J.-CONST. (Mar. 9, 2022), <https://www.ajc.com/politics/georgia-elections-bill-backs-ballot-inspections-and-gbi-investigations/ANF3QPCOBFGAXI27OCCXY5BQBU/> [https://perma.cc/3Y8F-9P25].

103. Edelman, *supra* note 99; Niese, *supra* note 102.

conspiracy theorists” and is a “naked effort to appease former President Donald Trump’s lies about election fraud in Georgia.”¹⁰⁴

That charge proved more challenging to assert when Governor Brian Kemp (R) and Georgia Secretary of State Brad Raffensperger (R), both of whom became targets of former President Donald Trump after they rejected pressure to overturn the vote count in Georgia, came out in support of the bill.¹⁰⁵ According to Governor Kemp, expanding the GBI’s involvement was common sense.¹⁰⁶ Motivations aside, the real questions are whether the bill is necessary and whether it will have unintended consequences.

Georgia has a checkered past when it comes to voting rights.¹⁰⁷ As late as the 1960s, Georgia continued to disenfranchise voters of color through literacy tests.¹⁰⁸ After Congress passed the Voting Rights Act of 1965, outlawing racial discrimination in voting, the United States Attorney General still required Georgia to obtain “preclearance” before amending its voting laws.¹⁰⁹ In 2013, however, the Supreme Court’s decision in *Shelby County v. Holder* declared the preclearance requirement unconstitutional, opening the door for Republicans and Democrats to change voting laws to favor their respective parties.¹¹⁰ Often accused of passing laws that restrict voting rights, Republicans argue that many of the laws they championed ultimately expanded voting.¹¹¹ They point to the record turnouts for the 2020 presidential election and the Senate runoffs as proof.¹¹² But after those elections resulted in a “blue wave,” Democrats have accused Republicans of

104. Tammy Joyner, *Election Workers on Their Own When Facing Threats, Accusations of Misconduct*, ATLANTA CIVIC CIRCLE (Apr. 21, 2022), <https://atlantaciviccircle.org/2022/04/21/election-workers-on-their-own-when-facing-threats-accusations-of-misconduct/> [https://perma.cc/D7TE-JSYL]; Bluestein, *supra* note 15.

105. *See* Bluestein, *supra* note 15.

106. *Id.*

107. *See* Will Peebles, *For Nearly 60 Years, Georgia’s Voting Rights Laws Have Shifted with the Political Winds*, SAVANNAH MORNING NEWS, <https://www.savannahnow.com/in-depth/news/politics/elections/2022/08/23/georgia-election-2022-did-voting-law-violate-voting-rights-act/10072734002/> [https://perma.cc/RTQ9-FKZE] (Aug. 23, 2022, 7:00 AM).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *See id.*

turning back the clock to the days of Jim Crow with the passage of SB 202 and SB 441.¹¹³

Justification For Granting GBI Original Jurisdiction

SB 441 ushers in a dramatic shift in how the executive branch monitors election integrity.¹¹⁴ Previously, the secretary of state undertook election investigations, and the GBI would only provide auxiliary help upon request.¹¹⁵ This exact process played out after the 2020 presidential election when the GBI assisted Secretary of State Raffensperger with investigations into counterfeit ballots, signature mismatches on ballots, and illegal ballot harvesting.¹¹⁶ After concluding its investigation, the GBI uncovered no evidence of fraud.¹¹⁷

The GBI's findings—or lack thereof—beg the question: Is change necessary if the existing process prevailed amidst one of the most contentious elections in the nation's history? According to Douglas County Elections Director Milton Kidd, the answer is no.¹¹⁸ Director Kidd is “unaware of any situation where the general public felt that the GBI should have been involved in an elections case to which they were precluded from.”¹¹⁹

Senator Ben Watson (R-1st) views the issue differently.¹²⁰ Although careful not to insinuate any wrongdoing by election officials in previous elections, Senator Watson believes the “erosion of the trust” amongst the Republican electorate is so great that it will take proactive measures like SB 441 to restore it.¹²¹ According to Senator Watson, not only do laws like SB 441 potentially discourage bad actors from engaging in inappropriate behavior, but they also protect against

113. Peebles, *supra* note 107.

114. *See* Joyner, *supra* note 16.

115. *Id.*

116. *See* Bluestein, *supra* note 15.

117. *Id.*

118. *See* Niese, *supra* note 102.

119. Telephone Interview with Milton Kidd, Douglas County Elections Director (May 31, 2022) [hereinafter Kidd Interview] (on file with the Georgia State University Law Review).

120. *See* Telephone Interview with Sen. Ben Watson (R-1st) (June 1, 2022) [hereinafter Watson Interview] (on file with the Georgia State University Law Review).

121. *Id.*

instances where election directors do not ask the GBI to investigate potentially inappropriate behavior.¹²²

Ultimately, Georgia Republicans believe the electoral system is so broken that the legislature is incapable of fixing it on its own.¹²³ They are confident, however, in the GBI's ability to restore faith in the electorate.¹²⁴ In the words of Representative James Burchett (R-176th), "If we can't trust the highest law enforcement in the state, who can we trust?"¹²⁵

Potential For Unintended Consequences

Director Kidd does not question the integrity of the GBI.¹²⁶ Instead, he questions the unintended consequences that could result from the GBI "inject[ing] themselves" into a "highly volatile situation" like a contested election.¹²⁷ Although SB 441 makes no specific reference to poll workers, Vasu Abhiraman, senior policy counsel for the ACLU of Georgia, fears the new law could result in "election workers becoming ensnared in a politically motivated dragnet and facing a GBI probe."¹²⁸

Prior to the passage of SB 441, the Georgia State Elections Board initially reviewed allegations of election worker malfeasance.¹²⁹ Then, at its discretion, the Georgia State Elections Board could forward the investigation to the secretary of state or attorney general's office.¹³⁰ Now, with the GBI launching its own investigations, the fear of criminal prosecution is driving poll workers "away from the election process."¹³¹ As Director Kidd explained, due to long hours and the stress of the job, it is not uncommon for workers to "forget their training" and "do things that the general public may not

122. *Id.*

123. See Mark Niese, *Georgia House Approves Elections Bill to Allow for More Investigations*, ATLANTA J.-CONST. (Mar. 15, 2022), <https://www.ajc.com/politics/georgia-house-approves-elections-bill-allowing-for-more-investigations/2RLL2O7IAFFBDE2TA2V5CWYJOQ/> [<https://perma.cc/3MU3-XCCU>].

124. Niese, *supra* note 102 ("[S]upporters of the measure said [GBI involvement] would improve election security and ease concerns about election integrity from Republican voters.").

125. Niese, *supra* note 123.

126. Kidd Interview, *supra* note 119.

127. *Id.*

128. Joyner, *supra* note 104.

129. *Id.*

130. *Id.*

131. Kidd Interview, *supra* note 119.

understand.”¹³² Moreover, the potential for innocent mistakes that may be viewed as malicious is compounded by the fact that many poll workers are temporary and have little time to familiarize themselves with “untested new laws, which are often confusing and can be interpreted in a variety of ways.”¹³³

SB 441’s opponents are concerned that it fails to clearly outline poll workers’ protections when someone levies charges against them.¹³⁴ Instead, individual counties decide how far they are willing to go to support their poll workers.¹³⁵ Director Kidd and Janine Eveler, the director of the Cobb Board of Elections and Registration, expressed their counties’ willingness to stand behind election workers who “unintentionally misstep.”¹³⁶ Director Eveler noted that election workers in Cobb County will have “legal support as long as election law allows it.”¹³⁷ Finally, despite repeated requests from Director Kidd, the Office of the Georgia Secretary of State has not provided him with “the criteria that an office that is accused of malfeasance is going to be judged upon.”¹³⁸ In his opinion, this uncertainty will “have a chilling effect on voters participating in the process.”¹³⁹ Still, other election officials like Joseph Kirk, the election supervisor for Bartow County, are willing to take “a wait-and-see approach.”¹⁴⁰ According to Kirk, poll workers should not be concerned with whether the secretary of state or the GBI investigates them because “[a]s long as we’re doing our jobs properly, we should be okay.”¹⁴¹ Senator Watson echoed this sentiment, noting that the GBI’s involvement in the electoral process should encourage “more appropriate behavior.”¹⁴²

Vasu Abhiraman of the ACLU of Georgia disagrees that election workers can rely on county officials “to be their backstop if they do

132. *Id.*

133. Joyner, *supra* note 104.

134. *See id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Fredreka Schouten & Kelly Mena, *Georgia House Passes Sweeping Bill with New Election Policing Powers*, CNN POLS., <https://www.cnn.com/2022/03/15/politics/georgia-house-election-fraud-bill/index.html> [<https://perma.cc/E7PE-T2QA>] (Mar. 15, 2022, 11:15 PM).

140. Joyner, *supra* note 16.

141. *Id.*

142. Watson Interview, *supra* note 120.

something wrong.”¹⁴³ Director Kidd also notes that even when poll workers perform their duties correctly, they may still face dangers.¹⁴⁴ During the 2020 presidential election, Shaye Moss and her mother, Ruby Freeman, were accused of engaging in ballot fraud by former President Donald Trump and his attorney, Rudy Giuliani.¹⁴⁵ After Moss received death threats, Fulton County’s elections office requested police protection for Moss and her mother.¹⁴⁶ Director Kidd trained Moss when he worked for Fulton County and remains in contact with her.¹⁴⁷ So, when he warns of the dangers of increasing the temperature in an already heated political environment, he does so with firsthand knowledge of poll workers who “had their lives ruined by simply trying to perform the essential functions of their job.”¹⁴⁸

Comparison to Florida Law

Although Secretary of State Raffensperger claims that “Georgia has become the center of the election universe,” it was not the first state to enact an “election police force bill.”¹⁴⁹ In April 2022, Florida Governor Ron DeSantis (R) “embrac[ed] a top priority of Republicans” when he signed a bill “dedicated to pursuing voter fraud and other election crimes.”¹⁵⁰ Because Governor DeSantis is a possible 2024 presidential candidate, critics questioned his motivations, claiming the law “underscor[ed] Trump’s lingering influence on Republican policymaking.”¹⁵¹

Florida’s law contains three provisions that are unique and could make it more susceptible to partisan abuse than SB 441. First, Florida’s law establishes the Office of Election Crimes and Security within the

143. Joyner, *supra* note 104.

144. *See id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Joyner, *supra* note 104; Kelly Mena, *Georgia Passes Bill Giving State Law Enforcement Agency Power to Investigate Elections*, CNN POLS., <https://www.cnn.com/2022/04/05/politics/georgia-passes-election-investigation/index.html> [<https://perma.cc/372A-XAP6>] (Apr. 5, 2022, 1:15 PM).

150. Anthony Izaguirre, *Florida Governor Signs Bill Creating Election Police Unit*, ASSOCIATED PRESS (Apr. 25, 2022), <https://apnews.com/article/2022-midterm-elections-covid-health-crime-florida-5fad57fac85e0944b6e8eeb423b195b7> [<https://perma.cc/XF7U-X7NY>].

151. *Id.*

Florida Department of State.¹⁵² Second, unlike the GBI, which usually assists local law enforcement agencies with investigating major crimes, the agency tasked with enforcing Florida’s law will focus solely on election fraud.¹⁵³ Finally, the law requires Governor DeSantis “to appoint a group of special officers from the Florida Department of Law Enforcement who would be tasked with pursuing the election law violations.”¹⁵⁴ Despite the laws’ differences, voting rights groups fear both laws will ultimately “deter people from participating in the democratic process” because neither law makes it clear who could be a target of an investigation—election officials, voters, or both.¹⁵⁵

Conclusion

Although SB 441 started as a bipartisan attempt at criminal justice reform, it ended as a contentious debate over election integrity. Unfortunately, the adage “time will tell” may not provide the answer as to which party was right. If the GBI never launches an investigation into election fraud, Republicans will argue that the mere presence of the GBI thwarted any attempts of malfeasance. Democrats, however, will argue that no malfeasance ever existed and that the law prevented legal participation in the democratic process.

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152. *Id.*

153. *See id.*; see O.C.G.A. § 35-3-4(a) (2022) (describing the GBI’s various “powers and duties” beyond investigating elections).

154. Izaguirre, *supra* note 150.

155. Fredreka Schouten, *Florida House Passes Bill Creating Election Police Force*, CNN POLS., <https://www.cnn.com/2022/03/09/politics/florida-bill-election-police-force/index.html> [https://perma.cc/85DX-AQYR] (Mar. 9, 2022, 7:23 PM) (quoting Daniel Griffith, policy director at Secure Democracy USA); Bluestein, *supra* note 15.