



2011 Legislative and Case Law Update

Georgia Public Safety Training Center

1000 Indian Springs Drive

Forsyth, GA 31029

www.GPSTC.org



This material provides a general overview of the subjects covered and is not legal advice or other professional service. Both statutory and case law change regularly and are different in each state. Public safety personnel should always contact an attorney when determining a course of action.

*The material in this presentation was compiled by Instructor Walter J. Marchant, Jr., Georgia Police Academy, GPSTC.
(478) 993-4623 or wmarchant@gpstc.org*



HB 14 - to change the term "victim" to the term "accuser"

House Bill 14 – Amends several statutes in Titles 16 and 17 relating to criminal law and criminal procedure, respectively, so as to change the term "victim" to the term "accuser" in the context of a number of statutes making reference to circumstances where there has not yet been a criminal conviction;





HB 14 - to change the term "victim" to the term "accuser"

To amend Titles 16 and 17 of the Official Code of Georgia Annotated, relating to criminal law and criminal procedure, respectively, so as to change the term "victim" to the term "accuser" in the context of a number of statutes making reference to circumstances where there has not yet been a criminal conviction; to provide for related matters; to repeal conflicting laws; and for other purposes.

The following statutes are effected:



HB 14 - to change the term "victim" to the term "accuser"

OCGA 16-5-90. Stalking

OCGA 16-5-91. Aggravated Stalking

OCGA 16-5-93. Victims entitled to notice of release from custody of person arrested for and charged with stalking or aggravated stalking

OCGA 16-6-1. Rape

OCGA 16-12-100.3. Obscene telephone contact with a child



HB 14 - to change the term "victim" to the term "accuser"

OCGA 17-4-20.1. Investigation of and arrests in incidents of family violence

OCGA 19-13-1. 'Family Violence' defined

OCGA 16-15-4. Unlawful acts; penalties

OCGA 17-6-1.1 Before whom offenses are bailable; when person charged with misdemeanor may be bailed

OCGA 17-10-15. HIV testing upon arrest, verdict, or plea of guilty or nolo contendere to AIDS transmitting crime; failure or refusal to submit to test; test results



HB 14 - to change the term "victim" to the term "accuser"

OCGA 17-16-4. Disclosure of evidence by prosecution and defendants

OCGA 31-22-9.1 Definitions of AIDS and HIV related terms



HB 40 - This Act shall be known and may be cited as "Chief's Law." Enacts OCGA 10-1-202.1 so that antifreeze sold in this state that is manufactured after July 1, 2012, containing more than 10 percent ethylene glycol shall include denatonium benzoate at a minimum of 30 parts per million and a maximum of 50 parts per million as an aversive agent to render the antifreeze unpalatable.





Wife Murders Husbands in Georgia

Lynn Turner (born **Julia Lynn Womack**; July 13, 1968 – August 30, 2010), was convicted of murder. She was convicted on March 24, 2007, for the second of two murders she committed by poisoning her victims with **antifreeze**. Her second trial lasted for twelve days. Before her arrest, she worked as a 911 operator. Ms. Turner died in prison on August 30, 2010. The cause of death was an apparent suicide by toxic overdose of blood pressure medication.





A BILL TO BE ENTITLED AN ACT

To provide a short title; to amend Part 3 of Article 8 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to antifreeze, so as to provide that antifreeze sold in this state containing more than 10 percent ethylene glycol shall include denatonium benzoate as an aversive agent to render it unpalatable; to provide for applicability; to provide for limitations on liability under certain circumstances; to repeal conflicting laws; and for other purposes.



BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as "Chief's Law."

SECTION 2.

Part 3 of Article 8 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to antifreeze, is amended by adding a new Code section to read as follows:

"10-1-202.1.

(a) Antifreeze sold in this state that is manufactured after July 1, 2012, containing more than 10 percent ethylene glycol shall include denatonium benzoate at a minimum of 30 parts per million and a maximum of 50 parts per million as an aversive agent to render the antifreeze unpalatable.



(b) The requirements of subsection (a) of this Code section shall apply only to manufacturers, packagers, distributors, recyclers, or sellers of antifreeze and shall apply to recyclers notwithstanding the provisions of Code Section 10-1-208.1.

(c) The requirements of subsection (a) of this Code section shall not apply to the sale of a motor vehicle, as defined in Code Section 40-1-1, that contains antifreeze or to wholesale containers containing 55 gallons or more of antifreeze.



(d) A manufacturer, packager, distributor, recycler, or seller of antifreeze that is required to contain denatonium benzoate pursuant to this Code section shall not be liable to any person for personal injury, death, property damage, damage to the environment including without limitation natural resources, or economic loss that results solely from the inclusion of denatonium benzoate in the antifreeze; provided, however, that such limitation on liability shall only be applicable if denatonium benzoate is included in antifreeze in the concentrations mandated by subsection (a) of this Code section. Such limitation on liability shall not apply to a particular liability to the extent that the cause of that liability is unrelated to the inclusion of denatonium benzoate in antifreeze.



(e) In any criminal prosecution under this part or civil action for damages relating to the requirements of this part, a distributor or seller of antifreeze who is not the manufacturer, packager, or recycler of such antifreeze and who sells or distributes antifreeze that is labeled as containing denatonium benzoate shall not be criminally responsible for, and shall be immune from civil liability for, failure to include denatonium benzoate in such labeled package or container of antifreeze; provided, however, that if such distributor or seller of antifreeze has actual knowledge that the labeled product does not contain denatonium benzoate in the concentrations mandated by subsection (a) of this Code section, such distributor or seller shall not receive the immunity provided by this subsection.”



SECTION 3.

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



House Bill 123 - now defines a peace officers firearm in OCGA 16-10-33 to include the officers “stun gun” or “taser”.





OCGA § 16-10-33. Remove or attempt to remove firearm, chemical spray, or baton from person acting within course of employment

The passing of HB 123 now defines a firearm as also a “stun gun” and “tasers”.

(a) It shall be unlawful for any person knowingly to remove or attempt to remove a firearm, chemical spray, or baton from the possession of another person if:



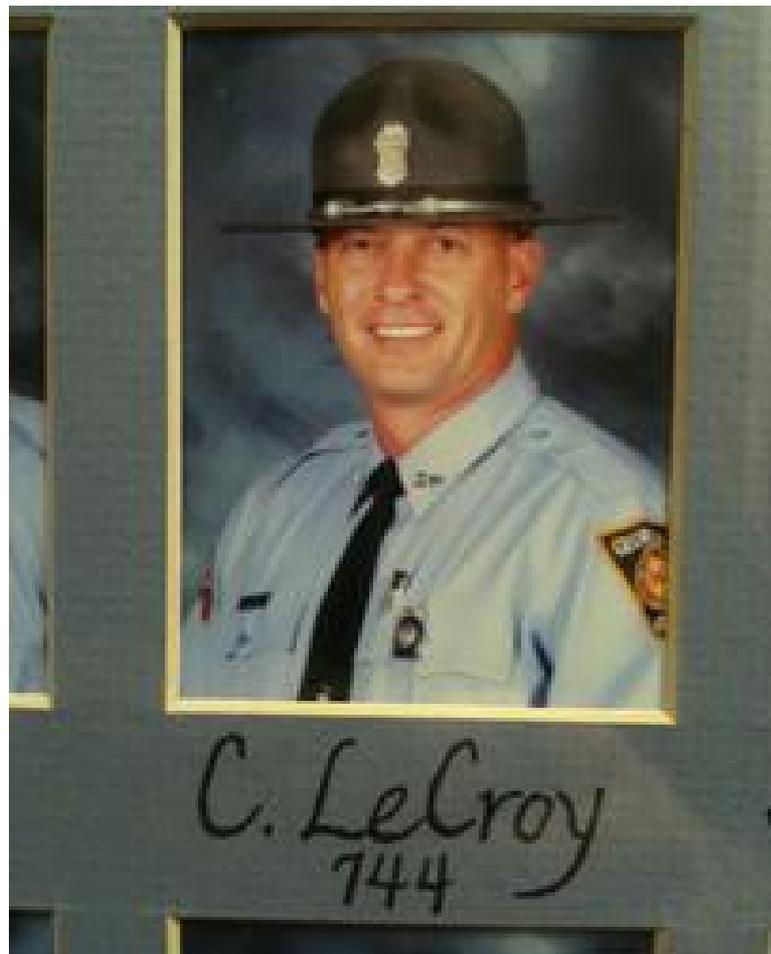
OCGA § 16-10-33: (cont'd):

- (1) The other person is lawfully acting within the course and scope of employment; and
- (2) The person has knowledge or reason to know that the other person is employed as:
 - (A) A peace officer as defined in paragraph (8) of Code Section 35-8-2;
 - (B) ...etc



State Medical Insurance Coverage for Family Members

The State Senate has unanimously approved legislation that would allow the surviving spouses of some state workers killed in the line of duty to continue to collect health insurance benefits. The bill was inspired by Georgia State Trooper Chadwick LeCroy, who was gunned down during a traffic stop last year, and his widow would qualify for coverage if the measure becomes law. It passed in the Georgia Senate 54-0.





OCGA 45-18-9 - relating to the right of continuation of health coverage for a spouse or dependent of a deceased public employee

(e) If any employee of this state is killed while acting within the scope of his or her employment or receives bodily injury while acting within the scope of his or her employment that directly results in death thereafter, eligible dependents may continue coverage, provided that:

(1) The deceased employee was the primary or principal beneficiary of any contract or contracts for health insurance established under this part;



OCGA 45-18-9: (cont'd):

- (2) At the time of death, the employee included his or her eligible dependents under such contract or contracts for health insurance;
- (3) At the time of death, the employee maintained continuous coverage during the period between injury and death;
- (4) The eligible dependents agree to pay the contributions to the cost of such coverage; and



OCGA 45-18-9: (cont'd):

(5) The eligible dependents pay such contributions in accordance with the rules and regulations promulgated and adopted by the board governing the continuance, discontinuance, and resumption of coverage by such eligible dependents; ...etc



HB 101 - Provide for Safer Bicycle Riding for Bicyclists and Motoring Public





OCGA 40-1-1. Definitions

Add New Paragraph:

"(6.1) 'Bicycle lane' means a portion of the roadway that has been designated by striping, pavement markings, or signage for the exclusive or preferential use of persons operating bicycles. Bicycle lanes shall at a minimum, unless impracticable, be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials.



Article 3

Driving on Right Side of Roadway, Overtaking and Passing, Following Too Closely

Add new paragraph:

OCGA 40-6-55. Notwithstanding other provisions of this chapter relating to operating a vehicle on a roadway, where a bicycle lane is provided on the roadway, the operator of a motor vehicle shall yield to a person operating a bicycle in a bicycle lane.



HB 101 - Provide for Safer Bicycle Riding for Bicyclists and Motoring Public

Add new paragraph:

OCGA 40-6-56. As used in this Code section, the term 'safe distance' means not less than three feet. Notwithstanding any provision of this article to the contrary, when feasible, the operator of a motor vehicle, when overtaking and passing a bicycle that is proceeding in the same direction on the roadway, shall leave a safe distance between such vehicle and the bicycle and shall maintain such clearance until safely past the overtaken bicycle.”



Part 1

Bicycles and Play Vehicles

OCGA 40-6-291. Traffic laws apply to persons riding bicycles

The provisions of this chapter that apply to vehicles, but not exclusively to motor vehicles, shall apply to bicycles, except as provided in this Code section and except that the penalties prescribed in subsection (b) of Code Section 40-6-390, subsection (c) of Code Section 40-6-391, and subsection (a) of Code Section 40-6-393 shall not apply to persons riding bicycles. (*See amendment on next slide*)



HB 101 - Provide for Safer Bicycle Riding for Bicyclists and Motoring Public

OCGA 40-6-291. (cont'd):

Amended Paragraph: Notwithstanding the provisions of Code Section 40-6-50, any person operating a bicycle may ride upon a paved shoulder; provided, however, that such person shall not be required to ride upon a paved shoulder. Any person operating a bicycle may signal a right turn with his or her right arm and hand extended horizontally or with his or her left hand and arm extended upward.



OCGA 40-6-294. Riding on roadways and bicycle paths

(a) As used in this Code section, the term 'hazards to safe cycling' includes, but shall not be limited to, surface debris, rough pavement, drain grates which are parallel to the side of the roadway, parked or stopped vehicles, potentially opening car doors, or any other objects which threaten the safety of a person operating a bicycle.



HB 101 - Provide for Safer Bicycle Riding for Bicyclists and Motoring Public

(b) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, except when turning: Turning left or avoiding; Avoiding hazards to safe cycling, when the; The lane is too narrow to share safely with a motor vehicle, when traveling; Traveling at the same speed as traffic, or while exercising; Exercising due care when passing a standing vehicle or one proceeding in the same direction; or. There is a right turn only lane and the person operating the bicycle is not turning right; provided, however, that every person operating a bicycle away from the right side of the roadway shall exercise reasonable care and shall give due consideration to the other applicable rules of the road. As used in this subsection, the term 'hazards to safe



HB 101 - Provide for Safer Bicycle Riding for Bicyclists and Motoring Public

cycling' includes, but is not limited to, surface debris, rough pavement, drain grates which are parallel to the side of the roadway, parked or stopped vehicles, potentially opening car doors, or any other objects which threaten the safety of a person operating a bicycle.

(c) Persons riding bicycles upon a roadway shall not ride more than two abreast except on bicycle paths, bicycle lanes, or parts of roadways set aside for the exclusive use of bicycles, or when a special event permit issued by a local governing authority permits riding more than two abreast. Whenever a usable bicycle path has been provided adjacent to a roadway and designated for the exclusive use of bicycle riders, then the appropriate governing authority may require



HB 101 - Provide for Safer Bicycle Riding for Bicyclists and Motoring Public

that bicycle riders use such bicycle path and not use those sections of the roadway so specified by such local governing authority. The governing authority may be petitioned to remove restrictions upon demonstration that the bicycle path has become inadequate due to capacity, maintenance, or other causes.

(d) Bicycle paths subject to the provisions of subsection (c) (d) of this Code section shall at a minimum be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials, and such bicycle paths shall



HB 101 - Provide for Safer Bicycle Riding for Bicyclists and Motoring Public

provide accessibility to destinations equivalent to the use of the roadway. Any person operating a bicycle in a bicycle lane shall ride in the same direction as traffic on the roadway.

(e) Electric assisted bicycles as defined in Code Section 40-1-1 may be operated on bicycle paths.



HB 114 - Relating to Abandoned Motor Vehicles





OCGA 40-11-1. Definitions

(3) 'Owner' or 'owners' means the registered owner, the owner as recorded on the title, lessor, lessee, security interest holders, and all lien holders as shown on the records of the Department of Revenue **or the records from the vehicle's state of registration.**



HB 114 - Added Sections 2 and 3.

SECTION 2.

Said article is further amended by revising subparagraph (B) of paragraph (3) of Code Section 40-11-5, relating to lien foreclosures on abandoned motor vehicles, as follows:

"(B) Regardless of the court in which the affidavit required by this paragraph is filed, the fee for filing such affidavit shall only be \$10.00 per motor vehicle upon which a lien is asserted. Notwithstanding any law to the contrary, the affidavit filing fee shall not be taxed nor shall any additional fee or surcharge be assessed for such filing."



SECTION 3.

Said article is further amended by adding a new Code section to read as follows:

"40-11-10.

(a) As used in this Code section, the term 'contents' means only the following:

HB 114 - Relating to abandoned motor vehicles



OCGA 40-11-10. (cont'd):

- (1) Prescription drugs or eyewear;
- (2) Personal documents, including, but not limited to, birth records, passports, or death records;
- (3) Firearms;
- (4) Medical devices;
- (5) Child safety restraining devices; or
- (6) Keys, except the keys to the abandoned motor vehicle.

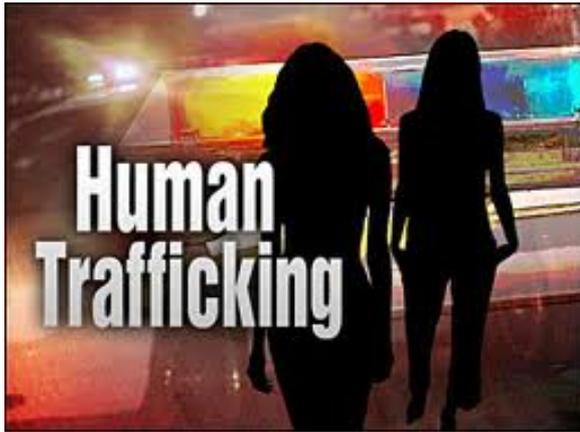
HB 114 - Relating to abandoned motor vehicles



OCGA 40-11-10. (cont'd):

(b) Any person who stores an abandoned motor vehicle pursuant to the provisions of this article shall allow the owner of such vehicle to retrieve the contents from such vehicle, and the owner of a motor vehicle shall be allowed to retrieve contents and any other item from such vehicle if such retrieval occurs within the first 30 days that such vehicle is stored.

HB 200 - discourage human trafficking



**Stop
Human
Trafficking
Now**

House Bill 200 - To discourage trafficking of persons for labor or sexual servitude and provide greater protections to persons subject to such crimes; to increase the penalties for trafficking of persons for labor or sexual servitude





HB 200 - discourage human trafficking

OCGA 16-5-46, relating to trafficking of persons for labor or sexual servitude, as follows:

"16-5-46.

(a) As used in this Code section, the term:

(1) 'Coercion' means:

(B) Exposing or threatening to expose any fact or information **or disseminating or threatening to disseminate any fact or information** that would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;



HB 200 - discourage human trafficking

(D) Providing a controlled substance, as such term is defined by Code Section 16-13-21, to such person **for the purpose of compelling such person to engage in labor or sexual servitude against his or her will;** or

(E) Causing or threatening to cause financial harm to any person or using financial control over any person.

(2) 'Deception' means:



(4) 'Performance' shall have the same meaning as set forth in Code Section 16-12-100.

(5) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section 16-12-100.

(6) 'Sexual servitude' means:

(A) Any sexually explicit conduct **or performance involving sexually explicit conduct** for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or



HB 200 - discourage human trafficking

(B) Any sexually explicit conduct **or performance involving sexually explicit conduct** which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

(d) The age of consent for sexual activity or the accused's lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.



HB 200 - discourage human trafficking

(e) The sexual history or history of commercial sexual activity of a person alleged to have been trafficked or such person's connection by blood or marriage to an accused in the case or to anyone involved in such person's trafficking shall be excluded from evidence if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.



SECTION 2.

Said title is further amended by revising subsections (a) and (b) of Code Section 16-6-13, relating to the penalties for violating Code Sections 16-6-9 through 16-6-12, as follows:

All penalties were increased and paragraph 2 was added:

(2) A person convicted of any of the offenses enumerated in Code Sections 16-6-10 through 16-6-12 when such offense involves the conduct of a person under the age of 16 years shall be guilty of a felony and shall be punished by imprisonment for a period of not less than ten nor more than 30 years, a fine of not more than \$100,000.00, or both.



SECTION 3.

Said title is further amended by adding a new Code section to Article 1 of Chapter 3, relating to responsibility as a defense to criminal prosecutions, to read as follows:

"16-3-6.

(a) As used in this Code section, the term:

- (1) 'Coercion' shall have the same meaning as set forth in Code Section 16-5-46.
- (2) 'Deception' shall have the same meaning as set forth in Code Section 16-5-46.
- (3) 'Sexual crime' means prostitution, sodomy, solicitation of sodomy, or masturbation for hire as such offenses are proscribed in Chapter 6 of Title 16.



HB 200 - discourage human trafficking

(4) 'Sexual servitude' shall have the same meaning as set forth in Code Section 16-5-46

(b) A person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.

(c) A defense based upon any of the provisions of this Code section shall be an affirmative defense."



HB 200 - discourage human trafficking

(b) A person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.

(c) A defense based upon any of the provisions of this Code section shall be an affirmative defense."



HB 203 - relating to the employment and training of peace officers



House Bill 203 - Amends OCGA 35-8-7.1, relating to the authority of the Georgia POST Council to refuse certificate to applicant or to discipline certified peace officer or exempt peace officer.





HB 203 - relating to the employment and training of peace officers

HB 203 - Adds two new subsections to OCGA 35-8-7.1 which read as follows:

"(e) Upon initiating an investigation of a peace officer for possible disciplinary action or upon disciplining a peace officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such peace officer of the investigation or disciplinary action. In the case of an investigation, it shall be sufficient to identify the peace officer and state that a disciplinary investigation has been opened. Notice of the initiation of an investigation shall be sent by priority mail. If the investigation is completed (cont'd):



OCGA 35-8-7.1. Authority of council to refuse to grant certificate or to discipline peace officer; restoration and reissuance of certificates.

without any further action, notice of the termination of such investigation shall also be provided to the head of the employing agency. In the case of disciplinary action, the notice shall identify the officer and state the nature of the disciplinary action taken. The notice of disposition shall be sent only after the action of the council is deemed final. Such notice shall be sent by priority mail.

(f) If the certification of a peace officer is suspended or revoked by either the executive director or council, then the council shall notify the head of the law enforcement agency that employs the peace officer; the district attorney of the judicial circuit in which such law enforcement agency is (cont'd):



OCGA 35-8-7.1. Authority of council to refuse to grant certificate or to discipline peace officer; restoration and reissuance of certificates.

is located; and the solicitor of the state court, if any, of the county in which such law enforcement agency is located. It shall be sufficient for this notice to identify the officer and state the length of time, if known, that the officer will not have powers of arrest. Such notice shall be sent by priority mail."



SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

Senate Bill 95 - Amends OCGA 35-8-8, relating to the authority when investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency.





SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

OCGA 35-8-8. Qualifications for peace officers (cont'd):

(6) Possess good moral character as determined by investigation under procedure established by the council **and fully cooperate during the course of such investigation;**

(c)(1) For purposes of this subsection, the term 'employment related information' means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.



SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

OCGA 35-8-8. Qualifications for peace officers (cont'd):

(2) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate, or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.



SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

OCGA 35-8-8. Qualifications for peace officers (cont'd):

(3) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents to a requesting law enforcement agency, including retrieving and redacting costs, provided such amount shall not exceed \$25.00 or \$0.25 per page, whichever is greater. No employer shall be required to prepare or create any document w not already in the employer's possession at the time a request for employment related information is received. Any employment related information provided pursuant to this subsection that is not subject to public disclosure while in the possession of a prior employer shall continue to be privileged and protected from public disclosure as a record of the requesting law enforcement agency.



SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

OCGA 35-8-8. Qualifications for peace officers (cont'd):

(4) No employer or law enforcement agency shall be subject to any civil liability for any cause of action by virtue of disclosing complete and accurate information to a law enforcement agency in good faith and without malice pursuant to this subsection. In any such cause of action, malice or bad faith shall only be demonstrated by clear and convincing evidence. Nothing contained in this subsection shall be construed so as to affect or limit rights or remedies provided by federal law.



SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

OCGA 35-8-8. Qualifications for peace officers (cont'd):

(5) Before taking final action on an application for employment based, in whole or in part, on any unfavorable employment related information received from a previous employer, a law enforcement agency shall inform the applicant, candidate, or peace officer that it has received such employment related information and that the applicant, candidate, or peace officer may inspect and respond in writing to such information. Upon the applicant's, candidate's, or peace officer's request, the law enforcement agency shall allow him or her to inspect the employment related information and to submit a written response to such information.....etc.



SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

OCGA 35-8-8. Qualifications for peace officers (cont'd):

(6) Nothing contained in this Code section shall be construed so as to require any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall not be a violation of this Code section for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. (cont'd):



SB 95 - Peace Officer candidate pre-employment background investigation, employers required to provide information

OCGA 35-8-8. Qualifications for peace officers (cont'd):

(cont'd): An action against such person to require disclosure on the grounds that the claim of self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located."



HB 266 - Carrying of weapons by Constables assigned to Magistrate Courts

House Bill 266 - Amends OCGA 16-11-130, relating to exemptions from Code Sections 16-11-126 through 16-11-127.2, concerning carrying weapons, so as to authorize constables to be able to carry weapons under certain circumstances;





HB 266 - Carrying of weapons by Constables assigned to Magistrate Courts

Code Section 16-11-130 of the Official Code of Georgia Annotated, relating to exemptions from Code Sections 16-11-126 through 16-11-127.2, concerning carrying weapons, is amended by revising subsection (a) as follows:

"(a) Code Sections 16-11-126 through 16-11-127.2 shall not apply to or affect any of the following persons if such persons are employed in the offices listed below or when authorized by federal or state law, regulations, or order:

(15) Clerks of the superior courts; **and**

(16) Constables employed by a magistrate court of this state."



SB 88 - increase age requirements for use of child restraint systems

Senate Bill 88 - Relating to equipment and inspection of motor vehicles, so as to increase age requirements for use of child restraint systems; to provide for related matters; to provide for an effective date;





SB 88 - increase age requirements for use of child restraint systems

Chapter 8 of Title 40 of the Official Code of Georgia Annotated, relating to equipment and inspection of motor vehicles, is amended by revising of subsections (b) and (d) of Code Section 40-8-76, relating to safety belts and child restraint systems, as follows:

"(b)(1) Every driver who transports a child under **eight** years of age in a passenger automobile, van, or pickup truck, other than a taxicab as defined by Code Section 33-34-5.1 or a public transit vehicle as defined by Code Section 16-5-20, shall, while such motor vehicle is in motion and operated on a public road, street, or highway of this state, provide for the proper restraint of such child in a child passenger restraining system.....etc..



SB 88 - increase age requirements for use of child restraint systems

OCGA 40-8-76, relating to safety belts and child restraint systems

(2) Upon a first conviction of an offense under this subsection, the defendant shall be punished by a fine of not more than \$50.00, except in the case of a child who is **six or seven** years of age, if the defendant shows to the court having jurisdiction of the case that a child passenger restraining system meeting the applicable requirements of this subsection has been purchased by him or her after the time of the offense and prior to the court appearance, the court may waive or suspend the fine for such first conviction. This exception shall apply until January 1, **2012**. ..etc.....



SB 88 - increase age requirements for use of child restraint systems

OCGA 40-8-76, relating to safety belts and child restraint systems

"(d) The provisions of this Code section shall not apply to buses, as defined in paragraph (7) of Code Section 40-1-1, used in the transport of children over four years of age until July 1, **2012**, provided that the bus is operated by a licensed or commissioned child care facility, has a current annual transportation safety inspection certificate as required by the appropriate licensing body, and has evidence of being inspected for use by a child care facility. If the bus is not a school bus, as defined in paragraph (55) of Code Section 40-1-1, or a multifunction school activities bus, as defined in 49 C.F.R. 571.3(B), each child over four years of age and under six eight years of age shall be properly restrained...etc.....



SB 88 - increase age requirements for use of child restraint systems

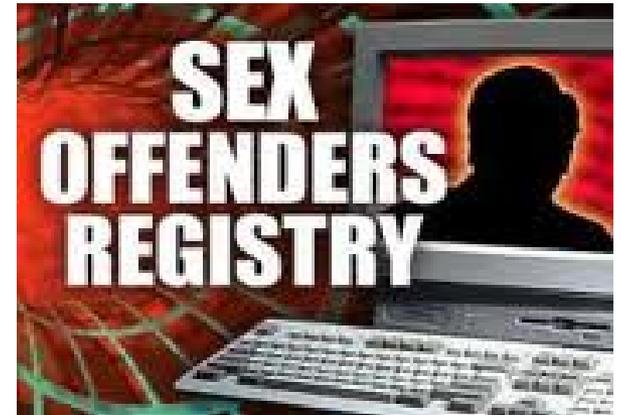
OCGA 40-8-76, relating to safety belts and child restraint systems

(cont'd): If the bus is not a school bus, as defined in paragraph (55) of Code Section 40-1-1, or a multifunction school activities bus, as defined in 49 C.F.R. 571.3(B), each child over four years of age and under **eight** years of age shall be properly restrained by a **child passenger restraining system**. Multifunction school activities buses, as defined in 49 C.F.R. 571.3(B), shall not be required to transport children five years of age or older in a child passenger restraining system."



HB 162 - sexual offender prohibited from photographing a minor without permission of the minor's parent

House Bill 162 - persons who are required to register on the state sexual offender registry are prohibited from photographing a minor without the permission of the minor's parent.





HB 162 - sexual offender prohibited from photographing a minor without permission of the minor's parent

OCGA 42-1-18

Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to the sexual offender registration review board, is amended by revising Code Section 42-1-18, relating to the definition of "photograph," photographing a minor without consent of parent or guardian prohibited, and penalty, as follows:



HB 162 - sexual offender prohibited from photographing a minor without permission of the minor's parent

- (a) As used in this Code section, the term 'photograph' means to take any picture, film or digital photograph, motion picture film, videotape, or similar visual representation or image of a person.
- (b) No **person required to register as a sexual offender pursuant to Code Section 17 42-1-12** shall intentionally photograph a minor without the consent of the minor's parent or guardian.
- (c) Any **person** who knowingly violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature."



HB 53 – Detective and Security Businesses

House Bill 53 - To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to change certain provisions regarding certain activities requiring a license; to clarify that persons certified by the Georgia Peace Officer Standard and Training Council are excluded from certain training provisions and regulations of Chapter 38 of Title 43 and may be excluded from licensure under certain circumstances;





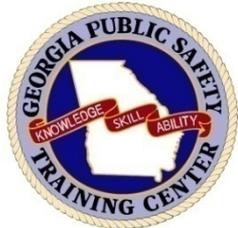
HB 53 – Detective and Security Businesses

OCGA 43-38-14. Exceptions

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by revising Code Section 43-38-14, relating to exceptions and local regulation regarding operators of private detective businesses and private security businesses, as follows:

"43-38-14.

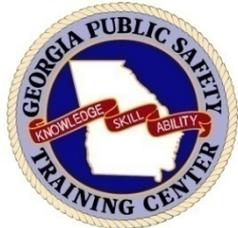
(a) This chapter shall not apply to:



OCGA 43-38-14. Exceptions

(b) 'Any person with a valid peace officer certification issued pursuant to Chapter 8 of Title 35, the 'Georgia Peace Officer Standards and Training Act,' who is employed by or works as an independent contractor for a licensed:

(1) Private security business shall be exempt from any training provisions required by this chapter for such business and shall be deemed to have satisfied all board rules and regulations relative to training; and



OCGA 43-38-14. Exceptions

(2) Private detective business or private security business shall be exempt from further licensure under this chapter and shall be permitted to carry a firearm without obtaining any weapons permit from the board; provided, however, that such licensed private detective business or private security business shall be required to register such employee or independent contractor with the board.



The Illegal Immigration Reform and Enforcement Act of 2011

(HB 87)



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

On June 27, 2011, Chief United States District Judge Thomas Thrash, Jr., Northern District of Georgia, put on hold two core parts of HB 87 which would have gone into effect July 1. His ruling **blocks police from asking about immigration status during investigations of criminal violations.**

Investigations into someone going a few miles over the speed limit, rolling a stop sign, or driving without proper equipment could be mere pretexts to investigate someone's immigration status.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Also blocked by Judge Thrash's ruling is the provision that would have criminalized **the acts of transporting or housing an undocumented immigrant or inducing an undocumented immigrant to come to Georgia.**

"State and local law enforcement officers and officials have no authorization to arrest, detain or prosecute anyone based upon sections 7 and 8 of HB 87 while this injunction remains in effect," Thrash ruled.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

A part of the law that will still go into effect is a provision that workers convicted of using fake identification to get jobs could be sentenced to 15 years in prison and fined \$250,000. The law will also require people applying for public benefits to provide certain types of identification.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

The following slides concerning ***The Illegal Immigration Reform and Enforcement Act of 2011*** (House Bill 87) were prepared and assembled by Director J. Dale Mann, GPSTC, which were compiled from information from the Prosecuting Attorney's Council of Georgia, Attorney Chuck Olsen.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Introduced by Rep. Matt Ramsey of the 72nd
- Approved 5/13/11; Effective 7/1/11, except Section 18 effective 1/1/12
- HB 87 is a long and complex piece of legislation that was inspired by legislation enacted in Arizona in 2010 (SB 1070, as amended). However, while it may have been inspired by the Arizona legislation, HB 87 is significantly different in many respects. Where the two laws are similar, references to the Arizona law and the reported cases interpreting it are included.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Section 1 is the short title - the "Illegal Immigration Reform and Enforcement Act of 2011."
- Sections 2 through 4 deal with enforcement of the obligations of state and local governments and their subordinate agencies to verify that employees, contractors and others they deal with comply with Federal immigration laws. While the provisions do not include direct criminal penalties,



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- they do require reports and make verification of immigration status a matter within the jurisdiction of the state Dept. of Labor, thus making prosecution for false statements and false swearing possible. Because these sections do not directly impact law enforcement or prosecution, they are not included in this summary.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Section 5 creates a new OCGA §16-9-121.1, “aggravated identity fraud,” which makes it a felony for any person (regardless of immigration status) to “willfully and fraudulently” use identifying information of another person for the purpose of seeking employment. Identifying information is already defined by OCGA §16-9-120(4). This provision is based on 18 USC § 1208A and will be part of the Criminal Code dealing with Identity Fraud. OCGA §16-9-120...



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Section 5 amends OCGA §16-9-126 and establishes the penalties for violating the new OCGA §16-9-121.1 which would be imprisonment for 1 - 15 years and/or a fine of \$250,000.00. Sentences must run consecutive to any other sentence.
- Section 6 amends OCGA §16-9-128 and applies exemptions currently applicable to identity fraud to the new O.C.G.A. §16-9-121.1.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Section 7 creates three new crimes: OCGA §§16-11-200 through 16-11-202. All three provisions use the same the definition of “illegal alien,” which is an element of all three offenses. The definition provides that the federal government must “verify” that the alien is “in the United States in violation of federal immigration law.” This requirement appears to limit application of the new three criminal provisions to situations where the officer has received confirmation from the



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- federal government that the foreign nationals are, in fact, in the United States illegally. How evidence of verification is to be admitted is covered by a new OCGA §16-11-203. OCGA §16-11-200 makes it illegal for any person, who is committing another crime, to knowingly and intentionally transport or move another person who is an illegal alien in a motor vehicle “for the purpose of furthering (the illegal alien’s) illegal presence in the United States.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- This provision appears to be based in part on Ariz. Rev. Stat. §13-2929, which was upheld by the United States District Court in *United States v. Arizona*, 703 F. Supp. 2d 980, 1003-1004 (D. Ariz. 2010), *aff'd in part*, 2011 U.S. App. Lexis 7419 (9th Cir. 2011). It is also similar to language found in 8 U.S.C. § 1324. Both OCGA § 16-11-200 and the Arizona statute require that the accused be engaged in the commission of another criminal offense (the “predicate offense”) at the time he or she is also knowingly and intentionally transporting the illegal alien(s).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Since all traffic offenses are misdemeanors, it appears this language is intended to act as a guard against profiling so that an officer cannot base a stop on the mere fact that the officer observed four people in a vehicle who the officer thinks look like foreigners. See also new OCGA §17-5-100(d). Instead the officer must have probable cause to believe that the driver of the vehicle has committed another crime (speeding, weaving, running a stop sign, etc.). Compare Ariz. Rev. Stat.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- §13-2929(C). As worded, in order to prosecute someone under 16-11-200, the state would have to plead the predicate offense in the indictment or accusation and then prove it beyond a reasonable doubt before the trier of fact could consider whether the accused was illegally transporting an illegal alien. The state also must prove that the accused was doing so for the purpose of “furthering the illegal presence of the alien in the United States”



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- OCGA §16-11-200 makes it a felony to transport 8 or more illegal aliens (Arizona makes it a felony to transport 10 or more), punishable by imprisonment for 1 - 5 years, a fine of \$5,000.00 to \$20,000.00 or both. It is also a felony (same penalty) regardless of the number, if the transporting is for the purpose of making a profit or “receiving anything of value.” Transporting a lesser number of illegal aliens is a misdemeanor. Under Federal law, it is a misdemeanor



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- unless the crime is an illegal alien who is transported for the purpose of committing another crime or the illegal alien is transported for commercial purposes. 8 U.S.C. §1324(a)(2). OCGA §16-11-200(d) contains several exceptions that apply to: (a) government employees who are acting within the scope of their duties; (b) people who transport illegal aliens to law enforcement, court or administrative proceedings; (c) employers who transport “an employee who was lawfully hired;” or “people providing privately funded social services.”



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- OCGA §16-11-201 makes it a crime to “knowingly conceal, harbor or shield an illegal alien from detection in any place” if the accused is at the same time committing another criminal offense, which would include a traffic offense. *Id.*, (b). This provision appears to be based on language contained in Ariz. Rev. Stat. §13-2929(A)(2) as well as 8 USC 1324(a)(1)(A)(iii) and was upheld by the District Court. *United States v. Arizona*, 703 F. Supp. 2d at 1003-1004. As noted above for OCGA §16-11-200, the state has to plead and prove the predicate offense in order to charge someone with violating this offense.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- While it does not require proof that the illegal alien is being harbored, etc., for the purpose of furthering the alien's illegal presence, it requires knowledge that the individual is an illegal alien within the meaning of the definition. The penalty for violations of OCGA §16-11-201 is a misdemeanor unless 8 or more illegal aliens are at the same location at the same time, in which case it is a felony, punishable by imprisonment for 1 to 5 years, a fine of \$5,000.00 to \$20,000.00 or both. It is also a felony (same penalty) regardless of the number, if the purpose is to make a profit or "receiving anything of value."



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- This provision appears to be based in part on Ariz. Rev. Stat. §13-2929, which was upheld by the United States District Court in *United States v. Arizona*, 703 F. Supp. 2d 980, 1003-1004 (D. Ariz. 2010), *aff'd in part*, 2011 U.S. App. Lexis 7419 (9th Cir. 2011). It is also similar to language found in 8 U.S.C. § 1324. Both OCGA § 16-11-200 and the Arizona statute require that the accused be engaged in the commission of another criminal offense (the “predicate offense”) at the time he or she is also knowingly and intentionally transporting the illegal alien(s).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Since all traffic offenses are misdemeanors, it appears this language is intended to act as a guard against profiling so that an officer cannot base a stop on the mere fact that the officer observed four people in a vehicle who the officer thinks look like foreigners. See also new OCGA §17-5-100(d). Instead the officer must have probable cause to believe that the driver of the vehicle has committed another crime (speeding, weaving, running a stop sign, etc.). Compare Ariz. Rev. Stat.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- §13-2929(C). As worded, in order to prosecute someone under 16-11-200, the state would have to plead the predicate offense in the indictment or accusation and then prove it beyond a reasonable doubt before the trier of fact could consider whether the accused was illegally transporting an illegal alien. The state also must prove that the accused was doing so for the purpose of “furthering the illegal presence of the alien in the United States”



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- OCGA §16-11-200 makes it a felony to transport 8 or more illegal aliens (Arizona makes it a felony to transport 10 or more), punishable by imprisonment for 1 - 5 years, a fine of \$5,000.00 to \$20,000.00 or both. It is also a felony (same penalty) regardless of the number, if the transporting is for the purpose of making a profit or “receiving anything of value.” Transporting a lesser number of illegal aliens is a misdemeanor. Under Federal law, it is a misdemeanor



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- unless the crime is an illegal alien who is transported for the purpose of committing another crime or the illegal alien is transported for commercial purposes. 8 U.S.C. §1324(a)(2). OCGA §16-11-200(d) contains several exceptions that apply to: (a) government employees who are acting within the scope of their duties; (b) people who transport illegal aliens to law enforcement, court or administrative proceedings; (c) employers who transport “an employee who was lawfully hired;” or “people providing privately funded social services.”



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- OCGA §16-11-201 makes it a crime to “knowingly conceal, harbor or shield an illegal alien from detection in any place” if the accused is at the same time committing another criminal offense, which would include a traffic offense. *Id.*, (b). This provision appears to be based on language contained in Ariz. Rev. Stat. §13-2929(A)(2) as well as 8 USC 1324(a)(1)(A)(iii) and was upheld by the District Court. *United States v. Arizona*, 703 F. Supp. 2d at 1003-1004. As noted above for OCGA §16-11-200, the state has to plead and prove the predicate offense in order to charge someone with violating this offense.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- While it does not require proof that the illegal alien is being harbored, etc., for the purpose of furthering the alien's illegal presence, it requires knowledge that the individual is an illegal alien within the meaning of the definition. The penalty for violations of OCGA §16-11-201 is a misdemeanor unless 8 or more illegal aliens are at the same location at the same time, in which case it is a felony, punishable by imprisonment for 1 to 5 years, a fine of \$5,000.00 to \$20,000.00 or both. It is also a felony (same penalty) regardless of the number, if the purpose is to make a profit or "receiving anything of value."



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- **OCGA §16-11-201(a)(1) defines “harboring” or “harbors” as “conduct that tends to substantially help an illegal alien to remain in the United States in violation of federal law” which means that it will also be necessary to prove the federal law that was violated.**



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- A person is not harboring an illegal alien if they: (a) provide services to “infants, children or victims of a crime; (b) provide emergency medical services or private funded social services; or are a criminal defense attorney representing a defendant. Also exempted are persons who conceal crime victims and witnesses or “holds an illegal alien in a jail, prison, or other detention facility.”



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- OCGA §16-11-202(d). OCGA §16-11-202 appears to be derived from Ariz. Rev. Stat. §13-2929(A)(3) which also was upheld. *United States v. Arizona*, 703 F. Supp. 2d at 1003-1004. OCGA §16-11-202 makes it illegal for a person to induce, entice or assist an illegal alien to enter Georgia if, at the time of the offense, the accused is committing another crime, and they know the illegal alien is an illegal alien as defined. The penalty for conviction of a first offense is a misdemeanor; subsequent convictions are felonies, punishable by imprisonment for 1 - 5 years; a fine of \$5,000.00 to \$20,000.00 or both.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- Section 8 adds a new OCGA §17-5-100 that, on the surface, appears to allow a peace officer who stops an individual based on probable cause that the individual has committed a crime, including a state traffic offense, to verify that the person is lawfully in the United States. While this provision is new to the Georgia Code, the United States Supreme Court has held that state and local officers may verify the immigration status of individuals who are lawfully detained. *Muehler v. Mena*, 544 U.S. 93, 100-101 (2005). This provision somewhat similar to *Ariz. Rev. Stat. §11-1051*, which was enjoined by the District Court, *United States v. Arizona*, 703 F. Supp. 2d at 993-99, but it contains significant differences.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

- The first difference is that under the Arizona law, officers are required to check immigration status any time they make a stop; **HOWEVER**, our new Code section §17-5-100 spells out when an officer may check the immigration status of the person who has been lawfully stopped. OCGA §17-5-100(b) applies only to cases where the officer has probable cause to believe that the person has committed a “violation of state or federal law;” a violation of a city or county ordinance does not qualify. Id., (a)(1).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Second, the officer is only authorized to run an immigration check if the person does not have certain specified documents, one of which is a valid foreign driver's license under OCGA §40-5-21(a)(2). Other documents include: (a) valid identification cards driver's licenses from Georgia or other states that require verification of lawful presence prior to issuing a driver's license or identification card (currently only Washington, New Mexico, Illinois and, possibly, Utah do not verify lawful presence prior to issuing licenses or ID cards); valid federal identification documents; or any "secure and verifiable document" under OCGA §50-36-2 (see below).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

OCGA §17-5-100(d). (This is language similar to that found in 2010 HB 94, 177 and SB 205.) Only if the conditions specified above are met and the officer “receives verification that such suspect is an illegal alien,” then the officer can detain the person or transport the person to “any authorized state or federal detention facility.” OCGA §17-5-100(e).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Under state law, a person arrested on state charges is either given a citation, if the offense is a traffic offense (or similar charge) and released or is taken to a county or municipal jail to post bond or to await appearance before a magistrate. **There is no federal law that authorizes state or local officers to take individuals arrested on federal charges to a federal facility without the approval of the US Attorney or a federal judge.**

See Fed. R. Crim. Proc. 41(d)(2)(A). In net effect, this subsection doesn't authorize state or local officers to do anything they couldn't do before passage of HB 87.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Subsections (e) and (f) contain immunity provisions but these would apply on in a state law claims; they provide no protection from 42 USC § 1983 actions.

(Violation of Civil Rights of Citizen or “other persons within the jurisdiction”)

Section 9 appears to be based on several parts of the Arizona legislation. Subsection (a) is a statement of legislative intent. Subsection (b)(1) is derived in part from Ariz. Rev. Stat. §11-1051(E) and authorizes state and local agencies and prosecutors to cooperate with federal agencies on immigration matters.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Subsection (c) is similar to part of OCGA § 17-5-100 but contains a clause limiting the authority to arrest and transport illegal aliens to a federal detention facility to situations “when authorized by federal law.” See discussion of OCGA § 17-5-100 above and Fed. R. Crim. Proc. 41(d)(2)(A). Subsection (d) allows state and local officers to make arrests for immigration law violations of other federal offenses **but only “[w]hen authorized by federal law.”** This appears to limit application of this provision only to those officers who have been authorized by the Federal government to make arrests for immigration offenses under 8 USC § 1357(g) (Section 287(g) of the Immigration and Naturalization Act).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 10 applies only to the Georgia State Patrol and amends existing OCGA. §35-2-14 to **require the Commissioner of Public Safety to try to get at least ten state troopers trained to enforce Federal immigration law.** (The commissioner shall annually designate appropriate **no fewer than ten peace officers to apply to** be trained pursuant to the memorandum of understanding ...)The current law does not contain a minimum number but simply authorizes the Commissioner to have troopers trained at Federal expense.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 11 affects the Criminal Justice Coordinating Council. It directs the Council to use grant funds to encourage state and local agencies to participate in the “287(g) . . . or similar agreement[s] for the purpose of enforcing federal immigration law.” This section is subject to funding.

Section 12 requires private employers with more than 10 employees to use the Federal e-verify program. It conditions issuance of city and county business licenses, occupational tax certificate on the filing of an affidavit of compliance.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 14 deals with reimbursement of jails for holding state prisoners and provides a financial incentive to jails that participate, or attempt to participate, in the 287(g) program.

Sections 15, 16, 17 and 18 deal with state and local agency employer verification. Section 18 includes a misdemeanor of a high an aggravated nature for the head of a public agency to violate OCGA §50-36-1 or to interfere in the implementation of its requirements.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 19 has an impact on law enforcement because its definition of a “secure and verifiable document” is incorporated into OCGA §17-5-100. It creates a new OCGA §50-36-2 that deals public benefit programs. It was amended so that it does not apply to valid foreign driver's license under OCGA §40-5-21(a)(2) or to the issuance of temporary driver's license to foreign driver's by the Dept. of Driver Services under OCGA §40-5-21.1.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

It also does not apply to court proceedings or to attorneys representing criminal defendants. Also exempted are “[i]nstances when a federal law mandates acceptance of a document.” The Attorney General is required to promulgate a listing of acceptable documents by Aug. 1, 2011, post it on his website and to update it annually.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 20 creates an "Immigration Enforcement Review Board" that is empowered to hear complaints that state or local government agencies are not complying with state immigration laws and to impose sanctions. Section 20.1 directs the Dept. of Agriculture to study the guest worker needs in the state's farming industries.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

OCGA §16-11-201(a)(1) defines “harboring” or “harbors” as “conduct that tends to substantially help an illegal alien to remain in the United States in violation of federal law” which means that it will also be necessary to prove the federal law that was violated.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

A person is not harboring an illegal alien if they: (a) provide services to “infants, children or victims of a crime; (b) provide emergency medical services or private funded social services; or are a criminal defense attorney representing a defendant. Also exempted are persons who conceal crime victims and witnesses or “holds an illegal alien in a jail, prison, or other detention facility.”



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

OCGA § 16-11-202(d). OCGA § 16-11-202 appears to be derived from Ariz. Rev. Stat. §13-2929(A)(3) which also was upheld. *United States v. Arizona*, 703 F. Supp. 2d at 1003-1004. OCGA §16-11-202 makes it illegal for a person to induce, entice or assist an illegal alien to enter Georgia if, at the time of the offense, the accused is committing another crime, and they know the illegal alien is an illegal alien as defined. The penalty for conviction of a first offense is a misdemeanor; subsequent convictions are felonies, punishable by imprisonment for 1 - 5 years; a fine of \$5,000.00 to \$20,000.00 or both.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 8 adds a new OCGA §17-5-100 that, on the surface, appears to allow a peace officer who stops an individual based on probable cause that the individual has committed a crime, including a state traffic offense, to verify that the person is lawfully in the United States. While this provision is new to the Georgia Code, the United States Supreme Court has held that state and local officers may verify the immigration status of individuals who are lawfully detained. *Muehler v. Mena*, 544 U.S. 93, 100-101 (2005). This provision is somewhat similar to *Ariz. Rev. Stat. §11-1051*, which was enjoined by the District Court, *United States v. Arizona*, 703 F. Supp. 2d at 993-99, but it contains significant differences.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

The first difference is that under the Arizona law, officers are required to check immigration status any time they make a stop; **HOWEVER**, our new Code section §17-5-100 spells out when an officer **may** check the immigration status of the person who has been lawfully stopped. OCGA §17-5-100(b) applies only to cases where the officer has probable cause to believe that the person has committed a “violation of state or federal law;” a violation of a city or county ordinance does not qualify. Id., (a)(1).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Second, the officer is only authorized to run an immigration check if the person does not have certain specified documents, one of which is a valid foreign driver's license under OCGA §40-5-21(a)(2). Other documents include: (a) valid identification cards driver's licenses from Georgia or other states that require verification of lawful presence prior to issuing a driver's license or identification card (currently only Washington, New Mexico, Illinois and, possibly, Utah do not verify lawful presence prior to issuing licenses or ID cards); valid federal identification documents; or any "secure and verifiable document" under OCGA §50-36-2 (see below).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

In addition, the officer **cannot** run an immigration check if the officer obtains “[o]ther information as to the suspect's identity that is sufficient to allow the peace officer to independently identify the suspect.” *Id.*, (b)(6). Unlike the Arizona statute, it does not authorize detention of a person until an immigration check is completed, which is one of the features that was enjoined. *United States v. Arizona*, 703 F. Supp. 2d at 987. *The race, color or national origin of the suspect cannot be considered, “except to the extent permitted by the Constitutions of Georgia and of the United States.”*



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

OCGA §17-5-100(d). (This is language similar to that found in 2010 HB 94, 177 and SB 205.) Only if the conditions specified above are met and the officer “receives verification that such suspect is an illegal alien,” then the officer can detain the person or transport the person to “any authorized state or federal detention facility.” OCGA §17-5-100(e).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Under state law, a person arrested on state charges is either given a citation, if the offense is a traffic offense (or similar charge) and released or is taken to a county or municipal jail to post bond or to await appearance before a magistrate. **There is no federal law that authorizes state or local officers to take individuals arrested on federal charges to a federal facility without the approval of the US Attorney or a federal judge.** See Fed. R. Crim. Proc. 41(d)(2)(A). In net effect, this subsection doesn't authorize state or local officers to do anything they couldn't do before passage of HB 87.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Subsections (e) and (f) contain immunity provisions but these would apply on in a state law claims; they provide no protection from 42 USC § 1983 actions. (Violation of Civil Rights of Citizen or “other persons within the jurisdiction”)

Section 9 appears to be based on several parts of the Arizona legislation. Subsection (a) is a statement of legislative intent. Subsection (b)(1) is derived in part from Ariz. Rev. Stat. §11-1051(E) and authorizes state and local agencies and prosecutors to cooperate with federal agencies on immigration matters.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Subsection (c) is similar to part of OCGA § 17-5-100 but contains a clause limiting the authority to arrest and transport illegal aliens to a federal detention facility to situations “when authorized by federal law.” See discussion of OCGA § 17-5-100 above and Fed. R. Crim. Proc. 41(d)(2)(A). Subsection (d) allows state and local officers to make arrests for immigration law violations of other federal offenses **but only “[w]hen authorized by federal law.”** This appears to limit application of this provision only to those officers who have been authorized by the Federal government to make arrests for immigration offenses under 8 USC § 1357(g) (Section 287(g) of the Immigration and Naturalization Act).



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 10 applies only to the Georgia State Patrol and amends existing OCGA. §35-2-14 to **require the Commissioner of Public Safety to try to get at least ten state troopers trained to enforce Federal immigration law.** (The commissioner shall annually designate appropriate **no fewer than ten peace officers to apply to** be trained pursuant to the memorandum of understanding ...)The current law does not contain a minimum number but simply authorizes the Commissioner to have troopers trained at Federal expense.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 11 affects the Criminal Justice Coordinating Council. It directs the Council to use grant funds to encourage state and local agencies to participate in the “287(g) . . . or similar agreement[s] for the purpose of enforcing federal immigration law.” This section is subject to funding.

Section 12 requires private employers with more than 10 employees to use the Federal e-verify program. It conditions issuance of city and county business licenses, occupational tax certificate on the filing of an affidavit of compliance.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

The penalty for a public official violating this provision is a misdemeanor; filing a false affidavit is a violation of OCGA §16-10-20. The Attorney General is authorized to investigate and prosecute violations.

Section 13 amends current OCGA. §42-4-14 to require local jails or detention facilities to attempt to verify the immigration status of any foreign national who is booked into the facility. Current law requires immigration checks only on prisoners who are charged with a felony, DUI, driving without a license and misdemeanors of a high an aggravated nature.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 14 deals with reimbursement of jails for holding state prisoners and provides a financial incentive to jails that participate, or attempt to participate, in the 287(g) program.

Sections 15, 16, 17 and 18 deal with state and local agency employer verification. Section 18 includes a misdemeanor of a high an aggravated nature for the head of a public agency to violate OCGA §50-36-1 or to interfere in the implementation of its requirements.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 19 has an impact on law enforcement because its definition of a “secure and verifiable document” is incorporated into OCGA §17-5-100. It creates a new OCGA §50-36-2 that deals public benefit programs. It was amended so that it does not apply to valid foreign driver's license under OCGA §40-5-21(a)(2) or to the issuance of temporary driver's license to foreign driver's by the Dept. of Driver Services under OCGA §40-5-21.1. It also



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

does not apply to court proceedings or to attorneys representing criminal defendants. Also exempted are “[i]nstances when a federal law mandates acceptance of a document.” The Attorney General is required to promulgate a listing of acceptable documents by Aug. 1, 2011, post it on his website and to update it annually.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

Section 20 creates an "Immigration Enforcement Review Board" that is empowered to hear complaints that state or local government agencies are not complying with state immigration laws and to impose sanctions. Section 20.1 directs the Dept. of Agriculture to study the guest worker needs in the state's farming industries.



HB 87 Illegal Immigration Reform and Enforcement Act of 2011

*** Note of Caution ***

The Illegal Immigration Reform and Enforcement Act of 2011 (House Bill 87) and similar immigration reform laws across the United States, are under close legal scrutiny in several federal courts. Law enforcement agencies in Georgia are encouraged to discuss HB 87 with your agency legal adviser to assist in establishing a policy or set of procedures prior to taking legal any action under HB 87.