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EVIDENCE Evidence

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EVIDENCE

Evidence: Amend the Official Code of Georgia Annotated so as to Substantially Revise, Supersede, and Modernize Provisions Relating to Evidence; Provide for Legislative Findings; Provide for Definitions; Provide for General Provisions; Provide for Judicial Notice; Provide for Parol Evidence; Provide for Admission of Relevant Evidence; Provide for Testimonial Privileges; Provide for Competency of Witnesses; Provide for Opinions and Expert Testimony; Provide for and Define Hearsay; Provide for Authentication and Identification of Writings, Recordings, and Photographs; Provide for the Best Evidence Rule; Provide for Establishment of Lost Records; Provide for Medical and Other Confidential Information; Provide for Securing Attendance of Witnesses and Production and Preservation of Evidence; Provide for Proof Generally; Amend Title 35 of the Official Code of Georgia Annotated, Relating to Law Enforcement Officers and Agencies, so as to Move Provisions Relating to DNA Analysis of Persons Convicted of Certain Crimes from Title 24 to Title 35; Change Provisions Relating to Foreign Language Interpreters and Interpreters for the Hearing Impaired; Amend the Official Code of Georgia Annotated so as to Conform Provisions to the New Title 24 and Correct Cross-References; Provide for Effective Dates and Applicability; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A. §§ 4-11-17; 7-1-63, -94, -95; 8-3-6; -104; 9-10-6, -9; 9-11-44; 10-1-157, -188, -208, -444; 10-4-15; 10-6-64; 10-14-27; 14-9A-117; 15-1-14; 15-11-79.1, -84; 15-18-14.1, -15; 16-5-27; 16-12-55; 17-4-30, -40; 17-7-25, -28, -93; 17-9-20, -41; 17-16-4; 20-2-940, -991; 22-1-14; 24-1-1 et seq,; 26-4-80; 28-1-16; 29-9-13.1; 31-5-5; 31-10-26; 31-21-3; 33-2-2; 33-20A-37; 34-9-60, -102, -108; 35-3-160, -161, -162, -163, -164, -165; 36-74-25, -45; 37-3-166; 37-4-125; 37-7-166; 40-2-74; 40-5-2,

	-58; 40-6-10, -11; 42-5-52.2; 42-6-4, -5; 43-3-24; 43-6-6; 43-9-12; 43-11-12; 43-18-8; 43-23-3; 43-28-6; 43-29-4; 43-33-9, -18; 43-34-8; 43-40-6; 44-2-5, -20, -23, -101; 44-4-3, -6; 44-5-45; 44-13-11; 44-14-38; 45-9-1, -20; 45-14-5; 45-16-43; 46-2-53; 46-3-175; 48-2-14; 48-5-138; 49-5-183.1; 50-5A-4; 50-18-96; 52-6-8; 53-5-33, -35, -43; 53-11-11[1]
BILL NUMBER:	HB 24
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have adopted the Federal Rules of Evidence, reorganized Georgia evidentiary rules where not displaced by the Federal Rules, and made other necessary corrections to the Code to incorporate the new structure of the evidence Code.
EFFECTIVE DATE:	N/A[2]

History

The last major revision of the Georgia Evidence Code, Title 24, was enacted in 1863.[3] Since that time, judicial systems and processes have evolved faster than the Georgia Rules of Evidence (GRE).[4] Electronic documents, communications, telephone records, and

1. See Appendix, Table 1—Miscellaneous O.C.G.A. Sections Impacted by HB 24, *infra*, for a listing of Code sections affected and in what way.

2. If enacted, the bill's effective date would have been January 1, 2012. HB 24 (HCS), § 100, p. 132, ln. 4428, 2010 Ga. Gen. Assem.

3. Video Recording of House Judiciary Committee Proceedings, Mar. 2, 2009, at 1 hr., 40 min., 9 sec. (remarks by Thomas M. Byrne, Chair of State Bar of Georgia Evidence Study Committee), http://media.legis.ga.gov/hav/09_10/comm/judy/judiy030209.wmv [hereinafter 2009 House Judy Committee Video] (noting this was the same period as the Emancipation Proclamation and the Battle of Vicksburg).

4. Student Observation of the Senate Judiciary Committee (Apr. 15, 2010) (remarks by Rep. Wendell Willard (R-49th)) (on file with the Georgia State University Law Review) [hereinafter Senate Committee Meeting].

photography have developed since the creation of the GRE, but the rules do not always explicitly accommodate these types of evidence.[5] Georgia, therefore, is "in desperate need of modernization of Georgia evidence law."[6]

In addition to purely technological developments since the last major GRE revision, there have been conceptual evolutions in evidence laws around the country as well. The Latin term *res gestae* "has long served as a catchword . . . to let in utterances which in strictness were not admissible and to exclude utterances which might well have been admitted," but it is "now out of place" in the Federal Rules of Evidence (FRE) and in states whose evidence code is modeled after them.[7] Professor Paul Milich, a GRE scholar, described *res gestae* in Georgia as "a source of confusion, consternation, and cost in our courts" because there is no consistent body of law on the subject.[8] Likewise, the GRE treat hearsay as "illegal evidence"—a party cannot waive his right to object to this kind of evidence at trial—which according to Professor Milich, leads to added cost due to potential for re-trying cases.[9] Representative Wendell Willard (R-49th), arguing for an update to our evidence Code, stated that this "strictness" is no longer appropriate in the context of modern discovery.[10]

On the other hand, Georgia has developed exceptions to common law evidence rules that do not appear in other states' rules. For example, FRE 404 generally prohibits the use of evidence of a person's character "for the purpose of proving action in conformity therewith."[11] But a number of exceptions allow such evidence for certain *other* purposes, such as to prove that a person had a motive or

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5. *Id.* (remarks by Prof. Paul Milich) (noting that authentication of a phone call is "hard" because the GRE developed before there were phones, and stating that photo and video evidence are not covered by statute in Georgia).

6. 2009 House Judy Committee Video, *supra* note 3, at 1 hr., 40 min., 9 sec. (remarks by Thomas M. Byrne).

7. BLACK'S LAW DICTIONARY 1335 (8th ed. 2004) (quoting JOHN H. WIGMORE, A STUDENTS' TEXTBOOK OF THE LAW OF EVIDENCE 279 (1935)); *see also* Robert D. Ingram, *Proposed New Georgia Rules of Evidence*, STATE BAR OF GEORGIA NEWS, *available at* http://www.gabar.org/news/proposed_new_georgia_rules_of_evidence (explaining *res gestae*).

8. *See* Student Observation of the Senate Committee Meeting (Apr. 15, 2010) (remarks by Prof. Paul Milich) (on file with Georgia State University Law Review).

9. *Id.*

10. *Id.*

11. FED. R. EVID. 404(a).

opportunity to commit an act.[12] In Georgia, the *bent of mind* rule adds an exception to the character evidence rules and gives a court discretion to allow a person's "*predisposition* to commit a crime because they committed [it] before" as "proof of character in order to show action in conformity therewith."[13] Some people have argued that this exception "swallows the rule" to admit the very things the common law character evidence rule intended to prohibit.[14]

Another frustration some have with the GRE is that they are scattered throughout the entire Code.[15] In contrast, the FRE are highly structured and easy to use; thus, adopting a similar structure in Georgia could ameliorate such frustrations.[16]

For these reasons and others,[17] a movement developed to modernize the GRE. The most likely source on which to base a new Georgia evidence code is the FRE. Congress enacted the FRE in 1975, and at least forty-two states have subsequently adopted evidence codes patterned after the FRE.[18] Georgia is the only state in the "deep south" that has *not* adopted a form of the FRE.[19] Supporters of evidence reform argued that adopting the FRE would bring Georgia's law into "conformity with every other state including the federal government."[20] They believed that having "uniformity" of rules with other states and the federal government would attract commerce because businesses want "to know what they'll get" if they have to go to court.[21]

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12. FED. R. EVID. 404(b).

13. 2009 House Judy Committee Video, *supra* note 3, at 34 min., 30 sec. (remarks by Jack Martin, Georgia Association of Criminal Defense Lawyers) (emphasis added).

14. *Id.* (noting that the bent of mind exception affected DUI cases).

15. Interview with Paul Milich, Professor, Ga. State Univ. College of Law, in Atlanta, Ga. (Apr. 1, 2010) [hereinafter Milich Interview].

16. *Id.*

17. One commenter noted that the rules are in an "archaic" language and read like they were "written by Nathaniel Hawthorne." Senate Committee Meeting, *supra* note 4 (remarks by Thomas M. Byrne).

18. 6 JACK B. WEINSTEIN & MARGARET A. BERGER, WEINSTEIN'S FEDERAL EVIDENCE § T-1 (Joseph M. McLaughlin, ed., Matthew Bender 2d ed. 2010) ("Forty-two states, Guam, Puerto Rico, the Virgin Islands, and the military have adopted rules of evidence patterned on the Federal Rules of Evidence. The majority of those jurisdictions adopted rules closely following the Federal Rules of Evidence as they were worded after Congress completed its revisions that resulted in their 1975 enactment.").

19. 2009 House Judy Committee Video, *supra* note 3, at 54 min., 34 sec. (remarks by Prof. Paul Milich).

20. *Id.* at 37 min. (remarks by Jack Martin).

21. Senate Committee Meeting, *supra* note 4 (remarks by Rep. Wendell Willard (R-49th)).

The first concerted effort to move away from the current GRE to the FRE occurred when the Evidence Study Committee was formed in August 1986.[22] Frank C. Jones chaired the Evidence Study Committee at that time, and he wrote a set of rules that passed the Board of Governors in 1988 and 1990.[23] That bill died in the House Judiciary Committee.[24] In 2003, under President Bill Barwick, "the Evidence Study Committee was reactivated with Ray Persons as [the] chair."[25] Around 2005, "the [Evidence Study] Committee refocused their energies on informing and obtaining input from lawyers across the state about the proposed changes" to the GRE.[26] In the summer of 2008, the initiative to move toward a more uniform set of evidence rules was revived by a joint legislative committee. This committee produced the first draft of House Bill (HB) 24.[27] At that time, the committee decided that the new evidence bill would not revise "recently adopted state policy," such as the 2005 tort reform effort, and that any provision that lacked broad consensus would remain untouched.[28] The committee approved the bill, but it did not proceed further due largely to strong opposition from solicitors and prosecutors.[29]

During the summer of 2009, Representative Willard continued the push toward adopting the FRE. Acknowledging the concerns that prosecutors raised during the previous legislative session, Willard included Brian Fortner, the head of the Georgia Association of Solicitors-General, on the Study Committee to revise the bill.[30] In an effort to address these concerns related to the bill, the Study Committee discussed at length the differences between the GRE and

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22. Robert D. Ingram, *Proposed New Georgia Rules of Evidence*, ST. B. GA. NEWS, *available at* http://www.gabar.org/news/proposed_new_georgia_rules_of_evidence.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. Mark Middleton, *State Bar Seeks Continued Legislative Success in 2010*, 15 GA. B. J., 28 (Dec. 2009), *available at* http://www.gabar.org/public/pdf/GBJ/dec09.pdf.

28. *Id.*

29. Video Recording of House Judiciary Committee, Mar. 9, 2010 at 1 min., 1 sec. (remarks by Rep. Wendell Willard (R-49th)), http://media.legis.ga.gov/hav/09_10/2010/committees/judi/judi030910EDITED.wmv [hereinafter 2010 House Judy Committee Video].

30. Interview with Brian Fortner, Solicitor General, Douglas County Solicitor-General's Office, in Douglasville, Ga. (Apr. 6, 2010) [hereinafter Fortner Interview].

the FRE.[31] The Study Committee analyzed the rules section by section, carefully vetting the bill in several stages—at the Bar level, at the legislative study level, and during the sessions[32]—to ensure that the rules were written in a way that would prevent unexpected surprises or "time bombs."[33] The revisions made during these meetings resulted in the version of the bill introduced in the 2010 session.

The history of HB 24 involved several years of cooperative effort among several different groups of people. Some of the participants included: the State Bar of Georgia; study committees; various interest associations; and citizen groups such as the Georgia Chamber of Commerce, the Metropolitan Atlanta Chamber of Commerce, the Georgia Trial Lawyers Association, the Medical Association of Georgia, the Defense Lawyers Association, the Georgia Hospital Association, and the Georgia Association of Solicitors-General.[34] On the other hand, the bill faced strong opposition from its inception because of its sheer size and its potential implications on every-day trial practice in Georgia, including changes to substantive rights of citizens.[35]

Bill Tracking of HB 24

Consideration and Passage by the House

2009 Session

Representatives Wendell Willard (R-49th), David Ralston (R-7th), Edward Lindsey (R-54th), Roger Lane (R-167th, Tom Knox (R-24th), and Mike Jacobs (R-80th), respectively, sponsored HB 24. The House of Representatives read the bill for the first time on January 14, 2009, and for the second time the following day.[36] Speaker of the

31. *Id.*
32. 2009 House Judy Committee Video, supra note 3, at 59 min., 34 sec. (remarks by Prof. Paul Milich).
33. *See id.* at 24 min., 17 sec. (remarks by Jack Martin).
34. Fortner Interview, *supra* note 30.
35. *See generally id.*
36. State of Georgia Final Composite Status Sheet, HB 24, Apr. 29, 2010.

House Glenn Richardson (R-19th) assigned it to the House Committee on Judiciary.[37]

After a series of study committee and sub-committee meetings, the bill finally came before the full House Committee on Judiciary on March 2, 2009.[38] Chairman Willard acknowledged that the bill "may need some further looking into or work" but wished to hold a public hearing and allow public comment and suggestions.[39]

The House Committee on Judiciary passed several amendments to HB 24 in the 2009 meeting. First, it added numbering to proposed Rule 803 to make the hearsay exceptions "easier to find," if ultimately codified.[40] Second, it amended Rule 614 to limit the ability of a court to call its own witness except with consent of both parties or in special circumstances.[41] The committee amended Rule 402 to recognize that different courts may have rules prescribed by both "constitutional or statutory authorit[ies]."[42] Rule 612, dealing with refreshing recollection, was amended to limit its applicability only to a "trial" rather than the broader "hearing."[43] Rules 103, 106, 404, and 801 were amended at the request of the prosecutors to match the language used in the FRE rather than containing editorial or other departures.[44] However, two other proposed amendments failed. One proposal would have amended Rule 609, concerning impeachment by evidence of criminal convictions of a witness, to match the FRE.[45] After Representative Mary Margaret Oliver (D-83rd) questioned whether the amendment would change "a law that related to [a] compromise" in 2005,[46] the amendment died because no one made a motion to pass.[47] Similarly, an amendment to Rule 611 to conform to the language of the FRE failed because no one seconded the

37. *Id.*

38. 2009 House Judy Committee Video, *supra* note 3, at 0 min. (introductory remarks by Rep. Wendell Willard (R-49th)).

39. *Id.*

40. *Id.* at 1 hr., 46 min., 8 sec. (remarks by Jill Travis, House Legislative Counsel).

41. *Id.* at 1 hr., 47 min., 29 sec.

42. *Id.* at 1 hr., 52 min., 54 sec.

43. *Id.* at 2 hr., 1 min., 43 sec.

44. 2009 House Judy Committee Video, *supra* note 3, at 1 hr., 49 min., 45 sec.; 1 hr., 51 min., 26 sec.; 1 hr., 54 min., 32 sec.; 2 hr., 3 min., 40 sec.

45. *Id.* at 1 hr., 56 min., 31 sec.

46. *Id.* at 1 hr., 57 min., 19 sec.

47. *Id.* at 1 hr., 58 min., 26 sec. (remarks by Rep. Wendell Willard (R-49th)).

motion.[48] The amendment would have limited the scope of cross-examination to the subject of direct examination, thus removing Georgia's "thorough and sifting cross-examination" rule.[49]

Several prosecutors spoke in opposition to the bill or specific provisions, raising objections to potential changes to existing Georgia policy,[50] training cost,[51] lack of uniformity with the language of the FRE,[52] and even disputing the amount of support across the state for the reform effort.[53] A particular concern was the removal of the *bent of mind* exception to the character evidence rules, especially with regard to DUI prosecutions. Brian Fortner of the Solicitors-General Association disputed the notion that adopting FRE 404(b) would permit the evidence prosecutors needed; he explained that a survey of other states that have adopted the FRE in some form revealed those states could not admit evidence of DUI similar transactions in the same manner Georgia prosecutors can and that Georgia has fewer alcohol-related traffic fatalities than *any* of those states.[54]

This concerted opposition ultimately halted the bill's passage during the 2009 session. The committee finally voted to pass the House Committee Substitute by a vote of 9 to 4[55] and favorably reported it on March 3, 2009.[56] But because of the prosecutors' hostility, the bill never came before the floor, and it died in the House Rules Committee.[57]

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48. *Id.* at 2 hr., 1 min., 23 sec.

49. "The right of a thorough and sifting cross-examination shall belong to every party as to the witnesses called against him." O.C.G.A. § 24-9-64 (2010).

50. 2009 House Judy Committee Video, *supra* note 3, at 1 min. (remarks by Brian Fortner, Douglas County Solicitor General).

51. *Id.* at 21 min., 6 sec. (remarks by Barry Morgan, Cobb County Solicitor General).

52. *See id.* at 54 min., 34 sec. (remarks by Prof. Paul Milich, noting that the language in FRE achieves "balance" and that the bill had "gone back to the federal language" in many instances at the request of the prosecutors).

53. *Id.* at 48 min., 55 sec. (remarks by Patrick Head, Cobb County District Attorney).

54. *Id.* at 9 min., 20 sec.

55. *Id.* at 2 hr., 9 min., 15 sec.

56. State of Georgia Final Composite Status Sheet, HB 24, Apr. 29, 2010.

57. 2010 House Judy Committee Video, *supra* note 29 (introductory remarks by Rep. Wendell Willard (R-49th)); Andy Peters, *Outlook Bleak for Tort, Evidence Bills*, 120 FULTON COUNTY DAILY REP. 52, Mar. 17, 2009, *available at* 2009 WLNR 22335493.

2010 Session

In 2010, the House Committee on Judiciary took up HB 24 again, this time with several "proposed modifications" to address the prosecutors' concerns, including how the Rules would be interpreted by courts and practitioners.[58] Professor Milich outlined fourteen proposed amendments for the committee.

First, a new "preamble" was added to "clarify the intent of the General Assembly to adopt the Federal Rules as interpreted by federal courts" and to make clear that existing Georgia law would remain where not specifically "spoken to" by the adopted FRE.[59] Next, an "editorial change" that was previously made to Rule 403 was removed so that the language would match "exactly to the language of the Federal Rules."[60] Rule 405 was modified to accommodate existing Georgia law that allows a criminal defendant to put on specific evidence in a good character defense, and it was slightly re-structured from the FRE to make explicit that *any* use of character evidence by the defendant would allow the prosecution to inquire of it.[61] Fourth, Rule 406 was changed to follow the language of the FRE.[62] Next, Rules 413 through 415 relating to similar acts evidence in cases of sexual assault and child molestation were modified at the request of prosecutors to make sure that every possible definition of sexual assault was covered by the rule.[63]

A significant new addition was Rule 417, which clarified the rule that prior DUI convictions would be admissible in DUI cases.[64] This compromise with the solicitors would allow admission of these prior convictions in specific situations where a defendant previously failed a breathalyzer test and later refused to take the test after a second stop for an alleged DUI, assuming he had learned that it "didn't work last time."[65] This compromise resolved a major dispute between those

58. 2010 House Judy Committee Video, *supra* note 29 (introductory remarks by Rep. Wendell Willard (R-49th)).
59. *Id.* at 5 min., 15 sec. (remarks by Prof. Paul Milich).
60. *Id.* at 8 min., 6 sec.
61. *Id.*
62. *Id.* at 15 min., 5 sec.
63. *Id.* at 10 min., 5 sec.
64. 2010 House Judy Committee Video, *supra* note 29, at 11 min. (remarks by Prof. Paul Milich).
65. *Id.*

favoring HB 24 and the opposing prosecutors.[66] Professor Milich referred to Georgia's "similar transactions" rule when describing the specific predicates to admit a prior DUI conviction: "We almost create the similarity by the description" of the specific predicates for allowing the DUI conviction evidence.[67]

Several changes were proposed to improve integration of the evidence code, case law, and statutory rules pertaining to the use of sign language and foreign language interpreters.[68] An amendment to Rule 608 returned the rule to "the exact language" of the FRE, except for codifying the holding of *United States v. Abel*[69] regarding admissibility of specific instances of bias to impeach—a rule which was already the law in Georgia.[70] Rule 609 also reverted to its FRE form in HB 24—the same proposal that died in the committee in 2009.[71] The change would have removed the "stepped up" balancing test that was adopted in 2005, which is used to determine whether to admit evidence of criminal convictions to impeach criminal defendants acting as witnesses in their own trials.[72] The prosecutors favored removing the word "substantially" from describing the weighing of probative value against the prejudicial effect of the conviction evidence.[73] But Jack Martin of the Georgia Association of Criminal Defense Lawyers feared that this type of impeachment evidence "doesn't really go to [the defendant's] credibility" because the offense would not be probative of the defendant's truthfulness and thus indirectly puts character into evidence.[74] During the committee's debate on the amendments, Representative Edward Lindsey (R-54th) expressed concern that "there should be a higher threshold" to allow evidence of other crimes.[75] However, the

66. Andy Peters, *House Panel Settles "Bent of Mind" Dispute*, 121 FULTON COUNTY DAILY REP. 48, Mar. 11, 2010, *available at* 2010 WLNR 5064072.

67. 2010 House Judy Committee Video, *supra* note 29, at 13 min., 3 sec.

68. *Id.* at 15 min., 5 sec.; 19 min., 52 sec.

69. United States v. Abel, 469 U.S. 45 (1984).

70. 2010 House Judy Committee Video, *supra* note 29, at 15 min., 44 sec.

71. *Compare* 2010 House Judy Committee Video, *supra* note 29, at 17 min., 10 sec. (discussing how the rule is nearly "the *exact* language of the federal rule"), *with* notes 45–49 and accompanying text (describing the same attempted modification in 2009 and its failure).

72. 2010 House Judy Committee Video, *supra* note 29, at 17 min., 10 sec. (remarks by Prof. Paul Milich).

73. *Id.* at 35 min. (remarks by Brian Fortner, Douglas County Solicitor General).

74. *Id.* at 41 min., 9 sec.

75. *Id.* at 1 hr., 19 min., 1 sec. (remarks by Rep. Edward Lindsey (R-54th)).

amendment passed as written to conform to the FRE without other support for retaining the "substantially" standard.[76]

An amendment to Rule 804(b)(3) restored the FRE's language of the "statement against interest" hearsay exception "rather than drafting . . . the Eleventh Circuit's opinion of it," thus leaving Georgia courts free to accept or reject that interpretation.[77] Likewise, the residual (or "necessity") hearsay exception of Rule 807 was changed, at the request of the prosecutors, to say that a court "may" exclude hearsay declarations if a party does provide the proper notice, rather than the original proposal to say a court "shall" exclude the hearsay.[78] Jack Martin again opposed the change to revert to the FRE language because it might "open[] the door to judges allowing that evidence in, even when there was no notice just because the evidence may be very compelling," and he asked the committee at minimum to adopt a rule that the hearsay "*shall* be excluded unless good cause [is] shown" for the lack of notice.[79] The committee rejected his request and adopted the exact language of the FRE. Additionally, other minor wording changes were made to multiple sections of Title 24 as part of the general re-write effort.[80]

After individually passing each proposed amendment, the House Committee on Judiciary unanimously passed the House Committee Substitute.[81] The committee favorably reported the new House Committee Substitute on March 10, 2010.[82] HB 24 was read for the third time on March 17 and passed the same day by a vote of 150 to 12.[83]

Consideration by the Senate

On March 18, 2010, the Senate first read HB 24, and President Pro Tempore Tommie Williams (R-19th) assigned it to the Senate

76. *Id.* at 1 hr., 19 min., 1 sec. (remarks by Rep. Wendell Willard (R-49th)).
77. *Id.* at 20 min., 17 sec. (remarks by Prof. Paul Milich).
78. 2010 House Judy Committee Video, *supra* note 29, at 38 min., 12 sec. (remarks by Jack Martin).
79. *Id.* at 38 min. 12 sec. (remarks by Jack Martin).
80. *See generally id.*
81. *Id.* at 1 hr., 28 min., 23 sec. (remarks by Rep. Wendell Willard (R-49th)).
82. State of Georgia Final Composite Status Sheet, HB 24, Apr. 29, 2010.
83. *Id.*; Georgia House of Representatives Voting Record, HB 24 (Mar. 17 2010).

Judiciary Committee.[84] On April 15th, the committee held its first hearing on the bill.[85] Representative Willard, Professor Milich, and Thomas Byrne again testified in support of the bill, and the discussion largely mirrored those in the House Committee. Senator John Wiles (R-37th) was one of several members of the committee who expressed concerns about the bill. Principally, he noted that it appeared HB 24 enacted "substantially more" than just the FRE, touching on many areas outside of Title 24. Second, he wanted confirmation that "exported" portions of the Code, which the sponsors claimed were merely removed to more appropriate locations, "[do not] change a comma or a semi-colon."[86] Unable to assuage his concerns, Senator Wiles urged the committee not to rush to pass the bill in the last three legislative days of the session.[87] Senator Wiles moved to table the bill, but the motion failed 4 to 6.[88] Senator Ronald Ramsey (D-43rd) made a motion to pass the House Committee Substitute. The motion was seconded, and the bill passed 6 to 5.[89] The Senate Judiciary Committee favorably reported the House Committee Substitute to HB 24 on April 24, 2010, and it was read for a second time in the Senate on the same day.[90] However, the bill was never scheduled for a vote by the full Senate because "[n]o one requested during a Senate Rules Committee meeting that the bill be brought to the floor," "virtually killing it."[91]

The Bill

The bill would have repealed Title 24 in its entirety and replaced it with a new Title 24, modeled after the FRE. Additionally, the bill would have adapted and re-organized non-impacted Georgia

84. State of Georgia Final Composite Status Sheet, HB 24, Apr. 29, 2010.

85. The Committee ran out of time and continued the meeting with the same parties on April 19th. *See* Senate Committee Meeting, *supra* note 4.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. State of Georgia Final Composite Status Sheet, HB 24, Apr. 29, 2010.

91. Andy Peters, *Evidence Rules Not Expected to Pass*, FULTON COUNTY DAILY REP., Apr. 27, 2010, at 1, 4.

evidence laws to the structure of the FRE and corrected references throughout the entire Georgia Code.

Section 1 of the bill is a preamble that reflects the General Assembly's intent "to adopt the [FRE]" as interpreted by the federal courts.[92] Where there are conflicts among circuit courts in interpreting the rules, the General Assembly would have "considered" interpretations of the Eleventh Circuit Court of Appeals.[93] While these interpretations would not have been binding on Georgia courts, the intent statement clarifies the bases of interpretation the General Assembly had in mind.[94] Further, the preamble contains an explicit statement that "unless displaced" by specific provisions of the new Title 24, substantive law of evidence is intended to be retained.[95]

Section 2 would have repealed and reenacted Title 24 relating to evidence. The proposed Title 24 would have, in large measure, adopted the FRE and re-codified existing Georgia law within the structural framework of the FRE.[96]

Sections 3 to 99—with some exceptions noted below—generally would have made corrections to Code sections to accommodate the revised evidence rules. There would have been three general types of changes made throughout the Code: (1) removing an evidence rule embedded within another section,[97] (2) deleting a section (and marking it "Reserved") that is an unnecessary evidence rule,[98] and (3) updating references to Title 24 to reflect the proposed, corresponding rule.[99] Additionally, several stylistic changes would have been made

92. HB 24 (HCS), § 1, p. 1, ln. 19–20, 2010 Ga. Gen. Assem.

93. *Id.*

94. *Id.*; *accord* Milich Interview, *supra* note 15 (referring to the persuasive authority of federal precedent and state courts' freedom to develop Georgia's own body of law); *see also* Mason v. Home Depot U.S.A., Inc., 283 Ga. 271, 658 S.E.2d 603 (2008).

95. HB 24 (CCS), § 1, p. 2, ln. 29–31, 2010 Ga. Gen. Assem.

96. Appendix Table 2 captures HB 24's departures from a strict adoption of the FRE and indicates where existing Georgia law would be codified in the new structure.

97. *E.g.*, HB 24 (CCS), § 4, p. 88, ln. 2945–48 (removing subsection (c) of Code section 7-1-63, providing for admissibility of copies of records, in favor of the federal best evidence rules in proposed Title 24, Chapter 10).

98. *E.g.*, *id.* § 77, p. 123, ln. 4125–30 (deleting Code section 44-2-23 in its entirety in favor of the federal authentication rules in proposed Title 24, Chapter 9).

99. *E.g.*, *id.* § 3, p. 87, ln. 2913 (amending a reference to Code section 24-9-29 to refer to the proposed, codified location of the same statute at § 24-12-31).

to other amended sections.[100] Appendix Table 1, *infra*, contains a complete list of the sections of HB 24, the Code sections affected, and the category of change.

Section 49 of the bill is an "export[]"[101] of a portion of Title 24. The current Code sections 24-4-60 to 24-4-65, "DNA Analysis upon Conviction of Certain Sex Offenses,"[102] would have moved, essentially verbatim,[103] to proposed Code sections 35-3-160 to 35-3-165.

Section 20 would have amended Code section 15-1-14 to direct the Supreme Court to establish rules and requirements for foreign language and hearing impaired interpreters for use in judicial proceedings. Similarly, Section 27 would have added a new Code section, 17-4-30, directing an arresting officer to comply with the provisions of proposed Article 3 of Title 24, Code sections 24-6-650 to 24-6-658. Because Article 3 is merely a re-location of existing Georgia law,[104] this would not have been a substantive change of law.

Analysis

Supporters of HB 24 argued that adopting the FRE would "mean[] better justice, fewer errors, [and] fewer retrials."[105] Of particular concern was the failure of the GRE to evolve with technology and society. But the FRE provide great flexibility regarding contemporary media to introduce at trial. Removing hearsay from "illegal evidence"[106] and dispatching with Georgia's business record exception—"the most restrictive in the country [that] costs litigants a lot of money"—will reduce litigation costs for all parties involved.[107]

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100. *E.g.*, *id.* § 9, p. 90, ln. 3013 (adding the phrase "or her" after "his" in Code section 9-10-6).

101. Senate Committee Meeting, *supra* note 4 (remarks by Thomas M. Byrne, responding to a question from Sen. John Wiles (R-37th) about the bill section).

102. O.C.G.A. §§ 24-4-60 to -65 (2010).

103. Senate Committee Meeting, *supra* note 4 (remarks by House Legislative Counsel Jill Travis that some errors were corrected).

104. *Compare* O.C.G.A. § 24-9-100 to -108 (current Article 5, Chapter 9, Title 24), *with* HB 24, § 2, p. 24–27, ln. 768–868 (relocating the statutes to proposed §§ 24-6-650 to -658).

105. 2010 House Judy Committee Video, *supra* note 29, at 1 hr., 1 min., 16 sec. (remarks by Thomas M. Byrne).

106. *See supra* note 9 and accompanying text.

107. Senate Committee Meeting, *supra* note 4 (remarks by Prof. Paul Milich).

Further, commercial marketability was another objective of HB 24.[108] Having a uniform code of laws encourages companies to move to and invest in Georgia.[109] By adopting the FRE, Georgia state courts would be in conformity with the federal courts of the United States.[110] Supporters claim that with more organized and easy-to-use rules of evidence, more businesses would consider the Georgia rules favorable to do business.[111] Achieving uniformity of the rules with the rest of the country would also facilitate the practice of attorneys who try cases across state lines and increase predictability.[112] Lastly, because all Georgia law students are trained and taught the FRE, adopting them would be relatively swift and intuitive, with minimal re-training cost.[113] Further, ongoing cost would be less than under the current GRE because of a reduced need for re-training on special Georgia rules and a reduced need for retrials based on improperly admitted evidence.

Effect on Similar Transactions, Character Evidence, and Defendant's Bent of Mind

The single greatest obstacle to the adoption of the bill in 2009 was opposition by solicitors and district attorneys to the repeal of the *bent of mind* rule.[114] Initially, the proposed change copied FRE 404(b) stating, "[E]vidence of other crimes, wrongs, or acts . . . [may] be admissible for other purposes" than character conformity.[115]

Prosecuting attorneys feared this would negatively affect their practice and their representation of victims' rights.[116] At bottom, their biggest concern was with losing the GRE *bent of mind* rule, particularly in DUI cases where the defendant refuses to take a state-

108. Milich Interview, *supra* note 15.
109. *Id.*
110. *Id.*
111. *Id.*; Senate Committee Meeting, *supra* note 4 (remarks by Rep. Wendell Willard (R-49th)).
112. Milich Interview, *supra* note 15 (emphasizing that Georgia is the only state in the United States that recognizes the *bent of mind* rule); Senate Committee Meeting, *supra* note 4 (remarks by Prof. Paul Milich).
113. *See* 2010 House Judy Committee Video, *supra* note 29, at 1 hr., 1 min., 16 sec. (remarks by Thomas M. Byrne).
114. 2009 House Judy Committee Video, *supra* note 3, at 6 min., 14 sec. (remarks by Brian Fortner).
115. FED. R. EVID. 404(b); *see also* Milich Interview, *supra* note 15.
116. Fortner Interview, *supra* note 30.

administered alcohol sampling test. A common example of this scenario occurs when a defendant takes a "high-minded" stance and refuses the tests, claiming it violates privacy.[117] The "solicitors did not want to be handicapped" by not being able to introduce evidence that the defendant had, in fact, taken and failed a DUI test in a prior incident.[118] The Solicitors demanded that they be able to present such evidence:

> The reason [the defendant] refused may be because [he] learned [his] lesson in a prior DUI case with a prior conviction. . . . If you're allowed, then, to argue that the reason you didn't want to take that test was because you didn't want to be subjected to it or whatever other argument we can come up with, we should be allowed to explore that and show that you've learned this procedure, you've gained knowledge about these DUI investigations through your prior violations.[119]

Brian Fortner, the head of the Georgia Association of Solicitors-General, however, played a key role in encouraging dialogue and educating the prosecutors to reach a compromise.[120] The compromise of proposed Code section 24-4-417 would have allowed prior DUI convictions to be used in those narrow situations where a defendant refuses a DUI test or provides an insufficient sample, or where the identity of the driver is an issue.[121] The inclusion of this unique exception "does not change the fact" that a prior DUI could still be admissible under Rule 404(b) as a "similar transaction" under the FRE.[122] The exception under section 24-4-417 "mirror[s] a lot of the federal language" in FRE 404(b), allowing character evidence for other purposes, such as showing identity, motive, or knowledge.[123]

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117. 2010 House Judy Committee Video, *supra* note 29, at 11 min., 50 sec. (remarks by Prof. Paul Milich).
118. *Id.* at 11 min., 40 sec. (remarks by Prof. Paul Milich).
119. *Id.* at 32 min., 16 sec. (remarks by Brian Fortner).
120. Milich Interview, *supra* note 15.
121. HB 24 (HCS), § 2, p. 14–15, ln. 443–61, 2010 Ga. Gen. Assem.; 2010 House Judy Committee Video, *supra* note 29, at 33 min., 8 sec. (remarks by Brian Fortner).
122. 2010 House Judy Committee Video, *supra* note 29, at 12 min., 43 sec. (remarks by Prof. Paul Milich).
123. *Id.* at 33 min., 8 sec. (remarks by Brian Fortner).

Because of this compromise, Brian Fortner, speaking for the Solicitors-General Association, stated to both committees that his organization would withdraw its opposition to HB 24.[124]

However, not everyone was satisfied by the compromise attempt. Some remained "[un]sure if similar transactions survive or not."[125] Professor Milich specifically argued that the proposed 404(b) "does exactly what similar transactions did," except for the overall removal of the *bent of mind* rule.

Case Law and Precedent Reliance

The bill is an amalgamation of the FRE and GRE. The vast majority of the bill mirrors the FRE; in fact, the bill has been characterized as "98% the Federal Rules and 2% of some other, whether it is Georgia law or some hybrid of the two."[126] Where the bill would have replaced Georgia rules, the General Assembly had intended the prevailing interpretations of the federal provisions by the United States Supreme Court and the Circuit Courts of Appeal to serve as guideposts.[127] In the event of conflicts among the circuits, the Eleventh Circuit's decisions would have preempted competing interpretations.[128] Initially, there might have been a "natural tendency" of Georgia courts to look to federal courts for persuasive guidance on the provisions of the bill, similar to the experience of the state in adopting the Federal Rules of Civil Procedure.[129] However, Georgia courts would not have been bound to "a continuing interpretation of the federal courts' decisions of the Rules" because of the "cutoff date which [would have been] the adoption date of [the new] evidence code . . . ."[130] After the cutoff date, Georgia courts would have been allowed to freely interpret the language of the bill

124. *Id.* at 37 min., 26 sec. In the Senate Judiciary Committee meeting, Fortner clarified that the organization was not "opposing" the bill, but that did not mean they were in favor of its passage either. Senate Committee Meeting, *supra* note 4.

125. *Id.* at 53 min., 36 sec. (remarks by Robert Stokely, Coweta County Solicitor General).

126. 2009 House Judy Committee Video, *supra* note 3, at 1 hr., 10 min., 19 sec. (remarks by Ken Wynne, Newton County District Attorney).

127. HB 24 (HCS), § 1, p. 1, ln. 19–22, 2010 Ga. Gen. Assem.

128. *Id.*

129. Milich Interview, *supra* note 15.

130. 2010 House Judy Committee Video, *supra* note 29, at 7 min., 7 sec. (remarks by Rep. Wendell Willard (R-49th)).

independently of federal courts; the two sets of rules would have evolved separately and distinctly.

Specific areas of the bill embrace established state law. "Unless displaced by the particular provisions of this [bill], the General Assembly intends that the substantive law of evidence in Georgia as it existed on December 31, 2011, be retained."[131] For instance, the rules guiding privilege would have been written into proposed sections 24-5-1 *et seq.* essentially verbatim, simply transposed from the current Code provisions found in sections 24-9-1 *et seq.* Hearsay rules governing statements made by children under the age of fourteen describing sexual contact or physical abuse with other children, confessions, and medical reports in narrative form would have also been retained and implemented in proposed sections 24-8-820 to 24-8-826. In cases where the bill embraced previously established Georgia law, Georgia case law would have remained dispositive.

The bill, while adopting the relevant FRE portion of a provision, in some places would have adjusted the language in an attempt to fix "glitches" within the Code. For instance, the FRE do not mention "bias" as an exception under FRE 608 that allows specific instances to impeach the character or conduct of a witness.[132] The United States Supreme Court, in *United States v. Abel*,[133] recognized the absence of bias in the rule was an aberration, holding that such specific instances of conduct may be used to show witness bias.[134] Instead of inviting re-litigation on this issue, the bill includes the bias in proposed section 24-6-608(b) to conform to federal, state, and common law.[135]

Rape Shield and Tort Reform Left Alone

The bill did not seek to amend the Georgia rape shield law, as enacted in the Criminal Justice Act of 2005,[136] in lieu of the

131. HB 24 § 1, p. 2, ln. 29–31, 2010 Ga. Gen Assem.
132. FED. R. EVID. 608.
133. *See generally* United States v. Abel, 469 U.S. 45 (1984).
134. 2010 House Judy Committee Video, *supra* note 29, at 16 min., 15 sec. (remarks by Prof. Paul Milich).
135. HB 24 (HCS), § 2, p. 19–20, ln. 618–21, 2010 Ga. Gen. Assem.; 2010 House Judy Committee Video, *supra* note 29, at 16 min., 15 sec. (remarks by Prof. Paul Milich).
136. 2005 Ga. Laws 20, § 13.1, at 27 (codified at O.C.G.A. § 24-2-3 (2010)).

corresponding FRE 412. The House felt that changing the rape shield laws required "so much discussion and really [had] the potential to do some great damage."[137] The chief opposition to the bill, the district attorneys and solicitors, agreed that rape shield provisions established and extended in 2005 should remain the Georgia law.[138] Laws affecting the rights of defendants and victims in sex matters tend to be treated *sui generis* due to the sensitive, political nature of those laws.[139] Thus, Georgia case law would have continued to determine the interpretation of proposed section 24-4-412.

The General Assembly also enacted tort reform in 2005 that imposed limits on non-economic damages in medical malpractice cases, made suing emergency room doctors more difficult, raised the standard for expert witnesses in torts, and removed joint and several liability, among other changes.[140] The bill would have modified only the evidentiary changes of that act; provisions relating to tort reform would have remained untouched.[141]

Constitutionality Under the "Single Subject" Rule

The Georgia Constitution bars the General Assembly from passing a bill that "refers to more than one subject matter or contains matter different from what is expressed in the title thereof."[142] "The test of whether an act or a constitutional amendment violates the multiple subject matter rule is whether all of the parts of the [bill] or of the constitutional amendment are germane to the accomplishment of a single objective."[143] The basis for the germaneness test is that "each proposition . . . should stand or fall upon its own merits."[144]

Application of the germaneness test "requires identification of the subject matter or objective" of the legislation.[145] The stated purpose

137. 2009 House Judy Committee Video, *supra* note 3, at 42 min., 5 sec. (remarks by Gwen Fleming, Dekalb County District Attorney).
138. Fortner Interview, *supra* note 30.
139. Milich Interview, *supra* note 15.
140. *See generally* 2005 Ga. Laws 1.
141. Milich Interview, *supra* note 15.
142. GA. CONST. art. III, § 5, para. 3.
143. Perdue v. O'Kelly, 280 Ga. 732, 733, 632 S.E.2d 110, 112 (2006) (quoting Carter v. Burson, 230 Ga. 511, 519, 198 S.E.2d 151, 156 (1973)).
144. *Id.* (citing Rea v. City of LaFayette, 130 Ga. 771, 772, 61 S.E. 707, 708 (1908)).
145. *Id.* at 734.

of the bill was to "amend the Official Code of Georgia Annotated so as to substantially revise, supersede, and modernize provisions relating to evidence."[146] Toward that purpose, the bill would have consolidated all (or most) of Georgia's evidentiary laws under Title 24.[147] In effect, the bill would have completely replaced Title 24 as the Title exclusively dedicated for the evidence code.[148] In doing so, the bill would also have deleted or relocated evidentiary provisions from twenty-three other titles.[149]

The broad reach of the bill, however, would have dealt "with the same topic matter which comes under 'evidence.' There may be references to other sections of titles, but they're all dealing with the same questions of evidence."[150] Speaker of the House David Ralston (R-7th) acknowledged that "I would not let the House vote on something that I knew in advance to be unconstitutional" under the "single subject" rule.[151] Outside the Georgia Rules of Evidence "there is no substantial change to the rules of law."[152]

The bill likely would have survived a challenge under the "single subject" rule. Although the bill is expansive and comprehensive, it merely changes, updates, and reorganizes the state's laws governing evidentiary matters. In attempting to adopt the FRE, Georgia is revisiting the process by which it and a majority of the other states have adopted other uniform laws, such as the Uniform Commercial Code and the Federal Rules of Civil Procedure. The mass adoption of the FRE and the reorganization of evidentiary rules under Title 24 would have been entirely germane to the accomplishment of the bill's clearly stated, single objective to modernize Georgia's evidentiary code.

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146. HB 24 (HCS), p. 1, ln. 1–2, 2010 Ga. Gen. Assem.

147. Video Recording of House Floor Debate, Mar. 17, 2010, at 1 hr., 49 min., 57 sec. (remarks by Rep. Wendell Willard (R-49th)), http://mediam1.gpb.org/ga/leg/2010/ga-leg-house_031710_AM.wmv.

148. *Id.*

149. *Id.* at 2 hr., 43 sec. (remarks by Rep. Steve Davis (R-109th)).

150. *Id.* at 1 hr., 46 min., 22 sec. (remarks by Rep. Wendell Willard (R-49th)).

151. *Id.* at 2 hr., 5 min., 25 sec.

152. *Senate Judiciary OKs Evidence Rules,* FULTON COUNTY DAILY REP., Apr. 21, 2010, at 1, *available at* 2010 WLNR 8226377 (quoting Prof. Paul Milich).

Appendix

Table 1—Miscellaneous O.C.G.A. Sections Impacted by HB 24

Bill Section	Code Section Affected	Detail
3	4-11-17	reference to Title 24
4	7-1-63	remove embedded evidence rule
5	7-1-94	remove embedded evidence rule; refer to Title 24; style
6	7-1-95	delete evidence rule; reserved
7	8-3-6	remove embedded evidence rule
8	8-3-104	remove embedded evidence rule
9	9-10-6	remove embedded evidence rule; style
10	9-10-9	delete evidence rule; reserved
11	9-11-44	delete evidence rule; reserved
12	10-1-157	remove embedded evidence rule
13	10-1-188	delete evidence rule; reserved
14	10-1-208	delete evidence rule; reserved
15	10-1-444	remove embedded evidence rule
16	10-4-15	remove embedded evidence rule; style
17	10-6-64	delete evidence rule; reserved
18	10-14-27	delete evidence rule; reserved
19	14-9A-117	delete evidence rule; reserved
20	15-1-14	update rule regarding interpreters; re-organize section
21	15-11-79.1	reference to Title 24
22	15-11-84	reference to Title 24; style
23	15-18-14.1	reference to Title 24; style
24	15-18-15	reference to Title 24
25	16-5-27	reference to Title 24; style
26	16-12-55	remove embedded evidence rule; style
28	17-4-40	reference to Title 24
29	17-7-25	reference to Title 24
30	17-7-28	reference to Title 24; style
31	17-7-93	remove embedded evidence rule; style
32	17-9-20	remove embedded evidence rule; style
33	17-9-41	delete evidence rule; reserved
34	17-16-4	reference to Title 24
35	20-2-940	reference to Title 24; style
36	20-2-991	remove embedded evidence rule
37	22-1-14	reference to Title 24

Bill Section	Code Section Affected	Detail
38	26-4-80	reference to Title 24
39	28-1-16	reference to Title 24; style
40	29-9-13.1	reference to Title 24
41	31-5-5	remove embedded evidence rule; style
42	31-10-26	remove embedded evidence rule; style
43	31-21-3	reference to Title 24
44	33-2-2	remove embedded evidence rule; style
45	33-20A-37	remove embedded evidence rule
46	34-9-60	reference to Title 24
47	34-9-102	reference to Title 24
48	34-9-108	reference to Title 24
49	35-3-160 to -165	new Article 6A (former Article 4 of Chapter 4 of Title 24)
50	36-74-25	reference to Title 24
51	36-74-45	reference to Title 24
52	37-3-166	reference to Title 24
53	37-4-125	reference to Title 24
54	37-7-166	reference to Title 24
55	40-2-74	reference to Title 24; style
56	40-5-2	remove embedded evidence rule
57	40-5-58	reference to Title 24
58	40-6-10	reference to Title 24
59	40-6-11	reference to Title 24
60	42-5-52.2	reference to Title 24
61	42-6-4	reference to Title 24
62	42-6-5	reference to Title 24
63	43-3-24	reference to Title 24
64	43-6-6	remove embedded evidence rule
65	43-9-12	reference to Title 24
66	43-11-12	remove embedded evidence rule
67	43-18-8	delete evidence rule; reserved
68	43-23-3	remove embedded evidence rule
69	43-28-6	remove embedded evidence rule
70	43-29-4	remove embedded evidence rule
71	43-33-9	remove embedded evidence rule
72	43-33-18	reference to Title 24
73	43-34-8	reference to Title 24
74	43-40-6	remove embedded evidence rule
75	44-2-5	remove embedded evidence rule; style

Bill Section	Code Section Affected	Detail
76	44-2-20	remove embedded evidence rule; style
77	44-2-23	delete evidence rule; reserved
78	44-2-101	remove embedded evidence rule; style
79	44-4-3	remove embedded evidence rule
80	44-4-6	remove embedded evidence rule
81	44-5-45	delete evidence rule; reserved
82	44-13-11	remove embedded evidence rule; style
83	44-14-38	delete evidence rule; reserved
84	45-9-1	remove embedded evidence rule; style
85	45-9-20	remove embedded evidence rule
86	45-14-5	remove embedded evidence rule; style
87	45-16-43	delete evidence rule; reserved
88	46-2-53	delete evidence rule; reserved
89	46-3-175	remove embedded evidence rule; style
90	48-2-14	remove embedded evidence rule; style
91	48-5-138	remove embedded evidence rule
92	49-5-183.1	reference to Title 24
93	50-5A-4	remove embedded evidence rule
94	50-18-96	delete evidence rule; reserved
95	52-6-8	remove embedded evidence rule; style
96	53-5-33	reference to Title 24
97	53-5-35	reference to Title 24
98	53-5-43	reference to Title 24
99	53-11-11	reference to Title 24

Table 2—Departures from FRE in Proposed Title 24

Proposed Title 24 Grouping	Proposed Title 24 section(s)	Old O.C.G.A. Reference (where known)	Notes
Ch. 1, Art. 1	24-1-1	24-1-1	Harmonizes FRE 102 with existing Georgia statute
	24-1-2	24-1-3	Proposed subsection (a) is former 24-1-3; remainder of new statute is like FRE 101 "Scope" statement but with added exceptions to which the rules do not apply.
	24-1-2(e)	N/A	Subsection added to make explicit that "the common law as expounded by Georgia courts shall continue" to apply except as modified by statute.
Ch. 2, Art. 2	24-2-220	24-1-4	Import of existing statute
	24-2-221	24-7-22	Import of existing statute
Ch. 3	24-3-1 to -10	24-6-[all]	Import of entire Ch. 6 of Title 24
Ch. 4 (Relevance)	24-4-404(b)		Last sentence not part of FRE ("Notice shall not be required" when prior bad acts offered to prove circumstances surrounding a crime, motive, or prior difficulties between accused and victim)
	24-4-405	—	Includes Georgia-specific rule that criminal defendant may put on evidence of own good character as a defense, as well as structural change.
	24-4-412	24-2-3	Import of existing Georgia Rape Shield statute
	24-4-413 to -415	—	Slight wording differences from FRE versions
	24-4-416	24-3-37.1	Import from 2005 Tort Reform Act (SB 3)
	24-4-417	N/A	New DUI character evidence exception
Ch. 5 (Privileges)	24-5-501 to -508	24-9-20 et seq.	Import of existing privilege rules
	24-5-501	24-9-21	Import of existing statute with modifications to add account privileges and definitions

Proposed Title 24 Grouping	Proposed Title 24 section(s)	Old O.C.G.A. Reference (where known)	Notes
	24-5-502	24-9-22	Import of existing statute
	24-5-503	24-9-23	Import of existing statute
	24-5-504	24-9-26	Import of existing statute
	24-5-505	24-9-27	Import of existing statute except for old subsection (d) removed
	24-5-506	24-9-20	Import of existing statute except renamed "defendant" to "accused"
	24-5-507	24-9-28	Import of existing statute
	24-5-508	24-9-30	Import of existing statute
Ch. 6, Art. 1 (Witnesses)	24-6-603(b)	24-9-5(b)	Import of existing statute with slight rewording
	24-6-608(b)		Addition of "bias" as an exception to rule that one cannot offer specific instances of conduct cannot be used to impeach, per *United States v. Abel*, 469 U.S. 45, 51 (1984).
	24-6-611(b)	24-9-64	Import of existing statute ("Thorough and sifting cross-examination" rule)
	24-6-616	24-9-61.1	Import of existing statute
	24-6-609(c) and (d)	24-9-84.1(c)	Georgia-specific versions of FRE for First Offenders and nolo contendere plea statutes
Ch. 6, Art. 2	24-6-620	24-9-80	Import of existing statute with rewording
	24-6-621	24-9-82	Import of existing statute
	24-6-622	24-9-68	Import of existing statute
	24-6-623	24-9-62	Import of existing statute
Ch. 6, Art. 3	24-6-650 to -658	24-9-100 to -108	Import of old Art. 5, Ch. 9, of Title 24
Ch. 7	24-7-702	24-9-67.1	Import from 2005 Tort Reform Act (SB 3) rules for expert witnesses
	24-7-707	24-9-67	Import from 2005 Tort Reform Act (SB 3)
Ch. 8, Art. 1	24-8-801(e)–(g)	Unidentified	Georgia-specific definitions

Proposed Title 24 Grouping	Proposed Title 24 section(s)	Old O.C.G.A. Reference (where known)	Notes
	24-8-802	N/A	New sentence added to FRE to explicitly overrule Georgia's "illegal evidence" rule for hearsay
	24-8-803(6)		Re-structured version of FRE business record exception (same substance)
	24-8-804(b)(1)		Last sentence regarding depositions is added to FRE
Ch. 8, Art. 2	24-8-820	24-3-16	Import of existing statute (all of Proposed Ch. 8 is imported from old O.C.G.A.)
	24-8-821	24-3-30	
	24-8-822	24-3-38	
	24-8-823	24-3-53	
	24-8-824	24-3-50	
	24-8-825	24-3-51	
	24-8-826	24-3-18	
Ch. 9, Art. 1	24-9-904		Georgia-specific definitions
Ch. 9, Art. 2	24-9-920	24-7-20	Import of existing statute
	24-9-921	24-7-9	Import of existing statute
	24-9-922	24-7-24	Import of existing statute
	24-9-923	24-4-48	Import of existing statute
	24-9-924	24-3-17(b)-(c)	Import of existing statute
Ch. 11, Art. 1	24-11-1 to -3	24-8-1 to -6	Adaptation of old Art. 1, Ch. 8, Tit. 24, but (at minimum) significantly restructured
Ch. 11, Art. 2	24-11-20 to -29	24-8-20 to -30	Import of existing Art. 2, Chap 8, Title 24)
New Ch. 12	24-12-31	24-9-29	Import of existing statute except for an additional definition of "client" in the new statute
Ch. 12			Entire Proposed Ch. 12 is old O.C.G.A. 24-9-40 to -47, Part 2 of Art. 2 of Ch. 9
Ch. 12, Art. 1	24-12-1 to -2	24-9-40 and -40.2	
Ch. 12, Art. 2	24-12-10 to -14	24-9-41 to -45	

Proposed Title 24 Grouping	Proposed Title 24 section(s)	Old O.C.G.A. Reference (where known)	Notes
Ch. 12, Art. 3	24-12-20	24-9-40.1 and -47	
Ch. 13, Art. 1	24-13-1 to -7	24-10-1 to -7	All generally from Art. 1 of Ch. 10 of Title 24, only slight re-words otherwise verbatim
Ch. 13, Art. 2	24-13-20 to -29	24-10-20 to -29	Import of previous Part 1 of Art. 2 "Subpoenas and Notice to Produce" of Ch. 10 of Tit 24. Slight re-org but same substantive law
Ch. 13, Art. 3	24-13-60 to -62	24-10-60 to -62	Import of old Art. 3, Securing Attendance of Prisoners
Ch. 13, Art. 4	24-13-90 to -97	24-10-90 to -97	Import of old Art. 5, Uniform Act to Secure the Attendance of Witnesses from without the State
Ch. 13, Art. 5	24-110 to -112	-10-110 to -112	Import of old Art. 6, Uniform Foreign Depositions Act
Ch. 13, Art. 6	24-13-130 to -139	24-10-130 to -139	Import of old Art. 7, Depositions to Preserve Testimony in Criminal Proceedings
Ch. 13, Art. 7	24-13-150 to -154	24-10-150 to -154	Import of old Article 8. Perpetuation of Testimony
Ch. 14, Art. 1	24-14-1 to -9	24-4-1 to -9	Import of old Ch. 4, Proof Generally, Art. 1, General Provisions
Ch. 14, Art. 2	24-14-20 to -29	24-4-20 to -27	Import of old Art. 2, Presumptions (with slight reorganization)
Ch. 14, Art. 3	24-14-40 to -47	24-4-40 to -47	Import of old Art. 3 Particular Matters of Proof (except for -48, which is in new rule 923 for Authentication)