



Judicial Council of Georgia

Standing Committee on Legislation

Legislative Support Request/Informational Item

2020 Session

Council/Organization: Court Reporting Matters Committee of the Judicial Council

Subject Matter: Modernizing and updating court-reporting related statutes.

Code Section(s): OCGA §§ 5-6-41, 15-5-21, 15-6-11, 15-11-17, 15-14-1, 15-14-5, OCGA §§ 15-14-21 through -24; OCGA 15-14-26, -28, -29 through -33, and -36; OCGA §§ 17-5-55, 17-8-5; and OCGA §§ 9-11-29.1, 9-11-30.

1. Overview: Describe the proposal/legislation and its purpose.

The proposed legislation will modernize and update a wide range of court reporting related statutes. The proposed changes will modernize the Court Reporting Act (OCGA § 15-14-20 *et seq.*), which was originally enacted in 1974 and last substantively updated in 1993. The proposal will also provide for the creation of rules and regulations governing the use of digital recording systems in courts, ensuring the accuracy and reliability of transcript generated by such systems. Further, the proposal will update the Civil Practice Act to accommodate e-filing of deposition transcripts. It will not affect deposition procedures in any other way.

Please see attached memo for more information.

2. Priority: Is this legislation of high, medium or low importance to your council?

High priority.

3. Stakeholders & Constituents:

- a. Describe the constituent and stakeholder groups that may be affected by this proposal (e.g., executive branch, other governmental entities, other agencies).
- b. Which are likely to support this request?
- c. Which are likely to oppose this request?
- d. Which have not voiced support or opposition?

A number of stakeholder groups will be affected by the proposal. The proposed changes will impact all classes of trial courts, although we anticipate that superior courts and state courts will be the most affected courts as they use court reporters the most. However, our proposal requires the Board of Court Reporting to promulgate statewide minimum standards for the use of digital recording systems in all classes of trial court. Thus, some municipal, juvenile, probate, and magistrate courts that currently use older digital recording systems may need to implement upgrades under the new rules. However, we feel that the respective councils of each class of court could ultimately support the proposal, since it vests the ultimate discretion about whether to implement these systems in each individual judge. Judges who do not wish to use a digital recording system may simply continue using traditional court reporting services, which will remain unchanged.



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The bar will also be affected, in that it will be easier to manage deposition transcripts, and in that attorneys will no longer need to receive and then file paper copies of depositions. Additionally, while some attorneys oppose the use of digital recording systems for court proceedings, we hope that the majority will recognize the efficiencies they can bring in comparison to traditional court reporting services. We believe that prosecutors and the defense bar are aware of the problems with the current system of providing court reporting services in the state, particularly in light of the publicity surrounding the Owens decision (Owens v. State, 303 Ga. 254 (2018)). Thus, we hope that PAC, the GPDC, and GACDL will support the legislation as well.

Additionally, civil trial and appellate attorneys and their clients experience significant delays in transcript production under the current system. Since civil matters are not impacted by the 120-day rule for criminal cases, and because incarcerated clients often receive expedited service, civil transcript production is often extremely delayed. Thus, we believe that groups such as GTLA and the appellate section of the state bar will support the legislation. Additionally, anything that reduces the cost of litigation, as this proposal hopefully will, would be welcomed by legal aid and pro bono advocacy groups such as Atlanta Legal Aid, Georgia Legal Services, and the Atlanta Volunteer Lawyers Foundation. Ultimately we think the bar and relevant legal organizations are likely to support the legislation.

County governments will be impacted. Court reporting services can be expensive, and can comprise a significant line item in county budgets. The availability of guidelines for the use of digital recording systems will enable counties to implement potentially significant cost savings, and we think that ACCG would likely support the proposal.

Municipal governments, however, unlike counties, generally do not fund court reporting services in municipal courts at all. The imposition of new requirements on any digital recording systems in use may not be supported by municipal governments, since this could only conceivably increase the cost of running a municipal court, and thus, GMA may oppose the bill.

Clerks of superior court and state court may support the bill, if only because it cleans up the process for filing deposition transcripts under the new e-filing law, which has become one of an issue in e-filing jurisdictions. However, they may oppose the additional burden placed on them to retain the evidence in trials—this cost is currently born by court reporters.

Further, the delay in transcript production times and the inability of litigants to access affordable court reporting services impacts all litigants and the public more generally. The public cannot access justice if it cannot access a record of court proceedings. Delays in transcript production and the cost of traditional court reporting services directly impact litigants' ability to access the appellate courts. The public as a whole is a stakeholder that is impacted by this issue, and we hope the public would support the bill.

Finally, because court reporters, nationally, routinely lobby against any effort in any state to permit digital court recording in addition to traditional stenographic court recording, we anticipate that court reporters will oppose this bill. However, we hope to address any concerns of



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court reporters by making clear that digital court reporting is not intended to replace traditional court reporting.

- 4. Supporting data:** Summarize any supporting data, evaluations, and/or research for this request.

As discussed further in the attached memo, the current shortage of court reporters is only worsening, and it has continued to impact the administration of justice in Georgia. Currently, the average age of court reporters in Georgia is 54 years old, with a full 70% of certified court reporters being over the age of 50. Only 7% of court reporters are 34 years old or younger. Courts in various areas of the state report increasing problems locating court reporting services, and this shortage will only become worse as more reporters retire.

- 5. Additional impact:** Will this request require a constitutional amendment or new court rule? Explain why the purpose of the bill cannot be achieved without legislation, if applicable.

This proposal will require both the Board of Court Reporting and the Judicial Council to promulgate new rules, which will replace the existing rules promulgated by both those groups regulating the practice of court reporting. The Court Reporting Act and related statutes are extremely detailed in delineating what and how court proceedings may be taken down and how the practice of court reporting is regulated, and it is not possible to make rules that contradict the existing statutes.

- 6. Budget:** Will this legislation have a fiscal impact on the state? If yes, what is the projected expense? Has a White Paper been submitted to the Judicial Council Standing Committee on Budget (if applicable)? Will this legislation have a fiscal impact on counties or municipalities?

This legislation will not have a fiscal impact on the state. As discussed above, counties should see some cost savings under this proposal, but some municipalities may see slight increases in costs if they need to upgrade their existing systems.

- 7. Other Factors:** Discuss any other relevant factors that should be considered, including experience in other states or whether similar legislation has been introduced in the past.

Staff is not aware of any similar legislation in Georgia. However, a large number of states, and the federal courts, have enacted updates to their laws and rules governing the provision of court reporting services in the last 10-15 years. Every single state (with one exception, Kentucky) that has updated their court reporting laws and rules has moved to a blended system that provides for a combination of digital recording and traditional court reporting services. The federal courts have also moved to a blended system. This proposal would implement a similar blended system in Georgia.



Judicial Council of Georgia

Administrative Office of the Courts

Chief Justice Harold D. Melton
Chair

Cynthia H. Clanton
Director

Memorandum

TO: Legislation Committee
FROM: Court Reporting Matters Committee
RE: Overview of Proposed Legislation to Amend Court Reporting-Related Laws
DATE: July 19, 2019

I. Background

At the last Court Reporting Matters Committee (CRMC) meeting, the Committee voted to support legislation that would update and modernize the law of court reporting in Georgia, including enabling the use of digital recording systems in trial courts to support and supplement traditional stenographic court reporting. Georgia law currently does not provide comprehensive statutory or rule-based guidance providing for the use of these systems. Some judges across the classes of trial courts have been using versions of these systems and have been engaging in pilot projects, and the Committee recommends the creation of a legal and regulatory framework that ensures that transcripts generated by the use of these systems are true, complete, and correct and that they can be produced reliably and accurately. This memo briefly outlines the proposed framework, and attached are proposed statutory changes.

This proposal attempts to address the problems posed by the shortage of court reporters. Georgia is currently facing an ongoing, accelerating shortage of stenographic court reporters. This problem is not unique to Georgia; there is a nation-wide shortage of court reporters in both state-level trial courts and the federal courts. Currently, the average age of court reporters in Georgia is 54 years old, with a full 70% of certified court reporters being over the age of 50. Only 7% of court reporters are 34 years old or younger. This shortage is only predicted to grow more severe as court reporters continue to retire and fewer new reporters become licensed. Across the country and in the federal system, courts have successfully utilized digital recording technology to supplement traditional stenographic court reporting.

The current shortage of court reporters has already had an impact on the administration of justice in Georgia. Owens v. State, 303 Ga. 254 (2018). This shortage has lead, in some areas, to delays in scheduling cases, as courts are unable to locate enough court reporters to cover hearings. Further, the shortage has lead to significant delays in transcript production time. *Id.* at 258 (noting a 19 year delay in appellant's case). Indeed, delay in transcript production, often reaching several

years, is one of the most common grounds cited in complaints against court reporters received by the Board of Court Reporting. The inability of litigants to obtain a transcript in a timely fashion directly impacts their ability to access the appellate courts. Additionally, staff of the Board of Court Reporting has experienced an increasing volume of inquiries from attorneys, parties, and court personnel who are having difficulty obtaining transcripts from reporters who have retired, become ill, or passed away suddenly, and whose records are unavailable or in a format that cannot be transcribed easily or affordably. The public's ability to access the justice system has been significantly impacted by this issue.

Further, in our current system, court reporters often retain the original evidence from trials, which can lead to incredible difficulties on re-trial as reporters retire and move away and original physical evidence becomes lost. All of these problems create inefficiencies and increase costs both to litigants and to court budgets, and the problems posed by the current system will only continue to worsen if action is not taken proactively to enable courts to create the record in an efficient and cost-effective manner.

II. Overview of Proposal

First, the proposal provides critical cleanup to almost every court reporting related statute in Georgia. For example, the Civil Practice Act is amended to make it clear that the original copy of a deposition transcript in an e-filing jurisdiction may be a digital copy, which will enable attorneys to more easily file the "original" PDF transcript with an e-filing system. Additionally, the proposal requires clerks or other designated court personnel to retain the physical evidence in trials, taking this burden away from the court reporters.

Additionally, large sections of the Court Reporting Act are amended to place more discretion in the Board of Court Reporting. The current statutes governing the licensing of court reporters are very detailed, and include detailed provisions, for example, requiring reporters to renew their licenses by April 1, for example. Similarly, the law presumes that the Board will administer a test of court reporting skills before awarding a license, but this practice was abandoned years ago for a variety of reasons, and the Board currently does not provide a test. Instead, the Board requires proof of a nationally-recognized court reporting certification. As regulatory priorities have shifted and technology has advanced over the four decades since this law was enacted, compliance with the Act has become an increasing burden on Board members and staff. The proposal would grant more discretion in the Board to create rules governing the regulation of the industry. In addition, the proposal recognizes that different classes of courts may face different court reporting challenges and permits more representation from judges from those classes of court to serve on the Board.

Most significantly, however, the proposal amends Chapter 14 of Title 5 (Court Reporting) to allow the Board of Court Reporting to regulate the use of digital recording systems as an alternative method for creating trial transcripts. The Board is tasked with promulgating rules for the use of the systems, including statewide minimum technical standards for their use. The new statute creates two new licenses: a certified digital operator and a certified transcriptionist. Digital recording systems, when used in lieu of court reporters, must be operated by a digital operator and

the resulting transcript must be created by a certified transcriptionist (all certified court reporters will be able to receive a license as a certified transcriptionist). Only transcripts certified by a certified court reporter or certified transcriptionist are entitled to the presumption that they are true, complete, and correct.

Finally, the discretion regarding whether to use a digital recording system or a traditional court reporter is vested in each individual judge. However, where a judge wishes to use a digital recording system in lieu of a court reporter, that judge must utilize a system that complies with the rules of the Board of Court Reporting. OCGA § 15-14-1. Related statutes, such as the Appellate Practice Act and two provisions in Title 17, are amended to conform with this system.