

The Senate Judiciary Committee offered the following substitute to SB 27:

A BILL TO BE ENTITLED
AN ACT

To amend Article 5 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated, relating to trial juries, so as to provide the state and the accused with same number of peremptory challenges in misdemeanor, felony, and death penalty cases, and in challenging alternate jurors; to provide the manner in which peremptory challenges are made; to change the size of the jury panel in felony and death penalty cases; to provide the manner in which the number of alternative jurors is determined; to amend Code Section 17-8-4 of the Official Code of Georgia Annotated, relating to the procedure for trial of jointly indicted defendants and other matters relating to jointly indicted defendants, so as to provide the state with an equal number of additional peremptory challenges in trials for jointly indicted defendants; to provide for related matters; to provide for an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 5 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated, relating to trial juries, is amended by striking Code Section 15-12-125 relating to demand of jury panels in misdemeanor trials, and inserting in lieu thereof the following:

"15-12-125.

For the trial of misdemeanors in all courts, each party may demand a full panel of 12 competent and impartial jurors from which to select a jury. When one or more of the regular panel of trial jurors ~~is~~ are absent or for any reason disqualified, the judge, at the request of counsel for either party, shall cause the panel to be filled by additional competent and impartial jurors to the number of 12 before requiring the parties or their counsel to strike a jury. From this panel, the ~~accused shall have the right to challenge four peremptorily, defendant~~ and the state two shall each have the right to challenge three jurors peremptorily. The defendant and the state shall exercise their challenges as provided in Code Section 15-12-166. The remaining six jurors shall constitute the jury."

SECTION 2.

Said article is further amended by striking Code Section 15-12-160, relating to the required panel of jurors in felony trials and the summoning of tales jurors, and inserting in lieu thereof the following:

"15-12-160.

When any person stands indicted for a felony, the court shall have impaneled ~~30~~ 24 jurors from which the defense and prosecution may strike jurors; provided, however, in any case in which the state announces its intention to seek the death penalty, the court shall have impaneled ~~42~~ 32 jurors from which the defense and state may strike jurors. If, for any reason, after striking from the panel there remain less than 12 qualified jurors to try the case, the presiding judge shall summon such numbers of persons who are competent jurors as may be necessary to provide a full panel. In making up the panel or successive panels, the presiding judge shall draw the tales jurors from the jury box of the county and shall order the sheriff to summon them."

SECTION 3.

Said article is amended further by striking Code Section 15-12-165, relating to the number of peremptory challenges of jurors, and inserting in lieu thereof the following:

"15-12-165.

Every person ~~indicted for a crime or offense~~ accused of a felony may peremptorily challenge ~~12~~ six of the jurors impaneled to try him or her. The state shall be allowed ~~one-half~~ the same number of peremptory challenges allowed to the accused defendant; provided, however, in any case in which the state announces its intention to seek the death penalty, the ~~person indicted for the crime~~ defendant may peremptorily challenge ~~20~~ ten jurors and the state shall be allowed ~~one-half~~ the same number of peremptory challenges ~~allowed to the accused.~~"

SECTION 4.

Said article is amended further by striking Code Section 15-12-166, relating to jurors not challenged are to be sworn, and inserting in lieu thereof the following:

"15-12-166.

If a juror is found competent ~~and is not challenged peremptorily by the state, he shall be put upon the accused,~~ the defendant and the state shall exercise their peremptory challenges with the state exercising the first challenge. Unless the parties and the court agree to another procedure, peremptory challenges shall be exercised in a manner so that the challenges shall not be heard by the jurors. Unless ~~he~~ the juror is challenged peremptorily by the ~~accused~~ defendant or the state, the juror shall be sworn to try the case."

SECTION 5.

Said article is amended further by striking Code Section 15-12-169, relating to the manner of selecting alternate jurors, and inserting in lieu thereof the following:

"15-12-169.

Alternate jurors must be drawn from the same source and in the same manner and have the same qualifications as the jurors already sworn. They shall be subject to the same examination and challenges. The number of alternative jurors shall be determined by the court. The state and the defendant shall be entitled to as many peremptory challenges to alternate jurors as there are alternate jurors called. ~~The defendant shall be entitled to additional peremptory challenges in an amount twice greater than the additional peremptory challenges of the state.~~ The peremptory challenges allowed to the state and to the defendant in such event shall be in addition to the regular number of peremptory challenges allowed in criminal cases to the defendant and to the state as provided by law. When two or more defendants are tried jointly, ~~each defendant shall be entitled to as many peremptory challenges to alternate jurors as there are alternate jurors called~~ the number and manner of exercising peremptory challenges shall be determined as provided in Code Section 17-8-4."

SECTION 6.

Code Section 17-8-4 of the Official Code of Georgia, relating to the procedure for trial of jointly indicted defendants and other matters relating to jointly indicted defendants, is amended by striking said Code section and inserting in lieu thereof the following:

"17-8-4.

(a) When two or more defendants are jointly indicted for a capital offense, any defendant so electing shall be separately tried unless the state shall waive the death penalty. When indicted for a capital felony when the death penalty is waived, or for a felony less than capital, or for a misdemeanor, such defendants may be tried jointly or separately in the discretion of the trial court. In any event, a jointly indicted defendant may testify for another jointly indicted defendant or on behalf of the state. When separate trials are ordered in any case, the defendants shall be tried in the order requested by the state. If the offense requires joint action and concurrence of two or more persons, acquittal or conviction of one defendant shall not operate as acquittal or conviction of others not tried.

(b) When two or more defendants are tried jointly for a crime or offense, such defendants shall be entitled to the same number of strikes as a single defendant if tried separately. The strikes shall be exercised jointly by the defendants or shall be apportioned among the defendants in the manner the court shall direct. In the event two or more defendants are tried jointly, the court, upon request of the defendants, acting in its sole discretion, may

1 allow an equal number of additional strikes to the defendants, not to exceed five each, as
2 the court shall deem necessary, to the ends that justice may prevail. The court shall allow
3 the state the same number of additional strikes as are allowed to the defendants."

4 **SECTION 7.**

5 This Act shall become effective upon its approval by the Governor or upon its becoming law
6 without such approval.

7 **SECTION 8.**

8 This Act shall apply to all trials that commence on or after the effective date of this Act.

9 **SECTION 9.**

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