

House Bill 414 (AS PASSED HOUSE AND SENATE)

By: Representative Jenkins of the 93rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to provide for concurrent grand juries; to establish procedures relating to pretrial
3 motions, discovery, certain witnesses, and demands for trial; to create time limits for filing
4 pretrial motions; to require that a demand for trial be filed with the clerk of court and served
5 upon the judge assigned to hear such case; to specify when a demand for trial shall expire;
6 to provide for procedures subsequent to appeal; to provide for procedures for a continuance
7 when a party, attorney, or material witness is on active duty as a member of the National
8 Guard or a reserve or active component of the armed forces of the United States; to provide
9 for the effect of the continuance on the demand for trial; to provide for bail; to clarify
10 provisions relating to oral scientific reports; to provide for other matters relative to the
11 foregoing; to provide for an effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
15 amended by adding a new Code Section 17-7-55 to read as follows:

16 "17-7-55.

17 In any term of court when the public interest requires it, the court may empanel one or
18 more concurrent grand juries in accordance with Part 1 of Article 4 of Chapter 12 of
19 Title 15."

20 style="text-align:center">**SECTION 2.**

21 Said title is further amended by striking Code Section 17-7-110, relating to the indictment
22 or accusation and witnesses, in its entirety and inserting in lieu thereof the following:

23 "17-7-110.

24 ~~Reserved.~~

1 All pretrial motions, including demurrers and special pleas, shall be filed within ten days
 2 after the date of arraignment, unless the time for filing is extended by the court."

3 SECTION 3.

4 Said title is further amended by striking Code Section 17-7-170, relating to demands for trial,
 5 and inserting in lieu thereof the following:

6 "17-7-170.

7 (a) Any person against whom a true bill of indictment or an accusation is filed with the
 8 clerk for an offense not affecting his the person's life may enter a demand for trial at the
 9 court term at which the indictment or accusation is filed or at the next succeeding regular
 10 court term thereafter; or, by special permission of the court, he or she may at any
 11 subsequent court term thereafter demand a trial. In either case, the demand for trial shall
 12 be filed with the clerk of court and served on upon the prosecutor and upon the judge to
 13 whom the case is assigned or, if the case is not assigned, upon the chief judge of the court
 14 in which the case is pending. The demand shall be binding only in the court in which the
 15 demand is filed, except where the case is transferred from one court to another without a
 16 request from the defendant.

17 (b) If the person is not tried when the demand is made or at the next succeeding regular
 18 court term thereafter, provided at both court terms there were juries impaneled and
 19 qualified to try ~~him, he~~ the person, the person shall be absolutely discharged and acquitted
 20 of the offense charged in the indictment or accusation. For purposes of computing the term
 21 at which a misdemeanor must be tried under this Code section, there shall be excluded any
 22 civil term of court in a county in which civil and criminal terms of court are designated;
 23 and for purposes of this Code section it shall be as if such civil term was not held.

24 (c) Any demand filed pursuant to this Code section shall expire at the conclusion of the
 25 trial or upon the defendant entering a plea of guilty or nolo contendere.

26 (d) If a case in which a demand for trial has been filed, as provided in this Code section,
 27 is reversed on direct appeal, a new demand for trial must be filed within the term of court
 28 in which the remittitur from the appellate court is received by the clerk of court or at the
 29 next succeeding regular court term thereafter.

30 (e) If the case in which a demand for trial has been filed as provided in this Code section
 31 results in a mistrial, the case shall be tried at the next succeeding regular term of court."

32 SECTION 4.

33 Said title is further amended by striking Code Section 17-8-31, relating to continuances
 34 where a party or his or her counsel is in attendance on active duty as member of the National
 35 Guard, and inserting in lieu thereof the following:

1 "17-8-31.

2 (a) It shall be the duty of any judge of the courts of this state to continue any case in the
3 court on or without motion when any party thereto or his or her leading attorney is absent
4 from court when the case is reached by reason of his or her attendance on active duty as a
5 member of the National Guard or a reserve or active component of the armed forces of the
6 United States. The case may proceed if the party, in the absence of his or her leading
7 attorney, or the leading attorney, in the absence of the party, announces ready for trial on
8 the call of the case. If counsel is absent, it shall be necessary for his or her client to make
9 oath that he or she cannot safely go to trial without the absent attorney and, if a party is
10 absent, his or her counsel shall state in his or her place that he or she cannot safely go to
11 trial without the client.

12 (b) It shall be the duty of any judge of the courts of this state to continue any case in the
13 court upon a showing by the state or the defendant that a material and necessary witness
14 is unavailable by reason of being on active duty as a member of the National Guard or as
15 a member of a reserve or active component of the armed forces of the United States.

16 (c) In cases in which a demand for trial has been filed in accordance with Code Section
17 17-7-170 or 17-7-171, the court shall grant the continuance if the party moving for a
18 continuance pursuant to subsection (b) of this Code section establishes by testimony,
19 affidavits, or other evidence that:

20 (1) The witness is material and necessary;

21 (2) The witness is located outside the territorial limits of the state;

22 (3) The party has submitted a request to the proper military authorities for the testimony
23 of the witness in accordance with Section 301 of Title 5 of the United States Code and
24 federal regulations or directives issued by the armed forces pursuant thereto; and

25 (4) The witness will not be available within the time limits prescribed by Code Section
26 17-7-170 or 17-7-171.

27 This continuance shall toll the running of the demand for trial and shall continue the trial
28 until the witness is released from active duty or the military makes the witness available
29 to testify. If the witness only becomes available to testify within the last two weeks of the
30 term of court in which the case must be tried, the case may be tried at the next succeeding
31 term of court.

32 (d) In any case in which the court grants the state a continuance pursuant to subsection (c)
33 of this Code section, the defendant shall have bail set upon application to the court, except
34 in those cases punishable by death or imprisonment for life without parole. In any case in
35 which the defendant is accused of committing a serious violent felony, as defined by
36 subsection (a) of Code Section 17-10-6.1, the court shall consider, but shall not be required
37 to set bail."

1 **SECTION 5.**

2 Said title is further amended by striking paragraph (4) of subsection (a) of Code Section
3 17-16-4, relating to disclosures required of prosecuting attorney and defendant, and inserting
4 in lieu thereof a new paragraph (4) to read as follows:

5 "(4) The prosecuting attorney shall, no later than ten days prior to trial, or as otherwise
6 ordered by the court, permit the defendant at a time agreed to by the parties or ordered
7 by the court to inspect and copy or photograph a report of any physical or mental
8 examinations and of scientific tests or experiments, including a summary of the basis for
9 the expert opinion rendered in the report, or copies thereof, if the state intends to
10 introduce in evidence in its case-in-chief or in rebuttal the results of the physical or
11 mental examination or scientific test or experiment. If the report is oral or partially oral,
12 the prosecuting attorney shall reduce all relevant and material oral portions of such report
13 to writing and shall serve opposing counsel with such portions no later than ten days prior
14 to trial. Nothing in this Code section shall require the disclosure of any other material,
15 note, or memorandum relating to the psychiatric or psychological treatment or therapy
16 of any victim or witness."

17 **SECTION 6.**

18 Said title is further amended by striking paragraph (2) of subsection (b) of Code Section
19 17-16-4, relating to disclosures required of prosecuting attorney and defendant, and inserting
20 in lieu thereof a new paragraph (2) to read as follows:

21 "(2) The defendant shall within ten days of timely compliance by the prosecuting
22 attorney but no later than five days prior to trial, or as otherwise ordered by the court,
23 permit the prosecuting attorney at a time agreed to by the parties or as ordered by the
24 court to inspect and copy or photograph a report of any physical or mental examinations
25 and of scientific tests or experiments, including a summary of the basis for the expert
26 opinion rendered in the report, or copies thereof, if the defendant intends to introduce in
27 evidence in the defense's case-in-chief or rebuttal the results of the physical or mental
28 examination or scientific test or experiment. If the report is oral or partially oral, the
29 defendant shall reduce all relevant and material oral portions of such report to writing and
30 shall serve opposing counsel with such portions no later than five days prior to trial.
31 Nothing in this Code section shall require the disclosure of any other material, note, or
32 memorandum relating to the psychiatric or psychological treatment or therapy of any
33 defendant or witness."

1 **SECTION 7.**

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

4 **SECTION 8.**

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