

House Bill 1264

By: Representatives Teilhet of the 34<sup>th</sup>, Post 2, Fleming of the 79<sup>th</sup>, Walker of the 115<sup>th</sup>, Thompson of the 69<sup>th</sup>, Post 1, and Boggs of the 145<sup>th</sup>

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 that courts may conduct bench trials in criminal cases with the consent of  
3 the defendant and the state; to provide that, when cases in which a demand for trial is filed  
4 end in a mistrial, such cases may be tried again in the same term of court; to provide for the  
5 service of demands for trial; to provide for the expiration of demands for trial in capital cases  
6 in certain circumstances; to provide for the refiling of demands after a case is reversed on  
7 direct appeal; to provide for the retrial of capital cases in which a demand for trial has been  
8 filed that end in a mistrial; to provide for trials to continue to verdict with less than a full  
9 panel of jurors under certain circumstances; to provide that the defendant must notify the  
10 prosecution of extenuating or mitigating evidence to be introduced at the presentencing  
11 hearing in certain circumstances; to provide an effective date; to repeal conflicting laws; and  
12 for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
16 amended by striking Code Section 17-7-70, relating to trial upon accusation in felony cases,  
17 and inserting in lieu thereof a new Code Section 17-7-70 to read as follows:

18 "17-7-70.

19 (a) In all felony cases, other than cases involving capital felonies, in which defendants  
20 have been bound over to the superior court, are confined in jail or released on bond pending  
21 a commitment hearing, or are in jail having waived a commitment hearing, the district  
22 attorney shall have authority to prefer accusations, and such defendants shall be tried on  
23 such accusations, provided that defendants going to trial under such accusations shall, in  
24 writing, waive indictment by a grand jury.

25 ~~(b) Judges of the superior court may open their courts at any time without the presence of~~  
26 ~~either a grand jury or a trial jury to receive and act upon pleas of guilty in misdemeanor~~

1 ~~cases and in felony cases, except those punishable by death or life imprisonment, when the~~  
 2 ~~judge and the defendant consent thereto. The judge may try the issues in such cases without~~  
 3 ~~a jury upon an accusation filed by the district attorney where the defendant has waived~~  
 4 ~~indictment and consented thereto in writing and counsel is present in court representing the~~  
 5 ~~defendant either by virtue of his employment or by appointment by the court."~~

## 6 SECTION 2.

7 Said title is further amended by striking subsection (b) of Code Section 17-7-70.1, relating  
 8 to trial upon accusation in certain felony and misdemeanor cases, and inserting in lieu thereof  
 9 a new subsection (b) to read as follows:

10 "~~(b) Judges of the superior court may open their courts at any time without the presence~~  
 11 ~~of either a grand jury or a trial jury to receive and act upon pleas of guilty or nolo~~  
 12 ~~contendere in felony and misdemeanor cases. The judge of the superior court may try the~~  
 13 ~~issues in such cases without a jury upon an indictment or upon an accusation filed by the~~  
 14 ~~district attorney where the defendant has waived trial by jury~~ Reserved."

## 15 SECTION 3.

16 Said title is further amended by inserting a new Code Section 17-7-98 at the end of Article  
 17 5 of Chapter 7 to read as follows:

18 "17-7-98.

19 Judges of the superior and state courts may open their courts at any time without the  
 20 presence of a jury and, with the consent of the defendant and the state, receive and act upon  
 21 pleas of guilty or nolo contendere, except in those cases in which the state is seeking the  
 22 death penalty, when the defendant's counsel is present in court representing the defendant  
 23 either by virtue of his or her employment or by appointment by the court or the defendant  
 24 has knowingly and intelligently waived the right to counsel."

## 25 SECTION 4.

26 Said title is further amended by striking subsection (e) of Code Section 17-7-170, relating  
 27 to demand for trial, and inserting in lieu thereof a new subsection (e) to read as follows:

28 "(e) If the case in which a demand for trial has been filed as provided in this Code section  
 29 results in a mistrial, the case shall be tried during the term at which the mistrial is declared  
 30 or at the next succeeding regular term of court, provided that there were juries impaneled  
 31 and qualified to try the defendant and provided, further, that the defendant was present in  
 32 court announcing ready for trial and requesting a trial on the indictment or accusation."



- 1 "17-8-7.
- 2 (a) If a defendant is entitled to a jury trial, trial shall be by jury unless the defendant
- 3 waives a jury trial in writing or in open court with the consent of the state and the approval
- 4 of the court.
- 5 (b) The size of a jury in a criminal case shall be as provided in Code Section 15-12-125
- 6 for misdemeanor cases and Code Section 15-12-165 for felony cases.
- 7 (c) At any time before a verdict is returned by the jury, the state and the defendant may,
- 8 with the court's approval stipulate in writing that the jury may consist of fewer persons or
- 9 that a jury of fewer persons may return a verdict if the court finds it necessary to excuse a
- 10 juror for good cause after the trial commences and no alternate jurors are available."

11 **SECTION 7.**

12 Said title is further amended by striking subsection (a) of Code Section 17-10-2, relating to

13 conduct of presentencing hearings in felony cases, and inserting in lieu thereof a new

14 subsection (a) to read as follows:

15 "(a) Except in cases in which the death penalty or life without parole may be imposed,

16 upon the return of a verdict of 'guilty' by the jury in any felony case, the judge shall dismiss

17 the jury and shall conduct a presentence hearing at which the only issue shall be the

18 determination of punishment to be imposed. In the hearing the judge shall hear additional

19 evidence in extenuation, mitigation, and aggravation of punishment, including the record

20 of any prior criminal convictions and pleas of guilty or nolo contendere of the defendant,

21 or the absence of any prior conviction and pleas, provided that only such evidence in

22 aggravation as the state has made known to the defendant prior to the defendant's trial and

23 only such evidence in extenuation or mitigation as the defendant has made known to the

24 state prior to the commencement of the sentencing hearing shall be admissible. The judge

25 shall also hear argument by the defendant or the defendant's counsel and the district

26 attorney, as provided by law, regarding the punishment to be imposed. The district attorney

27 shall open and the defendant or the defendant's counsel shall conclude the argument. Upon

28 the conclusion of the evidence and arguments, the judge shall impose the sentence or shall

29 recess the trial for the purpose of taking the sentence to be imposed under advisement. The

30 judge shall fix a sentence within the limits prescribed by law."

31 **SECTION 8.**

32 This Act shall become effective upon its approval by the Governor or upon its becoming law

33 without such approval.

1 **SECTION 9.**

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