

House Bill 1739

By: Representatives Boggs of the 145th and Bordeaux of the 125th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated,
2 relating to trial juries, so as to provide the state and the accused with same number of
3 peremptory challenges in misdemeanor and felony cases, and in challenging alternate jurors;
4 to provide the manner in which peremptory challenges are made; to change provisions
5 relating to the challenges for cause; to change provisions relating to challenges for cause in
6 civil cases; to change provisions relating to questions on voir dire and setting aside juror for
7 cause; to change the size of the jury panel in felony cases; to provide the manner in which
8 the number of alternative jurors is determined; to amend Code Section 17-8-4 of the Official
9 Code of Georgia Annotated, relating to the procedure for trial of jointly indicted defendants
10 and other matters relating to jointly indicted defendants, so as to provide the state with an
11 equal number of additional peremptory challenges in trials for jointly indicted defendants;
12 to provide for related matters; to provide for an effective date; to provide for applicability;
13 to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

19 "15-12-125.

20 For the trial of misdemeanors in all courts, each party may demand a full panel of 12
21 competent and impartial jurors from which to select a jury. When one or more of the
22 regular panel of trial jurors is are absent or for any reason disqualified, the judge, at the
23 request of counsel for either party, shall cause the panel to be filled by additional
24 competent and impartial jurors to the number of 12 before requiring the parties or their
25 counsel to strike a jury. From this panel, the ~~accused shall have the right to challenge four~~
26 ~~peremptorily;~~ defendant and the state ~~two~~ shall each have the right to challenge three jurors

1 peremptorily. The defendant and the state shall exercise their challenges as provided in
 2 Code Section 15-12-166. The remaining six jurors shall constitute the jury."

3 **SECTION 2.**

4 Said article is further amended by striking Code Section 15-12-134, relating to challenge of
 5 juror in civil case for desire or expression of opinion as to which party shall prevail and the
 6 hearing for the challenge, and inserting in lieu thereof the following:

7 "15-12-134.

8 In all civil cases it shall be good cause of challenge that a juror has expressed an opinion
 9 as to which party ought to prevail or that he or she has a wish or desire as to which shall
 10 succeed. It shall also be good cause of challenge that a juror has had a confidential
 11 relationship with a party to the extent that admissions and communications between them
 12 would be excluded on grounds of public policy as recognized in Code Section 24-9-21,
 13 24-9-22, or 24-9-24. Upon challenge made by either party upon either any of these
 14 grounds, it shall be the duty of the court to hear the competent evidence respecting the
 15 challenge as shall be submitted by either party, the juror being a competent witness. The
 16 court shall determine the challenge according to the opinion it entertains of the evidence
 17 adduced thereon."

18 **SECTION 3.**

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

22 "15-12-160.

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

1 with the state exercising the first challenge. Unless the parties and the court agree to
 2 another procedure, peremptory challenges shall be exercised in a manner so that the
 3 challenges shall not be heard by the jurors. Unless ~~he~~ the juror is challenged peremptorily
 4 by the ~~accused~~ defendant or the state, the juror shall be sworn to try the case."

5 SECTION 7.

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

8 "15-12-169.

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

22 SECTION 8.

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

26 "17-8-4.

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

1 (b) When two or more defendants are tried jointly for a crime or offense, such defendants
2 shall be entitled to the same number of strikes as a single defendant if tried separately. The
3 strikes shall be exercised jointly by the defendants or shall be apportioned among the
4 defendants in the manner the court shall direct. In the event two or more defendants are
5 tried jointly, the court, upon request of the defendants, acting in its sole discretion, may
6 allow an equal number of additional strikes to the defendants, not to exceed five each, as
7 the court shall deem necessary, to the ends that justice may prevail. The court shall allow
8 the state the same number of additional strikes as are allowed to the defendants."

9 **SECTION 9.**

10 This Act shall become effective on July 1, 2004.

11 **SECTION 10.**

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

13 **SECTION 11.**

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