

House Bill 170

By: Representatives Golick of the 34th, Roberts of the 154th, Ralston of the 7th, Mumford of the 95th, Miller of the 106th, and others

A BILL TO BE ENTITLED
AN ACT

1 To enact the "Criminal Justice Act of 2005" so as to substantially revise the laws of this state
2 relating to the conduct of criminal trials and appeals in criminal cases; to provide for a short
3 title; to amend Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to
4 appeal or certiorari by the state in criminal cases, so as to provide that the state may appeal
5 from an order, decision, or judgment of a superior court granting a motion for new trial or
6 denying a motion by the state to recuse or disqualify a judge; to amend Article 5 of Chapter
7 12 of Title 15 of the Official Code of Georgia Annotated, relating to trial juries, so as to
8 provide the state and the accused with the same number of peremptory challenges in
9 misdemeanor, felony, and death penalty cases and in challenging alternate jurors; to provide
10 the manner in which peremptory challenges are made; to change the size of the jury panel
11 in felony and death penalty cases; to provide the manner in which the number of alternative
12 jurors is determined; to amend Title 17 of the Official Code of Georgia Annotated, relating
13 to criminal procedure, so as to provide the state with an equal number of additional
14 peremptory challenges in trials for jointly indicted defendants; to provide that the prosecuting
15 attorney shall always conclude the argument to the jury; to change the provision relating to
16 notice and argument in presentence hearings; to provide that provisions relating to discovery
17 apply to sentencing proceedings; to amend Title 24 of the Official Code of Georgia
18 Annotated, relating to evidence, so as to change the provisions relating to the impeachment
19 of witnesses; to provide for the admission of evidence of character of a witness; to provide
20 for the impeachment of witnesses through evidence of conviction of a crime; to provide for
21 the admission of specific instances of conduct by a witness; to provide for other matters
22 relative to the foregoing; to provide for an effective date; to repeal conflicting laws; and for
23 other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

25 **SECTION 1.**

26 This Act shall be known and may be cited as the "Criminal Justice Act of 2005."

1 "15-12-125.
 2 For the trial of misdemeanors in all courts, each party may demand a full panel of 12
 3 competent and impartial jurors from which to select a jury. When one or more of the
 4 regular panel of trial jurors is absent or for any reason disqualified, the judge, at the request
 5 of counsel for either party, shall cause the panel to be filled by additional competent and
 6 impartial jurors to the number of 12 before requiring the parties or their counsel to strike
 7 a jury. From this panel, the ~~accused shall have the right to challenge four peremptorily,~~
 8 defendant and the state ~~two~~ shall each have the right to challenge three jurors peremptorily.
 9 The defendant and the state shall exercise their challenges as provided in Code Section
 10 15-12-166. The remaining six jurors shall constitute the jury."

11 **SECTION 4.**

12 Said article is further amended by striking Code Section 15-12-160, relating to required panel
 13 of jurors in felony trial, and inserting in lieu thereof a new Code Section 15-12-160 to read
 14 as follows:

15 "15-12-160.

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

25 **SECTION 5.**

26 Said article is further amended by striking Code Section 15-12-165, relating to number of
 27 peremptory challenges, and inserting in lieu thereof a new Code Section 15-12-165 to read
 28 as follows:

29 "15-12-165.

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

1 ten jurors and the state shall be allowed ~~one-half~~ the same number of peremptory
2 challenges ~~allowed to the accused.~~"

3 **SECTION 6.**

4 Said article is further amended by striking Code Section 15-12-166, relating to jurors not
5 challenged to be sworn, and inserting in lieu thereof a new Code Section 15-12-166 to read
6 as follows:

7 "15-12-166.

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

15 **SECTION 7.**

16 Said article is further amended by striking Code Section 15-12-169, relating to manner of
17 selecting alternate jurors, and inserting in lieu thereof a new Code Section 15-12-169 to read
18 as follows:

19 "15-12-169.

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

SECTION 10.

Said title is further amended by striking subsection (a) of Code Section 17-10-2, relating to conduct of presentence hearings in felony cases, and inserting in lieu thereof a new subsection (a) to read as follows:

"(a)(1) Except in cases in which the death penalty or life without parole may be imposed, upon the return of a verdict of 'guilty' by the jury in any felony case, the judge shall dismiss the jury and shall conduct a presentence hearing at which the only issue shall be the determination of punishment to be imposed. In the hearing the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or nolo contendere of the defendant, ~~or the absence of any prior conviction and pleas, provided that only such evidence in aggravation as the state has made known to the defendant prior to the defendant's trial shall be admissible.~~

(2) The judge shall also hear argument by the defendant or the defendant's counsel and the district prosecuting attorney, as provided by law, regarding the punishment to be imposed. The district prosecuting attorney shall open and ~~the defendant or the defendant's counsel shall~~ conclude the argument.

(3) Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence to be imposed under advisement. The judge shall fix a sentence within the limits prescribed by law."

SECTION 11.

Said title is further amended by adding a new subsection (e) to Code Section 17-16-2, relating to applicability of discovery in criminal cases, to read as follows:

"(e) The provisions of this article shall apply to presentence hearings."

SECTION 12.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by striking Code Section 24-2-2, relating to character and conduct of parties generally irrelevant, and inserting in lieu thereof a new Code Section 24-2-2 to read as follows:

"24-2-2.

(a) ~~The general character of the parties and especially their conduct in other transactions are irrelevant matter unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct~~ Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

1 (1) Character of accused. Evidence of a pertinent trait of character offered by an
 2 accused or by the prosecution to rebut the same or, if evidence of a trait of character of
 3 the alleged victim of the crime is offered by an accused and admitted under paragraph (2)
 4 of this subsection, evidence of the same trait of character of the accused offered by the
 5 prosecution;

6 (2) Character of alleged victim. Evidence of a pertinent trait of character of the alleged
 7 victim of the crime offered by an accused or by the prosecution to rebut the same or
 8 evidence of a character trait of peacefulness of the alleged victim offered by the
 9 prosecution in a homicide case to rebut evidence that the alleged victim was the
 10 aggressor;

11 (3) Character of witness. Evidence of the character of a witness as provided in Article
 12 4 of Chapter 9 of this title.

13 (b)(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character
 14 of a person in order to show action in conformity therewith. It may, however, be
 15 admissible for other purposes, such as proof of motive, opportunity, intent, preparation,
 16 bent of mind, course of conduct, plan, knowledge, identity, common scheme, modus
 17 operandi, or absence of mistake or accident.

18 (2) Upon written request made by the defendant at or prior to arraignment, the
 19 prosecution in a criminal case shall provide notice of the general nature of any such
 20 evidence it intends to introduce at trial ten days in advance of trial; however, if the other
 21 crimes, wrongs, or acts involve prior difficulties between the parties involved in the case,
 22 then no such notice is required. The trial court may, in its discretion, excuse the ten day
 23 notice requirement on good cause shown.

24 (c)(1) In all cases in which evidence of character or a trait of character of a person is
 25 admissible, proof may be made by testimony as to that person's general reputation for
 26 character in the community by a witness who has knowledge of that person's general
 27 reputation for character in the community.

28 (2) Specific instances of conduct are generally inadmissible to prove character or a trait
 29 of character; however, inquiry is allowable into relevant specific instances of conduct on
 30 cross examination."

31 SECTION 13.

32 Said title is further amended by striking subsections (b) and (c) of Code Section 24-9-20,
 33 relating to testimony of criminal defendant, and inserting in lieu thereof new subsections (b)
 34 and (c) to read as follows:

35 "(b) If a defendant in a criminal case wishes to testify and announces in open court his
 36 intention to do so, he may so testify in his own behalf. If a defendant testifies, he shall be

1 sworn as any other witness and may be examined and cross-examined as any other witness;
 2 ~~except that no evidence of general bad character or prior convictions shall be admissible~~
 3 ~~unless and until the defendant shall have first put his character in issue. Evidence of prior~~
 4 ~~felony convictions may be admitted in those cases where the prior felony convictions are~~
 5 ~~alleged in the indictment, as provided by law. The failure of a defendant to testify shall~~
 6 ~~create no presumption against him, and no comment shall be made because of such failure.~~
 7 ~~(c) In the event that a defendant elects to be sworn and examined, he shall not lose his~~
 8 ~~right to open and conclude the argument to the jury, if he has not introduced other evidence~~
 9 ~~in the trial."~~

10 SECTION 14.

11 Said title is further amended by striking Code Section 24-9-81, relating to when own witness
 12 may be impeached, and inserting in lieu thereof a new Code Section 24-9-81 to read as
 13 follows:

14 "24-9-81.

15 ~~A party may not impeach a witness voluntarily called by him, except where he can show~~
 16 ~~to the court that he has been entrapped by said witness by a previous contradictory~~
 17 ~~statement. Any party, including the party calling the witness, may attack the credibility of~~
 18 ~~a witness. However, in In the trial of all civil cases, either plaintiff or defendant shall be~~
 19 ~~permitted to make the opposite party, or anyone for whose immediate benefit the action is~~
 20 ~~prosecuted or defended, or any agent of said party, or agent of any person for whose~~
 21 ~~immediate benefit such action is prosecuted or defended, or officer or agent of a~~
 22 ~~corporation when a corporation is such party or for whose benefit such action is prosecuted~~
 23 ~~or defended a witness, with the privilege of subjecting such witness to a thorough and~~
 24 ~~sifting examination and with the further privilege of impeachment, as if the witness had~~
 25 ~~testified in his own behalf and were being cross-examined."~~

26 SECTION 15.

27 Said title is further amended by striking Code Section 24-9-84, relating to how witnesses are
 28 impeached by proof of general bad character, and inserting in lieu thereof new Code Sections
 29 24-9-84, 24-9-84.1, and 24-9-84.2 to read as follows:

30 "24-9-84.

31 ~~A witness may be impeached by evidence as to his general bad character. Any party may~~
 32 ~~impeach the credibility of a witness by offering evidence of the witness's bad character in~~
 33 ~~the form of reputation, but subject to the following limitations:~~

34 ~~(a) The evidence may refer only to character for truthfulness or untruthfulness;~~

1 (b) Evidence of truthful character is admissible only after the character of the witness for
 2 truthfulness has been attacked by reputation evidence or otherwise; and

3 (c) The impeaching character witness should first be questioned as to his knowledge of the
 4 general character of the witness, next as to what that character is, and lastly he may be
 5 asked if from that character he would believe him on his oath. The witness may be
 6 sustained by similar proof of character. The particular transactions or the opinions of
 7 single individuals shall not be inquired of on either side, except upon cross-examination
 8 in seeking for the extent and foundation of the witness's knowledge.

9 24-9-84.1.

10 (a) General rule. For the purpose of attacking the credibility of a witness or the accused,
 11 if the accused testifies:

12 (1) Evidence that a witness or the accused has been convicted of a crime shall be
 13 admitted if the crime was punishable by death or imprisonment of one year or more under
 14 the law under which the witness or the accused was convicted if the court determines that
 15 the probative value of admitting the evidence outweighs its prejudicial effect to the
 16 witness or to the accused; and

17 (2) Evidence that any witness or the accused has been convicted of a crime shall be
 18 admitted if it involved dishonesty or making a false statement, regardless of the
 19 punishment that could be imposed for such offense.

20 (b) Time limit. Evidence of a conviction under subsection (a) of this Code section is not
 21 admissible if a period of more than ten years has elapsed since the date of the conviction
 22 or of the release of the witness or the accused from the confinement imposed for that
 23 conviction, whichever is the later date, unless the court determines, in the interest of
 24 justice, that the probative value of the conviction supported by specific facts and
 25 circumstances substantially outweighs its prejudicial effect. However, evidence of a
 26 conviction more than ten years old, as calculated herein, is not admissible unless the
 27 proponent gives to the adverse party sufficient advance written notice of intent to use such
 28 evidence to provide the adverse party with a fair opportunity to contest the use of such
 29 evidence.

30 (c) Effect of pardon or annulment. Evidence of a conviction is not admissible under this
 31 Code section if:

32 (1) The conviction has been the subject of a pardon or annulment based on a finding of
 33 the rehabilitation of the person convicted and such person has not been convicted of a
 34 subsequent crime that was punishable by death or imprisonment for one year or more; or

35 (2) The conviction has been the subject of a pardon, annulment, or other equivalent
 36 procedure based on a finding of innocence.

1 (d) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible
 2 under this Code section. The court may, however, in a criminal case allow evidence of a
 3 juvenile adjudication of a witness other than the accused if conviction of the offense would
 4 be admissible to attack the credibility of an adult and the court is satisfied that admission
 5 in evidence is necessary for a fair determination of the issue of guilt or innocence.

6 (e) Pendency of appeal. The pendency of an appeal therefrom does not render evidence
 7 of a conviction inadmissible. Evidence of the pendency of an appeal shall be admissible.

8 24-9-84.2.

9 Any party may offer evidence of specific instances of conduct of a witness, for the purpose
 10 of attacking or supporting the witness's character for truthfulness, other than conviction of
 11 crime as provided in Code Section 24-9-84.1. Such specific instances of conduct may not
 12 be proved by extrinsic evidence. They may, however, in the discretion of the court, if
 13 probative of truthfulness or untruthfulness, be inquired into on cross-examination of the
 14 witness concerning the witness's character for truthfulness or untruthfulness or concerning
 15 the character for truthfulness or untruthfulness of another witness as to which character the
 16 witness being cross-examined has testified."

17 **SECTION 16.**

18 This Act shall become effective on the first day of the month following the month in which
 19 it is approved by the Governor or in which it becomes law without such approval.

20 **SECTION 17.**

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