

The House Committee on Judiciary Non-civil offers the following substitute to
HB 170:

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 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error,
4 so as to specifically provide that the denial of a defendant's motion to recuse may be subject
5 to interlocutory appeal; to provide that the state may appeal from an order, decision, or
6 judgment of a superior court granting a motion for new trial or denying a motion by the state
7 to recuse or disqualify a judge; to amend Article 5 of Chapter 12 of Title 15 of the Official
8 Code of Georgia Annotated, relating to trial juries, so as to provide the state and the accused
9 with the same number of peremptory challenges in misdemeanor, felony, and death penalty
10 cases and in challenging alternate jurors; to provide the manner in which peremptory
11 challenges are made; to change the size of the jury panel in felony and death penalty cases;
12 to provide for excuses for cause under certain circumstances; to provide the manner in which
13 the number of alternative jurors is determined; to amend Title 17 of the Official Code of
14 Georgia Annotated, relating to criminal procedure, so as to provide for additional peremptory
15 challenges in trials for jointly indicted defendants; to provide that the prosecuting attorney
16 shall always conclude the argument to the jury; to provide that provisions relating to
17 discovery apply to sentencing proceedings; to change certain provisions relating to
18 discovery; to amend Title 24 of the Official Code of Georgia Annotated, relating to evidence,
19 so as to change the provisions relating to the impeachment of the defendant; to change
20 provisions relating to when a witness has been impeached; to provide for the impeachment
21 of witnesses through evidence of conviction of a crime and bad character; to provide for the
22 admission of specific instances of conduct by a witness; to provide for other matters relative
23 to the foregoing; to provide for applicability; to repeal conflicting laws; and for other
24 purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1 "(a) An appeal may be taken by and on behalf of the State of Georgia from the superior
 2 courts, state courts, City Court of Atlanta, and juvenile courts and such other courts from
 3 which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme
 4 Court of Georgia in criminal cases and adjudication of delinquency cases in the following
 5 instances:

6 (1) From an order, decision, or judgment setting aside or dismissing any indictment,
 7 accusation, or petition alleging that a child has committed a delinquent act or any count
 8 thereof;

9 (2) From an order, decision, or judgment arresting judgment of conviction or
 10 adjudication of delinquency upon legal grounds;

11 (3) From an order, decision, or judgment sustaining a plea or motion in bar, when the
 12 defendant has not been put in jeopardy;

13 (4) From an order, decision, or judgment suppressing or excluding evidence illegally
 14 seized or excluding the results of any test for alcohol or drugs in the case of motions
 15 made and ruled upon prior to the impaneling of a jury or the defendant being put in
 16 jeopardy, whichever occurs first;

17 (5) From an order, decision, or judgment of a court where the court does not have
 18 jurisdiction or the order is otherwise void under the Constitution or laws of this state;

19 (6) From an order, decision, or judgment of a superior court transferring a case to the
 20 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28; ~~or~~

21 (7) From an order, decision, or judgment of a superior court granting a motion for new
 22 trial or an extraordinary motion for new trial; or

23 (8) From an order, decision, or judgment denying a motion by the state to recuse or
 24 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy."

25 SECTION 4.

26 Article 5 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated, relating to trial
 27 juries, is amended by striking Code Section 15-12-125, relating to demand of jury panels for
 28 misdemeanor trials, and inserting in lieu thereof a new Code Section 15-12-125 to read as
 29 follows:

30 "15-12-125.

31 For the trial of misdemeanors in all courts, each party may demand a full panel of ~~12~~ 14
 32 competent and impartial jurors from which to select a jury. When one or more of the
 33 regular panel of trial jurors is absent or for any reason disqualified, the judge, at the request
 34 of counsel for either party, shall cause the panel to be filled by additional competent and
 35 impartial jurors to the number of ~~12~~ 14 before requiring the parties or their counsel to strike
 36 a jury. From this panel, the ~~accused shall have the right to challenge four peremptorily,~~

1 defendant and the state two shall each have the right to challenge four jurors peremptorily.
 2 The defendant and the state shall exercise their challenges as provided in Code Section
 3 15-12-166. The remaining six jurors shall constitute the jury."

4 SECTION 5.

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

8 "15-12-160.

9 When any person stands indicted for a felony, the court shall have impaneled ~~30~~ 36 jurors
 10 from which the defense and prosecution may strike jurors; provided, however, that in any
 11 case in which the state announces its intention to seek the death penalty, the court shall
 12 have impaneled ~~42~~ 48 jurors from which the defense and state may strike jurors. If, for any
 13 reason, after striking from the panel there remain less than 12 qualified jurors to try the
 14 case, the presiding judge shall summon such numbers of persons who are competent jurors
 15 as may be necessary to provide a full panel. In making up the panel or successive panels,
 16 the presiding judge shall draw the tales jurors from the jury box of the county and shall
 17 order the sheriff to summon them."

18 SECTION 6.

19 Said article is further amended by adding at the end of Code Section 15-12-164, relating to
 20 challenges to jurors in a felony trial, a new subsection (d) to read as follows:

21 "(d) The court shall also excuse for cause any juror who from the totality of the juror's
 22 answers on voir dire is determined by the court to be substantially impaired in the juror's
 23 ability to be fair and impartial. The juror's own representation that the juror would be fair
 24 and impartial is to be considered by the court but is not determinative."

25 SECTION 7.

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 of the jurors impaneled to try him or her. The state shall be allowed ~~one-half~~
 32 the same number of peremptory challenges allowed to the ~~accused~~ defendant; provided,
 33 however, that in any case in which the state announces its intention to seek the death
 34 penalty, the ~~person indicted for the crime~~ defendant may peremptorily challenge ~~20~~ 18

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

3 **SECTION 8.**

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

7 "15-12-169.

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

21 **SECTION 9.**

22 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 23 amended by striking Code Section 17-8-4, relating to procedure for trial of jointly indicted
 24 defendants, and inserting in lieu thereof a new Code Section 17-8-4 to read as follows:

25 "17-8-4.

26 (a) When two or more defendants are jointly indicted for a capital offense, any defendant
 27 so electing shall be separately tried unless the state shall waive the death penalty. When
 28 indicted for a capital felony when the death penalty is waived, or for a felony less than
 29 capital, or for a misdemeanor, such defendants may be tried jointly or separately in the
 30 discretion of the trial court. In any event, a jointly indicted defendant may testify for
 31 another jointly indicted defendant or on behalf of the state. When separate trials are ordered
 32 in any case, the defendants shall be tried in the order requested by the state. If the offense
 33 requires joint action and concurrence of two or more persons, acquittal or conviction of one
 34 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 shall allow an equal number of additional strikes to the defendants, not to exceed five each,
 7 as the court shall deem necessary, to the ends that justice may prevail. The court may allow
 8 the state additional strikes not to exceed the number of additional strikes as are allowed to
 9 the defendants."

10 SECTION 10.

11 Said title is further amended by striking Code Section 17-8-71, relating to order of argument
 12 after evidence presented, and inserting in lieu thereof a new Code Section 17-8-71 to read
 13 as follows:

14 "17-8-71.

15 After the evidence is closed on both sides, the prosecuting attorney shall be entitled to open
 16 and conclude the argument to the jury. ~~If the defendant introduces no evidence, his counsel~~
 17 ~~shall open and conclude the argument to the jury after the evidence on the part of the state~~
 18 ~~is closed~~ The defendant shall be entitled to make a closing argument prior to the concluding
 19 argument of the prosecuting attorney."

20 SECTION 11.

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

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

33 (2) The judge shall also hear argument by the defendant or the defendant's counsel and
 34 the ~~district~~ prosecuting attorney, as provided by law, regarding the punishment to be
 35 imposed. ~~The district~~ Except in cases where the death penalty may be imposed, the

1 prosecuting attorney shall open and ~~the defendant or the defendant's counsel shall~~
 2 conclude the argument. In cases where the death penalty may be imposed, the prosecuting
 3 attorney shall open and the defendant or the defendant's counsel shall conclude the
 4 argument.

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

8 SECTION 12.

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

11 "(e) Except as provided in paragraph (3) of subsection (b) of Code Section 17-16-4, if a
 12 defendant has elected to have the provisions of this article apply, the provisions of this
 13 article shall also apply to sentencing hearings and the sentencing phase of a death penalty
 14 trial."

15 SECTION 13.

16 Said title is further amended in Code Section 17-16-4, relating to discovery disclosure
 17 required by the prosecuting attorney and defendant, by adding a new paragraph (5) at the end
 18 of subsection (a) and a new paragraph (3) at the end of subsection (b) to read as follows:

19 "(5) The prosecuting attorney shall, no later than ten days prior to trial, or at such time
 20 as the court orders, provide the defendant with notice of any evidence in aggravation of
 21 punishment that the state intends to introduce in sentencing."

22 "(3)(A) The defendant shall, no later than the conclusion of the charge of the jury by
 23 the court or if the defendant has waived a jury trial at the time the case is submitted to
 24 the court for judgment, permit the prosecuting attorney to inspect and copy or
 25 photograph books, papers, documents, photographs, tangible objects, audio and visual
 26 tapes, films and recordings, or copies or portions thereof and to inspect and photograph
 27 buildings or places which are within the possession, custody, or control of the defendant
 28 and which the defendant intends to introduce as evidence in the presentence hearing.

29 (B) The defendant shall, no later than the conclusion of the charge of the jury by the
 30 court or if the defendant has waived a jury trial at the time the case is submitted to the
 31 court for judgment, permit the prosecuting attorney to inspect and copy or photograph
 32 a report of any physical or mental examinations and scientific tests or experiments,
 33 including a summary of the basis for the expert opinion rendered in the report, or copies
 34 thereof, if the defendant intends to introduce in evidence in the presentence hearing the
 35 results of the physical or mental examination or scientific test or experiment. If the

1 report is oral or partially oral, the defendant shall reduce all relevant and material oral
 2 portions of such report to writing and shall serve opposing counsel with such portions.
 3 (C) The defendant shall, no later than the conclusion of the charge of the jury by the
 4 court or if the defendant has waived a jury trial at the time the case is submitted to the
 5 court for judgment, serve upon the prosecuting attorney a list of witnesses that the
 6 defendant intends to call as a witness in the presentence hearing. At the same time, the
 7 defendant shall produce for the opposing party any statement of such witnesses that is
 8 in the possession, custody, or control of the defendants or the defendant's counsel that
 9 relates to the subject matter of the testimony of such witnesses."

10 SECTION 14.

11 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
 12 striking subsections (b) and (c) of Code Section 24-9-20, relating to testimony of criminal
 13 defendant, and inserting in lieu thereof new subsections (b) and (c) to read as follows:

14 "(b) If a defendant in a criminal case wishes to testify and announces in open court his or
 15 her intention to do so, ~~he~~ the defendant may so testify in his or her own behalf. If a
 16 defendant testifies, he or she shall be sworn as any other witness and may be examined and
 17 cross-examined as any other witness, ~~except that no evidence of general bad character or~~
 18 ~~prior convictions shall be admissible unless and until the defendant shall have first put his~~
 19 ~~character in issue. Evidence of prior felony convictions may be admitted in those cases~~
 20 ~~where the prior felony convictions are alleged in the indictment, as provided by law. The~~
 21 failure of a defendant to testify shall create no presumption against him or her, and no
 22 comment shall be made because of such failure.

23 ~~(c) In the event that a defendant elects to be sworn and examined, he shall not lose his~~
 24 ~~right to open and conclude the argument to the jury, if he has not introduced other evidence~~
 25 ~~in the trial."~~

26 SECTION 15.

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

30 "24-9-81.

31 ~~A party may not impeach a witness voluntarily called by him, except where he can show~~
 32 ~~to the court that he has been entrapped by said witness by a previous contradictory~~
 33 ~~statement. Any party, including the party calling the witness, may attack the credibility of~~
 34 ~~a witness. However, in In the trial of all civil cases, either plaintiff or defendant shall be~~
 35 permitted to make the opposite party, or anyone for whose immediate benefit the action is

1 prosecuted or defended, or any agent of said party, or agent of any person for whose
 2 immediate benefit such action is prosecuted or defended, or officer or agent of a
 3 corporation when a corporation is such party or for whose benefit such action is prosecuted
 4 or defended a witness, with the privilege of subjecting such witness to a thorough and
 5 sifting examination and with the further privilege of impeachment, as if the witness had
 6 testified in his or her own behalf and were being cross-examined."

7 **SECTION 16.**

8 Said title is further amended by striking Code Section 24-9-84, relating to how witnesses are
 9 impeached by proof of general bad character, and inserting in lieu thereof new Code Sections
 10 24-9-84 and 24-9-84.1 to read as follows:

11 "24-9-84.

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

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

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

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

25 24-9-84.1.

26 (a) General rule. For the purpose of attacking the credibility of a witness, or of the
 27 defendant, if the defendant testifies:

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

32 (2) Evidence that the defendant has been convicted of a crime shall be admitted if the
 33 crime was punishable by death or imprisonment of one year or more under the law under
 34 which the defendant was convicted if the court determines that the probative value of
 35 admitting the evidence substantially outweighs its prejudicial effect to the defendant; and

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

4 (b) Time limit. Evidence of a conviction under subsection (a) of this Code section is not
 5 admissible if a period of more than seven years has elapsed since the date of the conviction
 6 or of the release of the witness or the defendant from the confinement imposed for that
 7 conviction, whichever is the later date, unless the court determines, in the interest of
 8 justice, that the probative value of the conviction supported by specific facts and
 9 circumstances substantially outweighs its prejudicial effect. However, evidence of a
 10 conviction more than seven years old, as calculated herein, is not admissible unless the
 11 proponent gives to the adverse party sufficient advance written notice of intent to use such
 12 evidence to provide the adverse party with a fair opportunity to contest the use of such
 13 evidence.

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

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

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

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

27 (e) Pendency of appeal. The pendency of an appeal from a conviction does not render
 28 evidence of a conviction inadmissible. Evidence of the pendency of an appeal shall be
 29 admissible."

30 SECTION 17.

31 This Act shall apply to all cases indicted or accused on or after July 1, 2005.

32 SECTION 18.

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