

House Bill 1314

By: Representative Ralston of the 7<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 5 and Chapter 18 of Title 15 of the Official Code of Georgia Annotated,  
2 relating to appeal and error and prosecuting attorneys, respectively, so as to change  
3 provisions relating to the state's right to appeal in criminal cases; to exclude the state's  
4 appeal in criminal cases from the standard of review by appellate courts of first grant of new  
5 trial; to authorize the state to have the right of direct appeal in certain cases rather than  
6 having to seek certification; to provide the state with the right to appeal orders granting a  
7 defendant a bench trial over the objection of the state; to provide for direct appeal when a  
8 district attorney or solicitor is disqualified from prosecuting a case; to remove references to  
9 the former City Court of Atlanta; to amend Code Section 36-32-1 of the Official Code of  
10 Georgia Annotated, relating to establishment of municipal courts, so as to correct a  
11 cross-reference; to provide for related matters; to provide for an effective date; to repeal  
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended  
16 by revising subsection (a) of Code Section 5-5-1, relating to the power of probate, superior,  
17 state, juvenile, and City of Atlanta courts, as follows:

18 "(a) The superior, state, and juvenile courts ~~and the City Court of Atlanta~~ shall have power  
19 to correct errors and grant new trials in cases or collateral issues in any of the respective  
20 courts in such manner and under such rules as they may establish according to law and the  
21 usages and customs of courts."

22 **SECTION 2.**

23 Said title is further amended by revising Code Section 5-5-50, relating to standard for review  
24 by appellate court of first grant of new trial, as follows:

1 "5-5-50.

2 (a) The first grant of a new trial shall not be disturbed by an appellate court unless the  
3 appellant shows that the judge abused his discretion in granting it and that the law and facts  
4 require the verdict notwithstanding the judgment of the presiding judge.

5 (b) This Code section shall not apply to appeals by the state in criminal cases."

6 **SECTION 3.**

7 Said title is further amended by revising subsection (a) of Code Section 5-7-1, relating to  
8 orders, decisions, or judgments appealable by the state in criminal cases, as follows:

9 "(a) An appeal may be taken by and on behalf of the State of Georgia from the superior  
10 courts, state courts, ~~City Court of Atlanta~~, and juvenile courts and such other courts from  
11 which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme  
12 Court of Georgia in criminal cases and adjudication of delinquency cases in the following  
13 instances:

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

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

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

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

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

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

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

31 (8) From an order, decision, or judgment denying a motion by the state to recuse or  
32 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; ~~or~~

33 (9) From an order, decision, or judgment issued pursuant to subsection (c) of Code  
34 Section 17-10-6.2; or

35 (10) From an order, decision, or judgment in the superior or state court granting the  
36 defendant a bench trial over the objection of the state."



