

House Bill 392

By: Representative Levitas of the 82nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated,
2 relating to arraignment and pleas generally, so as to provide for certain requirements prior
3 to a defendant entering a plea of guilty or nolo contendere; to provide for a prosecuting
4 attorney authority to enter into plea discussions; to provide for guidelines for such plea
5 discussions; to provide for restrictions for the judge regarding plea discussions; to provide
6 for certain procedures for a judge regarding tentative plea agreements; to provide for
7 guidelines for a judge regarding such judge granting sentence leniency and reduction; to
8 provide for certain procedures for a judge regarding the acceptance of a plea of guilty or nolo
9 contendere; to provide for a verbatim record of certain proceedings regarding pleas of guilty
10 or nolo contendere; to provide for the right to withdraw a plea of guilty or nolo contendere;
11 to provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

14 Article 5 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to
15 arraignment and pleas generally, is amended by designating its current provisions as Part 1
16 and by adding a new part to read as follows:

17 style="text-align:center">"Part 2

18 17-7-97.1.

19 (a) Pleas of guilty and pleas of nolo contendere shall be entered in a manner consistent with
20 this part.

21 (b) If a person enters a plea of guilty or nolo contendere, such plea shall be received only
22 from the defendant personally in open court; provided, however, that if the defendant is a
23 corporation, the counsel or a designated corporate officer for such corporation shall be
24 authorized to enter the plea.

25 (c) A plea of guilty or a plea of nolo contendere shall be accepted by the judge only after
26 due consideration of the views of the parties and the interests of the public in the effective
27 administration of justice.

28 17-7-97.2.

29 (a) A defendant shall not be called upon to enter a plea before having an opportunity to
30 retain counsel or, if such defendant is eligible for appointment of counsel, until counsel has
31 been appointed or right to counsel waived. A defendant with counsel shall not be required
32 to enter a plea if such defendant's counsel makes a reasonable request for additional time
33 to represent the defendant's interest, or if the defendant has not had a reasonable time to
34 consult with counsel.

35 (b) A defendant without counsel shall not be called upon to enter a plea to any offense
36 without having had a reasonable time to consider his or her decision. When a defendant
37 without counsel tenders a plea of guilty or nolo contendere to an offense, the court shall not
38 accept such plea unless it is reaffirmed by the defendant after a reasonable time for
39 deliberation, following the guidelines established pursuant to Code Section 17-7-97.8.

40 17-7-97.3.

41 (a) In cases in which it appears that the interests of the public in the effective
42 administration of criminal justice pursuant to the guidelines established in Code Section
43 17-7-97.6 would thereby be served, the prosecuting attorney shall be authorized to engage
44 in plea discussions for the purpose of reaching a plea agreement. The prosecuting attorney
45 shall engage in plea discussions or reach a plea agreement with the defendant only through
46 defense counsel, except when the defendant is not eligible for or does not desire
47 appointment of counsel and has not retained counsel.

48 (b) The prosecuting attorney, in reaching a plea agreement, shall be authorized to agree
49 to one or more of the following, as dictated by the circumstances of the individual case:

50 (1) To make or not to oppose favorable recommendations as to the sentence which
51 should be imposed if the defendant enters a plea of guilty or nolo contendere;

52 (2) To seek or not to oppose dismissal of the offense charged, provided that the
53 defendant enters a plea of guilty or nolo contendere to another offense reasonably related
54 to the defendant's conduct; or

55 (3) To seek or not to oppose dismissal of other charges or potential charges against the
56 defendant if the defendant enters a plea of guilty or nolo contendere.

57 17-7-97.4.

58 (a) Unless otherwise ordered by a court of jurisdiction, defense counsel shall conclude a
59 plea agreement only with the consent of the defendant and shall ensure that the decision
60 to enter or not enter a plea of guilty or nolo contendere is ultimately made by the defendant.

61 (b) To aid the defendant in reaching a decision, defense counsel, after appropriate
62 investigation, shall advise the defendant of the alternatives available and of considerations
63 deemed important by the counsel in reaching a decision.

64 17-7-97.5.

65 (a) A judge shall not participate in plea discussions.

66 (b) If a tentative plea agreement has been reached, upon request of the parties, the judge
67 shall be authorized to permit the parties to disclose the tentative agreement and the reasons
68 therefor in advance of the time for the tendering of the plea. The judge shall then indicate
69 to the prosecuting attorney and defense counsel whether the judge will likely concur in the
70 proposed disposition if the information developed in the plea hearing or presented in the
71 presentence report is consistent with the representations made by the parties. If the judge
72 concur but the final disposition differs from that contemplated by the plea agreement, then
73 the judge shall state for the record what information in the presentence report or hearing
74 contributed to the decision not to sentence in accordance with the plea agreement.

75 (c) When a plea of guilty or nolo contendere is tendered or received as a result of a plea
76 agreement, the judge shall give the agreement due consideration, but notwithstanding its
77 existence, shall reach an independent decision regarding whether to grant charge or
78 sentence leniency under the guidelines set forth pursuant to Code Section 17-7-97.6.

79 17-7-97.6.

80 (a) When imposing a sentence, it is proper for the judge to grant sentence leniency and
81 reduction of charges to defendants who enter pleas of guilty or nolo contendere when the
82 interests of the public in the effective administration of criminal justice are thereby served.

83 The judge shall consider:

84 (1) Whether the defendant by entering a plea has aided in ensuring the prompt and
85 certain application of correctional measures;

86 (2) Whether the defendant has acknowledged guilt and shown a willingness to assume
87 responsibility for conduct;

88 (3) Whether leniency will make possible alternative correctional measures which are
89 better adapted to achieving rehabilitative, protective, deterrent, or other purposes of
90 correctional treatment or will prevent undue harm to the defendant from the form of
91 conviction;

- 92 (4) Whether the defendant has made public trial unnecessary when there are good
 93 reasons for not having the case dealt with in a public trial;
 94 (5) Whether the defendant has given or offered cooperation when such cooperation has
 95 resulted or may result in the successful prosecution of other offenders engaged in equally
 96 serious or more serious criminal conduct; and
 97 (6) Whether the defendant by entering a plea has aided in avoiding delay, including,
 98 without limitation, delay due to crowded court dockets, in the disposition of other cases
 99 and thereby has increased the probability of prompt and certain application of
 100 correctional measures to other offenders.
 101 (b) The judge should not impose upon a defendant any sentence in excess of that which
 102 would be justified by any of the rehabilitative, protective, deterrent, or other purposes of
 103 the criminal law merely because the defendant has chosen to require the prosecution to
 104 prove the defendants guilt at trial rather than to enter a plea of guilty or nolo contendere.
 105 (c) A judge imposing a sentence upon a plea of guilty or a plea of nolo contendere shall
 106 impose such sentence in a manner consistent with Code Section 17-10-1.

107 17-7-97.7.

108 The judge shall not accept a plea of guilty or nolo contendere without first determining on
 109 the record that the plea is voluntary. By inquiry of the prosecuting attorney and defense
 110 counsel, or the prosecuting attorney and the defendant, if the defendant has properly
 111 declined to be represented by counsel, the judge shall determine whether the tendered plea
 112 is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has
 113 been reached. If the prosecuting attorney has agreed to seek charge or sentence leniency
 114 which must be approved by the judge, the judge shall advise the defendant personally that
 115 the recommendations of the prosecuting attorney are not binding on the judge. The judge
 116 shall then address the defendant personally to determine whether any other promises or any
 117 force or threats were used to obtain the plea.

118 17-7-97.8.

119 (a) A judge shall not accept a plea of guilty or nolo contendere from a defendant without
 120 first:

121 (1) Determining on the record that the defendant understands the nature of the charges
 122 against him or her;

123 (2) Informing the defendant on the record that by entering a plea of guilty or nolo
 124 contendere, he or she would waive:

125 (A) The right to trial by jury;

126 (B) The presumption of innocence;

- 127 (C) The right to confront witnesses against the defendant;
 128 (D) The right to subpoena witnesses;
 129 (E) The right to testify and to offer other evidence;
 130 (F) The right to assistance of counsel during trial; and
 131 (G) The right not to incriminate himself or herself and that by entering a plea of not
 132 guilty or remaining silent and not entering a plea, the defendant would obtain a jury
 133 trial; and
 134 (3) Informing the defendant on the record:
 135 (A) The terms of any negotiated plea;
 136 (B) The maximum possible sentence on the charge, including that possible from
 137 consecutive sentences and enhanced sentences where provided by law; and
 138 (C) If applicable, the mandatory minimum sentence.
 139 (b) The information contained in subsection (a) of this Code section may be developed by
 140 questions from the judge, the district attorney, or the defense attorney, or a combination of
 141 any of these, and, in the case of a defendant who has properly declined to be represented
 142 by counsel, by the defendant.

143 17-7-97.9.

- 144 (a) Notwithstanding the acceptance of a plea of guilty, the judgment shall not be entered
 145 upon such plea without an inquiry on the record as may satisfy the judge that there is a
 146 factual basis for such plea. If the court intends to reject the plea agreement, the court shall,
 147 on the record, inform the defendant personally that:
 148 (1) The court is not bound by any plea agreement;
 149 (2) The court intends to reject the plea agreement presently before it;
 150 (3) The disposition of the present case may be less favorable to the defendant than that
 151 contemplated by the plea agreement; and
 152 (4) The defendant may withdraw his or her guilty plea as a matter of right.
 153 (b) The court shall, on the record, also inform the prosecuting attorney that the court
 154 intends to reject the plea agreement presently before it and that the state may withdraw its
 155 plea agreement. After informing the state of its intention to reject the plea agreement, the
 156 court shall provide the prosecuting attorney a reasonable opportunity to withdraw the plea
 157 agreement. If neither the plea nor the plea agreement is then withdrawn by the defendant
 158 or the state, respectively, sentence may be pronounced.

159 17-7-97.10.

- 160 A verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo
 161 contendere shall be made and preserved. The record shall include:

- 162 (1) The inquiry into the voluntariness of the plea;
163 (2) The advice to the defendant;
164 (3) The inquiry into the accuracy of the plea; and
165 (4) If applicable, the notice to the defendant and to the prosecuting attorney that the court
166 intends to reject the plea agreement and the defendant's and the state's rights to withdraw
167 the plea or the plea agreement before sentence is pronounced.

168 17-7-97.11.

- 169 (a) After sentence is pronounced, the judge shall allow the defendant to withdraw his or
170 her plea of guilty or nolo contendere whenever the defendant, upon a timely motion for
171 withdrawal, proves that withdrawal is necessary to correct a manifest injustice.
172 (b) In the absence of a showing that withdrawal is necessary to correct a manifest injustice,
173 a defendant shall not be allowed to withdraw a plea of guilty or nolo contendere as a matter
174 of right once sentence has been pronounced by the judge."

175 **SECTION 2.**

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