

House Bill 600

By: Representative Ralston of the 7th

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 change the standard of
4 review for appeals by the state; to authorize the state to have the right of direct appeal in
5 certain cases rather than having to seek certification; to provide the state with the right to
6 appeal orders granting a defendant a bench trial over the objection of the state; to provide the
7 state with the right to appeal orders declaring any statute, law, uniform rule of court, or treaty
8 of this state or of the United States to be unconstitutional; to provide for direct appeal when
9 a district attorney or solicitor is disqualified from prosecuting a case; to remove references
10 to the former City Court of Atlanta; to provide the state with the right to cross-appeal; to
11 provide for appeals to the superior court by the prosecuting entity in certain criminal and
12 ordinance cases tried in municipal, magistrate, recorders, and probate courts; to provide for
13 an exception for certain appeals; to amend Code Section 36-32-1 of the Official Code of
14 Georgia Annotated, relating to establishment of municipal courts, so as to correct a
15 cross-reference; to provide for related matters; to provide for an effective date; to repeal
16 conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

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

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

26 **SECTION 2.**

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

29 "5-5-50.

30 (a) The first grant of a new trial in a civil action shall not be disturbed by an appellate
 31 court unless the appellant shows that the judge abused his or her discretion in granting it
 32 and that the law and facts require the verdict notwithstanding the judgment of the presiding
 33 judge.

34 (b) The first grant of a new trial in a criminal action shall not be disturbed by an appellate
 35 court unless the appellant shows plain error in granting it and that the law and facts require
 36 the verdict notwithstanding the judgment of the presiding judge."

37 **SECTION 3.**

38 Said title is further amended by revising Code Section 5-7-1, relating to orders, decisions,
 39 or judgments appealable by the state in criminal cases, as follows:

40 "5-7-1.

41 (a) An appeal may be taken by and on behalf of the State of Georgia from the superior
 42 courts, state courts, ~~City Court of Atlanta~~, and juvenile courts and such other courts from
 43 which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme
 44 Court of Georgia in criminal cases and adjudication of delinquency cases in the following
 45 instances:

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

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

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

53 (4) From an order, decision, or judgment suppressing or excluding evidence, ~~illegally~~
 54 ~~seized or~~ including but not limited to, excluding evidence of the results of any test for
 55 alcohol or drugs or compelling the return of seized property in the case of motions made
 56 and ruled upon prior to the impaneling of a jury or the defendant being put in jeopardy,
 57 whichever occurs first;

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

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

- 62 (7) From an order, decision, or judgment of a superior court granting a motion for new
 63 trial or an extraordinary motion for new trial;
- 64 (8) From an order, decision, or judgment denying a motion by the state to recuse or
 65 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or
- 66 (9) From an order, decision, or judgment issued pursuant to subsection (c) of Code
 67 Section 17-10-6.2;
- 68 (10) From an order, decision, or judgment in the superior or state court granting the
 69 defendant a bench trial over the objection of the state;
- 70 (11) From an order, decision, or judgment made and ruled upon prior to the defendant
 71 being put in jeopardy declaring any statute, law, uniform rule of court, or treaty of this
 72 state or of the United States to be unconstitutional; or
- 73 (12) From an order disqualifying a district attorney's office as provided in subsection (g)
 74 of Code Section 15-18-5 or an order disqualifying a solicitor-general's office as provided
 75 in subsection (d) of Code Section 15-18-65.
- 76 (b) In any instance in which any appeal is taken by and on behalf of the State of Georgia
 77 in a criminal case, the defendant shall have the right to cross appeal. Such cross appeal
 78 shall be subject to the same rules of practice and procedure as provided for in civil cases
 79 under Code Section 5-6-38.
- 80 (c) Notwithstanding the provisions of subsection (a) of this Code section, if the defendant
 81 obtains a certificate of immediate review from any order, decision, or judgment prior to the
 82 impaneling of a jury or the defendant being put in jeopardy, the state may file a cross
 83 appeal by filing notice thereof within 15 days from the service of the notice of appeal; and
 84 the state may present for adjudication on the cross appeal all errors or rulings adversely
 85 affecting the state. Such cross appeal shall be subject to the same rules of practice and
 86 procedure as provided for in civil cases pursuant to Code Section 5-6-38."

87 **SECTION 4.**

88 Said title is further amended by revising Code Section 5-7-2, relating to certification required
 89 for immediate review of nonfinal orders, decisions, or judgments, as follows:

90 "5-7-2.

91 (a) Except as provided in subsection (b) of this Code section ~~Other than from an order,~~
 92 ~~decision, or judgment sustaining a motion to suppress evidence illegally seized,~~ in any
 93 appeal under this chapter where the order, decision, or judgment is not final, it shall be
 94 necessary that the trial judge certify within ten days of entry thereof that the order,
 95 decision, or judgment is of such importance to the case that an immediate review should
 96 be had.

97 (b) A certificate of immediate review shall not be required from an:

- 98 (1) Order, decision, or judgment suppressing or excluding evidence which excludes the
 99 results of any test for alcohol or drugs or compels the return of seized property; provided
 100 that the prosecuting attorney certifies to the trial court that the appeal is not taken for the
 101 purpose of delay and that the evidence is substantial proof of a fact material in the
 102 proceedings; or
 103 (2) An order, decision, or judgment described in paragraph (10) or (11) of subsection (a)
 104 of Code Section 5-7-1.
 105 (c) For purposes of this Code section, the granting of a motion for new trial or an
 106 extraordinary motion for new trial shall be considered a final order."

107 **SECTION 5.**

108 Said title is further amended by revising Code Section 5-7-3, relating to right of certiorari,
 109 as follows:

110 "5-7-3.

111 A proceeding by certiorari may be taken by and on behalf of the State of Georgia from one
 112 court to another court of this state, where the right of certiorari is provided as a procedure
 113 for appealing a judgment, ~~in the specified situations set forth in Code Sections 5-7-1 and~~
 114 ~~5-7-2."~~

115 **SECTION 6.**

116 Said title is further amended by adding two new Code sections to read as follows:

117 "5-7-6.

118 The prosecuting entity which has a right to appeal to the superior court pursuant to Chapter
 119 4 of this title shall have the same right to appeal to a superior court as the state has as
 120 provided in Code Section 5-7-1, in cases involving:

- 121 (1) Violations of the ordinances of a political subdivision or authorities of this state
 122 which are punishable by a fine or imprisonment; and
 123 (2) Misdemeanors which a municipal, magistrate, recorder, or probate court is
 124 authorized to conduct trials and impose sentences.

125 5-7-7.

126 (a) The provisions of this chapter shall be liberally construed to effectuate its purposes.

127 (b) The provisions of this chapter shall not apply to civil actions brought by the state."

128 **SECTION 7.**

129 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting
 130 attorneys, is amended by revising subsection (g) of Code Section 15-18-5, relating to
 131 appointment of substitute for absent or disqualified district attorney, as follows:

132 "(g) Any order entered by a court disqualifying a district attorney's office from engaging
 133 in the prosecution shall specify the legal basis for such order. The district attorney may,
 134 on behalf of the state and prior to the defendant in a criminal case being put in jeopardy,
 135 ~~apply for a certificate of immediate review~~ directly appeal as provided in Code Section
 136 ~~5-7-2~~ 5-7-1, and such order shall be subject to appellate review as provided in Chapter 7
 137 of Title 5."

138 **SECTION 8.**

139 Said chapter is further amended by revising subsection (d) of Code Section 15-18-65, relating
 140 to a solicitor's disqualification from interest or relationship, as follows:

141 "(d) Any order entered by a court disqualifying a solicitor-general's office from engaging
 142 in the prosecution shall specify the legal basis of such order. The solicitor-general may,
 143 on behalf of the state and prior to the defendant in a criminal case being put in jeopardy,
 144 ~~apply for a certificate of immediate review~~ directly appeal as provided in Code Section
 145 ~~5-7-2~~ 5-7-1, and such order shall be subject to appellate review as provided by Chapter 7
 146 of Title 5."

147 **SECTION 9.**

148 Code Section 36-32-1 of the Official Code of Georgia Annotated, relating to establishment
 149 of municipal courts, is amended by revising subsection (a) as follows:

150 "(a) Each municipal corporation of this state shall, unless otherwise provided in the local
 151 law relating to a particular municipal corporation, be authorized to establish and maintain
 152 a municipal court having jurisdiction over the violation of municipal ordinances and over
 153 such other matters as are by general law made subject to the jurisdiction of municipal
 154 courts. Any such court shall be styled as a municipal court. Any reference in this Code or
 155 in any local law to a corporate court, police court, recorder's court, mayor's court, or any
 156 such court known by any other name which has jurisdiction over the violation of municipal
 157 offenses shall be deemed to mean a municipal court. Except in this Code section ~~and in the~~
 158 ~~laws relating to the City Court of Atlanta~~, the terms 'corporate court,' 'corporate courts,'
 159 'police court,' 'police courts,' 'recorder's court,' 'recorders' courts,' 'mayor's court,' and
 160 'mayors' courts,' when such terms refer to a court of a municipal corporation, are stricken
 161 wherever they appear in any general or local law of this state and the term 'municipal court'
 162 or 'municipal courts,' whichever is appropriate, is inserted in lieu thereof. The change in

163 the name of any such court as provided for by Article VI, Section X, Paragraph I of the
164 Constitution of the State of Georgia and by this Code section shall not affect the validity
165 of any action or prosecution in such court."

166 **SECTION 10.**

167 This Act shall become effective upon its approval by the Governor or upon its becoming law
168 without such approval.

169 **SECTION 11.**

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