

The House Committee on Judiciary Non-Civil offers the following substitute to HB 556:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to
2 pretrial proceedings, so as to provide for trials by a court sitting without a jury under certain
3 circumstances; to provide for exceptions; to provide for requirements and procedures; to
4 provide for a sunset date and automatic repeal; to revise authority for trial upon accusations;
5 to provide for a definition; to provide for a sunset date for trial upon accusations in certain
6 instances; to provide for related matters; to provide for an effective date; to repeal conflicting
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to pretrial
11 proceedings, is amended by adding a new Code section in Article 1, relating to general
12 provisions, to read as follows:

13 "17-7-4.

14 (a) As used in this Code section, the term 'serious violent felony' shall have the same
15 meaning as provided for under Code Section 17-10-6.1.

(b) Except as to trials conducted under Article 2 of Chapter 10 of this title and except for trials involving a serious violent felony, the accused in any felony or misdemeanor case may elect in writing to be tried by the court sitting without a jury by filing such request with the clerk of court and serving such request upon the prosecuting attorney and the judge to whom the case is assigned or, if the case is not assigned, upon the chief judge of the court in which the case is pending.

(c) When an accused elects a trial by the court sitting without a jury, the court shall, on the record:

(1) Advise the accused about the right to a trial by jury and the differences between trial by jury and trial by a court sitting without a jury; and

(2) Inquire whether the accused's election is knowing, intelligent, and voluntary.

(d) In criminal prosecutions when a jury trial has been expressly waived, the court may nevertheless order a trial with a jury. The court shall consider the prosecuting attorney's request for a jury trial, but the prosecuting attorney's objection shall not preclude the court from granting a request by the accused for a trial by the court sitting without a jury under subsection (b) of this Code section.

(e) This Code section shall stand repealed in its entirety on June 30, 2022."

SECTION 2.

Said chapter is further amended by revising Code Section 17-7-70, relating to trial upon accusations in felony cases and trial upon accusations of felony and misdemeanor cases in which guilty plea entered and indictment waived, as follows:

"17-7-70.

~~(a) In all felony cases, other than cases involving capital felonies, in which defendants have been bound over to the superior court, are confined in jail or released on bond pending a commitment hearing, or are in jail having waived a commitment hearing, the district attorney shall have authority to prefer accusations, and such defendants shall be tried on~~

~~such accusations, provided that defendants going to trial under such accusations shall, in writing, waive indictment by a grand jury.~~

(b) Judges of the superior court may open their courts at any time without the presence of either a grand jury or a trial jury to receive and act upon pleas of guilty in misdemeanor cases and in felony cases, except those punishable by death or life imprisonment, when the judge and the defendant consent thereto. The judge may try the issues in such cases without a jury upon an accusation filed by the district attorney where the defendant has waived indictment and consented thereto in writing and counsel is present in court representing the defendant either by virtue of his or her employment or by appointment by the court."

SECTION 3.

Said chapter is further amended by revising Code Section 17-7-70.1, relating to trial upon accusations in certain felony and misdemeanor cases and trial upon plea of guilty or nolo contendere, as follows:

"17-7-70.1.

(a)(1) In felony cases involving violations of the following:

(A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-20, 16-9-31, 16-9-33, 16-9-37, 16-10-52, and 40-5-58;

(B) Article 1 of Chapter 8 of Title 16, relating to theft;

(C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;

(D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to confinement; ~~or~~

(E) Code Section 16-11-131, relating to possession of a firearm by a convicted felon or first offender probationer; or

(F) Code Section 16-13-30, relating to the purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana,

in which defendants have either been bound over to the superior court based on a finding of probable cause pursuant to a commitment hearing under Article 2 of this chapter or have expressly or by operation of law waived a commitment hearing, the district attorney shall have authority to prefer accusations, and the defendants shall be tried on such accusations according to the same rules of substantive and procedural laws relating to defendants who have been indicted by a grand jury.

(2) All laws relating to rights and responsibilities attendant to indicted cases shall be applicable to cases brought by accusations signed by the district attorney.

(3) The accusation need not be supported by an affidavit except in those cases in which the defendant has not been previously arrested in conjunction with the transaction charged in the accusation or when the accusation is to be used as the basis for the issuance of an arrest warrant.

(a.1)(1) As used in this subsection, the term 'serious violent felony' shall have the same meaning as provided for under Code Section 17-10-6.1.

(2) Notwithstanding any other law to the contrary, the district attorney shall have authority to prefer accusations, and the accused shall be tried on such accusations according to the same rules of substantive and procedural laws relating to defendants who have been indicted by a grand jury for any felony, other than a serious violent felony, in which an accused has ~~The provisions of subsection (a) of this Code section shall apply to violations of Code Section 16-13-30 whenever there has been a finding of probable cause pursuant to a commitment hearing under Article 2 of this chapter or the accused has waived either expressly or by operation of law the right to this hearing;~~

(A) Been bound over to the superior court based on a finding of probable cause pursuant to a commitment hearing under Article 2 of this chapter;

(B) Expressly or by operation of law waived a commitment hearing;

(C) Been released on bond pending a commitment hearing; or

(D) Been confined in jail for at least 45 days since his or her arrest, unless such time frame has been waived in writing by the accused.

(3) Paragraphs (2) and (3) of subsection (a) of this Code section shall apply to accusations provided for under this subsection.

(4) This subsection shall be repealed in its entirety on June 30, 2022.

(b) Judges of the superior court may open their courts at any time without the presence of either a grand jury or a trial jury to receive and act upon pleas of guilty or nolo contendere in felony and misdemeanor cases. The judge of the superior court may try the issues in such cases without a jury upon an indictment or upon an accusation filed by the district attorney where the defendant has waived trial by jury.

(c) An accusation substantially complying with the form provided in subsections (d) and (e) of Code Section 17-7-71 shall in all cases be sufficient.

(d) The district attorney may not bring an accusation pursuant to this Code section in those cases where the grand jury has heard evidence or conducted an investigation or in which a no bill has been returned.

(e) Notwithstanding subsections (a) through (d) of this Code section, nothing in this Code section shall affect the rights of public officials to appear before a grand jury as provided in Code Sections 45-11-4 and 45-15-11 or peace officers to appear before a grand jury as provided in Code Section 17-7-52."

SECTION 4.

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

SECTION 5.

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