

Senate Bill 244

By: Senators Beach of the 21st, Albers of the 56th, Summers of the 13th, Robertson of the 29th, Tillery of the 19th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 11 of Title 17 of the Official Code of Georgia Annotated,
2 relating to general provisions regarding the assessment and payment of costs of criminal
3 proceedings, so as to provide for the award of reasonable attorney's fees and costs in a
4 criminal case to the defendant upon such defendant making a successful motion to disqualify
5 the prosecuting attorney for misconduct in connection with the case; to provide for
6 procedures for assessing and paying such fees and costs; to provide for related matters; to
7 provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 11 of Title 17 of the Official Code of Georgia Annotated, relating to
11 general provisions regarding the assessment and payment of costs of criminal proceedings,
12 is amended by adding a new Code section to read as follows:

13 "17-11-6.

14 (a) In the event, based upon a motion by the defendant in a felony or misdemeanor
15 criminal case, that the prosecuting attorney in such case is disqualified due to improper

16 conduct on the part of such prosecuting attorney, the defendant shall be entitled to an award
17 of reasonable costs and attorney's fees in the case.

18 (b) If the disqualification of the prosecuting attorney results in the criminal case being
19 dismissed against the defendant who filed the motion for disqualification due to improper
20 conduct, the defendant who filed the motion for disqualification shall be entitled to an
21 award of all reasonable attorney's fees and costs incurred by the defendant in defending the
22 case.

23 (c) If the disqualification of the prosecuting attorney results only in the disqualification of
24 the prosecuting attorney and the underlying criminal case proceeds to trial, the defendant
25 who filed the motion for disqualification shall be entitled to an award of reasonable
26 attorney's fees and costs directly related to such motion for disqualification.

27 (d) The defendant who filed a successful motion for disqualification of a prosecuting
28 attorney based upon the misconduct of such prosecuting attorney shall file a motion for
29 reasonable attorney's fees and costs upon the termination of the underlying criminal case.
30 The judge to whom the criminal case was assigned shall consider such motion for
31 reasonable attorney's fees and costs and shall award such reasonable attorney's fees and
32 costs as provided under this Code section to such defendant.

33 (e) Attorney's fees and costs awarded under this Code section shall be paid from the
34 treasury of the county in which such criminal case was brought."

35 **SECTION 2.**

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

38 **SECTION 3.**

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