

House Bill 37

By: Representative Randall of the 142nd

A BILL TO BE ENTITLED
AN ACT

To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to clarify when the district attorney shall be disqualified from interest or relationship to engage in a prosecution; to provide for the appointment of a district attorney pro tempore in any matter involving the prosecution of persons or agencies to whom it is the duty of the district attorney to render advice; to amend Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to pretrial proceedings, so as to require a district attorney examination and that any trial be conducted by accusation in every case where a peace officer uses force in the performance of his or her duties which results in the serious injury or death of a person; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Article 1 of Chapter 18, relating to general provisions relative to prosecuting attorneys, by revising Code Section 15-18-5, relating to the appointment of a substitute district attorney for an absent or disqualified district attorney, as follows:

"15-18-5.

(a) As used in this Code section, the term:

(1) 'Competent attorney' means an attorney who meets the qualifications of the office of district attorney as provided for under paragraphs (3), (4), and (5) of Code Section 15-18-3.

(2) 'Immediate family' means a spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, nephew, niece, aunt, uncle, first cousin, and the spouses of any such individuals.

(3) 'Prosecution' means all legal proceedings, including pretrial proceedings, by which a person's liability for a crime is investigated or determined.

(b) The district attorney and the district attorney's office shall be disqualified from interest or relationship to engage in a prosecution of any matter that involves the prosecution of:

(1) The district attorney's immediate family;

(2) The district attorney acting in his or her personal or individual character or for his or her personal or individual interest; or

(3) Persons or agencies to whom it is the duty of the district attorney to render advice, including but not limited to peace officers as provided for in paragraph (7) of Code Section 15-18-6.

~~(a)(c)~~ When a district attorney's office is disqualified from interest or relationship to engage in a prosecution, the district attorney shall notify the Attorney General of the disqualification. Upon receipt of such notification, the Attorney General shall appoint to act as district attorney pro tempore in place of the district attorney for such matter:

~~(1) A Request the services of and thereafter appoint~~ a district attorney, a solicitor-general, or a retired prosecuting attorney as provided in Code Section 15-18-30; provided, however, that in any matter which is subject to Code Section 17-7-52 or 17-7-70.2, the Attorney General shall be limited under this paragraph to appointing a retired prosecuting attorney as provided in Code Section 15-18-30;

~~(2) An Designate an~~ attorney from the Department of Law; or

~~(3) A Appoint a competent attorney to act as district attorney pro tempore in place of the district attorney;~~ provided, however, that in any matter which is subject to Code Section 17-7-52 or 17-7-70.2, the Attorney General shall be limited under this paragraph to appointing a competent attorney who has also previously served as Governor, Attorney General, an assistant attorney general, a Justice of the Supreme Court, a United States Attorney General, an assistant United States Attorney General, a United States Attorney, an assistant United States Attorney, or a judge of the United States district courts or courts of appeals.

~~(b)(d)~~ A private attorney acting as district attorney pro tempore pursuant to paragraph (3) of subsection ~~(a)~~ (c) of this Code section is subject to all laws and regulations established pursuant to Code Section 15-18-19 governing district attorneys. Such private attorney shall receive the same compensation from state funds appropriated for the operations of the district attorneys at the same rate as the district attorney during the term of such appointment and shall incur the same penalties in the discharge of the duties of said office.

~~(c)(e)~~ Nothing in this Code section shall affect Code Section 45-15-30.

~~(d)(f)~~ The appointment of the district attorney pro tempore shall specify in writing the court or courts to which the appointment applies, the county or counties where located, the time period covered, and the name of the case or cases to which such appointment shall apply. A copy of the appointment shall be filed with the clerk of court and copies shall be

provided to the presiding judge and the Prosecuting Attorneys' Council of the State of Georgia and opposing counsel in any action affected by such order. An order appointing a private attorney pursuant to this Code section shall also specify whether such attorney will serve on a full-time or part-time basis and any restrictions which may apply to such attorney's private practice of law during the term of such appointment. Private attorneys who serve on a part-time basis shall be compensated at an hourly rate determined by the Prosecuting Attorneys' Council of the State of Georgia based on the annual salary of district attorneys paid from state funds. The Prosecuting Attorneys' Council of the State of Georgia shall establish such procedures or guidelines as may be necessary to ensure proper accountability of any funds paid to a private attorney pursuant to this Code section.

~~(e)~~(g) A district attorney or solicitor-general who is designated as a district attorney pro tempore, or any assistant designated by such district attorney pro tempore to prosecute such case or cases, or an employee of the Department of Law shall not receive any additional compensation for such services. The actual expenses incurred by the district attorney pro tempore or members of the district attorney pro tempore's staff shall be reimbursed in the same manner and by the same funding source as is provided by law for such personnel when they are performing official duties, provided that, in the case of nonstate paid personnel, the actual expenses incurred shall be reimbursed by the county in which the said district attorney pro tempore is acting at the same rate as provided in Code Section 15-18-12 for district attorneys. Any court costs, filing costs, witness fees, costs of reporting and preparing transcripts of records, and any other expenses incurred for such services shall be paid as provided by law.

~~(f)~~(h) If a disqualified district attorney fails or refuses to notify the Attorney General as provided in subsection ~~(a)~~ (c) of this Code section, the presiding judge may notify the Attorney General.

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

SECTION 2.

Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to pretrial proceedings, is amended in Article 3, relating to indictments, by revising Code Section 17-7-52, relating to the procedure for indictment of peace officer for a crime in the performance of duties, notification, and rights of officer, as follows:

98 "17-7-52.

99 (a) Except as provided for in Code Section 17-7-70.2, before ~~Before~~ an indictment against
100 a present or former peace officer charging the officer with a crime which is alleged to have
101 occurred while he or she was in the performance of his or her duties is returned by a grand
102 jury, the officer shall be notified of the contemplated action by the district attorney of the
103 county wherein the grand jury shall convene and the officer shall be afforded the rights
104 provided in Code Section 45-11-4.

105 (b) Except as provided for in Code Section 17-7-70.2, the ~~The~~ requirements of
106 subsection (a) of this Code section shall apply to all prosecutions, whether for
107 misdemeanors or felonies, and no such prosecution shall proceed either in state or superior
108 court without a grand jury indictment."

109 SECTION 3.

110 Said chapter is further amended in Article 4, relating to accusations, by adding a new Code
111 section to read as follows:

112 "17-7-70.2.

113 (a) As used in this Code section, the term 'serious injury' means an injury involving a
114 broken bone, the loss of a member of the body, the loss of use of a member of the body,
115 the substantial disfigurement of the body or of a member of the body, blackened eyes,
116 substantially swollen lips or other facial or body parts, substantial bruises to body parts, or
117 an injury which is life threatening.

118 (b) In every case where a peace officer uses force in the performance of his or her duties
119 which results in the serious injury or death of a person, the district attorney shall examine
120 the use of force and file accusations relating to any violation of the law in such use of force.

121 (c) After the filing of any accusations as provided for in subsection (b) of this Code
122 section, there shall be a commitment hearing pursuant to Article 2 of this chapter before
123 the judge of the superior court. If the judge makes a finding of probable cause, then such
124 peace officer shall be tried on such accusations according to the same rules of substantive
125 and procedural laws relating to defendants who have been indicted by a grand jury.

126 (d) The requirements of this Code section shall apply to all instances where a peace officer
127 uses force in the performance of his or her duties which results in the serious injury or
128 death of a person notwithstanding any other law to the contrary."

129 SECTION 4.

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