

Summary of the Criminal Justice Act of 2005 (HB170 / AP)

Act §	OCGA	Issues Addressed	Highlights and Summary of Section
1		Short Title of Bill	Criminal Justice Act of 2005
2	5-6-34	State's Right to Appeal	Amends existing law providing that trial court certification must issue a certificate of immediate review of matters not subject to a direct appeal so that it clearly applies to the denial of a defense motion to recuse the trial judge
3	5-7-1	State's Right to Appeal	Allows State to appeal granting of motion for new trial and denial of motion to recuse or disqualify judge
4	15-12-125	Misdemeanor Jury Trials	Misdemeanor Panel Size: 12 Peremptory Strikes: State 3 Defendant 3
5	15-12-160	Felony Jury Panels	Felony Panel Size: Felony = 30 Death Penalty = 42
6	15-12-164	Court Excusal for Cause	If court finds a potential juror's ability to be fair and impartial is substantially impaired court shall excuse for cause
7	15-12-165	Felony Peremptory Strikes	Regular Felony Peremptory Strikes: State 9 Defendant 9 Death Penalty: State 15 Defendant 15
8	15-12-169	Alternate Jurors	Court determines number of alternates. State & Defendant: Strikes = number of alternates
9	17-8-4	Trial of Codefendants	<u>Death Penalty:</u> D has Right to separate trial unless State agrees to waive death penalty (no change) <u>All other cases:</u> Court's discretion as to joint or separate trials of codefendants (no change) If separate trials are ordered Ds "shall be tried in the order requested by the state." (no change) <u>Jury Selection:</u> If tried separately each gets regular number of strikes If tried jointly, court, upon request of defendants, " shall allow an equal number of additional strikes, not to exceed 5 each, <u>as the court shall deem necessary, to the ends that justice may prevail</u> " "The court may allow the state additional strikes not to exceed the number of additional strikes as are allowed to the defendants."
10	17-8-71	Closing Argument	"After the evidence is closed on both sides, the prosecuting attorney <u>shall</u> open and conclude the argument to the jury. The defendant shall be entitled to make a closing argument prior to the concluding argument of the prosecuting attorney."
11	17-10-2(a)	Felony Presentence Hearings	Language "provided that only such evidence in aggravation as the state has made known to the defendant prior to the defendant's trial shall be admissible" in felony cases was removed. This is now covered by 17-16-4(a)(5) (see 13 below) Regular Felonies: Prosecuting attorney shall open & conclude argument Death Penalty cases: Prosecuting attorney opens Defense attorney closes
12	17-16-2	Discovery – Sentencing	Makes provisions for discovery in felony cases applicable to evidence to be used in sentencing hearings

13	17-6-4	Discovery – Notice of Intent	<p><u>State's requirement of notice of evidence in aggravation</u> 17-6-4(a)(5) no later than 10 days prior to trial, or at such time as the court orders but never later than the beginning</p> <p><u>Defendant's required disclosure of evidence at sentencing</u> No later than time of verdict</p> <p><u>Defendant's required disclosure of Sentencing witness list</u> No later than 5 days prior to commencement of trial D is to provide a list of sentencing witnesses</p>
Act §	OCGA	Issues Addressed	Highlights and Summary of Section
13.1	24-2-3 (a)&(b)	Past Sexual Behavior of V (Rape shield extensions)	<p>Past Sexual Behavior of V inadmissible in <u>Rape, Aggravated Sodomy, Aggravated Child Molestation, Aggravated Sexual Battery</u></p> <p>Note: Past sexual behavior includes past marital history, mode of dress, general reputation for promiscuity .</p> <p>Exception – if past behavior directly involved accused and supports an inference that accused could have believe witness consented to conduct</p>
14	24-9-20 (b)&(c)	Defendant who testifies	General language prohibiting bad character & prior conviction evidence until D puts character in issue was struck. Language regarding closing argument was struck
15	24-9-81	Credibility of Witness	Any party may attack credibility of any witness <u>even his own</u>
16	24-9-84 24-9-84.1	Impeachment – Character Impeachment – Prior crimes	<p>Bad character evidence in form of reputation evidence allowed with following limitations:</p> <ul style="list-style-type: none"> - Evidence may only refer to character for truthfulness or untruthfulness - Evidence of truthful character admissible only after character of witnesses truthfulness has been attacked by reputation evidence <u>or otherwise</u> - In a criminal cases, the character for untruthfulness of the defendant may be introduced in evidence only if the defendant testifies and offers evidence of his or her truthful character; and - Character witness should first be questioned as to his knowledge of general character, next as to what that character is, and lastly would you believe under oath. Similar good character evidence is allowed <p>For purpose of attacking credibility of witness:</p> <p><u>Felony convictions</u> <u>Witnesses other than defendants:</u> “Evidence that a witness has been convicted of a crime shall be admitted if the crime was punishable by death or imprisonment of one year or more under the law under which the witness was convicted if the court determines that the probative value of admitting the evidence <u>outweighs</u> its prejudicial effect to the witness”</p> <p><u>As to defendants</u> – “Evidence that the defendant has been convicted of a crime shall be admitted if the crime was punishable by death or imprisonment of one year or more under the law under which the defendant was convicted if the court determines that the probative value of admitting the evidence <u>substantially outweighs</u> its prejudicial effect to the defendant”</p> <p><u>Crimes involving Dishonesty or false statement regardless of punishment</u> “Evidence that any <u>witness or the defendant</u> has been convicted of a crime <u>shall be admitted</u> if it involved dishonesty or making a false statement, regardless of the punishment that could be imposed for such offense”</p> <p><u>Time Limit:</u> Prior conviction where 10 years has elapsed from conviction or release from confinement, whichever is later is inadmissible against a witness, “unless the court determines, in the interest of justice, that the probative value of the conviction supported by the specific facts and circumstances substantially outweighs its prejudicial effect.” Note – anything over 10 years old requires advance written notice to be given by the proponent</p> <p><u>Juvenile Adjudications:</u> Generally inadmissible against defendant</p>

			Presumed inadmissible against a witness, but can be rebutted if it is shown that: <ul style="list-style-type: none"> - would have been a crime if adult - probative value substantially outweighs prejudicial effect - court finds necessary for a fair determination of guilt or innocence of defendant
17		Effective Date	Applies to all trials commencing after July 1, 2005
18		Repeal of laws in Conflict	"All laws and part of laws in conflict with this Act are repealed."