

2018 Regular Session

HOUSE BILL NO. 295

BY REPRESENTATIVE BACALA

CRIMINAL/TRIALS: Provides relative to grounds for a mistrial

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 591 and to enact Code of
3 Criminal Procedure Article 775.2, relative to special grounds for mistrial in criminal
4 proceedings; to provide specific grounds for mistrial; to provide a motion for mistrial
5 made by the state; to provide for objections; to provide for the waiver of certain
6 claims; to provide for findings of fact; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 591 is hereby amended and reenacted
9 and Code of Criminal Procedure Article 775.2 is hereby enacted to read as follows:

10 Art. 591. Double jeopardy; definition

11 No person shall be twice put in jeopardy of life or liberty for the same
12 offense, except, when on his own motion, a new trial has been granted or judgment
13 has been arrested, or where there has been a mistrial legally ordered under the
14 provisions of ~~Article 775~~ Article 775 or 775.2 or ordered with the express consent
15 of the defendant.

16 * * *

17 Art. 775.2. Mistrial; special grounds

18 A. Upon motion of the state, a mistrial may be ordered without prejudice and
19 without the consent of the defendant, and in a jury case, the jury dismissed when,
20 during trial, counsel for defendant does any of the following:

1 (1) Raises the issue that he is rendering ineffective assistance of counsel,

2 (2) Raises the issue that pending actions of the court will render him
3 ineffective as counsel.

4 (3) Appears to be under the influence of drugs or alcohol, or is suffering
5 from a medical condition or other influences which render him unable to effectively
6 assist in the representation of the defendant.

7 B. If the defendant objects to the state's motion for a mistrial on the grounds
8 set forth in Paragraph A of this Article, and the state's motion for mistrial is denied,
9 the defendant shall have waived his right to raise these issues on a claim for
10 ineffective assistance of counsel on appeal or post-conviction relief.

11 C. Upon motion of the state, a mistrial may be ordered without prejudice and
12 without the consent of the defendant, and in a jury case, the jury dismissed when
13 either of the following occur:

14 (1) There is a legal defect in the proceeding which would make any
15 judgment entered upon a verdict reversible as a matter of law.

16 (2) During trial, either inside or outside of the courtroom, there is
17 misconduct resulting in substantial and irreparable prejudice to the state's case, and
18 the misconduct was by a juror or the defendant, his counsel, or someone acting at the
19 behest of the defendant or his counsel. If there are two or more defendants, the
20 mistrial may not be declared as to a defendant who does not join in the motion of the
21 state if neither the defendant, his counsel, nor a person acting at his or his counsel's
22 behest participated in the misconduct, or the state's case is not substantially and
23 irreparably prejudiced as to the defendant.

24 D. Before granting a mistrial, the judge shall make findings of fact with
25 respect to the grounds for the mistrial and insert the findings in the record of the
26 case.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 295 Original

2018 Regular Session

Bacala

Abstract: Provides special grounds for mistrial in criminal proceedings.

Present law provides certain grounds for the court to order a mistrial, including when:

- (1) The defendant consents.
- (2) The jury is unable to agree upon a verdict.
- (3) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law.
- (4) The court finds that the defendant does not have the mental capacity to proceed.
- (5) It is physically impossible to proceed with the trial in conformity with law.
- (6) False statements of a juror on voir dire prevent a fair trial.

Present law requires that a mistrial be ordered when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial, when prejudicial remarks are made by the judge, the district attorney, or other court official, or when the state and the defendant jointly move for a mistrial.

Proposed law provides special grounds for a mistrial which may be ordered without prejudice and without the consent of the defendant, when counsel for defendant does any of the following during trial:

- (1) Raises the issue that he is rendering ineffective assistance of counsel.
- (2) Raises the issue that pending actions of the court will render him ineffective as counsel.
- (3) Appears to be under the influence of drugs or alcohol, or is suffering from a medical condition or other influences which render him unable to effectively assist in the representation of the defendant.

Proposed law provides that the defendant waives his right to raise ineffectiveness of counsel on appeal or post-conviction relief if the defendant objects to the state's motion for mistrial and the state's motion for mistrial is denied.

Proposed law provides that a mistrial may be ordered without prejudice and without the consent of the defendant, and in a jury case, the jury dismissed when there is a legal defect in the proceeding which would make any judgment entered upon a verdict reversible as a matter of law, or, during trial, either inside or outside of the courtroom, there is misconduct resulting in substantial and irreparable prejudice to the state's case.

Proposed law requires the judge to make findings of fact with respect to the grounds for the mistrial and insert the findings in the record of the case prior to ordering a mistrial.

(Amends C.Cr.P. Art. 591; Adds C.Cr.P. Art. 775.2)