
DIGEST

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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)