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PENAL INSTITUTIONS First Offenders: Sentencing and Court Review

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PENAL INSTITUTIONS

First Offenders: Sentencing and Court Review

CODE SECTION:	O.C.G.A. § 42-8-60 (amended)
BILL NUMBER:	SB 442
ACT NUMBER:	964
SUMMARY:	The Act allows the court to enter an adjudication of guilt against a defendant who has been granted first offender status when it is subsequently discovered that the defendant was not a first offender. A first offender sentence will not be imposed until such time as the court has reviewed the defendant's criminal record on file with the Georgia Crime Information Center.

History

O.C.G.A. § 42-8-60 provides for lenient treatment of first offenders. After a verdict of guilty or a plea of *nolo contendere*, the court may “defer further proceeding” and place the first offender on probation.¹ The purpose of this provision is to afford the first offender an opportunity for rehabilitation “without the stigma of a felony conviction.”² If such probation were violated, however, the court could then enter an adjudication of guilt³ and impose any sentence permitted by law, even if that sentence were harsher than the terms originally imposed.⁴

O.C.G.A. § 42-8-60 has been amended on two occasions. In 1982, O.C.G.A. § 42-8-60(a)(2) was added to provide for confinement as a permissible feature of first offender treatment.⁵ In 1985, the Legislature

1. O.C.G.A. § 42-8-60(a)(1) (Supp. 1986).

2. *State v. Wiley*, 233 Ga. 316, 317, 210 S.E.2d 790, 791 (1974).

3. O.C.G.A. § 42-8-60(b) (Supp. 1986). In *Beasley v. State*, 165 Ga. App. 160, 299 S.E.2d 886 (1983), the court reversed a sentence and remanded the case with instructions for further proceedings because the trial court failed to enter an adjudication of guilt after finding that the terms of probation under the First Offender Act had been violated.

4. *Stephens v. State*, 152 Ga. App. 591, 592, 263 S.E.2d 477, 478 (1979), *rev'd on other grounds*, 245 Ga. 835, 268 S.E.2d 330 (1980).

5. 1982 Ga. Laws 1807, 1808, § 1. In *O'Ree v. State*, 172 Ga. App. 51, 51, 322 S.E.2d 89, 90 (1984), the court of appeals rejected defendant's argument that confinement was not “a feature of first offender treatment” before the 1982 amendment became effective.

added another provision to O.C.G.A. § 42-8-60(b) which clarified when the trial court could properly enter an adjudication of guilt. Retaining the same basic language as the original version, the amendment provided that if a defendant violates the terms of his first offender period of probation or is convicted for another crime during that term, an adjudication of guilt may be entered by the court "during the period of probation."⁶

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The Act amends O.C.G.A. § 42-80-60(b) to ensure that the court retains jurisdiction to enter an adjudication of guilt and to proceed with sentencing if it is subsequently discovered that the defendant was not entitled to first offender status. Because the court may have to wait for as long as a month to receive the defendant's criminal records, the Act alleviates the problems which result from delay.⁷ The Act adds O.C.G.A. § 42-8-60(c) which requires the court to review the defendant's criminal record on file with the Georgia Crime Information Center before granting first offender status. This provision provides some assurance that only first offenders are sentenced under this section.⁸

6. Compare 1982 Ga. Laws 1807, 1808, § 1 with 1985 Ga. Laws 380, 381, § 1.

7. Interview with Joe Drolet, Fulton County Assistant District Attorney, in Atlanta (Mar. 20, 1986).

8. *Id.*