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A. Ware

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CRIMES AND OFFENSES

Bail Jumping: Redefine Offenses

CODE SECTION:	O.C.G.A. § 16-10-51(a), (b) (amended), 16-10-51(c) (new)
BILL NUMBER:	HB 768
ACT NUMBER:	1232
SUMMARY:	The Act expands the crime of misdemeanor bail jumping to include defendants charged with or convicted of any misdemeanor who fail to appear as directed. In addition, the Act creates the new offense of out-of-state bail jumping and provides notice procedures applicable to felony, misdemeanor, and out-of-state bail jumping.
EFFECTIVE DATE:	July 1, 1988

History

The crimes of felony and misdemeanor bail jumping¹ were created by the Georgia Legislature in 1980.² The crime of felony bail jumping is committed when a person charged with or convicted of a felony fails to appear at the place and time specified in the conditions of release.³ Prior to HB 768, misdemeanor bail jumping occurred only when a person was charged with or convicted of a “forcible misdemeanor or a misdemeanor . . . of a high or aggravated nature” and did not appear as directed.⁴ There could be no conviction for either felony or misdemeanor bail jumping unless the defendant was notified of the place and time of his court appearance.⁵ In addition, a person could not be convicted of bail jumping if he presented a sufficient excuse for his absence.⁶

1. Bail jumping is defined as follows: “To abscond, withdraw, or secrete one’s self, in violation of the obligation of a bail bond.” BLACK’S LAW DICTIONARY 763 (5th ed. 1979).

2. 1980 Ga. Laws 387.

3. *Id.*

4. *Id.*

5. *Id.* (defining notice as giving a person information by “mailing at his last known address”).

6. 1980 Ga. Laws 387.

HB 768

The Act redefines misdemeanor bail jumping to include persons charged with or convicted of any misdemeanor who jump bail; the underlying misdemeanor is not limited to one that is forcible or of a high or aggravated nature.⁷ The Act also creates the new offense of out-of-state bail jumping⁸ and revises the notice provisions regarding felony and misdemeanor bail jumping.⁹ Finally, the Act contains a specific exemption for those who fail to appear after posting a cash bond if the absence is tantamount to an admission of guilt and the bond can be forfeited without further court proceedings according to local court rules.¹⁰ The proceeds from forfeiture of the bond are treated as a fine paid.¹¹

In its original form, O.C.G.A. § 16-10-51 required that there be notice to the defendant regarding the bail jumping proceedings prior to a conviction for that crime.¹² Notice was to be given to "the person by mailing at his last known address."¹³ This provision was interpreted by some courts to require actual notice, thus making it possible for some defendants to escape prosecution.¹⁴ For example, even if a defendant was instructed to return to court on a certain date, he could not be prosecuted for bail jumping unless he received written notice requiring him to appear.¹⁵ As introduced, HB 768 would have deleted this specific notice procedure and required only that notice be given in some manner.¹⁶ However, the substitutes from both the House and Senate Committees on Judiciary reincorporated the mailing procedure by requiring "mailing to his last known address."¹⁷ In order to address the problem that prompted the legislation, both committees' substitutes proposed that "actual notice to the defendant in open court" be an acceptable alternative to a mailing.¹⁸ The modified mailing and actual notice procedures are included in the final version of the Act.¹⁹

There are no substantial changes made respecting felony bail jumping other than the notice procedures. However, the definition of misde-

7. O.C.G.A. § 16-10-51(a), (b) (1988).

8. O.C.G.A. § 16-10-51(c) (1988).

9. O.C.G.A. § 16-10-51(a), (b) (1988).

10. O.C.G.A. § 16-10-51(d) (1988).

11. *Id.*

12. 1980 Ga. Laws 387.

13. *Id.*

14. Telephone interview with Representative Tom Ramsey, House District No. 3 (Apr. 22, 1988) [hereinafter Ramsey Interview]. Representative Ramsey stated that this problem was brought to his attention by Jack Partain, District Attorney for the Conasauga Circuit.

15. *Id.*

16. HB 768, as introduced, 1987 Ga. Gen. Assem.

17. HB 768 (HCS), 1988 Ga. Gen. Assem.; HB 768 (SCS), 1988 Ga. Gen. Assem.

18. HB 768 (HCS), 1988 Ga. Gen. Assem.; HB 768 (SCS), 1988 Ga. Gen. Assem.

19. O.C.G.A. § 16-10-51(a), (b) (1988).

misdemeanor bail jumping is substantially revised. Under the previous statute, misdemeanor bail jumping was committed when a person failed to appear after being charged with or convicted of a misdemeanor that was forcible or of a high or aggravated nature.²⁰ Initially, HB 768 also included this limiting language.²¹ The Senate committee substitute omitted the language to include all misdemeanors in the definition of misdemeanor bail jumping.²² As passed, HB 768 also refers to misdemeanors generally, thus making all persons charged with or convicted of any misdemeanor subject to penalties for failure to appear.²³

In addition to redefining misdemeanor bail jumping, HB 768 creates the new offense of out-of-state bail jumping.²⁴ This offense was not included in the original legislation but was part of the substitute submitted by the Senate Committee on Judiciary²⁵ and eventually was included in the final version of the Act.²⁶ The offense of out-of-state bail jumping is committed when a person charged with or convicted of specific misdemeanors²⁷ leaves the state in an effort to avoid the appearance required by the conditions of his release.²⁸ Out-of-state bail jumping is classified as a felony and is punishable by one to three years in prison, a \$3000 fine, or both.²⁹ Notice requirements, identical to those regarding felony and misdemeanor bail jumping, are found in the definition of the new crime.³⁰

The offense of out-of-state bail jumping was added at the suggestion of a senator whose district borders Alabama.³¹ Apparently, defendants often leave the state to avoid prosecution. The problem is aggravated by the fact that Alabama authorities are reluctant to search for and extradite a person charged with a misdemeanor. By making out-of-state bail jumping a felony, the legislature intends to encourage extradition while discourag-

20. 1980 Ga. Laws 387.

21. HB 768, as introduced, 1987 Ga. Gen. Assem.

22. HB 768 (HCS), 1988 Ga. Gen. Assem.

23. O.C.G.A. § 16-10-51(b) (1988).

24. O.C.G.A. § 16-10-51(c) (1988).

25. HB 768 (SCS), 1988 Ga. Gen. Assem.

26. O.C.G.A. § 16-10-51(c) (1988).

27. The crime of out-of-state bail jumping can only occur if a person leaves the state to avoid appearing in court after having been charged with or convicted of one of the following misdemeanors: abandonment; simple assault; carrying a deadly weapon to a public gathering; passing bad checks; simple battery; bribery; failure to report child abuse; criminal trespass; contributing to the delinquency of a minor; escape; tampering with evidence; family violence; deceptive business practices; conversion of leased personal property; fraud in obtaining public assistance, food stamps, or Medicaid; reckless conduct; any misdemeanor offense under either Chapter 8 (offenses involving theft) or Chapter 13 (offenses involving controlled substances) of Title 16; and driving under the influence of drugs or alcohol. O.C.G.A. § 16-10-51(c)(2) (1988).

28. O.C.G.A. § 16-10-51(c)(1) (1988).

29. *Id.*

30. *Id.*

31. Ramsey Interview, *supra* note 14. Senator Quillian Baldwin of the 29th District suggested the legislation.

ing bail jumping.³²

Another new provision was added by the Senate committee to exempt certain misdemeanants from prosecution for misdemeanor or out-of-state bail jumping.³³ The new section, included in the final version of the Act, exempts a misdemeanant who fails to appear after posting a cash bond if, under local court rules, his absence is "construed as an admission of guilt and the cash bond is forfeited without the need for any further statutory procedures."³⁴ When there is such a forfeiture, HB 768 directs that "the proceeds of the cash bond are applied and distributed as any fine imposed by the court would be."³⁵

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32. *Id.*

33. HB 768 (SCS), 1988 Ga. Gen. Assem.

34. O.C.G.A. § 16-10-51(d) (1988).

35. *Id.*