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Angelyn M. Wright

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COURTS

Magistrate Courts: Provide that Persons Accused of Violating an Ordinance Relating to Loitering May Be Arrested Prior to the Time of Trial

CODE SECTIONS: O.C.G.A. §§ 15-10-62 to -63 (amended)
BILL NUMBER: HB 1531
ACT NUMBER: 776
SUMMARY: The Act allows for the arrest prior to trial of those persons cited or accused and being prosecuted for violation of a county loitering ordinance.
EFFECTIVE DATE: July 1, 1994

History

State law provides that municipalities and counties may adopt local loitering ordinances.¹ However, the authority of counties to arrest for violation of local ordinances was limited to offenses of public drunkenness and disorderly conduct.² Without authority to arrest, the citing officer could only issue a citation to the accused, requiring that the accused appear in County Recorder's Court at a later date.³ Too often, the accused had no identification at the time of the citation. If the accused failed to appear in court, it was extremely difficult to enforce the citation.⁴ The purpose of this Act is to give counties the authority to arrest loitering-ordinance violators, without mandating arrest.⁵ The Act does not affect the substantive ordinance and does not require counties to adopt loitering ordinances.⁶

HB 1531

A defendant may be prosecuted for violating an ordinance of a county or state authority upon citation or upon accusation.⁷ Prior to this Act,

1. O.C.G.A. § 16-11-36(d) (1992).

2. 1987 Ga. Laws 448 (formerly found at O.C.G.A. § 15-10-62(a) (1990)). Municipalities, however, have authority to arrest for violation of local ordinances other than the two provided for counties. *Mullis v. State*, 27 S.E.2d 91 (Ga. 1943); 1958-59 Op. Att'y Gen. 74; 1962 Op. Att'y Gen. 335.

3. Telephone Interview with Rep. Tom Sherrill, House District No. 62 (Mar. 29, 1994) [hereinafter Sherrill Interview].

4. *Id.*

5. *Id.* After arrest under this Act, the accused receives the same procedural due process afforded after arrest for similar violations, *i.e.*, misdemeanors. *Id.*

6. *Id.*

7. 1987 Ga. Laws 448 (codified at O.C.G.A. § 15-10-62(a) (1990)). Accusation is

one prosecuted by accusation for violating such an ordinance of a county or state authority could not be arrested before trial except for public drunkenness, disorderly conduct, or when the ordinance of a state authority specifically provided for pretrial arrest.⁸ The Act retains these exceptions and adds language that allows one accused of violating a county ordinance "relating to" loitering to be arrested before the time of trial.⁹ It also retains the provisions allowing the defendant's arrest for failure to appear for trial and requiring the defendant to post bond to assure future appearance.¹⁰ Additionally, the Act makes the language of the Code gender neutral by referring to "his or her future appearance."¹¹

The Act also amends the section of the Code that governs the prosecution by citation of ordinance violations.¹² Persons cited for violation of a loitering ordinance may now be arrested prior to trial.¹³ Like Code section 15-10-62(b), Code section 15-10-63(d) continues to provide for the arrest of a defendant who failed to appear for trial upon warrant of the magistrate.¹⁴ In this case, the defendant must post a bond for future appearance.¹⁵

The American Civil Liberties Union (ACLU) opposed HB 1531 due to concern it would be used to "sweep the streets" of homeless people during major public events.¹⁶ Representative Tom Sherrill maintains, instead, the Act is targeted at the problem of persons who violate county loitering ordinances but who, too often, do not appear for their court dates, resulting in a lack of effective enforcement of those ordinances.¹⁷ Ms. Teresa Nelson of the ACLU also points out that it is the taxpayers who will bear the expense of jailing violators who cannot post bond, the majority of those cited for loitering.¹⁸

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made by the county attorney designated by the governing authority. *Id.* Prosecution by citation does not require a prosecuting attorney. 1987 Ga. Laws 448 (codified at O.C.G.A. § 15-10-63(a) (1990)).

8. 1987 Ga. Laws 448 (formerly found at O.C.G.A. § 15-10-62(b) (1990)).

9. O.C.G.A. § 15-10-62(b) (1994).

10. *Id.*

11. *Id.* (emphasis added).

12. 1987 Ga. Laws 448 (codified at O.C.G.A. § 15-10-63(d) (1990)).

13. O.C.G.A. § 15-10-63(d) (1994).

14. *Id.*

15. *Id.*

16. Teresa Nelson, Executive Director of ACLU of Georgia, Address at House Special Judiciary Meeting (Feb. 10, 1994). According to Ms. Nelson, there is a statistical increase in the number of arrests for loitering during major events in Atlanta. *Id.* The concern was this Act would be used as a tool to facilitate the expansion of this practice to counties even though municipalities already have this authority. Telephone Interview with Teresa Nelson (Mar. 29, 1994) [hereinafter Nelson Interview].

17. Sherrill Interview, *supra* note 3.

18. Nelson Interview, *supra* note 16.