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CRIMINAL PROCEDURE Bonds and Recognizances: Expand Superior Court Jurisdiction of Bail Hearings; Create Rebuttable Presumption of Flight for Persons Accused of Certain Violent Crimes

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CRIMINAL PROCEDURE

Bonds and Recognizances: Expand Superior Court Jurisdiction of Bail Hearings; Create Rebuttable Presumption of Flight for Persons Accused of Certain Violent Crimes

CODE SECTION: O.C.G.A. § 17-6-1 (amended)
BILL NUMBER: SB 81
ACT NUMBER: 287
GEORGIA LAWS: 1995 Ga. Laws 379
SUMMARY: The Act amends bail hearing procedures, providing that certain offenses are bailable only before a superior court judge. In addition, the Act limits when bail can be granted in cases involving certain offenses. Lastly, the Act creates a rebuttable presumption of flight for those defendants facing a second conviction for the commission of a serious violent felony.
EFFECTIVE DATE: July 1, 1995¹

History

In 1994, the Georgia General Assembly passed the Sentence Reform Act of 1994 (Reform Act).² The Reform Act mandated that persons convicted of a second serious violent felony would automatically be sentenced to life in prison without parole.³ Because the Reform Act drastically changed the powers and jurisdiction of the State Board of Pardons and Paroles, it had to be ratified by the voters as a constitutional amendment.⁴ In November 1994, the constitutional amendment was ratified.⁵ On

1. The Act applies to all bail hearings held on or after July 1, 1995 without regard to the time the offense was committed. O.C.G.A. § 17-6-1 (Supp. 1995).

2. 1994 Ga. Laws 1959 (codified at O.C.G.A. §§ 16-5-40, 16-6-1, -2, -4, -22.2, 16-8-41, 17-10-1, -6, -6.1, -7, 42-9-39, -45 (Supp. 1995)).

3. 1994 Ga. Laws 1959, § 12, at 1968 (codified at O.C.G.A. § 17-10-7(b)(2) (Supp. 1995)).

4. GA. CONST. art. IV, § 2, ¶¶ 1, 2 (Supp. 1995); see *Legislative Review*, 11 GA. ST. U. L. REV. 37 (1994); *Legislative Review*, 11 GA. ST. U. L. REV. 159, 164 (1994).

5. Ken Foskett, '2 Strikes, You're Out' in Effect, ATLANTA CONST., Jan. 2,

January 1, 1995, the Reform Act became effective.⁶ After the Reform Act's passage, Governor Zell Miller examined Georgia's statutory sentencing scheme seeking to align existing law with the new amendment.⁷

SB 81

The purpose of this Act is to streamline and conform bail hearings with Georgia's sentencing laws.⁸ The Act amends the jurisdictional requirements and procedures for bail hearings found in Code section 17-6-1.⁹ Code section 17-6-1 was amended by adding hijacking a motor vehicle and aggravated stalking to the list of offenses that are bailable only before a superior court judge.¹⁰ The Act's provisions apply to all bail hearings held after July 1, 1995, regardless of when the offense was committed or the conviction occurred.¹¹

After introduction, SB 81 was assigned to the Senate Judiciary Committee. The Committee introduced a substitute which was adopted by the Senate and forwarded to the House.¹² The

1995, at C1.

6. *Id.*

7. Telephone Interview with Sen. Mark Taylor, Senate District No. 12 (July 11, 1995) [hereinafter Taylor Interview].

8. *Id.*

9. O.C.G.A. § 17-6-1 (Supp. 1995).

10. *Id.* Hijacking a motor vehicle was added by SB 81. Aggravated stalking was added separately by HB 413. 1995 Ga. Laws 989. Previously, a person could only be bailed in superior court if they were charged with treason, murder, rape, aggravated sodomy, armed robbery, aircraft hijacking, aggravated child molestation, aggravated sexual battery, controlled substance violations, or if previously charged or convicted of kidnapping, arson, aggravated assault, or burglary. 1988 Ga. Laws 358 (formerly found at O.C.G.A. 17-6-1 (1990)). All other offenses were bailable before a court of inquiry. *Id.*

11. 1995 Ga. Laws 379, § 3, at 380. This section of the law is not codified in O.C.G.A. 17-6-1 (Supp. 1995), which is common practice for effective dates. Taylor Interview, *supra* note 7. Because the Reform Act went into effect on January 1, 1995, it is possible that some defendants facing their second conviction for the commission of a serious violent felony might have been arraigned and released on bail because the prosecution still had the burden of proving the person was likely to flee. Taylor Interview, *supra* note 7. Section 3 was added to reduce the number of fleeing defendants. Taylor Interview, *supra* note 7.

12. SB 81 (SCS), 1995 Ga. Gen. Assem.

substitute bill added language limiting the grant of bail when the defendant faces a second conviction for a serious violent felony.¹³ This provision was added because persons facing their second conviction for the commission of a serious violent felony are subject to life in prison without parole if convicted.¹⁴ The language reflects a common sense realization that such persons are likely to flee if released on bail.¹⁵

Additionally, the substitute defined a serious violent felony by reference to Code section 17-10-6.1.¹⁶ The committee substitute included a rebuttable presumption of flight for those facing a second conviction.¹⁷ Furthermore, it provided for continuances of bail hearings and for the availability of counsel for the defendant.¹⁸

The bill was forwarded to the House and assigned to the House Judiciary Committee.¹⁹ The Committee was concerned that the bill could be construed to create a right to two bail hearings: a committal hearing and a bond hearing.²⁰ Thus, the Committee introduced a substitute to SB 81 that removed all language that could be construed to create a right to more than one hearing.²¹ This substitute was approved by both the House and Senate.²²

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13. *Id.*; Compare SB 81, as introduced, 1995 Ga. Gen. Assem. with SB 81 (SCS), 1995 Ga. Gen. Assem.

14. 1994 Ga. Laws 1959, § 2, at 1961 (codified at O.C.G.A. § 17-10-7 (Supp. 1995)).

15. Taylor Interview, *supra* note 7.

16. SB 81 (SCS), 1995 Ga. Gen. Assem.

17. *Id.*

18. *Id.*

19. Final Composite Status Sheet, Mar. 17, 1995.

20. Meeting of the House Judiciary Committee, Mar. 8, 1995.

21. *Id.*; compare SB 81 (HCS), 1995 Ga. Gen. Assem. with O.C.G.A. § 17-6-1 (Supp. 1995).

22. Final Composite Status Sheet, Mar. 17, 1995.