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## CRIMINAL PROCEDURE Bonds and Recognizances: Release Surety from Liability at Discretion of the Court When the Principal Uses a False Name

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## CRIMINAL PROCEDURE

### *Bonds and Recognizances: Release Surety from Liability at Discretion of the Court When the Principal Uses a False Name*

CODE SECTIONS:	O.C.G.A. §§ 16-10-51, 17-6-31 (amended)
BILL NUMBER:	HB 620
ACT NUMBER:	361
GEORGIA LAWS:	1997 Ga. Laws 973
SUMMARY:	The Act changes the definition of out-of-state-bail jumping to simplify the language and include additional offenses. The Act also increases the penalties for bail jumping. Finally, the Act releases bail bondsmen from liability at the court's discretion when a defendant who has been committed to a correctional facility uses a false name, unless the bondsman knew or should have known that the defendant used a false name, provided that the bondsman acted with due diligence and used all practical means to secure the defendant's attendance before the court.
EFFECTIVE DATE:	July 1, 1997

#### *History*

Bail bondsmen are often called in to post bail for a person they have never met. In such cases, they rely on the word of the person charged with a crime and the information provided by police records.<sup>1</sup> When a suspect gives police and the bail bondsman a false name and fake address, it is difficult, if not impossible, for the bondsman to track down the defendant when his or her court day approaches. As a result, the bond is forfeited.<sup>2</sup> Because the bondsman reasonably relied on the police records and jailers rely on bondsmen to keep the jail population at manageable levels, those in the bond industry say they should not be held liable for the missing defendants.<sup>3</sup>

In addition, the increasing number of arrests resulting from recent crackdowns on driving offenses have led to a growing number of defendants fleeing the state to avoid prosecution.<sup>4</sup> Because the offenses

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1. See Telephone Interview with Rep. William Randall, House District No. 127 (Apr. 24, 1997) [hereinafter Randall Interview].

2. See *id.*

3. See *id.*

4. See *id.*

are misdemeanors, bondsmen have not been able to extradite the fleeing defendants from other states, even though they may know where to find them.<sup>5</sup> To allow prosecutors and bondsmen to pursue misdemeanor defendants beyond Georgia's borders, the General Assembly created the bail-jumping felony statute in 1989.<sup>6</sup> This law makes it a felony for defendants charged with certain misdemeanors to leave the state to avoid prosecution. Because it is a felony charge, bondsmen are then able to get the defendants extradited back to Georgia.<sup>7</sup> Because bondsmen were forfeiting more and more bonds on defendants charged with driving without a license, driving with a suspended or revoked license, and driving without proof of insurance, they believed these charges should be added to the list of misdemeanors that result in a charge of felony out-of-state bail jumping.<sup>8</sup>

### *HB 620*

#### *Introduction*

Because legislators wanted to cut down on the number of defendants who may be tempted to leave the state to avoid prosecution for any of these misdemeanors, HB 620 was introduced to increase the penalty for out-of-state-bail jumping, set a minimum fine of \$1000 and increase the maximum fine to \$5000, and increase the maximum term of imprisonment from three years to five years.<sup>9</sup> HB 620 was passed by a vote of 144 to 15 in the House and 51 to 0 in the Senate.<sup>10</sup>

#### *Giving a False Name*

As introduced, HB 620 would have automatically released bail bondsmen from liability when a defendant fled the state to avoid prosecution on one of the enumerated misdemeanors if the defendant had been released by a jail or correctional institution after giving a false name.<sup>11</sup> Believing that the bondsmen should bear some responsibility, the House Special Judiciary Committee added language that would continue to hold the bondsman liable if he or she actually knew that the defendant had given a false name.<sup>12</sup> The Senate Special

5. *See id.*

6. 1989 Ga. Laws 623 (codified at O.C.G.A. § 16-5-51 (Supp. 1987)).

7. *See* Randall Interview, *supra* note 1.

8. *See id.*

9. *Compare* 1989 Ga. Laws 623 (formerly found at O.C.G.A. § 16-10-51(c) (1996)), *with* O.C.G.A. § 16-10-51(c) (Supp. 1997).

10. *See* <<http://www.ganet.org/services/HB620>>.

11. HB 620, as introduced, 1997 Ga. Gen. Assem.

12. *Compare* HB 620, as introduced, 1997 Ga. Gen. Assem., *with* HB 620 (HCS), 1997 Ga. Gen. Assem.

Judiciary Committee also added responsibility to the bondsmen.<sup>13</sup> First, the bondsman would be liable if he or she knew or should have known that the defendant gave a false name.<sup>14</sup> Second, releasing the bondsman of liability would be at the discretion of the court, and the court must be satisfied that the bondsman acted with due diligence and used all practical means to bring the defendant to court.<sup>15</sup> The Committee added this language because it did not want to let bondsmen escape liability completely by allowing them to use the law to avoid the responsibility of making a reasonable effort to ensure the integrity of the bond.<sup>16</sup>

If the defendant has relatives in the locality where he or she was arrested, bondsmen can get more background information on the individual and sometimes even secure a guarantor for the bond.<sup>17</sup> However, bondsmen generally have no such option when they are called by a defendant from jail.<sup>18</sup> In that situation, a bondsman can rely only on police records and the honesty of the person who has been charged.<sup>19</sup> Although the defendant may be charged with what appears to be a minor misdemeanor, the bondsman is "taking a big risk; you know they aren't exactly getting out members of the angelic choir."<sup>20</sup>

#### *Adding Driving Offenses to Felony Bail-Jumping Statute*

As introduced, HB 620 would have eliminated the enumerated misdemeanors covered by the out-of-state bail-jumping law, making it a felony to skip bail on any misdemeanor.<sup>21</sup> Believing this would carry the law too far, the House Special Judiciary Committee replaced the enumerated misdemeanors that were creating the most vexing problem for the bail bond industry.<sup>22</sup>

These crimes—driving under a suspended or revoked license or with no license at all and driving without proof of insurance—are not serious crimes in and of themselves.<sup>23</sup> They do not indicate a serious risk for

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13. Compare HB 620 (HCS), 1997 Ga. Gen. Assem., with HB 620 (SCA), 1997 Ga. Gen. Assem.

14. See O.C.G.A. § 17-6-31 (Supp. 1997).

15. See *id.*

16. See Telephone Interview with Sen. Mike Egan, Chairman of Senate Special Judiciary Committee, Senate District No. 40 (Apr. 29, 1997).

17. See Randall Interview, *supra* note 1.

18. See *id.*

19. See *id.*

20. *Id.*

21. HB 620, as introduced, 1997 Ga. Gen. Assem.

22. See Randall Interview, *supra* note 1.

23. See Telephone Interview with Paul Mumper, who works in the bail bond industry (July 8, 1997) [hereinafter Mumper Interview].

bondsmen, as would a crime carrying a more severe penalty.<sup>24</sup> Although the amount of bond for these two crimes varies from county to county, in many places it can be as much as \$1000, so a bondsman would lose as much as \$2000 if the defendant did not show up.<sup>25</sup> But the sheer number of cases<sup>26</sup> has led to increasing losses for the bail bond industry over the last several years.<sup>27</sup> The bail bond industry provides a service not only to people who are incarcerated because they are not able to post bond, but also to local law enforcement officials who must manage their jail capacities.<sup>28</sup> Often, in rural areas there is only one bail bondsman in the county and if that person is too cautious in providing bail, it can have repercussions not only for the people who must remain in jail until their court dates, but for those local law enforcement officials.<sup>29</sup> When a bondsman puts up bail for a defendant, the bondsman collects a 10% fee, but is also gambling that the defendant will show up in court.<sup>30</sup>

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24. See Randall Interview, *supra* note 1.

25. See Mumper Interview, *supra* note 23.

26. See *id.* ("We've had to pay off 31 bonds in 10 years [on various crimes], but that's exceptional. We go after people and our thing is we want to get them back into court. We've had a lot of forfeitures, but we've gone to find them.")

27. See *id.*

28. See Randall Interview, *supra* note 1.

29. See *id.*; Telephone Interview with Clarke County Sheriff Jerry Massey, Chairman of the Legislative Committee of the Georgia Sheriff's Association (July 8, 1997).

30. See Randall Interview, *supra* note 1.