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CRIMINAL PROCEDURE

Trial Upon Accusation: Provide for Certain Crimes to be Tried Upon Accusation When a Defendant Has Been Bound Over After a Finding of Probable Cause

CODE SECTION:	O.C.G.A. § 17-7-70.1 (amended)
BILL NUMBER:	HB 1306
ACT NUMBER:	568
GEORGIA LAWS:	1998 Ga. Laws 208
SUMMARY:	The Act provides that certain felony and misdemeanor cases may be tried upon accusation after a probable cause hearing or after a waiver of such hearing, whether expressly or by operation of law. The crimes that may now be tried upon accusation include theft by taking, theft by receiving stolen property, theft by shoplifting, forgery and fraudulent practices, escape from custody, and other offenses related to confinement. Further, the Act provides that offenses relating to possession of firearms by convicted felons and first offenders on probation may be tried upon accusation.
EFFECTIVE DATE:	March 27, 1998 ¹

History

In the past, criminal cases could be tried only upon accusation when a defendant expressly waived indictment by a grand jury.² As a result, many defendants waited several months for trial because of the delay in the indictment process.³ In 1992, the Georgia General Assembly passed HB 1136, which permitted trial by accusation for enumerated offenses.⁴ In 1992, Code section 17-7-70.1 provided that for violations

1. The Act became effective upon approval by the Governor. *See* 1998 Ga. Laws 208, § 3, at 213.

2. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)).

3. *See* Telephone Interview with Rep. Mike Polak, House District No. 67 (May 22, 1998) [hereinafter Polak Interview].

4. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1 (Supp.

of certain Code sections “in which [the] defendants have either been bound over to the superior court or have expressly waived a commitment hearing, . . . the defendants shall be tried on such accusations according to the same rules of substantive and procedural laws relating to defendants who have been indicted by a grand jury.”⁵ The 1992 Code section provided for trial upon accusation in cases involving the following crimes: theft by taking,⁶ theft by shoplifting,⁷ entering a motor vehicle with intent to commit theft or felony,⁸ forgery,⁹ deposit account fraud,¹⁰ financial transaction card theft¹¹ and fraud,¹² unauthorized use of financial transaction card,¹³ escape,¹⁴ and habitual violations of motor vehicle offenses.¹⁵ Further, the 1992 Code section provided that courts could act upon pleas of guilty or nolo contendere without the presence of a jury, and that judges could try cases without a jury if the defendant waived his right to a jury trial.¹⁶ The 1992 Code section also provided that the district attorney could not act under the Code section’s provisions to try the defendant by accusation if the grand jury had heard evidence, conducted an investigation, or returned a “no bill.”¹⁷

1992)).

5. *Id.*

6. *See id.*; O.C.G.A. § 16-8-2 (1996).

7. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-8-14 (1996).

8. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-8-18 (1996).

9. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-9-19 (1996).

10. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-9-20 (1996).

11. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-9-31 (1996).

12. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-9-33 (1996).

13. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-9-37 (1996).

14. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 16-10-52 (1996).

15. *See* 1992 Ga. Laws 1808, § 1, at 1809 (formerly found at O.C.G.A. § 17-7-70.1(a) (Supp. 1992)); O.C.G.A. § 40-5-58 (1997).

16. *See* 1992 Ga. Laws 1808, § 1, at 1809 (codified at O.C.G.A. § 17-7-70.1(b) (Supp. 1992)). This provision remains unchanged. *See* O.C.G.A. § 17-7-70.1(b) (Supp. 1998).

17. *See* 1992 Ga. Laws 1808, § 1, at 1809 (codified at O.C.G.A. § 17-7-70.1(d) (Supp. 1992)). This provision remains unchanged. *See* O.C.G.A. § 17-7-70.1(d) (Supp. 1998). The term “no bill” is used when the State brings indictment proceedings against an individual but the grand jury chooses not to indict. *See* BLACK’S LAW DICTIONARY 1047

In 1996, the General Assembly amended Code section 17-7-70.1 to provide that cases involving the purchase, possession, manufacture, distribution, or sale of a controlled substance or marijuana¹⁸ may be tried upon accusation.¹⁹

The Act was initiated through the efforts of the Grand Jury Associations of DeKalb County and Clayton County.²⁰ The Act sought to relieve some of the backlog in the courts and in local prosecutors' offices.²¹ The offenses included in the Act are victimless crimes that require no further investigation; therefore, grand juries typically "rubber stamp" the cases and send them to trial.²² The process of trial upon accusation helps streamline the court system by allowing grand juries to focus more time on violent offenders, and allows individuals charged with certain crimes to begin the trial process more quickly.²³

HB 1306

HB 1306, as introduced, added the crimes of theft by receiving stolen property and possession of a firearm by a convicted felon or a first offender on probation to the several crimes already subject to trial by accusation pursuant to Code section 17-7-70.1(a).²⁴

The House Special Judiciary Committee offered a substitute to the bill, which provided substantial changes.²⁵ For example, the House Committee substitute added the following crimes to those that could be tried upon accusation: all violations relating to theft, all violations relating to forgery and fraudulent practices, and all violations relating to escape and other offenses related thereto.²⁶ The House Committee

(6th ed. 1990).

18. *See* 1996 Ga. Laws 678, § 1 (codified at O.C.G.A. § 17-7-70.1(a.1) (Supp. 1996)); O.C.G.A. § 16-13-30 (1991).

19. *See* 1996 Ga. Laws 678, § 1 (codified at O.C.G.A. § 17-7-70.1(a.1) (Supp. 1996)). HB 1306 evolved partly because of the success of O.C.G.A. § 17-7-70.1(a.1), which allows for the prosecution of violations of O.C.G.A. § 16-13-30 (possession, manufacture, sale, or purchase of marijuana) upon accusation. *See* Telephone Interview with Rep. William Randall, House District No. 127 (May 20, 1998) [hereinafter Randall Interview].

20. *See* Polak Interview, *supra* note 3.

21. *See id.*

22. *Id.*

23. *See id.*; Randall Interview, *supra* note 19; *see also* Record of Proceedings in the Senate Judiciary Committee (Feb. 16, 1998) [hereinafter Record of Proceedings] (available in Georgia State University College of Law Library).

24. *See* HB 1306, as introduced, 1998 Ga. Gen. Assem.

25. *See* HB 1306 (HCS), 1998 Ga. Gen. Assem.

26. *See id.*

substitute also changed the requirements for trying a case upon accusation when the defendant has been bound over “based on a finding of probable cause pursuant to a commitment hearing . . . or ha[s] expressly *or by operation of law* waived a commitment hearing.”²⁷ The Committee added the “or by operation of law” language to the language requiring a probable cause hearing or waiver thereof.²⁸ The Committee substitute also provided that defendants brought to trial by accusation have all the same rights as defendants in cases brought by indictment.²⁹ Additionally, an accusation affidavit is not required to support an accusation unless the offense charged is one for which the defendant has not been arrested previously.³⁰

The House floor substitute, which is the final version of the bill,³¹ added that violators of Code section 16-11-131, relating to the possession of a firearm by a convicted felon or first offender probationer, may be tried upon accusation.³² This addition was suggested by the Senate Judiciary Committee.³³

Applicability

The Act sets forth several crimes that may now be tried upon accusation, rather than through indictment.³⁴ The Act retains trial upon accusation for all crimes that were previously included in Code section 17-7-70.1(a) and adds the crimes of theft, forgery and fraudulent practices, crimes relating to escape, and crimes involving possession of a firearm by a convicted felon or a first offender probationer.³⁵ Finally, the Act requires that before a trial upon

27. *Id.* (emphasis added). Additionally, the House Committee substitute renumbered Code section 17-7-70.1(a) to create subparagraphs (a)(1), (a)(2), and (a)(3). *Compare* HB 1306 (HCS), *with* HB 1306, as introduced, 1998 Ga. Gen. Assem.

28. *Compare* HB 1306 (HCS), 1998 Ga. Gen. Assem., *with* HB 1306, as introduced, 1998 Ga. Gen. Assem.

29. *See* O.C.G.A. § 17-7-70.1 (a)(1)-(a)(3) (Supp. 1998).

30. *See id.*

31. The House floor substitute was passed on February 10, 1998 with the added support of Reps. Randall of the 127th District, Massey of the 86th District, and Jenkins of the 110th District. *See* Telephone Interview with Rep. Warren Massey, House District No. 86 (May 21, 1998) [hereinafter Massey Interview]; *see also* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

32. *See* O.C.G.A. § 17-7-70.1(a)(1)(E) (Supp. 1998).

33. *See* Record of Proceedings, *supra* note 23.

34. *See* O.C.G.A. § 17-7-70.1(a) (Supp. 1998).

35. *See id.*

accusation may take place, the defendant must “have either been bound over to the superior court based on a finding of probable cause pursuant to a commitment hearing . . . or ha[s] expressly or by operation of law waived a commitment hearing.”³⁶ The language requiring a finding of probable cause was added to assure that a defendant’s due process rights were not being violated by the statute.³⁷

Alison W. Ellwanger

36. *Id.*

37. *See* Massey Interview, *supra* note 31.