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CRIMINAL PROCEDURE

Bonds and Recognizances: Amend Provisions Regarding Certain Offenses

CODE SECTION: O.C.G.A. § 17-6-1 (amended)
BILL NUMBER: HB 776
ACT NUMBER: 1140
SUMMARY: The Act amends the Code section relating to offenses bailable only before a superior court judge. The Act also adds a new subsection which requires a presiding judicial officer to notify the superior court when an individual has been arrested for certain offenses and is being held without bail. Furthermore, the Act permits a person charged with certain offenses to petition the superior court for release on bail.
EFFECTIVE DATE: July 1, 1988

History

As early as 1860, Georgia statutes provided that certain serious crimes were bailable¹ only at the discretion of a superior court judge.² To a large extent, public perception defined what constituted an egregious crime and dictated whether stricter bail proceedings were required.³ A list of

1. Bail is generally defined as a cash bond which is “[a] sum of money, in the amount designated in an order fixing bail, posted by a defendant or by another person on his behalf with a court . . . upon condition that such money will be forfeited if the defendant does not comply with the directions of a court requiring his attendance at the criminal action.” BLACK’S LAW DICTIONARY 128 (5th ed. 1979).

2. The first written Code of Georgia incorporated this premise, designating capital offenses as those for which a judge of the superior court must set bail. CODE OF GA. § 4625 (1860). The Code of 1860 is often referred to as the Code of 1863 or the Original Code of 1863 because the Civil War delayed its publication several years. Clark, *The History of the First Georgia Code*, in REPORT TO THE SEVENTH ANNUAL MEETING OF THE GEORGIA BAR ASSOCIATION 144 (1890).

The Code listed murder as the only capital offense for white persons, but listed “insurrection, or an attempt to excite it; murder; poisoning with intent to kill; and rape upon a free white female” as capital offenses when committed by a “slave or free person of color.” CODE OF GA. §§ 4220, 4704 (1860).

3. Telephone interview with Joe Drolet, Assistant District Attorney, Fulton County (Apr. 15, 1988) [hereinafter Drolet Interview]. Public outrage over the ability of certain offenders to make bail with minimal judicial proceedings can directly affect the

crimes requiring stricter bail proceedings was eventually codified and currently is found at Code section 17-6-1.⁴ Change in public opinion regarding the seriousness of certain crimes is reflected in the history of that Code section.⁵ That section, as well as sections dealing with criminal procedure generally, reveal the legislature's ad hoc approach.⁶

HB 776 was introduced during the 1987 legislative session.⁷ Originally, the bill was intended to amend O.C.G.A. § 17-6-1 to make drug trafficking an offense bailable only before a superior court judge.⁸

HB 776

The Act amends O.C.G.A. § 17-6-1 by changing both the format and substance of the Code section.⁹ Format changes were not present in the original version of HB 776¹⁰ but the Senate Committee on Judiciary provided a substitute which changed the form by numbering offenses bailable only before a superior court judge.¹¹ This structure was incorporated into the final version of the bill.¹²

Significant substantive changes to the Code section address five specific areas. Section 17-6-1(a) lists the offenses which require individual review by a superior court judge regarding potential bail.¹³ The offense of perjury previously was perceived to constitute an offense serious enough to require stricter bail proceedings, but the Act deletes perjury from the

legislature's desire to set stricter bail requirements for particular offenses. *Id.* For example, note the addition of aggravated child molestation to the statute in this regard. O.C.G.A. § 17-6-1(a)(7) (Supp. 1988).

4. O.C.G.A. § 17-6-1 (Supp. 1988).

5. The revisionary history of O.C.G.A. § 17-6-1 can be tracked in some detail: CODE OF GA. § 4625 (1860); CODE OF GA. § 4649 (1868); CODE OF GA. § 4747 (1873); CODE OF GA. § 4747 (1882); GA. PENAL CODE § 933 (1895); GA. PENAL CODE § 958 (1910); 1922 Ga. Laws 51; CODE OF GA. § 27-901 (1933); 1973 Ga. Laws 454; 1980 Ga. Laws 1359; 1982 Ga. Laws 910; 1983 Ga. Laws 3; 1983 Ga. Laws 358; 1983 Ga. Laws 452; 1984 Ga. Laws 22; 1984 Ga. Laws 679; 1984 Ga. Laws 760; 1985 Ga. Laws 416; 1986 Ga. Laws 166.

6. Telephone interview with Representative Johnny Isakson, House District No. 21 (Apr. 29, 1988) [hereinafter Isakson Interview].

7. HB 776, as introduced, 1987 Ga. Gen. Assem.

8. Isakson Interview, *supra* note 6. There was no real opposition to the 1987 bill, but it became a vehicle for various interest groups. For example, aggravated child molestation was added in the House version. When the bill reached the Senate, the Committee on Judiciary excluded the crime of perjury. Additionally, that committee recognized that the language and format of the Code section had become unwieldy, and a decision was made to revise it. Because many changes were envisioned, HB 776's passage was delayed until the 1988 session. *Id.*

9. O.C.G.A. § 17-6-1 (Supp. 1988).

10. HB 776, as introduced, 1987 Ga. Gen. Assem.

11. HB 776 (SCS), 1988 Ga. Gen. Assem.

12. O.C.G.A. § 17-6-1 (Supp. 1988). The change in format allows for a more coherent form.

13. O.C.G.A. § 17-6-1(a) (Supp. 1988).

list of offenses entirely.¹⁴ Conversely, the crime of aggravated child molestation is a new addition to the list.¹⁵ This addition was not contained in the original version of the bill but surfaced in a House Committee on Judiciary floor amendment and was incorporated in the bill's final version.¹⁶

The second substantive change added the offense of trafficking¹⁷ in cocaine or marijuana to the list of offenses.¹⁸ The sponsor intended this addition to resolve confusion regarding whether trafficking, in addition to selling or distributing, illegal drugs requires stricter bail proceedings.¹⁹ Prior language in O.C.G.A. § 17-6-1 did not specifically list "trafficking" in drugs as defined in O.C.G.A. § 16-13-31,²⁰ thus, actual distributors were being held, but suppliers were getting out of jail easily. This amendment to the Code section closes the loophole that had been available to drug suppliers.²¹

Further, the new Act eliminates the restriction that persons charged with certain offenses simply were not eligible for bail.²² There was concern among members of the General Assembly that denying bail to individuals without a hearing implicated due process concerns.²³ The new statute provides that such offenses areailable at a superior court judge's discretion;²⁴ this change eliminates the possibility of a constitutional challenge based on the lack of a hearing.²⁵

Perhaps the most controversial aspect of the Act is the addition of sub-

14. A perjurer who is released on bail shortly after arrest does not pose the potential threat to society that an accused rapist or murderer might pose. Isakson Interview, *supra* note 6.

15. O.C.G.A. § 17-6-1(a) (Supp. 1988). Various civic and public interest groups have vocalized growing concern over crimes against children. Great public outrage occurs when persons who are charged with child molestation are quickly released on bail with minimal judicial proceedings. By adding this offense to the list, legislators attempted to address the public concern and make bail procedures stricter for individuals charged with shocking crimes. Telephone interview with Tom Varner, Aide to House Minority Caucus (Apr. 14, 1988). Furthermore, an aggravated child molestation case will ultimately be tried in superior court; thus, it is appropriate for a superior court judge initially to review the charged individual and make a decision regarding bail. Isakson Interview, *supra* note 6.

16. Compare HB 776, as introduced, 1987 Ga. Gen. Assem. with HB 776 (HCSFA), 1988 Ga. Gen. Assem. and O.C.G.A. § 17-6-1 (Supp. 1988).

17. Trafficking in, as opposed to selling, cocaine has been defined as knowingly having actual possession of the proscribed amount of illegal drugs. *Dixon v. State*, 180 Ga. App. 222, 224, 348 S.E.2d 742, 745 (1986).

18. O.C.G.A. § 17-6-1(a)(9) (Supp. 1988).

19. Isakson Interview, *supra* note 6.

20. See O.C.G.A. § 16-13-31 (1988) (explicitly defining the offense of trafficking in drugs).

21. Isakson Interview, *supra* note 6.

22. Compare 1986 Ga. Laws 166 with O.C.G.A. § 17-6-1 (Supp. 1988).

23. Isakson Interview, *supra* note 6.

24. O.C.G.A. § 17-6-1(a) (Supp. 1988).

25. Isakson Interview, *supra* note 6.

section (c). This subsection applies when a person is arrested and charged with an offense bailable only before a superior court judge. Subsection (c) requires notification to a superior court judge within forty-eight hours of an arrest that the arrestee is being held without bail.²⁶ Furthermore, the superior court must set a hearing on the issue of bail within twenty days.²⁷ This requirement was not included in the original version of HB 776 but was introduced as a ten-day period in a Senate committee substitute.²⁸ Superior court judges and sheriffs viewed this addition with some disfavor. Some superior court judges expressed concern that this requirement would increase their already staggering workload, especially in view of the fairly stringent timeframe.²⁹ Sheriffs expressed the practical concern that the Act does not identify who will bear the responsibility and extra expense of physically transporting prisoners to and from bail hearings.³⁰ One concession to such concerns is reflected in the extension of the time period for setting a bail hearing from ten to twenty days.³¹ However, due process rights protected by the subsection were considered more important than the judges' and sheriffs' technical objections.³² These rights have been compromised as evidenced by a recent case in which an individual was arrested on drug charges and held for four months without a bail hearing before charges were ultimately dismissed.³³

As a complete package, the changes in O.C.G.A. § 17-6-1 provide a concise and coherent Code section and address concerns central to the pro-

26. O.C.G.A. § 17-6-1(c) (Supp. 1988).

27. *Id.*

28. Compare HB 776, as introduced, 1987 Ga. Gen. Assem. with HB 776 (SCS), 1988 Ga. Gen. Assem.

29. Drolet Interview, *supra* note 3. Specifically, the fairly stringent time frame has raised legitimate concern that a prisoner may appear before a superior court judge on the issue of bail before the case actually has been bound over to the court. This situation would mean that the case file may not yet be in the judge's possession. This file, which includes information about the present offense charged, previous convictions, and dispositions of prior charged offenses, is very pertinent in making an informed decision about the setting and amount of bail.

30. *Id.*

31. Compare HB 776 (SCS), 1988 Ga. Gen. Assem. (including the 10-day requirement) with O.C.G.A. § 17-6-1(c) (Supp. 1988) (reflecting the Conference Committee change to 20 days). Meetings and discussions with superior court judges convinced members of the General Assembly that the 10-day period simply was not a realistic time frame. Isakson Interview, *supra* note 6.

32. Isakson Interview, *supra* note 6. The previous bail system had no requisite hearing period; it was perceived to provide a speedy bail hearing primarily for those with money and resources. Indigents were often without recourse in such a system. *Id.*

33. Davis, *After 4 Months in Jail, Woman's Charges Dismissed*, Atlanta Const., Apr. 15, 1988, at 1D, col. 1. The woman was arrested in Woodbine, Georgia, on a cocaine trafficking charge on December 4, 1987. She was held for four months in the Camden County Jail. Her first and only appearance relating to the charge was on April 12, 1988, when the charge was dismissed. The woman is considering legal action against Camden County. *Id.*

tection of the general public. Ultimately, however, the very nature of O.C.G.A. § 17-6-1 makes it inherently transitional; this law must be responsive to current public issues and prevailing public sentiment. Thus, amendments to O.C.G.A. § 17-6-1 can be expected.³⁴

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34. Drolet Interview, *supra* note 3.