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## CRIMES AND OFFENSES Criminal Attempt, Conspiracy, and Solicitation: Allow for Person to be Convicted of Conspiracy to Commit Crime Despite Completion of that Crime by Others

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## CRIMES AND OFFENSES

### *Criminal Attempt, Conspiracy, and Solicitation: Allow for Person to be Convicted of Conspiracy to Commit Crime Despite Completion of that Crime by Others*

CODE SECTION: O.C.G.A. § 16-4-8.1 (new)  
BILL NUMBER: HB 1560  
ACT NUMBER: 813  
GEORGIA LAWS: 1996 Ga. Laws 679  
SUMMARY: The Act provides that a person may be convicted of conspiracy despite the completion of the object crime by others. A person may not, however, be convicted of both the conspiracy and the completed crime.  
EFFECTIVE DATE: July 1, 1996

#### *History*

Under Georgia Code section 16-4-8, a person may be convicted of conspiracy when two or more persons conspire to commit a crime and “any one or more of such persons does any overt act to effect the object of the conspiracy.”<sup>1</sup> This provision did not mention what effect completion of the object crime by co-conspirators would have on conviction.<sup>2</sup> Georgia case law is similarly silent on the effect of the completion of the crime by someone other than the person convicted of the conspiracy.<sup>3</sup>

According to the Georgia Supreme Court, a conspiracy is a corrupt agreement between two or more people to commit an illegal act.<sup>4</sup> Georgia courts have held that the General Assembly intended to make conspiracy a separate crime only in situations where the crime conspired to be committed was not actually committed.<sup>5</sup> A defendant cannot be convicted of both conspiracy and the completed crime.<sup>6</sup> Georgia case law seems firmly settled on the matter that, “[t]he state can charge conspiracy, prove the completion of the object or of a substantive crime which is short of completion, such as attempt, but

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1. 1969 Ga. Laws 857, § 14, at 867 (codified at O.C.G.A. § 16-4-8 (1996)).

2. *See id.*

3. *See Walker v. State*, 213 Ga. App. 407, 444 S.E.2d 824 (1994).

4. *Sentell v. State*, 227 Ga. 153, 179 S.E.2d 234, 237 (1971).

5. *Rowe v. State*, 166 Ga. App. 836, 305 S.E.2d 624 (1983); *Kilgore v. State*, 251 Ga. 291, 305 S.E.2d 82 (1983).

6. *Rowe*, 166 Ga. App. at 838, 305 S.E.2d at 625; *Kilgore*, 251 Ga. at 299, 305 S.E.2d at 87.

convict only of conspiracy.<sup>7</sup> Further, “[c]onspiracy merges only where there is a conviction of a substantive offense.”<sup>8</sup>

A conspiracy charge is a question for the jury.<sup>9</sup> However, in the State of Georgia, juries have been reluctant to find defendants guilty of conspiracy where there exists a lapse in time between the conspiracy and the completed crime or a substantial geographic separation between the conspirator and the crime.<sup>10</sup> Too often, juries decided between only two options: (1) the actual crime or (2) the conspiracy of the parties to the crime.<sup>11</sup>

### *HB 1560*

The Act creates a new Code section that allows a defendant to be convicted of conspiracy despite the completion of the object crime by his or her co-conspirators, but provides that a single defendant may not be convicted of both the conspiracy to commit a crime and the completed crime itself.<sup>12</sup> The Act is designed to increase the probability that juries will find a defendant guilty of conspiracy, despite the completion of the crime by the other conspirators.<sup>13</sup>

The Act is favored by prosecutors in the state of Georgia, but defense attorneys may find it useful as well.<sup>14</sup> Defense attorneys would be entitled to a jury charge that includes the Act’s language, one that might be advantageous to their clients.<sup>15</sup> If a trial judge should charge the jury that they may not convict a defendant of both conspiracy and the completed crime, and also instructs that the defendant may be convicted of conspiracy even though the crime was completed, it may confuse the jury.<sup>16</sup> Juries might erroneously interpret the judge’s instructions to mean that they cannot convict the defendant of the conspiracy if other defendants were convicted of the object crime.<sup>17</sup>

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7. *Walker v. State*, 213 Ga. App. 407, 411-12, 444 S.E.2d 824, 829 (1994) (quoting *Moser v. State*, 178 Ga. App. 526, 343 S.E.2d 703 (1986) (Beasley, J., concurring specially)) (emphasis omitted).

8. *Id.* at 412, 444 S.E.2d at 829.

9. *Simpkins v. State*, 149 Ga. App. 763, 768, 256 S.E.2d 63, 67 (1979).

10. Telephone Interview with Rep. McCracken Poston, House District No. 3 (May 3, 1996) [hereinafter Poston Interview]. Representative Poston sponsored the bill. *Id.*

11. *Id.*

12. O.C.G.A. § 16-4-8.1 (1996). The Act passed the House and Senate without amendment. Final Composite Status Sheet, Mar. 18, 1996.

13. Poston Interview, *supra* note 10.

14. *Id.*

15. Telephone Interview with Assistant Fulton County Attorney Charles Hadaway (June 21, 1996).

16. *Id.*

17. *Id.*

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The Act does not significantly alter Georgia's conspiracy law, because prior to the passage of the Act, a defendant could be convicted of conspiracy when his or her co-conspirators completed the crime, so long as the defendant did not help complete the crime.<sup>18</sup> The Act codifies that rule.<sup>19</sup>

*Mike Arnold*

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18. *Id.*

19. *Id.*