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CRIMINAL PROCEDURE Bonds and Recognizances: Amend Provisions for Notice to Superior Court; Provide for Temporary Release of Certain Detainees

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CRIMINAL PROCEDURE

Bonds and Recognizances: Amend Provisions for Notice to Superior Court; Provide for Temporary Release of Certain Detainees

CODE SECTIONS:	O.C.G.A. §§ 17-6-1 (amended); 17-10-9.1 (new)
BILL NUMBERS:	SB 255, HB 466
ACT NUMBERS:	685, 483
SUMMARY:	SB 255 amends existing provisions requiring notice to the superior court when a person is being held in a detention facility and is charged with an offense bailable only before a superior court judge. HB 466 creates a new section permitting the release of a person who has been found guilty of certain crimes, pending his reporting to a correction facility to serve his sentence. This release may be conditioned upon either the convicted person's own recognizance or the posting of bond to ensure his return at the time for the sentence to commence.
EFFECTIVE DATE:	July 1, 1989

History

As early as 1861, Georgia provided bail bonds for those accused of a criminal offense.[1] Certain crimes later became bailable only upon a hearing before a superior court judge.[2] The sheriff or other judicial officer was authorized to set and collect bail for those accused of other crimes.[3] The law was later amended to provide that all persons charged with misdemeanors are entitled to bail.[4] The law has remained substantially unchanged since that time.

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1. *See* Code of Ga. §§ 4605 to -4606 (1861); "While the Eighth Amendment of the United States Constitution states that bail shall not be excessive, it does not expressly provide that a defendant has a right to bail." W. DANIEL, GEORGIA CRIMINAL TRIAL PRACTICE 251 (1988).

2. *See* Ga. Penal Code § 933 (1895). For a thorough history of the Code section defining these offenses, see *Bonds and Recognizances: Amend Provisions Regarding Certain Offenses*, 5 GA. ST. U.L. REV. 348 (1988) [hereinafter *Bonds and Recognizances*].

3. Ga. Penal Code § 932 (1895).

4. *See* Ga. Code § 27-901 (1933), added by 1921 Ga. Laws 911.

In 1973, the Code was amended to list specific offenses which were bailable only before a superior court judge.[5] Subsequent amendments clarified and further defined situations in which a criminal defendant was not entitled to bond.[6] Although a person was not automatically entitled to release on bond under the statute, he was allowed to petition the superior court for bail.[7] The Code authorized the superior court to release the defendant upon his personal recognizance. The judge could not authorize the release, however, unless he was satisfied that the arrestee posed no risk to society and that the arrestee would not leave the jurisdiction.[8] Until recently, the statute placed an affirmative obligation on a detained person to petition for bond.[9] The 1988 amendment to the Code provided that the court detaining an individual notify the superior court if the detainee is being held without bail.[10] In that event, the superior court must notify the district attorney and hold a bond hearing within twenty days of the notice from the jurisdiction holding the defendant.[11]

The latitude of discretion left to court officers and the tribunal regarding what bond, if any, may be set at the pre- or postconviction phase of a criminal detention has changed through the years. The issue of sentencing itself, however, has long remained solely within the purview of the court. A judge's authority and obligation to sentence a convicted criminal, as defined by the Code, has changed little.

The judge must specify the term of service and the date at which the sentence begins to run.[12] If the defendant appeals his conviction and does not post an appeal bond, he receives credit for time served while the case is on appeal.[13]

SB 255

SB 255 replaces existing section 17-6-1(c) with a more specific provision regarding procedures to be followed if a person is being held in jail without bail and charged with an offense bailable only before a superior court judge.[14] If the arrestee is being held in a facility other than a municipal jail and a bail hearing has been held, the hearing court must

5. 1973 Ga. Laws 454. *See Bonds and Recognizances, supra* note 2.

6. *See* 1982 Ga. Laws 911–12.

7. 1983 Ga. Laws 452.

8. 1982 Ga. Laws 912. A determination of whether to set bond, and in what amount, may involve several considerations, including an individual's prior convictions. DANIEL, *supra* note 1, at 252.

9. 1983 Ga. Laws 452.

10. *See* 1988 Ga. Laws 362.

11. *Id.*

12. O.C.G.A. § 17-10-9 (1982), added by 1931 Ga. Laws 165.

13. O.C.G.A. § 17-10-9 (1982), added by 1965 Ga. Laws 230–31.

14. O.C.G.A. § 17-6-1(c) (Supp. 1989).

notify the superior court, within forty-eight hours after the hearing, that the person is being held without bail.[15] If the defendant has not petitioned for bail, the superior court must notify the district attorney and hold a bail hearing.[16] The Act changes the maximum allowable time in which to hold the hearing from twenty to thirty days.[17]

The Act also specifies the procedures to be followed if the individual has been jailed in a municipal facility.[18] If the person has been held in municipal jail for a period of thirty days without a bond hearing, the municipal court must notify the superior court, within forty-eight hours of the expiration of that time, that the person is being held without bail.[19] If the detainee has not already petitioned the superior court for bond, the superior court must hold a bond hearing within thirty days after receipt of the notice from the municipal court.[20] The Act passed the General Assembly with only one technical change.[21]

HB 466

The Act adds new section 17-10-9.1. The new section permits sentencing judges to release convicted criminals, upon the criminals' own recognizance or on bail, after sentencing but before they are required to report to a corrections facility.[22] The sponsors intended the bill to alleviate prison overcrowding in the state.[23] The bill in its original form provided only for release of the person on his own recognizance and addressed only those individuals sentenced to state prison facilities.[24]

The original bill permitted all convicts to be considered for release under the program.[25] This quickly changed when the sponsor of the bill offered his own amendment which provided that capital felons be automatically excluded from participation in the program.[26] The final

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15. O.C.G.A. § 17-6-1(c)(1) (Supp. 1989).
16. *Id.*
17. *Id.*
18. O.C.G.A. § 17-6-1(c)(2) (Supp. 1989).
19. *Id.*
20. *Id.*
21. SB 255 (SCS), 1989 Ga. Gen. Assem. The original bill referred to O.C.G.A. § 17-4-63, rather than to § 17-4-62. SB 255, as introduced, 1989 Ga. Gen. Assem. No O.C.G.A. § 17-4-63 exists.
22. O.C.G.A. § 17-10-9.1 (Supp. 1989).
23. Floor Debate in the House of Representatives by Representative Denmark Groover, Jr., House District No. 99 (Mar. 13, 1989), 1989 Ga. Gen. Assem.
24. HB 466, as introduced, 1989 Ga. Gen. Assem.
25. *Id.* The bill was vigorously opposed by some members of the Senate. Senator Nathan Deal, Senate District No. 49, remarked that he saw no difference between leaving the decision of which individuals qualified for the program entirely up to the trial judge, and sentencing, which is clearly discretionary in the trial court. Floor Debate in the House of Representatives, Mar. 13, 1989, 1989 Ga. Gen. Assem.
26. *See* HB 466 (FA), 1989 Ga. Gen. Assem.

version of the bill also excludes individuals who have been convicted of those offenses bailable only before a superior court judge.[27]

Subsequent amendments of the bill allowed those sentenced to county jails, as well as those sentenced to state penal facilities, to participate.[28] In addition, the trial court has the option of releasing the person on his own recognizance or on bond.[29] With the addition of the release on bail provision, the Senate committee substitute added alternative criminal sanctions with which an individual could be charged upon failure to voluntarily appear at the correctional facility at the time for sentence to commence.[30] A convict's sentence does not begin to run until the person surrenders himself to the corrections facility.[31] This provision prevents the person from receiving credit on his sentence for the period of time for which he is released.[32]

The bill's several versions prior to passage contained no limit upon the amount of time a convict might be out of custody prior to serving his sentence.[33] The final bill provides that the court may only allow the convict up to 120 days of time out of custody before being committed to jail.[34] This limitation upon the trial court's discretion may well limit the Act's effectiveness in controlling prison overcrowding.

The decision of whether to hear the petition of a convict to be released on his personal recognizance or on bail pending sentence is left entirely to the discretion of the trial judge.[35] The bill expressly states that the court's decision is unappealable.[36] In the event that the person has been sentenced to a county facility, the trial court is to set

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27. O.C.G.A. § 17-10-9.1(a) (Supp. 1989). *See* O.C.G.A. § 17-6-1(c) (Supp. 1989).

28. HB 466 (SCS), 1989 Ga. Gen. Assem. These changes were incorporated into the new Code section. O.C.G.A. § 17-10-9.1(a) (Supp. 1989).

29. *Id.*

30. HB 466 (HCS). *See* O.C.G.A. § 17-10-9.1(f) (Supp. 1989). The court may charge a person with bail-jumping, O.C.G.A. § 16-10-51 (1982), or with escape, O.C.G.A. § 16-10-52(a)(3) (1982). Since the bill as introduced dealt solely with release on personal recognizance, it provided only for contempt charges in the event the convict failed to appear. HB 466, as introduced, 1989 Ga. Gen. Assem.

31. O.C.G.A. § 17-10-9.1(c) (Supp. 1989). This provision was added by HB 466 (SCS), 1989 Ga. Gen. Assem.

32. Generally, a sentence begins to run from the date it is pronounced. Norman v. State, 87 Ga. App. 442, 445, 74 S.E.2d 131, 132 (1953). If the defendant is not immediately incarcerated following sentencing, the sentence begins to run when he offers himself up to the court, or makes himself otherwise available to the appropriate authority. Huff v. McLarty, 241 Ga. 442, 446, 246 S.E.2d 302, 306 (1978).

33. HB 466, as introduced, (HCS, SCS), 1989 Ga. Gen. Assem.

34. O.C.G.A. § 17-10-9.1(d) (Supp. 1989).

35. O.C.G.A. § 17-10-9.1(c) (Supp. 1989). Originally, the bill could have been interpreted to mandate that the judge hear all petitions regarding release. *See* HB 466, as introduced, 1989 Ga. Gen. Assem. The language was changed, however, to make the decision discretionary with the court. *See* HB 466 (SCS), 1989 Ga. Gen. Assem.

36. O.C.G.A. § 17-10-9.1(b) (Supp. 1989). The express rejection of a right of appeal was added by HB 466 (SCS), 1989 Ga. Gen. Assem.

the date upon which the convicted person is to surrender himself.[37] If the individual has been sentenced to serve time in a state facility, the Department of Corrections is to designate which prison and the date upon which the person is to appear to serve the sentence.[38]

Taken together, these two pieces of new legislation help to ensure that a criminal defendant does not spend extended periods of time in a correctional facility without the benefit of bond, unless the person is accused of one of certain specified crimes. The requirements for automatic bond hearings are apparently designed to lessen the overcrowding of Georgia prisons with pretrial detainees. The new postsentencing release program also allows some latitude to the sentencing court, with regard to when a convict must report and begin to serve his sentence. Whether this relaxed procedure for incarceration helps to relieve overcrowding in our prisons, without adding to incidences of recidivism during these hiatuses, remains to be seen.

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37. O.C.G.A. § 17-10-9.1(d) (Supp. 1989).
38. *Id.*