Georgia State University Law Review

Volume 11
Issue 1 *October 1994*

Article 4

9-1-1994

COURTS Magistrate Courts: Provide for an Optional No Contest Bond Forfeiture Procedure for Misdemeanor Bad Check Violations as a Final Disposition and Provide for Bench Warrants When Forfeiture Is Not Final Disposition

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Recommended Citation
Wright, Angelyn M. (1994) "COURTS Magistrate Courts: Provide for an Optional No Contest Bond Forfeiture Procedure for Misdemeanor Bad Check Violations as a Final Disposition and Provide for Bench Warrants When Forfeiture Is Not Final Disposition," *Georgia State University Law Review*: Vol. 11: Iss. 1, Article 4.
Available at: http://digitalarchive.gsu.edu/gsulr/vol11/iss1/4

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COURTS

Magistrate Courts: Provide for an Optional No Contest Bond Forfeiture Procedure for Misdemeanor Bad Check Violations as a Final Disposition and Provide for Bench Warrants When Forfeiture Is Not Final Disposition

CODE SECTION:	O.C.G.A. § 15-10-203 (new)
BILL NUMBER:	HB 326
ACT NUMBER:	1099
SUMMARY:	The Act provides that chief magistrates may establish "no contest" cash bond schedules, allows persons arrested or accused of misdemeanor bad check violations to post a no contest cash bond, and deems failure to appear for trial to be a guilty plea and forfeiture of the bond, unless the court provides otherwise. When the court rejects the guilty plea and forfeiture, the Act instructs the court to issue a bench warrant for the defendant's arrest for subsequent default.
EFFECTIVE DATE:	April 5, 1994

History

Article 10 of chapter 10 of title 15 of the Code provides procedures for prosecution for the issuance of bad checks.[1] Before the provisions of the Act, prosecution for bad checks involved two difficulties. First, the procedure typically required more than one appearance in court.[2] Second, reimbursement of the merchant was often delayed or, in some cases, never occurred.[3] Upon request of the Magistrate Judges Council, Representative Reichert offered HB 326 to circumvent these two procedural problems.[4] The bill was first introduced in the 1993 legislative session, but due to the changes for clarity and constitutionality, it did not pass until the 1994 session.[5]

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1. *See* O.C.G.A. § 15-10-202 (1994).
2. Telephone Interview with Rep. Robert Reichert, House District No. 126 (Mar. 29, 1994) [hereinafter Reichert Interview].
3. *Id.* The current procedure merchants use is as follows: (1) telephoning the issuer of the bad check; (2) sending the issuer a "friendly" letter; (3) sending the issuer a "ten day letter" by registered mail stating that the issuer has ten days to reimburse the merchant the amount of the check plus a service charge of up to $20; and (4) institute a civil suit or swear out a warrant for the issuer's arrest. This procedure is time consuming and costly for the merchant. *Id.*
4. *Id.*
5. Telephone Interview with Bert Fridlin, State Director of Georgia, National

Produced by The Berkeley Electronic Press, 1994
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The intent was "to give the magistrate court a procedure similar in bad check charges to the procedure . . . use[d] for traffic tickets."[6] Under HB 326, people accused of issuing a bad check may pay the bond.[7] If they do not wish to return to court and if the bond is accepted as fine and restitution, it would satisfy their criminal penalty.[8] In the alternative, the accused could choose "to have [one's] day in court" by posting a standard appearance bond.[9]

HB 326

The Act provides a means for disposing of misdemeanor bad check violations.[10] After introduction of the bill, the House Judiciary Committee submitted a substitute.[11] A floor amendment changed one provision of the substitute before the bill was sent to the Senate.[12] The Senate Special Judiciary Committee offered a substitute that made no substantive changes, but merely clarified the language of the bill.[13] The House and Senate accepted this final version.[14]

Code section 15-10-203 was added to give a person arrested or accused by warrant or citation pursuant to Code section 15-10-202(d)[15] the option of posting a "no contest" cash bond, which if forfeited may be deemed a guilty plea and payment.[16] The Act gives the chief

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Federation of Independent Business (NFIB) (Mar. 29, 1994) [hereinafter Fridlin Interview]. The NFIB supported HB 326. *Id.*

6. Reichert Interview, *supra* note 2. The recipient of the traffic ticket may choose to enter a plea of guilty by paying a bond (often incorrectly called a fine), in the same amount of the possible fine, to the court clerk. The driver then gets the license back. If the recipient thereafter does not appear in court, a guilty plea is entered, and the bond is forfeited and becomes payment for the fine. *Id.; see also* O.C.G.A. §§ 40-13-55, -58 (1991).

7. Reichert Interview, *supra* note 2. *See generally* O.C.G.A. § 15-10-203 (1994).

8. Reichert Interview, *supra* note 2. *See generally* O.C.G.A. § 15-10-203 (1994).

9. Reichert Interview, *supra* note 2. *See generally* O.C.G.A. § 15-10-203 (1994). Additionally, the standard appearance bond generally costs less than the no contest cash bond because the amount does not include restitution or minimum fines. Reichert Interview, *supra* note 2.

10. Reichert Interview, *supra* note 2. The issuance of a bad check, "knowing that it will not be honored," for an amount less than $500 constitutes misdemeanor criminal issuance of a bad check. O.C.G.A. § 16-9-20 (Supp. 1994).

11. HB 326 (HCS), 1994 Ga. Gen. Assem.; *see infra* notes 20-22 and accompanying text.

12. HB 326 (HCSFA), 1994 Ga. Gen. Assem.; *see infra* notes 18-19 and accompanying text.

13. Reichert Interview, *supra* note 2; *see* HB 326 (SCS), 1994 Ga. Gen. Assem. (changing the language of the bill to deem failure to appear an automatic plea of guilty as opposed to a potential guilty plea). *See infra* notes 24-25 and accompanying text.

14. *Compare* HB 326 (SCS), 1994 Ga. Gen. Assem. *with* O.C.G.A. § 15-10-203 (1994).

15. O.C.G.A. § 15-10-202(d) (1994) (relating to arrest for failure to appear for trial).

16. *Id.* § 15-10-203 (1994). The term "no contest" was not in the original bill as

magistrate of each county the authority to establish a schedule of no contest cash bonds, to assure future appearance in court, in an amount sufficient to pay for court costs, minimum fines, and restitution for the full amount of the dishonored check.[17] When the no contest cash bond is posted, the receipt will contain language stating that failure to appear for trial will result in forfeiture and may constitute a plea of guilty to the misdemeanor charged and a waiver of "certain constitutional rights."[18] The Act requires that persons arrested acknowledge this language.[19]

The choice of bonds provision, added by the House Judiciary Committee substitute, distinguishes the no contest bond from other bonds currently available for the defendant.[20] It provides that a person who is arrested or accused under Code section 15-10-202(d) may post either a no contest cash bond, a property bond, or a standard appearance bond to assure future appearance in court.[21] If the defendant chooses to give a property or standard appearance bond as opposed to a no contest cash bond, failure to appear for trial will result in the issuance of a bench warrant for the defendant's arrest and forfeiture of the bond proceeds as provided by Code section 17-6-17.[22]

The Act allows the court to accept the forfeiture of the no contest cash bond as a guilty plea and satisfaction of the judgment against the defendant.[23] Failure to appear for trial by a person who has given a no contest cash bond results in forfeiture of the bond and an automatic guilty plea.[24] Forfeiture occurs without any additional state action and constitutes the "imposition and payment of a fine and restitution."[25]

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proposed but was added by the House Judiciary Committee to distinguish the no contest cash bond from other forms of bonds and to "further clarify" the intent of the bill. Reichert Interview, *supra* note 2; HB 326 (HCS), 1994 Ga. Gen. Assem.

17. O.C.G.A. § 15-10-203(a) (1994). Fines are governed by O.C.G.A. § 16-9-20 (Supp. 1994).

18. *Id.* This language was added by the floor amendment in the House to give sufficient notice to any accused person opting to post the no contest bond that the bond may, under circumstances of forfeiture, be considered as a plea of guilty and the waiver of the right to a trial by jury, right to an attorney, etc. Reichert Interview, *supra* note 2.

19. O.C.G.A. § 15-10-203(a) (1994).

20. HB 326 (HCS), 1994 Ga. Gen. Assem.

21. O.C.G.A. § 15-10-203(b) (1994).

22. *Id.* § 15-10-203(f) (1994); *see also id.* § 17-6-17 (1990).

23. *Id.* § 15-10-203(c) (1994).

24. *Id.*

25. *Id.* The NFIB supported this bill because it simplifies the procedure for merchant reimbursement. Currently, the condemnation of funds from a standard appearance bond must occur before the merchant may be reimbursed the amount of the check. Under the Act, after forfeiture and acceptance of the plea by the magistrate judge, no further action is required before reimbursement. Reichert Interview, *supra* note 2.

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Additionally, the forfeiture acts as a bar to later prosecution of the defendant for the same violation.[26]

The Act provides that the court has the sole discretion to prevent the consequences of default mandated by the Act.[27] At the time of nonappearance at trial, the judge may determine that justice will not be served by forfeiture of the funds and disposition of the charges with prejudice.[28] In that case, the failure to appear in court by a person who has posted a no contest cash bond will not result in an automatic guilty plea and will not be a bar to subsequent prosecution for the same offense.[29]

In addition, the posted funds will be held in the court's registry pending subsequent prosecution, and the defendant will be served with a citation for a future appearance date.[30] If the defendant defaults again, the court is required to issue a bench warrant for the defendant's arrest.[31] The provision for citation for future appearance and the issuance of a bench warrant for subsequent default was added as part of the House Judiciary Committee substitute.[32] When subsequent prosecution results in the conviction of a person who has given a no contest cash bond, the proceeds of the bond are used to pay restitution, fines, and any court costs imposed by the court.[33]

A possible problem with this Act is the lack of requirements for the chief magistrate of each county to create a schedule for no contest bonds.[34] Additionally, the time and effort expended by the merchant prior to instituting civil or criminal proceedings are not affected.[35] Organizations such as the National Federation of Independent Business will probably follow the Act's implementation and enforcement to try to resolve these issues.[36]

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26. O.C.G.A. § 15-10-203(c) (1994).

27. *Id.* § 15-10-203(d) (1994). O.C.G.A. § 15-20-203(c) describes the default process. *See supra* notes 23-26 and accompanying text.

28. *Id.* An example of a circumstance in which the judge would likely not accept the forfeiture as a guilty plea is when the accused has a history of "floating bad checks," and the judge prefers to issue a greater fine than the minimum fine used to calculate the no contest cash bond. Reichert Interview, *supra* note 2.

29. O.C.G.A. § 15-10-203(d) (1994).

30. *Id.*

31. *Id.*

32. *See* HB 326 (HCS), 1994 Ga. Gen. Assem.

33. O.C.G.A. § 15-10-203(e) (1994).

34. Fridlin Interview, *supra* note 5. *See generally* O.C.G.A. § 15-10-203 (1994). The NFIB is concerned the lack of uniformity from county to county in enforcement of bad check legislation will hinder the effectiveness of the Act. Fridlin Interview, *supra* note 5.

35. Fridlin Interview, *supra* note 5.

36. *Id.*

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