

House Bill 1172

By: Representatives Hill of the 21<sup>st</sup>, Tumlin of the 38<sup>th</sup>, Levitas of the 82<sup>nd</sup>, Bearden of the 68<sup>th</sup>, Heard of the 104<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to where  
2 offenses are bailable, procedure, schedule of bails, and appeal bonds, so as to require persons  
3 who are not lawfully present in the United States to have bail set by a superior court judge;  
4 to amend Code Section 17-10-1 of the Official Code of Georgia Annotated, relating to fixing  
5 of sentence, so as to correct a cross-reference; to provide for other related matters; to repeal  
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to where offenses  
10 are bailable, procedure, schedule of bails, and appeal bonds, is amended by revising  
11 subsections (a), (b), (c), and (d) to read as follows:

12 "(a)(1) The following offenses are bailable only before a judge of the superior court:

13 ~~(1)~~(A) Treason;

14 ~~(2)~~(B) Murder;

15 ~~(3)~~(C) Rape;

16 ~~(4)~~(D) Aggravated sodomy;

17 ~~(5)~~(E) Armed robbery;

18 ~~(6)~~(F) Aircraft hijacking and hijacking a motor vehicle;

19 ~~(7)~~(G) Aggravated child molestation;

20 ~~(8)~~(H) Aggravated sexual battery;

21 ~~(9)~~(I) Manufacturing, distributing, delivering, dispensing, administering, or selling any  
22 controlled substance classified under Code Section 16-13-25 as Schedule I or under  
23 Code Section 16-13-26 as Schedule II;

24 ~~(10)~~(J) Violating Code Section 16-13-31, relating to trafficking in cocaine,  
25 methamphetamine, or marijuana;

1       ~~(H)~~(K) Kidnapping, arson, aggravated assault, or burglary if the person, at the time of  
 2       the alleged kidnapping, arson, aggravated assault, or burglary, had previously been  
 3       convicted of, was on probation or parole with respect to, or was on bail for kidnapping,  
 4       arson, aggravated assault, burglary, or one or more of the offenses listed in ~~paragraphs~~  
 5       ~~(1) through (10) of this subsection~~ subparagraphs (A) through (J) of this paragraph; and  
 6       ~~(12)~~(L) Aggravated stalking.

7       (2) Any person who is not lawfully present in the United States who is charged with any  
 8       violation of the Code shall only appear before a judge of the superior court for the  
 9       purpose of having bail set.

10       (b)(1) All offenses not included in paragraph (1) of subsection (a) of this Code section  
 11       areailable by a court of inquiry and any person not included in paragraph (2) of  
 12       subsection (a) of this Code section may have bail set by a court of inquiry. Except as  
 13       provided in subsection (g) of this Code section, at no time, either before a court of  
 14       inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal  
 15       is pending, shall any person charged with a misdemeanor be refused bail.

16       (2) Except as otherwise provided in this chapter:

17       (A) A person charged with violating Code Section 40-6-391 whose alcohol  
 18       concentration at the time of arrest, as determined by any method authorized by law,  
 19       violates that provided in paragraph (5) of subsection (a) of Code Section 40-6-391 may  
 20       be detained for a period of time up to six hours after booking and prior to being released  
 21       on bail or on recognizance; and

22       (B) When an arrest is made by a law enforcement officer without a warrant upon an  
 23       act of family violence pursuant to Code Section 17-4-20, the person charged with the  
 24       offense shall not be eligible for bail prior to the arresting officer or some other law  
 25       enforcement officer taking the arrested person before a judicial officer pursuant to Code  
 26       Section 17-4-21.

27       (3)(A) Notwithstanding any other provision of law, a judge of a court of inquiry may,  
 28       as a condition of bail or other pretrial release of a person who is charged with violating  
 29       Code Section 16-5-90 or 16-5-91, prohibit the defendant from entering or remaining  
 30       present at the victim's school, place of employment, or other specified places at times  
 31       when the victim is present or intentionally following such person.

32       (B) If the evidence shows that the defendant has previously violated the conditions of  
 33       pretrial release or probation or parole which arose out of a violation of Code Section  
 34       16-5-90 or 16-5-91, the judge of a court of inquiry may impose such restrictions on the  
 35       defendant which may be necessary to deter further stalking of the victim, including but  
 36       not limited to denying bail or pretrial release.

1 (c)(1) In the event a person is detained in a facility other than a municipal jail for an  
 2 offense which is bailable only before a judge of the superior court, or the person is  
 3 detained because he or she is not lawfully present in the United States and is allowed to  
 4 have bail set only before a judge of the superior court, as provided in subsection (a) of  
 5 this Code section, and a hearing is held pursuant to Code Section 17-4-26 or 17-4-62, the  
 6 presiding judicial officer shall notify the superior court in writing within 48 hours that the  
 7 arrested person is being held without bail. If the detained person has not already  
 8 petitioned for bail as provided in subsection (d) of this Code section, the superior court  
 9 shall notify the ~~district~~ prosecuting attorney and shall set a date for a hearing on the issue  
 10 of bail within 30 days after receipt of such notice.

11 (2) In the event a person is detained in a municipal jail for a period of 30 days for an  
 12 offense which is bailable only before a judge of the superior court, or the person is  
 13 detained because he or she is not lawfully present in the United States and is allowed to  
 14 have bail set only before a judge of the superior court, as provided in subsection (a) of  
 15 this Code section ~~for a period of 30 days,~~ the municipal court shall notify the superior  
 16 court in writing within 48 hours that the arrested person has been held for such time  
 17 without bail. If the detained person has not already petitioned for bail as provided in  
 18 subsection (d) of this Code section, the superior court shall notify the ~~district~~ prosecuting  
 19 attorney and set a date for a hearing on the issue of bail within 30 days after receipt of  
 20 such notice.

21 (3) Notice sent to the superior court pursuant to paragraph (1) or (2) of this subsection  
 22 shall include any incident reports and criminal history reports relevant to the detention  
 23 of such person.

24 (d) A person charged with any offense which is bailable only before a judge of the superior  
 25 court or a person who is detained because he or she is not lawfully present in the United  
 26 States and is allowed to have bail set only before a judge of the superior court, as provided  
 27 in subsection (a) of this Code section, may petition the superior court requesting that such  
 28 person be released on bail. The court shall notify the ~~district~~ prosecuting attorney and set  
 29 a date for a hearing within ten days after receipt of such petition."

## 30 SECTION 2.

31 Code Section 17-10-1 of the Official Code of Georgia Annotated, relating to fixing of  
 32 sentence, is amended by revising subparagraph (a)(3)(B) as follows:

33 "(B) A parolee or probationer charged with a misdemeanor involving physical injury  
 34 or an attempt to commit physical injury or terroristic threats or with a new felony shall  
 35 not be entitled to bond pending a hearing on the revocation of his or her parole or  
 36 probation, except by order of a judge of the superior, state, or magistrate court wherein

1 the alleged new offense occurred after a hearing and upon determination of the  
2 superior, state, or magistrate court that the parolee or probationer does not constitute  
3 a threat to the community; provided, however, that this subparagraph ~~does~~ shall not  
4 authorize state or magistrate court judges to grant bail for a person who is not lawfully  
5 present in the United States or who is charged with any offense ~~listed~~ as provided in  
6 subsection (a) of Code Section 17-6-1."

7 **SECTION 3.**

8 All laws and parts of laws in conflict with this Act are repealed.