



# GEORGIA MISDEMEANOR BAIL PRACTICES

(INCLUDING S.B. 407 (2018) PROVISIONS)

— A Bench Card for Judges —

All misdemeanor defendants in Georgia (inclusive of offenses that are violations of local ordinances), have a right to pretrial bail. “When determining bail for a person charged with a misdemeanor, courts shall not impose excessive bail and shall impose only the conditions reasonably necessary to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances.” O.C.G.A. § 17-6-1(b)(1).

Judges *sitting by designation* under the express written authority of an authorized elected judge, may release on bail or their own recognizance a person charged with a bail restricted offense for the purpose of entering a pretrial release program, a pretrial release and diversion program, or a pretrial intervention and diversion program. O.C.G.A. § 17-6-12(b).

## KEY CONSIDERATIONS

### INITIAL APPEARANCE WITHIN 48/72 HOURS OF ARREST

Every person arrested on a misdemeanor must be brought before a judge for a bail determination as soon as possible, but in no case later than 48 hours after a warrantless arrest (O.C.G.A. § 17-4-62) or 72 hours after an arrest on a warrant (O.C.G.A. § 17-4-26). See also Unif. Mag. Ct. R. 25.

- Per SB 407 (2018), determinations regarding bail should be made “as soon as possible.” O.C.G.A. § 17-6-1(e)(2). “As soon as possible” means within a reasonable time, having due regard to all the circumstances.” O.C.G.A. § 1-3-3. (See also “Ability to Pay”).
- All offenses not included in O.C.G.A. § 17-6-1(a), including violations of local ordinances, are bailable by any court of inquiry (including magistrate courts). O.C.G.A. § 17-6-1(b)(1).

### RELEASE ON “ONLY THE CONDITIONS REASONABLY NECESSARY”

SB 407 established that when determining bail, the court must consider the defendant’s ability to pay and that “courts shall not impose excessive bail and shall impose **only the conditions reasonably necessary** (emphasis added) to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances.” O.C.G.A. § 17-6-1(b)(1). (See also “Ability to Pay”).

## ADDITIONAL CONDITIONS OF RELEASE

For a defendant in need of services, the court should consider referrals to *voluntary* supportive services (including substance abuse or mental health treatment, employment or education resources, counseling, or transportation assistance). O.C.G.A. § 17-6-1(e)(2)(E). Possible other conditions of release include requirements that a defendant report by phone weekly or monthly; seek or maintain employment; continue or enroll in an educational program; continue or enroll in substance abuse or mental health treatment; report to a pretrial services agency or day reporting center; abide by a curfew; refrain from contact with specified persons; abide by travel or activity restrictions; or other reasonable conditions tailored to managing the particular risk a defendant presents. O.C.G.A. §§ 17-6-1(b)(1) & 17-6-1(e)(1).

## ABILITY TO PAY

If the court initially sets a monetary bail which the defendant cannot make, the defendant may seek to have the bail reduced pursuant to a hearing with enhanced protections to ensure that the bail was not excessive. O.C.G.A. § 17-6-1(b)(1). And, while nothing prohibits an earlier/initial ability to pay determination, *Walker v. City of Calhoun*, provides that indigency determinations made pursuant to a judicial hearing with court-appointed counsel for purposes of setting bail are presumptively constitutional if made within 48 hours of arrest. 901 F.3d 1245, 1266 (11th Cir. 2018). SB 407 clarified that, “[w]hen determining bail, as soon as possible, the court shall consider: (A) [t]he accused’s financial resources and other assets, including whether any such assets are jointly controlled; (B) [t]he accused’s earnings and other income; (C) [t]he accused’s financial obligations, including obligations to dependents; (D) [t]he purpose of bail; and (E) [a]ny other factor the court deems appropriate.” O.C.G.A. § 17-6-1(e)(2)(A)-(E). While not binding, the American Bar Association Standards on Pretrial Release suggest that “[f]inancial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant’s appearance in court. The judge should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.” ABA Standard 10-5.3.

## FORMS OF BAIL

The following forms of bail are permissible under Georgia law:

### RELEASE ON RECOGNIZANCE

Defendant is released on her/his pledge to return to court as required and to obey all laws. The court may still impose additional conditions of release *if necessary*. O.C.G.A. §§ 17-6-1(b)(1), 17-6-1(i) & 17-6-17; Unif. Mag. Ct. R. 23.3.

### SECURED BOND

Defendant is required to secure a bond in a specified amount in order to be released. SB 407 established that, before setting bail, the court must consider the financial circumstances of the accused. O.C.G.A. § 17-6-1(e)(2) (See also “Ability to Pay” and “Use of Bail Schedules”). The court may still impose additional conditions of release *if necessary*. (See “Additional Conditions of Release”). Bail may be secured by:

- **Cash:** Deposited with the sheriff and returned at the conclusion of the case so long as the defendant makes all required appearances. Unif. Mag. Ct. R. 23.3; see also O.C.G.A. §§ 17-6-4, 17-6-9 & 17-6-10.
- **Personal Surety:** A third party guarantees the defendant’s future appearance and agrees to forfeit the bond amount if the defendant does not appear. O.C.G.A. § 17-6-4.
- **Commercial Surety:** A bail bondsman (“commercial surety”) guarantees the bond for a nonrefundable fee paid by or on the behalf of the defendant. O.C.G.A. §§ 17-6-4 and 17-6-30.

- **Property:** “[B]y real estate located within the State of Georgia with unencumbered equity, not exempted, owned by the accused or surety, valued at double the amount of bail set in the bond.” Unif. Mag. Ct. R. 23.3(2).
- **Driver’s License:** The court may order a bond secured by the defendant’s driver’s license. Additionally, if a misdemeanor defendant has been incarcerated for five days, the sheriff can accept the defendant’s driver’s license as collateral for *any* secured bond up to \$1,000, provided the license is not suspended, expired, or revoked. After execution of the bond agreement, the license will be returned to the defendant. O.C.G.A. § 17-6-2. Defendants charged with DUI are not eligible. O.C.G.A. §§ 17-6-2 & 40-5-67. The court or sheriff should inform defendants clearly that failure to appear will result in automatic license suspension and may result in criminal prosecution for bail jumping as well as an arrest warrant for the failure to appear. O.C.G.A. §§ 17-6-2; 16-10-51.

### ELECTRONIC MONITORING

Defendant is released to an electronic pretrial release and monitoring program. O.C.G.A. § 17-6-1.1(j). The defendant must have no outstanding warrants, accusations, indictments, holds, or incarceration orders that require the posting of bond or further adjudication. O.C.G.A. § 17-6-1.1(a), (d), & (i). The court may still impose additional conditions of release *if necessary*. O.C.G.A. § 17-6-1(b)(1) & 17-6-1.1(e). (See also “Additional Conditions of Release”).

### USE OF BAIL SCHEDULES

Use of a bail schedule as the sole mechanism of assessing pretrial bail is improper, but the Eleventh Circuit has held that it is constitutional to use a bail schedule in conjunction with an individualized hearing that is held within 48 hours of arrest to determine whether the arrestee is indigent and also, if the amount of bail should be reduced or another form of bail should be imposed. See *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018). Family violence offenses must be excluded from any bail schedule. O.C.G.A. § 17-6-1(f).

### ESTABLISH A LINE OF CONTACT AND PROVIDE CLEAR INFORMATION

Before release, it is essential to establish a means of contacting the defendant and to provide clear notice of the next steps in the case. For any defendant, a risk of failure to appear because of logistical or cognitive challenges is not a sufficient basis to restrict a person’s pretrial liberty. Instead, the court should provide clear notice of the person’s next court date and establish a reliable means of communication with the accused. Courts should (a) ask each defendant how the court can contact him or her (phone, address, e-mail, etc.); (b) gather multiple contact numbers (spouse, immediate family, etc.); and (c) offer referrals to any local organizations that assist people in getting to court. Additionally, provide each defendant clear verbal *and* written notice of the following:

- A. Next Court Date:** Day, time, and precise location.
- B. Consequences of Failure to Appear or Violation of Conditions:** An arrest warrant may be issued, release may be revoked, any bond security may be forfeited, the case may be marked as resolved and any bond security applied as a fine, and the defendant may be prosecuted for bail jumping. Any driver’s license posted as collateral will be automatically suspended. O.C.G.A. §§ 17-6-2, 17-6-8, 17-6-10(c), 17-6-12(d), 17-6-17, 17-6-71, 17-6-72 & 16-10-51. “[A]bsent a finding of sufficient excuse to appear, the court shall summarily issue an order for his or her arrest” upon the failure of a person released on his or her own recognizance to appear for trial. O.C.G.A. § 17-6-12(d).
- C. How to Contact the Court:** By phone, in person, online, etc.

### BAIL IN FAMILY VIOLENCE CASES

SB 407 requires the court to set bail on an individualized basis in family violence cases, giving “particular consideration to the exigencies of the case at hand” and imposing “any specific conditions as he or she may deem necessary.” The court should maintain a list of possible conditions of release, and specific restrictions may apply in cases involving stalking. O.C.G.A. §§ 17-6-1(b)(2)(B), 17-6-1(b)(3) & 17-6-1(f)(1)-(3).