

Senate Bill 34

By: Senators Hecht of the 34<sup>th</sup>, Fort of the 39<sup>th</sup>, Starr of the 44<sup>th</sup>, Kemp of the 3<sup>rd</sup>, Hamrick of the 30<sup>th</sup>, and Ray of the 48<sup>th</sup>

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend numerous provisions of the Official Code of Georgia Annotated so as to  
2 strengthen and clarify punishment provisions in various Code sections; to provide a short  
3 title; to amend Code Section 16-10-52 of the Official Code of Georgia Annotated, relating  
4 to the offense of escape, so as to change certain provisions relating to punishment; to amend  
5 Code Section 16-5-70 of the Official Code of Georgia Annotated, relating to the offense of  
6 cruelty to children, so as to make second degree cruelty to children a separate offense from  
7 family violence battery; to amend Chapter 6 of Title 16 of the Official Code of Georgia  
8 Annotated, relating to sexual offenses, so as to change provisions relating to forfeiture of  
9 motor vehicles; to provide a forfeiture procedure for violation of Code Section 16-6-10  
10 involving minors; to amend Code Sections 17-10-1 and 42-8-34 of the Official Code of  
11 Georgia Annotated, relating to sentencing and probation, respectively, so as to allow the trial  
12 court to have jurisdiction over any person placed on probation; to amend Code Section  
13 42-8-34.1 of the Official Code of Georgia Annotated, relating to revocation of probated or  
14 suspended sentences, so as to change the penalties authorized for imposition upon proof of  
15 a defendant's violation of probation or suspension; to provide a definition; to provide for a  
16 maximum sentence for a violation of probation or suspension which is the commission of a  
17 felony offense; to provide a sentence authorized for a violation of a special condition of  
18 probation or suspension; to provide for related matters; to provide for an effective date and  
19 for applicability; to repeal conflicting laws; and for other purposes.

20 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

21 **SECTION 1.**

22 This Act shall be known and may be cited as the "2001 Crime Prevention Act."

**SECTION 2.**

Code Section 16-10-52 of the Official Code of Georgia Annotated, relating to the offense of escape, is amended by striking subsection (b) and inserting in lieu thereof the following:

"(b)(1) A person who, having been convicted of a felony or misdemeanor, is convicted of the offense of escape shall be punished by imprisonment for not less than one nor more than ten years. ~~Any other person convicted of the offense of escape shall be punished as for a misdemeanor, except that~~

(2) Any person who is in lawful confinement prior to conviction or adjudication who is convicted of the offense of escape shall be punished by imprisonment for not less than one nor more than five years.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, a person who commits the offense of escape while armed with a dangerous weapon shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than 20 years.

(4) Any other person convicted of the offense of escape shall be punished as for a misdemeanor."

**SECTION 3.**

Code Section 16-5-70 of the Official Code of Georgia Annotated, relating to the offense of cruelty to children, is amended by adding a new subsection (f) at the end thereof to read as follows:

"(f) A person who violates subsection (c) of this Code section while committing family violence battery is guilty of the separate offense of cruelty to children in the second degree. The offense of cruelty to children in the second degree shall not be merged with the offense of family violence battery for the purpose of prosecution and sentencing. An offender who is convicted of a violation of subsection (c) of this Code section shall be punished in accordance with the provisions of subsection (e) of this Code section."

**SECTION 4.**

Said chapter is further amended in Code Section 16-6-13.2, relating to forfeiture, by striking subsection (c) and inserting in lieu thereof the following:

"(c)(1) Any motor vehicle operated by a person ~~who has been convicted of or pleaded nolo contendere~~ to facilitate a violation of Code Section 16-6-11 where the offense involved the pimping of a person under the age of 18 years to perform an act of prostitution and involved a motor vehicle or operated by a person who has been convicted of or pleaded nolo contendere for two previous violations of Code Section 16-6-11 or 16-6-12 involving a motor vehicle within a five-year period and who is convicted or pleads nolo contendere to a third violation of Code Section 16-6-11 or 16-6-12 involving

1 a motor vehicle within the same five-year period is declared to be contraband and subject  
 2 to forfeiture to the state, as provided in this Code section, ~~provided that said forfeiture~~  
 3 ~~shall not be absolute unless the defendant is convicted of said offense.~~

4 (2) For the purpose of this subsection, a violation of Code Section 16-6-11 or 16-6-12  
 5 involving a motor vehicle shall mean a violation of Code Section 16-6-11 or 16-6-12 in  
 6 which a motor vehicle is used to violate said Code section or in which the violation  
 7 occurred."

## 8 SECTION 5.

9 Said chapter is further amended by inserting after Code Section 16-6-13.2 a new Code  
 10 Section 16-6-13.3 to read as follows:

11 "16-6-13.3.

12 (a) Any property which is used, intended for use, or used in any manner to facilitate a  
 13 violation of Code Section 16-6-10, wherein any of the persons involved in performing an  
 14 act of prostitution are under the age of 18, is contraband and forfeited to the state and no  
 15 person shall have a property interest in it. Such property may be seized or detained in the  
 16 same manner as provided in Code Section 16-13-49 and shall not be subject to replevin,  
 17 conveyance, sequestration, or attachment.

18 (b) Within 60 days of the date of the seizure of contraband pursuant to this Code section,  
 19 the district attorney shall initiate forfeiture or other proceedings as provided in Code  
 20 Section 16-13-49. An owner or interest holder, as defined by subsection (a) of Code  
 21 Section 16-13-49, may establish as a defense to the forfeiture of property which is subject  
 22 to forfeiture under this Code section the applicable provisions of subsection (e) or (f) of  
 23 Code Section 16-13-49. Property which is forfeited pursuant to this Code section shall be  
 24 disposed of and distributed as provided in Code Section 16-13-49.

25 (c) If property subject to forfeiture cannot be located; has been transferred or conveyed to,  
 26 sold to, or deposited with a third party; is beyond the jurisdiction of the court; has been  
 27 substantially diminished in value while not in the actual physical custody of a receiver or  
 28 governmental agency directed to maintain custody of the property; or has been commingled  
 29 with other property that cannot be divided without difficulty, the court shall order the  
 30 forfeiture of any property of a claimant or defendant up to the value of property found by  
 31 the court to be subject to forfeiture under this Code section in accordance with the  
 32 procedures set forth in subsection (x) of Code Section 16-13-49.

33 (d) The provisions of paragraphs (3), (4), and (5) of subsection (x) and subsection (z) of  
 34 Code Section 16-13-49 shall be applicable to any proceedings brought pursuant to this  
 35 Code section."

**SECTION 6.**

Code Section 17-10-1 of the Official Code of Georgia Annotated, relating to sentencing, is amended by striking paragraphs (1) and (2) and subparagraph (A) of paragraph (3) of subsection (a) and inserting in lieu thereof the following:

"(a)(1) Except in cases in which life imprisonment, life without parole, or the death penalty may be imposed, upon a verdict or plea of guilty in any case involving a misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence shall prescribe a determinate sentence for a specific number of months or years which shall be in conformity with any mandatory minimum sentences required by law or shall be within the minimum and maximum prescribed by law as the punishment for the crime. The judge imposing the sentence is granted power and authority to suspend or probate all or any part of the entire sentence under such rules and regulations as the judge deems proper, including the authority to revoke the suspension or probation when the defendant has violated any of the rules and regulations prescribed by the court, even before the probationary period has begun, subject to the conditions set out in this subsection; provided, however, that such action shall be subject to the provisions of Code Section 17-10-6.1.

(2) Probation supervision shall terminate in all cases no later than two years from the commencement of probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, in those cases involving the collection of fines, restitution, or other funds, the period of supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs. Probation supervision shall not be required for defendants sentenced to probation while the defendant is in the legal custody of the Department of Corrections or the State Board of Pardons and Paroles.

(3)(A) Any part of a sentence of probation revoked for a violation other than a subsequent commission of any felony, a violation of a special condition, or a misdemeanor offense involving physical violence resulting in bodily injury to an innocent victim which in the opinion of the trial court constitutes a danger to the community or a serious infraction occurring while the defendant is assigned to an alternative probation confinement facility shall be served in a probation detention center, probation boot camp, diversion center, weekend lock up, or confinement in a local jail or detention facility, or other community correctional alternatives available to the court or provided by the Department of Corrections."

**SECTION 7.**

Code Section 42-8-34 of the Official Code of Georgia Annotated, relating to probation, is amended by striking subsection (g) and inserting in lieu thereof a new subsection (g) to read as follows:

"(g) The sentencing judge shall ~~not lose~~ retain jurisdiction over any person placed on probation ~~during the term of his probated sentence~~. The judge is empowered to revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed advisable by the judge, to modify or change the probated sentence at any time during the period of time ~~originally~~ prescribed for the probated sentence to run."

**SECTION 8.**

Code Section 42-8-34.1 of the Official Code of Georgia Annotated, relating to revocation of probated or suspended sentences, restitution or fines, and the limitation on probation supervision, is amended by striking said Code section and inserting in lieu thereof the following:

"42-8-34.1.

(a) For the purposes of this Code section, the term 'special condition of probation or suspension of the sentence' means a condition of a probated or suspended sentence which:

(1) Is expressly imposed as part of the sentence in addition to general conditions of probation and court ordered fines and fees; and

(2) Is identified in writing in the sentence as a condition the violation of which authorizes the court to revoke the probation or suspension and require the defendant to serve up to the balance of the sentence in confinement.

~~(a)(b)~~ A Notwithstanding any other provision of law, ~~no~~ court may not revoke any part of any probated or suspended sentence unless the defendant admits the violation as alleged or unless the evidence produced at the revocation hearing establishes by a preponderance of the evidence the violation or violations alleged.

~~(b)(c)~~ At any revocation hearing, upon proof that the defendant has violated any general provision of probation or suspension other than by commission of a new felony offense, the court shall consider the use of alternatives to include community service, intensive probation, diversion centers, probation detention centers, special alternative incarceration, or any other alternative to confinement deemed appropriate by the court or as provided by the state or county. In the event the court determines that the defendant does not meet the criteria for said alternatives, the court may revoke the balance of probation or not more than two years in confinement, whichever is less.

~~(c)(d)~~ If the violation of probation or suspension alleged and proven by a preponderance of the evidence or the defendant's admission is the commission of a felony offense ~~or the~~

1 ~~violation of a special condition imposed pursuant to this Code section, notwithstanding any~~  
 2 ~~other provision of law,~~ the court may revoke no more than the lesser of the balance of  
 3 probation or the maximum time of the sentence authorized to be imposed for the crime  
 4 constituting the violation of the probation.

5 (e) If the violation of probation or suspension alleged and proven by a preponderance of  
 6 the evidence or the defendant's admission is the violation of a special condition of  
 7 probation or suspension of the sentence, the court may revoke the probation or suspension  
 8 of the sentence and require the defendant to serve the balance of the original sentence in  
 9 confinement.

10 ~~(d)~~(f) The payment of restitution or reparation, costs, or fines ordered by the court may be  
 11 payable in one lump sum or in periodic payments, as determined by the court after  
 12 consideration of all the facts and circumstances of the case and of the defendant's ability  
 13 to pay. Such payments shall, in the discretion of the sentencing judge, be made either to  
 14 the clerk of the sentencing court or, if the sentencing court is a probate court, state court,  
 15 or superior court, to the probation office serving said court.

16 ~~(e)~~(g) In no event shall an offender be supervised on probation for more than a total of two  
 17 years for any one offense or series of offenses arising out of the same transaction, whether  
 18 before or after confinement, except as provided by paragraph (2) of subsection (a) of Code  
 19 Section 17-10-1."

## 20 SECTION 9.

21 This Act shall become effective July 1, 2001, and shall apply to offenses of escape and  
 22 cruelty to children in the second degree committed on or after July 1, 2001.

## 23 SECTION 10.

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