

Senate Bill 34

By: Senators Hecht of the 34th, Fort of the 39th, Starr of the 44th, Kemp of the 3rd, Hamrick of the 30th and others

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 the age of pandering involving
9 minors; to change provisions relating to forfeiture of motor vehicles; to provide a forfeiture
10 procedure for violation of Code Section 16-6-10 involving minors; to amend Code Sections
11 17-10-1 and 42-8-34 of the Official Code of Georgia Annotated, relating to sentencing and
12 probation, respectively, so as to allow the trial court to have jurisdiction over any person
13 placed on probation; to amend Code Section 42-8-34.1 of the Official Code of Georgia
14 Annotated, relating to revocation of probated or suspended sentences, so as to change the
15 penalties authorized for imposition upon proof of a defendant's violation of probation or
16 suspension; to provide a definition; to provide for a maximum sentence for a violation of
17 probation or suspension which is the commission of a felony offense; to provide a sentence
18 authorized for a violation of a special condition of probation or suspension; to provide for
19 related matters; to provide for an effective date and for applicability; to repeal conflicting
20 laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 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) 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 person who is in lawful custody or 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. Any other person convicted of the offense of escape shall be punished as for a misdemeanor, except that 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."

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.

Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses, is amended in Code Section 16-6-13, relating to penalties for violating Code Sections 16-6-9 through 16-6-12, by striking subsection (b) and inserting in lieu thereof the following:

"(b) A person convicted of pandering when such offense involves the solicitation of a person under the age of ~~17~~ 18 years to perform an act of prostitution or the assembly of two or more persons under the age of ~~17~~ 18 years at a fixed place for the purpose of being solicited by others to perform an act of prostitution shall be guilty of a felony and shall be fined not less than \$2,500.00 nor more than \$10,000.00 or shall be imprisoned for not less than one year nor more than five years, or both fined and imprisoned. Adjudication of guilt or imposition of sentence for a conviction of a second or subsequent offense of pandering involving a person under the age of ~~17~~ 18 years pursuant to this subsection, including a plea of nolo contendere, shall not be suspended, probated, deferred, or withheld."

1 Code Section 16-13-49. Property which is forfeited pursuant to this Code section shall
2 be disposed of and distributed as provided in Code Section 16-13-49;

3 (3) If property subject to forfeiture cannot be located; has been transferred or conveyed
4 to, sold to, or deposited with a third party; is beyond the jurisdiction of the court; has
5 been substantially diminished in value while not in the actual physical custody of a
6 receiver or governmental agency directed to maintain custody of the property; or has been
7 commingled with other property that cannot be divided without difficulty, the court shall
8 order the forfeiture of any property of a claimant or defendant up to the value of property
9 found by the court to be subject to forfeiture under this Code section in accordance with
10 the procedures set forth in subsection (x) of Code Section 16-13-49; and

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

14 SECTION 7.

15 Code Section 17-10-1 of the Official Code of Georgia Annotated, relating to sentencing, is
16 amended by striking paragraphs (1), (4), (5) and (6) of subsection (a) and inserting in lieu
17 thereof the following:

18 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death
19 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
20 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
21 shall prescribe a determinate sentence for a specific number of months or years which
22 shall be in conformity with any mandatory minimum sentences required by law or shall
23 be within the minimum and maximum prescribed by law as the punishment for the crime.
24 The judge imposing the sentence is granted power and authority to suspend or probate all
25 or any part of the entire sentence under such rules and regulations as the judge deems
26 proper, including the authority to revoke the suspension or probation when the defendant
27 has violated any of the rules and regulations prescribed by the court, even before the
28 probationary period has begun, subject to the conditions set out in this subsection;
29 provided, however, that such action shall be subject to the provisions of Code Section
30 17-10-6.1."

31 ~~"(4) In cases of imprisonment followed by probation, the sentence shall specifically~~
32 ~~provide that the period of probation shall not begin until the defendant has completed~~
33 ~~service of the confinement portion of the sentence. No revocation of any part of a~~
34 ~~probated sentence shall be effective while a defendant is in the legal custody of the Board~~
35 ~~of Pardons and Paroles.~~

36 ~~(5)~~(4)(A) Where a defendant has been sentenced to probation, the court shall retain
37 jurisdiction throughout the period of the probated sentence as provided for in subsection

1 (g) of Code Section 42-8-34. Without limiting the generality of the foregoing, the court
 2 may shorten the period of probation on motion of the defendant or on its own motion,
 3 if the court determines that probation is no longer necessary or appropriate for the ends
 4 of justice, the protection of society, and the rehabilitation of the defendant. Prior to
 5 entering any order for shortening a period of probation, the court shall afford notice to
 6 the victim or victims of all sex related offenses or violent offenses resulting in serious
 7 bodily injury or death, and, upon request of the victim or victims so notified, shall
 8 afford notice and an opportunity for hearing to the defendant and the prosecuting
 9 attorney.

10 (B) The Department of Corrections shall establish a form document which shall
 11 include the elements set forth in this Code section concerning notification of victims
 12 and shall make copies of such form available to prosecuting attorneys in the state.
 13 When requested by the victim, the form document shall be provided to the victim by
 14 the prosecuting attorney. The form shall include the address of the probation office
 15 having jurisdiction over the case and contain a statement that the victim must maintain
 16 a copy of his or her address with the probation office and must notify the office of any
 17 change of address in order to maintain eligibility for notification by the Department of
 18 Corrections as required in this Code section.

19 ~~(6)~~(5)(A) Except as otherwise authorized by law, no court shall modify, suspend,
 20 probate, or alter a previously imposed sentence so as to reduce or eliminate a period of
 21 incarceration or probation and impose a financial payment which:

- 22 (i) Exceeds the statutorily specified maximum fine, plus all penalties, fees,
 23 surcharges, and restitution permitted or authorized by law; or
- 24 (ii) Is to be made to an entity which is not authorized by law to receive fines,
 25 penalties, fees, surcharges, or restitution.

26 (B) The prohibitions contained in this paragraph shall apply regardless of whether a
 27 defendant consents to the modification, suspension, probation, or alteration of such
 28 defendant's sentence and the imposition of such payment.

29 (C) Nothing in this paragraph shall prohibit or prevent a court from requiring, as a
 30 condition of suspension, modification, or probation of a sentence in a criminal case
 31 involving child abandonment, that the defendant pay all or a portion of child support
 32 which is owed to the custodial parent of a child which is the subject of such case."

33 SECTION 8.

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

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

6 SECTION 9.

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

11 "42-8-34.1.

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

14 (1) Is expressly imposed as part of the sentence in addition to general conditions of
 15 probation;

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

19 (3) Is related to public safety.

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

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

32 ~~(c)(d)~~ If the violation of probation or suspension alleged and proven by a preponderance
 33 of the evidence or the defendant's admission is the commission of a felony offense ~~or the~~
 34 ~~violation of a special condition imposed pursuant to this Code section, notwithstanding any~~
 35 ~~other provision of law~~, the court may revoke no more than the lesser of the balance of

1 probation or the maximum time of the sentence authorized to be imposed for the crime
2 constituting the violation of the probation.

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

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

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

18 **SECTION 10.**

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

21 **SECTION 11.**

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