

House Bill 791

By: Representatives Murphy of the 18th, Lucas of the 124th and Skipper of the 137th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 and Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as
3 to require defendants who are not first offenders but who are sentenced to serve time in
4 confinement in the state prison system followed by a term of probation to be supervised on
5 probation by the State Board of Pardons and Paroles rather than the state-wide probation
6 system; to change how jurisdiction, probation, and parole supervision is handled; to change
7 supervision requirements; to change provisions relating to supervision; to provide for related
8 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
13 amended in Code Section 17-10-1, relating to sentencing, probation, and parole, by striking
14 subsection (a) in its entirety and inserting in lieu thereof the following:

15 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death
16 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
17 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
18 shall prescribe a determinate sentence for a specific number of months or years which
19 shall be in conformity with any mandatory minimum sentences required by law or shall
20 be within the minimum and maximum prescribed by law as the punishment for the crime.
21 The judge imposing the sentence is granted power and authority to suspend or probate all
22 or any part of the entire sentence under such rules and regulations as the judge deems
23 proper, subject to the conditions set out in this subsection; provided, however, that such
24 action shall be subject to the provisions of Code Section 17-10-6.1. In cases where the
25 judge imposes a sentence on a defendant who is not a first offender as defined in Article
26 3 of Chapter 8 of Title 42 involving a term of imprisonment followed by a term of

1 probation, supervision of the defendant shall be conducted exclusively by the State Board
2 of Pardons and Paroles for the entire length of the sentence. Such defendant shall be
3 known as a split sentence probationer. In cases where the judge imposes a sentence on
4 a defendant who is not a first offender consisting exclusively of a term of probation or a
5 term of probation which also includes alternative incarceration as provided in Code
6 Section 42-8-35.1, 42-8-35.4, or 42-8-35.5, supervision of the defendant shall be
7 conducted exclusively by the state-wide probation system; provided, however, should a
8 defendant's probation be revoked and such defendant be sentenced to imprisonment,
9 further supervision of the defendant shall be conducted by the State Board of Pardons and
10 Paroles.

11 (2) Probation supervision shall terminate in all cases no later than two years from the
12 commencement of probation supervision unless specially extended or reinstated by the
13 sentencing court upon notice and hearing and for good cause shown; provided, however,
14 in those cases involving the collection of fines, restitution, or other funds, the period of
15 supervision shall remain in effect for so long as any such obligation is outstanding, or
16 until termination of the sentence, whichever first occurs. Split sentence probation
17 supervision shall continue for the entire term of the sentence imposed.

18 (3)(A) Any part of a sentence of probation revoked for a violation other than a
19 subsequent commission of any felony; or a misdemeanor offense involving physical
20 violence resulting in bodily injury to an innocent victim which in the opinion of the trial
21 court constitutes a danger to the community or a serious infraction occurring while the
22 defendant is assigned to an alternative probation confinement facility shall be served
23 in a probation detention center, probation boot camp, diversion center, weekend lock
24 up, or confinement in a local jail or detention facility; or other community correctional
25 alternatives available to the court or provided by the Department of Corrections. Future
26 supervision of the defendant shall be conducted by the state-wide probation system so
27 long as the defendant is not sentenced to custody in the state prison system.

28 (B) A parolee or probationer charged with a misdemeanor involving physical injury
29 or an attempt to commit physical injury or terroristic threats or with a new felony shall
30 not be entitled to bond pending a hearing on the revocation of his or her parole or
31 probation, except by order of a judge of the superior court wherein the alleged new
32 offense occurred after a hearing and upon determination of the superior court that the
33 parolee or probationer does not constitute a threat to the community.

34 (4) In cases of imprisonment followed by probation, the sentence shall specifically
35 provide that the period of probation shall not begin until the defendant has completed
36 service of the confinement portion of the sentence; provided, however, the split sentence
37 probation supervision in this situation shall be conducted by the State Board of Pardons

1 and Paroles. No revocation of any part of a probated sentence shall be effective while a
2 defendant is in the legal custody of the State Board of Pardons and Paroles.

3 (5)(A) Where a defendant has been sentenced to probation, the court shall retain
4 jurisdiction throughout the period of the probated sentence as provided for in subsection
5 (g) of Code Section 42-8-34, provided that the original sentence does not require
6 confinement in the state prison system. Without limiting the generality of the
7 foregoing, the court may shorten the period of probation on motion of the defendant or
8 on its own motion, if the court determines that probation is no longer necessary or
9 appropriate for the ends of justice, the protection of society, and the rehabilitation of the
10 defendant. Prior to entering any order for shortening a period of probation, the court
11 shall afford notice to the victim or victims of all sex related offenses or violent offenses
12 resulting in serious bodily injury or death, and, upon request of the victim or victims
13 so notified, shall afford notice and an opportunity for hearing to the defendant and the
14 prosecuting attorney.

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

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

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

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

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

1 defendant but may stay and suspend the execution of the sentence or any portion thereof
 2 or may place him or her on probation under the supervision and control of the probation
 3 supervisor for the duration of such probation. The period of probation or suspension shall
 4 not exceed the maximum sentence of confinement which could be imposed on the
 5 defendant."

6 "(f) During the interval between the conviction or plea and the hearing to determine the
 7 question of probation, the court may, in its discretion, either order the confinement of the
 8 defendant without bond or may permit his or her release on bond, which bond shall be
 9 conditioned on his or her appearance at the hearing and shall be subject to the same rules
 10 as govern appearance bonds. Any time served in confinement shall be considered a part of
 11 the sentence of the defendant.

12 (g)(1) The sentencing judge shall not lose jurisdiction over any person placed solely on
 13 probation during the term of his or her probated sentence. The judge is empowered to
 14 revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any
 15 manner deemed advisable by the judge, to modify or change the probated sentence at any
 16 time during the period of time originally prescribed for the probated sentence to run.

17 (2) The sentencing judge shall lose jurisdiction over any person given a split sentence
 18 or who having initially been sentenced solely to probation has such person's probation
 19 subsequently revoked and is required to enter the state prison system. Those persons
 20 described in this paragraph shall be under the authority and direction of the State Board
 21 of Pardons and Paroles who shall have the power to revoke any or all of the split probated
 22 sentence, or, in any manner deemed advisable by the State Board of Pardons and Paroles
 23 to modify or change the split probated sentence or the conditions of the sentence at any
 24 time during the period of time originally prescribed for the split sentence to run.

25 (h) Notwithstanding any provision of this Code or any rule or regulation to the contrary,
 26 if a defendant is placed on probation in a county of a judicial circuit other than the one in
 27 which he or she resides for committing any misdemeanor offense, such defendant may,
 28 when specifically ordered by the court, have his or her probation supervision transferred
 29 to the judicial circuit of the county in which he or she resides."

30 SECTION 4.

31 Said title is further amended by striking subsections (b) through (e) of Code Section
 32 42-8-34.1, relating to requirements for revocations, in their entirety and inserting in lieu
 33 thereof the following:

34 "(b) At any revocation hearing, upon proof that the defendant has violated any provision
 35 of probation or suspension other than by commission of a new felony offense, the court
 36 shall consider the use of alternatives to include community service, intensive probation,

1 diversion centers, probation detention centers, special alternative incarceration, or any other
 2 alternative to confinement deemed appropriate by the court or as provided by the state or
 3 county. In the event the court determines that the defendant does not meet the criteria for
 4 said alternatives, the court may revoke the balance of probation or not more than two years
 5 in confinement, whichever is less. If the court revokes any portion of probation which
 6 requires the defendant to be confined in the state prison system, the defendant's future
 7 supervision shall be conducted by the State Board of Pardons and Paroles.

8 (c) If the violation of probation or suspension alleged and proven by a preponderance of
 9 the evidence or the defendant's admission is the commission of a felony offense or the
 10 violation of a special condition imposed pursuant to this Code section, notwithstanding any
 11 other provision of law, the court may revoke no more than the lesser of the balance of
 12 probation or the maximum time of the sentence authorized to be imposed for the crime
 13 constituting the violation of the probation. If the court revokes any portion of probation
 14 which requires the defendant to be confined in the state prison system, the defendant's
 15 future supervision shall be conducted by the State Board of Pardons and Paroles.

16 (d) The payment of restitution or reparation, costs, or fines ordered by the court may be
 17 payable in one lump sum or in periodic payments, as determined by the court after
 18 consideration of all the facts and circumstances of the case and of the defendant's ability
 19 to pay. Such payments shall, in the discretion of the sentencing judge, be made either to
 20 the clerk of the sentencing court or, if the sentencing court is a probate court, state court,
 21 or superior court, to the probation or parole office serving said court.

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

26 SECTION 5.

27 Said title is further amended by striking subsection (a) of Code Section 42-8-34.2, relating
 28 to fines and costs delinquency, in its entirety and inserting in lieu thereof the following:

29 "(a) In the event that a defendant is delinquent in the payment of fines, costs, or restitution
 30 or reparation, as was ordered by the court as a condition of probation or split sentence
 31 probation, the defendant's probation or parole officer is authorized, but not required, to
 32 execute a sworn affidavit wherein the amount of arrearage is set out. In addition, the
 33 affidavit shall contain a succinct statement as to what efforts the department or the State
 34 Board of Pardons and Paroles has made in trying to collect the delinquent amount. The
 35 affidavit shall then be submitted to the sentencing court for approval. Upon signature and
 36 approval of the court, said arrearage shall then be collectable through issuance of a writ of

1 fieri facias by the clerk of the sentencing court; and the department or the State Board of
 2 Pardons and Paroles may enforce such collection through any judicial or other process or
 3 procedure which may be used by the holder of a writ of execution arising from a civil
 4 action."

5 SECTION 6.

6 Said title is further amended by striking subsection (b) of Code Section 42-8-60, relating to
 7 first offender violation of probation, in its entirety and inserting in lieu thereof the following:
 8 "(b) Upon violation by the defendant of the terms of probation, upon a conviction for
 9 another crime during the period of probation, or upon the court determining that the
 10 defendant is or was not eligible for sentencing under this article, the court may enter an
 11 adjudication of guilt and proceed as otherwise provided by law. Notwithstanding any
 12 provision to the contrary, the court shall always retain jurisdiction of persons sentenced
 13 pursuant to this article. Even in circumstances where the court imposes a split sentence,
 14 the court and the state-wide probation system shall respectively retain jurisdiction and
 15 supervise a first offender defendant. No person may avail himself or herself of this article
 16 on more than one occasion."

17 SECTION 7.

18 Said title is further amended by striking Code Section 42-9-3, relating to definitions, in its
 19 entirety and inserting in lieu thereof the following:

20 "42-9-3.

21 As used in this chapter, the term:

22 (1) 'Board' 'board' means the State Board of Pardons and Paroles.

23 (2) 'Split sentence' means a sentence which is not imposed pursuant to Article 3 of
 24 Chapter 8 of this title and which requires the defendant to serve some portion of his or
 25 her sentence in the confinement of the state prison system and some portion of his or her
 26 sentence on probation."

27 SECTION 8.

28 Said title is further amended by striking Code Section 42-9-21, relating to parole supervision,
 29 in its entirety and inserting in lieu thereof the following:

30 "42-9-21.

31 (a) The board shall have the function and responsibility of supervising all persons placed
 32 on parole or other conditional release by the board or who are sentenced to serve any
 33 portion of their sentence in confinement in the state prison system.

1 (b) The board is authorized to maintain and operate or to enter into memoranda of
 2 agreement or other written documents evidencing contracts with other state agencies,
 3 persons, or any other entities for transitional or intermediate or other services or for
 4 programs deemed by the board to be necessary for parolees, split sentence probationers,
 5 or others conditionally released from imprisonment by order of the board or by the court
 6 and to require as a condition of relief that the offender pay directly to the provider a
 7 reasonable fee for said services or programs.

8 (c) In all cases where restitution is applicable or where fines or fees are ordered, including
 9 but not limited to fees pursuant to subsection (f) of Code Section 17-15-13, Code Section
 10 40-6-391, or subsection (b) of Code Section 16-13-2, the board shall collect during the
 11 parole or split sentence probation period those sums determined to be owed to the victim
 12 or the state."

13 SECTION 9.

14 Said title is further amended by striking Code Section 42-9-42, relating to violation of parole,
 15 and inserting in lieu thereof the following:

16 "42-9-42.

17 (a) No person shall be granted clemency, pardon, parole, or other relief from sentence
 18 except by a majority vote of the board. A majority of the members of the board may
 19 commute a death sentence to life imprisonment, as provided in Code Section 42-9-20.

20 (b) A grant of clemency, pardon, parole, or other relief from sentence shall be rendered
 21 only by a written decision which shall be signed by at least the number of board members
 22 required for the relief granted and which shall become a part of the permanent record.

23 (c) Good conduct, achievement of a fifth-grade level or higher on standardized reading
 24 tests, and efficient performance of duties by an inmate shall be considered by the board in
 25 his or her favor and shall merit consideration of an application for pardon or parole. No
 26 inmate shall be placed on parole until and unless the board shall find that there is
 27 reasonable probability that, if he or she is so released, he or she will live and conduct
 28 himself or herself as a respectable and law-abiding person and that his or her release will
 29 be compatible with his or her own welfare and the welfare of society. Furthermore, no
 30 person shall be released on pardon or placed on parole unless and until the board is
 31 satisfied that he or she will be suitably employed in self-sustaining employment or that he
 32 or she will not become a public charge. However, notwithstanding other provisions of this
 33 chapter, the board may, in its discretion, grant pardon or parole to any aged or disabled
 34 persons.

35 (d)(1) Any person who is paroled or who is released on split sentence probation after
 36 serving a portion of his or her sentence in confinement shall be released on such terms

1 and conditions as the board shall prescribe. The board shall diligently see that no
 2 peonage is allowed in the guise of parole relationship or supervision. The parolee or split
 3 sentence probationer shall remain in the legal custody of the board until the expiration of
 4 the maximum term specified in his or her sentence or until he or she is pardoned by the
 5 board.

6 (2) The board may require the payment of a parole supervision fee of at least \$10.00 per
 7 month as a condition of parole or other conditional release. The monthly amount shall
 8 be set by rule of the board and shall be uniform state wide. The board may require or the
 9 parolee or person under conditional release may request that up to 24 months of the
 10 supervision fee be paid in advance of the time to be spent on parole or conditional
 11 release. In such cases, any advance payments are nonreimbursable in the event of parole
 12 or conditional release revocation or if parole or conditional release is otherwise
 13 terminated prior to the expiration of the sentence being served on parole or conditional
 14 release. Such fees shall be collected by the board to be paid into the general fund of the
 15 state treasury.

16 (3) In every case that a court of this state sentences a defendant to a split sentence, such
 17 that supervision of the defendant rests with the board, in addition to any fine or order of
 18 restitution imposed by the court, there shall be a probation fee as a condition of probation
 19 of \$23.00 per each month of supervision, and in addition, a one-time fee of \$50.00 where
 20 such defendant was convicted of a felony. The probation fee may be waived or amended
 21 after administrative process by the board, or upon determination by the court, as to the
 22 undue hardship, inability to pay, or any other extenuating factors which prohibit
 23 collection of the fee; provided, however, that the imposition of sanctions for failure to pay
 24 fees shall be within the discretion of the board through hearings. All probation fees
 25 collected by the board shall be paid into the general fund of the state treasury, except as
 26 provided in subsection (f) of Code Section 17-15-13, relating to sums to be paid into the
 27 Georgia Crime Victims Emergency Fund.

28 (e) If a parolee or split sentence probationer violates the terms of his or her parole or
 29 probation, he or she shall be subject to rearrest or extradition for placement in the actual
 30 custody of the board, to be redelivered to any state or county correctional institution of this
 31 state."

32 SECTION 10.

33 Said title is further amended by striking Code Section 42-9-44, relating to terms and
 34 conditions of parole, in its entirety and inserting in lieu thereof the following:

35 "42-9-44.

1 (a) The board, upon placing a person on parole or split sentence probation, shall specify
2 in writing the terms and conditions thereof. A certified copy of the conditions shall be
3 given to the parolee or split sentence probationer. Thereafter, a copy shall be sent to the
4 clerk of the court in which the person was convicted. The board shall adopt general rules
5 concerning the terms and conditions of parole or split sentence probation and concerning
6 what shall constitute a violation thereof and shall make special rules to govern particular
7 cases. The rules, both general and special, may include, among other things, a requirement
8 that the parolee or split sentence probationer shall not leave this state or any definite area
9 in this state without the consent of the board; that the parolee or split sentence probationer
10 shall contribute to the support of his or her dependents to the best of the parolee's or split
11 sentence probationer's ability; that the parolee or split sentence probationer shall make
12 reparation or restitution for his or her crime; that the parolee or split sentence probationer
13 shall abandon evil associates and ways; and that the parolee or split sentence probationer
14 shall carry out the instructions of his or her parole or probation supervisor, and, in general,
15 so comport himself or herself as the parolee's or split sentence probationer's supervisor
16 shall determine. A violation of the terms of parole or split sentence probation may render
17 the parolee or split sentence probationer liable to arrest and a return to a penal institution
18 to serve out the term for which the parolee or split sentence probationer was sentenced.

19 (b) Each parolee or split sentence probationer who does not have a high school diploma
20 or a general educational development equivalency diploma (GED) shall be required as a
21 condition of parole or split sentence probation to obtain a high school diploma or general
22 educational development equivalency diploma (GED) or to pursue a trade at a vocational
23 or technical school. Any such parolee or split sentence probationer who demonstrates to
24 the satisfaction of the board an existing ability or skill which does in fact actually furnish
25 the parolee or split sentence probationer a reliable, regular, and sufficient income shall not
26 be subject to this provision. Any parolee or split sentence probationer who is determined
27 by the Department of Corrections or the board to be incapable of completing such
28 requirements shall only be required to attempt to improve ~~their~~ his or her basic educational
29 skills. Failure of any parolee or split sentence probationer subject to this requirement to
30 attend the necessary schools or courses or to make reasonable progress toward fulfillment
31 of such requirement shall be grounds for revocation of parole or split sentence probation.
32 The board shall establish regulations regarding reasonable progress as required by this
33 subsection. This subsection shall apply to paroles granted on or after July 1, 1995."

SECTION 11.

Said title is further amended by striking paragraph (2) of subsection (a) and subsection (b) of Code Section 42-9-44.3, relating to community service, in their entirety and inserting in lieu thereof the following:

"(2) 'Community service' means uncompensated work by an offender with a community service agency for the benefit of the community pursuant to a directive of the State Board of Pardons and Paroles or its designee as a condition of parole or split sentence probation or as an alternative to the revocation of parole or split sentence probation."

"(b) The State Board of Pardons and Paroles or its designee may direct an offender to perform community service as a condition of parole or split sentence probation or as an alternative to the revocation of parole or split sentence probation."

SECTION 12.

Said title is further amended by striking subsection (a) of Code Section 42-9-45, relating to rule-making power, in its entirety and inserting in lieu thereof the following:

"(a) The board may adopt and promulgate rules and regulations, not inconsistent with this chapter, touching all matters dealt with in this chapter, including, among others, the practice and procedure in matters pertaining to paroles, split sentence probation, pardons, and remission of fines and forfeitures. The rules and regulations shall contain an eligibility requirement for parole which shall set forth the time when the automatic initial consideration for parole of inmates under the jurisdiction of the Department of Corrections shall take place and also the times at which periodic reconsideration thereafter shall take place. Such consideration shall be automatic, and no written or formal application shall be required."

SECTION 13.

Said title is further amended by striking Code Section 42-9-48, relating to arrest of parolee, in its entirety and inserting in lieu thereof the following:

"42-9-48.

(a) If any member of the board shall have reasonable ground to believe that any parolee, split sentence probationer, or conditional releasee has lapsed into criminal ways or has violated the terms and conditions of his or her parole, split sentence probation, or conditional release in a material respect, the member may issue a warrant for the arrest of the parolee, split sentence probationer, or conditional releasee.

(b) The warrant, if issued by a member or the board, shall be returned before the board and shall command that the alleged violator of parole, split sentence probation, or conditional release be brought before the board for a final hearing on revocation of parole, split

1 sentence probation, or conditional release within a reasonable time after the preliminary
2 hearing provided for in Code Section 42-9-50.

3 (c) All officers authorized to serve criminal process, all peace officers of this state, and all
4 employees of the board whom the board specifically designates in writing shall be
5 authorized to execute the warrant.

6 (d) Any parole supervisor, when he or she has reasonable ground to believe that a parolee,
7 split sentence probationer, or conditional releasee has violated the terms or conditions of
8 his or her parole or conditional release in a material respect, shall notify the board or some
9 member thereof; and proceedings shall thereupon be had as provided in this Code section."

10 **SECTION 14.**

11 Said title is further amended by striking subsections (a) through (d) and (g) through (i) of
12 Code Section 42-9-50, relating to a preliminary hearing for a parole violator, and inserting
13 in lieu thereof the following:

14 "(a) Whenever a parolee, split sentence probationer, or conditional releasee is arrested on
15 a warrant issued by a member of the board for an alleged violation of parole, split sentence
16 probation, or conditional release, an informal preliminary hearing in the nature of a court
17 of inquiry shall be held at or near the place of the alleged violation. However, a preliminary
18 hearing is not required if the parolee, split sentence probationer, or conditional releasee is
19 not under arrest on a warrant issued by the board, has absconded from supervision, has
20 signed a waiver of a preliminary hearing, has admitted any alleged violation to any
21 representative of the board in the presence of a third party who is not a representative of
22 the board, or has been convicted of any crime in a federal court or in a court of this state
23 or of another state.

24 (b) The proceeding shall commence within a reasonable time after the arrest of the parolee,
25 split sentence probationer, or conditional releasee. Its purpose shall be to determine
26 whether there is probable cause or reasonable grounds to believe that the arrested parolee,
27 split sentence probationer, or conditional releasee has committed acts which would
28 constitute a violation of his or her parole, split sentence probation, or conditional release.

29 (c) The preliminary hearing shall be conducted by a hearing officer designated by the
30 board, who shall be some officer who is not directly involved in the case. It shall be the
31 duty of the officer conducting the hearing to make a summary or digest, which may be in
32 the form of a tape recording, of what transpires at the hearing in terms of the testimony and
33 other evidence given in support of or against revocation. In addition, the officer shall state
34 the reasons for his or her decision that probable cause for revocation does or does not exist
35 and shall indicate the evidence relied upon.

1 (d) It shall be the responsibility of the officer selected to conduct the preliminary hearing
 2 to provide the alleged violator with written notice of the time and place of the proceeding,
 3 its purpose, and the violations which have been alleged. This notice shall allow a
 4 reasonable time for the alleged violator to prepare his or her case."

5 "(g) At the hearing, the alleged violator may appear and speak in his or her own behalf,
 6 may present witnesses to testify in his or her behalf, and may bring letters, documents, or
 7 any other relevant information to the hearing officer. He or she shall also have the right to
 8 cross-examine those who have given adverse information at the preliminary hearing
 9 relating to the alleged violation, provided that the hearing officer may refuse to allow such
 10 questioning if he or she determines that the informant would be subjected to risk of harm
 11 if his or her identity were disclosed.

12 (h) Should the hearing officer determine that probable cause for revocation exists, he or
 13 she shall then determine whether the alleged violator should be incarcerated pending his
 14 or her final revocation hearing or whether he or she should be set free on his or her
 15 personal recognizance pending that hearing. If an alleged violator who is set free on his or
 16 her personal recognizance subsequently fails to appear at his or her final hearing, the board
 17 may summarily revoke his or her parole, split sentence probation, or conditional release.

18 (i) The decision of the hearing officer as to probable cause for revocation shall not be
 19 binding on the board but may be either ratified or overruled by majority vote of the board.
 20 In the event that the board overrules a determination of the hearing officer that probable
 21 cause did not exist, the board shall then determine whether the alleged violator should be
 22 incarcerated pending his or her final hearing or whether he or she should be set free on his
 23 or her personal recognizance pending that hearing. If an alleged violator who is set free
 24 on personal recognizance subsequently fails to appear at his or her final hearing, the board
 25 may summarily revoke his or her parole, split sentence probation, or conditional release.
 26 Where a hearing officer has determined, after finding probable cause, that the alleged
 27 violator should be set free on his or her personal recognizance, the board may overrule that
 28 decision and order the alleged violator to be incarcerated pending his or her final hearing."

29 SECTION 15.

30 Said title is further amended by striking subsections (a) through (d) and (g) of Code Section
 31 42-9-51, relating to final hearing for parole violator, and inserting in lieu thereof the
 32 following:

33 "(a) A parolee or split sentence probationer who has allegedly violated the terms of his or
 34 her parole, split sentence probation, or conditional release shall, except as otherwise
 35 provided in this subsection, have a right to a final hearing before the board, to be held
 36 within a reasonable time after the occurrence of one of the events listed in this subsection.

1 No final hearing shall be required or permitted if the parolee, split sentence probationer,
2 or conditional releasee has been convicted of or entered any form of guilty plea or plea of
3 nolo contendere in any federal or state court of record to any felony crime, or misdemeanor
4 involving physical injury, committed by the parolee, split sentence probationer, or
5 conditional releasee during a term of parole, split sentence probation, or conditional
6 release, and which new conviction results in imposition by the convicting court of a term
7 of imprisonment, and, in such cases, the board shall revoke the entire unexpired term of
8 parole, split sentence probation, or conditional release. In no case shall a final hearing be
9 required if the parolee, split sentence probationer, or conditional releasee has signed a
10 waiver of final hearing. The final hearing, if any, shall be held within a reasonable time:

11 (1) After an arrest warrant has been issued by a member of the board and probable cause
12 for revocation has been found by the preliminary hearing officer;

13 (2) After a majority of the board overrules a determination by the preliminary hearing
14 officer that probable cause does not exist;

15 (3) After the board or two of its members are informed of an alleged violation and decide
16 to consider the matter of revocation without issuing a warrant for the alleged violator's
17 arrest; or

18 (4) After a determination has been made that no preliminary hearing is required under
19 subsection (a) of Code Section 42-9-50.

20 (b) The purpose of the hearing shall be to determine whether the alleged violator has in
21 fact committed any acts which would constitute a violation of the terms and conditions of
22 his or her parole, split sentence probation, or conditional release and whether those acts are
23 of such a nature as to warrant revocation of parole, split sentence probation, or conditional
24 release.

25 (c) When a parolee, split sentence probationer, or conditional releasee has been convicted
26 of any crime, whether a felony or a misdemeanor, or has entered a plea of guilty or nolo
27 contendere thereto in a court of record, his or her parole, split sentence probation, or
28 conditional release may be revoked without a hearing before the board. Moreover,
29 whenever it shall appear to the board that a parolee, split sentence probationer, or
30 conditional releasee either has absconded or has been convicted of another crime in a
31 federal court or in a court of record of another state, the board may issue an order of
32 temporary revocation of parole, split sentence probation, or conditional release, together
33 with its warrant for such violator, which shall suspend the running of the parolee's, split
34 sentence probationer's, or conditional releasee's time from the date of the temporary
35 revocation of parole, split sentence probation, or conditional release to the date of the
36 determination by the board as to whether the temporary revocation shall be made
37 permanent. If the board determines that there has been no violation of the conditions of the

1 parole, split sentence probation, or conditional release, then the parolee, split sentence
2 probationer, or the releasee shall be reinstated upon his or her original parole, split sentence
3 probation, or conditional release without any loss of time and the order of temporary
4 revocation of parole, split sentence probation, or conditional release and the warrant shall
5 be withdrawn.

6 (d) In all cases in which there is a hearing before the board, the alleged violator shall be
7 given written notice of the time and place of the hearing and of the claimed violations of
8 parole, split sentence probation, or conditional release. In addition, this notice shall advise
9 him or her of the following rights:

10 (1) His or her right to disclosure of evidence introduced against him or her; provided,
11 however, this right shall not be construed to require the board to disclose to an alleged
12 violator confidential information contained in its files which has no direct bearing on the
13 matter of parole revocation;

14 (2) His or her opportunity to be heard in person and to present witnesses and
15 documentary evidence;

16 (3) His or her right to confront and cross-examine adverse witnesses, unless a majority
17 of the board determines that disclosure of a particular informant's identity would cause
18 that informant or a member of his or her family to suffer a risk of harm; and

19 (4) His or her right to subpoena witnesses and documents through the board as provided
20 in subsections (e) and (f) of this Code section.

21 The notice shall be served by delivering it to the alleged violator in person, by delivering
22 it to a person 18 years or older at his or her last known place of residence, or by depositing
23 it in the mail properly addressed to his or her last known place of residence."

24 "(g) Within a reasonable time after the hearing provided for by this Code section, the board
25 shall enter an order (1) rescinding parole, split sentence probation, or conditional release
26 and returning the parolee, split sentence probationer, or conditional releasee to serve the
27 sentence theretofore imposed upon him or her, with benefit of computing the time so
28 served on parole, split sentence probation, or conditional release as a part of his or her
29 sentence; or (2) reinstating the parole, split sentence probation, or conditional release or
30 shall enter such other order as it may deem proper. The board shall issue a written
31 statement which shall indicate its reasons for revoking or not reinstating parole, split
32 sentenced probation, or conditional release or for taking such other action as it deems
33 appropriate and shall also indicate the evidence relied upon in determining the facts which
34 form the basis for these reasons. The parolee, split sentence probationer, or conditional
35 releasee who is the subject of the board's decision shall be furnished with a copy of this
36 written statement."

1 "42-9-57.
2 Nothing contained in this chapter shall be construed as repealing any power given to any
3 court of this state to place offenders on probation or to supervise ~~the same~~ offenders
4 sentenced only to probation nor any power of any probation agency set up in any county
5 of the state in conjunction with the courts. The board shall be authorized to cooperate with
6 any such agencies, except that it shall not assume or pay any financial obligations thereof.
7 The board shall also be authorized to cooperate with the courts for the probation of
8 offenders in those counties in which there is no existing probation agency, when a court so
9 requests."

10 **SECTION 19.**

11 Said title is further amended by striking Code Section 42-9-59, relating to effect on
12 previously granted pardons, paroles, and probation, in its entirety and inserting in lieu thereof
13 the following:

14 "42-9-59.

15 This chapter shall not affect pardons, paroles, or probations acted upon prior to February
16 5, 1943, nor split sentence probationers acted upon or sentenced prior to July 1, 2001."

17 **SECTION 20.**

18 This Act shall become effective July 1, 2001, and shall apply to sentences imposed on or
19 after July 1, 2001.

20 **SECTION 21.**

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