

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 Ray of the 48th

AS PASSED

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 Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses,
 6 so as to change provisions relating to forfeiture of motor vehicles; to provide a forfeiture
 7 procedure for violation of Code Section 16-6-11 involving minors; to amend Code Sections
 8 17-10-1 and 42-8-34 of the Official Code of Georgia Annotated, relating to sentencing and
 9 probation, respectively, so as to allow the trial court to have jurisdiction over any person
 10 placed on probation; to allow the trial judge to have continuing authority to modify a
 11 sentence for one year from when the sentence is imposed or within 120 days of the remittitur;
 12 to provide that the court shall afford notice and an opportunity for a hearing to the
 13 prosecuting attorney; to provide that any order modifying a sentence which is entered
 14 without notice and an opportunity for a hearing as provided in this Act shall be void; to
 15 amend Code Section 42-8-34.1 of the Official Code of Georgia Annotated, relating to
 16 revocation of probated or suspended sentences, so as to change the penalties authorized for
 17 imposition upon proof of a defendant's violation of probation or suspension; to provide a
 18 definition; to provide for a maximum sentence for a violation of probation or suspension
 19 which is the commission of a felony offense; to provide a sentence authorized for a violation
 20 of a special condition of probation or suspension; to provide for related matters; to provide
 21 for an effective date and for applicability; to repeal conflicting laws; and for other purposes.

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

23 **SECTION 1.**

24 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, 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 charged with a felony 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.

Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses, is 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 a motor vehicle within the same five-year period is declared to be contraband and subject to forfeiture to the state, as provided in this Code section, ~~provided that said forfeiture shall not be absolute unless the defendant is convicted of said offense.~~

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

SECTION 4.

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

1 "16-6-13.3.

2 (a) Any proceeds or money which is used, intended for use, used in any manner to
3 facilitate, or is derived from a violation of Code Section 16-6-11, wherein any of the
4 persons involved in performing an act of prostitution is under the age of 18, is contraband
5 and forfeited to the state and no person shall have a property interest in it. Such proceeds
6 or money may be seized or detained in the same manner as provided in Code Section
7 16-13-49 and shall not be subject to replevin, conveyance, sequestration, or attachment.

8 (b) Within 60 days of the date of the seizure of proceeds or money pursuant to this Code
9 section, the district attorney shall initiate forfeiture or other proceedings as provided in
10 Code Section 16-13-49. An owner or interest holder, as defined by subsection (a) of Code
11 Section 16-13-49, may establish as a defense to the forfeiture of proceeds or money which
12 is subject to forfeiture under this Code section the applicable provisions of subsection (e)
13 or (f) of Code Section 16-13-49. Proceeds or money which is forfeited pursuant to this
14 Code section shall be disposed of and distributed as provided in Code Section 16-13-49,
15 provided that no less than 50 percent of the money and proceeds forfeited under this Code
16 section shall be distributed to the local governing authority to be distributed to local or
17 state-wide programs serving the child victims of the crime which are funded or operated
18 by state or local governmental agencies.

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

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

31 **SECTION 5.**

32 Code Section 17-10-1 of the Official Code of Georgia Annotated, relating to sentencing, is
33 amended by striking paragraphs (1) and (2) and subparagraph (A) of paragraph (3) of
34 subsection (a) and inserting new paragraphs (1) and (2) and subparagraph (A) of paragraph
35 (3) of subsection (a) and by adding a new subsection (f) to read as follows:

1 “(a)(1) Except in cases in which life imprisonment, life without parole, or the death
 2 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
 3 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
 4 shall prescribe a determinate sentence for a specific number of months or years which
 5 shall be in conformity with any mandatory minimum sentences required by law or shall
 6 be within the minimum and maximum prescribed by law as the punishment for the crime.
 7 The judge imposing the sentence is granted power and authority to suspend or probate all
 8 or any part of the entire sentence under such rules and regulations as the judge deems
 9 proper, including the authority to revoke the suspension or probation when the defendant
 10 has violated any of the rules and regulations prescribed by the court, even before the
 11 probationary period has begun, subject to the conditions set out in this subsection;
 12 provided, however, that such action shall be subject to the provisions of Code Section
 13 17-10-6.1.

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

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

31 (f) Within one year of the date upon which the sentence is imposed, or within 120 days
 32 after receipt by the sentencing court of the remittitur upon affirmance of the judgment after
 33 direct appeal, whichever is later, the court imposing the sentence has the jurisdiction,
 34 power, and authority to correct or reduce the sentence and to suspend or probate all or any
 35 part of the sentence imposed. Prior to entering any order correcting, reducing, or
 36 modifying any sentence, the court shall afford notice and an opportunity for a hearing to
 37 the prosecuting attorney. Any order modifying a sentence which is entered without notice

1 and an opportunity for a hearing as provided in this subsection shall be void. This
 2 subsection shall not limit any other jurisdiction granted to the court in this Code section or
 3 as provided for in subsection (g) of Code Section 42-8-34."

4 SECTION 6.

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

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

13 SECTION 7.

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

18 "42-8-34.1.

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

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

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

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

30 ~~(b)(c)~~ At any revocation hearing, upon proof that the defendant has violated any general
 31 provision of probation or suspension other than by commission of a new felony offense,
 32 the court shall consider the use of alternatives to include community service, intensive
 33 probation, diversion centers, probation detention centers, special alternative incarceration,
 34 or any other alternative to confinement deemed appropriate by the court or as provided by
 35 the state or county. In the event the court determines that the defendant does not meet the

1 criteria for said alternatives, the court may revoke the balance of probation or not more
2 than two years in confinement, whichever is less.

3 ~~(c)~~(d) If the violation of probation or suspension alleged and proven by a preponderance
4 of the evidence or the defendant's admission is the commission of a felony offense ~~or the~~
5 ~~violation of a special condition imposed pursuant to this Code section, notwithstanding any~~
6 ~~other provision of law~~, the court may revoke no more than the lesser of the balance of
7 probation or the maximum time of the sentence authorized to be imposed for the crime
8 constituting the violation of the probation.

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

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

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

24 SECTION 8.

25 This Act shall become effective July 1, 2001, and shall apply to offenses of escape
26 committed on or after July 1, 2001.

27 SECTION 9.

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