

House Bill 1161

By: Representatives Powell of the 23rd, Greene of the 134th, DeLoach of the 127th, Parham of the 94th, Teper of the 42nd, Post 1, and others

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 provide for comprehensive provisions regarding management of probationers; to change
4 certain provisions regarding suspension or probation of sentence; to change certain
5 provisions regarding documents required to be part of a sentence package; to change certain
6 provisions regarding the continuing jurisdiction of a sentencing judge over a probationer; to
7 change certain provisions regarding terms and conditions of probation; to change certain
8 conditions relating to community service; to provide for implementation of a specialized
9 continuum of probation supervision; to provide for a short title; to provide for definitions;
10 to provide for procedures, conditions, and limitations with respect to the sentencing options
11 system; to provide for powers, duties, and authority of the department of corrections, the
12 commissioner of corrections, chief probation officers, and sentencing courts; to provide for
13 applicability and construction of such provisions; to provide for automatic repeal; to provide
14 for an effective date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

17 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
18 amended by striking paragraph (1) of subsection (a) of Code Section 17-10-1, relating to the
19 suspension or probation of sentence, and inserting in its place a new paragraph (1) to read
20 as follows:

21 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death
22 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
23 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
24 shall prescribe a determinate sentence for a specific number of months or years which
25 shall be ~~in conformity with any mandatory minimum sentences required by law or shall~~
26 ~~be~~ within the minimum and maximum sentences prescribed by law as the punishment for

1 the crime. The judge imposing the sentence is granted power and authority to suspend or
 2 probate all or any part of the entire sentence under such rules and regulations as the judge
 3 deems proper, including service of a probated sentence in the sentencing options system,
 4 as provided by Article 9 of Chapter 8 of Title 42, and including the authority to revoke
 5 the suspension or probation when the defendant has violated any of the rules and
 6 regulations prescribed by the court, even before the probationary period has begun,
 7 subject to the conditions set out in this subsection; provided, however, that such action
 8 shall be subject to the provisions of Code Section 17-10-6.1."

9 SECTION 2.

10 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 11 in subsection (a) of Code Section 42-5-50, relating to documents required to be part of a
 12 sentence package, by deleting "and" from the end of paragraph (3), deleting the period and
 13 substituting "; and" at the end of paragraph (4), and inserting a new paragraph (5) at the end
 14 thereof to read as follows:

15 "(5) A copy of the sentencing information report."

16 SECTION 3.

17 Said title is further amended by striking subsection (g) of Code Section 42-8-34, relating to
 18 continuing jurisdiction of the sentencing judge over a probationer, and inserting in its place
 19 a new subsection (g) to read as follows:

20 "(g) The sentencing judge shall ~~retain~~ not lose jurisdiction over any person placed on
 21 probation during the term of the person's probated sentence. The judge is empowered to
 22 revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any
 23 manner deemed advisable by the judge, to modify or change the probated sentence,
 24 including ordering the probationer into the sentencing options system, as provided in
 25 Article 9 of this chapter, at any time during the period of time prescribed for the probated
 26 sentence to run."

27 SECTION 4.

28 Said title is further amended in Code Section 42-8-35, relating to terms and conditions of
 29 probation, by deleting "and" from the end of paragraph (11), deleting the period and
 30 substituting "; and" at the end of paragraph (12), and inserting a new paragraph (13) at the
 31 end thereof to read as follows:

32 "(13) Submit to drug, alcohol, and mental health evaluation and testing, and participate
 33 in treatment and rehabilitative programming as directed."

1 participation, drug testing, community service, all special conditions of probation, and
2 general conditions of probation as set forth in Code Section 42-8-35.

3 (9) 'Options system probationer' means a probationer who has been sentenced to the
4 sentencing options system.

5 (10) 'Probation supervision' means a level of probation supervision which includes, but
6 is not limited to, general conditions of probation as set forth in Code Section 42-8-35 and
7 all special conditions of probation.

8 (11) 'Residential substance abuse treatment facility' means a state correctional facility
9 that provides inpatient treatment for alcohol and drug abuse.

10 (12) 'Sentencing option system' means a continuum of sanctions for probationers that
11 includes the sanctions set forth in subsection (c) of Code Section 42-8-153.

12 42-8-152.

13 (a) In addition to any other terms or conditions of probation provided for under this
14 chapter, the trial judge may provide that defendants who are sentenced to probation
15 pursuant to subsection (c) of Code Section 42-8-34 be ordered to the sentencing options
16 system.

17 (b) Where a defendant has been sentenced to the sentencing options system, the court shall
18 retain jurisdiction throughout the period of the probated sentence as provided in subsection
19 (g) of Code Section 42-8-34, and may modify or revoke any part of a probated sentence
20 as provided in Code Section 42-8-34.1 and subsection (c) of Code Section 42-8-38.

21 42-8-153.

22 (a) The department is authorized to establish by rules and regulations a system of
23 administrative sanctions as an alternative to judicial modifications or revocations for
24 probationers who violate the terms and conditions of the sentencing options system
25 established under this article. The department may not, however, sanction probationers for
26 violations of special conditions of probation or general conditions of probation for which
27 the sentencing judge has expressed an intention that such violations be heard by the court
28 pursuant to Code Section 42-8-34.1.

29 (b) The department shall only impose restrictions which are equal to or less restrictive than
30 the initial sanction set by the sentencing judge.

31 (c) The administrative sanctions which may be imposed by the department are as follows,
32 from most restrictive to least restrictive:

- 33 (1) Probation detention center or residential substance abuse treatment facility;
- 34 (2) Probation boot camp;
- 35 (3) Probation diversion center;

- 1 (4) Intensive probation;
- 2 (5) Options system day report center;
- 3 (6) Electronic monitoring;
- 4 (7) Community service; or
- 5 (8) Probation supervision.

6 42-8-154.

7 Whenever an options system probationer is arrested on a warrant for an alleged violation
8 of probation, an informal preliminary hearing shall be held within a reasonable time not to
9 exceed 15 days. However, a preliminary hearing is not required if the probationer is not
10 under arrest on a warrant, or if the probationer has signed a waiver of a preliminary
11 hearing.

12 42-8-155.

13 (a) If an options system probationer violates the conditions of probation, the department
14 may impose administrative sanctions as an alternative to judicial modification or revocation
15 of probation.

16 (b) Upon issuance of a petition outlining the alleged probation violations, the chief
17 probation officer, or his or her designee, may initiate a hearing to determine whether an
18 options system probationer has violated a condition of probation. If the hearing officer
19 determines that the probationer has violated a condition of probation, the hearing officer
20 is authorized to impose sanctions consistent with paragraphs (4) through (8) of subsection
21 (c) of Code Section 42-8-153. The failure of an options system probationer to comply with
22 a sanction imposed by the hearing officer shall constitute a violation of probation.

23 (c)(1) Upon issuance of a petition outlining the alleged probation violations, the hearing
24 officer may initiate an administrative proceeding to determine whether an option system
25 probationer has violated a condition of probation. If the hearing officer determines by a
26 preponderance of the evidence that the probationer has violated a condition of probation,
27 the hearing officer may impose sanctions consistent with subsection (c) of Code Section
28 42-8-153.

29 (2) The administrative proceeding provided for under this subsection shall be
30 commenced within 15 days, but not less than 48 hours after notice of the administrative
31 proceeding has been served on the probationer. The administrative proceeding may be
32 conducted electronically.

33 (3) The failure of a probationer to comply with the sanction or sanctions imposed by the
34 hearings officer shall constitute a violation of probation.

1 (d) The probationer may appeal any administrative decision of the hearings officer to the
2 sentencing court.

3 (e) An options system probationer may at any time waive a hearing and voluntarily accept
4 the sanctions proposed by the department.

5 42-8-156.

6 Nothing contained in this article shall be construed as repealing any power given to any
7 court of this state to place offenders on probation or to supervise offenders.

8 42-8-157.

9 This article shall only apply in counties that have an options system day reporting center
10 certified by the department.

11 42-8-158.

12 This article shall be liberally construed so that its purposes may be achieved.

13 48-8-159.

14 This article shall be repealed in its entirety on July 1, 2005."

15 **SECTION 6.**

16 This Act shall become effective on July 1, 2004.

17 **SECTION 7.**

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