

House Bill 1161 (AS PASSED HOUSE AND SENATE)

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, appeal, and limitations with respect to the sentencing
11 options system; to provide for powers, duties, and authority of the department of corrections,
12 the commissioner of corrections, chief probation officers, and sentencing courts; to provide
13 for applicability and construction of such provisions; to provide for automatic repeal; to
14 provide for an effective date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **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 is required in all jurisdictions with an
16 options system day reporting center certified by the Department of Corrections. The
17 failure to provide the sentencing information report shall not cause an increase in the 15
18 day time period for the department to assign the inmate to a correctional institution as set
19 forth in subsection (b) of this Code Section."

20 SECTION 3.

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

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

31 SECTION 4.

32 Said title is further amended in Code Section 42-8-35, relating to terms and conditions of
33 probation, by deleting "and" from the end of paragraph (11), deleting the period and

1 substituting "; and" at the end of paragraph (12), and inserting a new paragraph (13) at the
2 end thereof to read as follows:

3 "(13) Submit to evaluations and testing relating to rehabilitation and participate in and
4 successfully complete rehabilitative programming as directed by the department."

5 **SECTION 5.**

6 Said title is further amended by inserting immediately following Code Section 42-8-35.6 a
7 new Code Section 42-8-35.7 to read as follows:

8 "42-8-35.7.

9 Unless the court has ordered more frequent such screenings, it shall be the duty of each
10 probation supervisor to administer or have administered a drug and alcohol screening not
11 less than once every 60 days to any person who is placed on probation and who, as a
12 condition of such probation, is required to undergo regular, random drug and alcohol
13 screenings, provided that the drug and alcohol screenings required by this Code section
14 shall be performed only to the extent that necessary funds therefor are appropriated in the
15 state budget."

16 **SECTION 6.**

17 Said title is further amended by striking subsection (e) of Code Section 42-8-72, relating to
18 community service as a condition of probation, and inserting in lieu thereof the following:

19 "(e) Community service hours may be added to original court ordered hours as a
20 disciplinary action by the court, ~~or~~ as an additional requirement of any program in lieu of
21 incarceration, or as part of the sentencing options system as set forth in Article 9 of this
22 chapter."

23 **SECTION 7.**

24 Said title is further amended by inserting a new article at the end of Chapter 8, relating to
25 probation, to be designated Article 9, to read as follows:

26 "ARTICLE 9

27 42-8-150.

28 This article shall be known and may be cited as the 'Probation Management Act of 2004.'

29 42-8-151.

30 For purposes of this article, the term:

31 (1) 'Commissioner' means the commissioner of corrections.

(2) 'Chief probation officer' means the highest ranking field probation officer in each judicial circuit.

(3) 'Department' means the Department of Corrections.

(4) 'Electronic monitoring' means supervising, mapping, or tracking the location of a probationer by means including electronic surveillance; voice recognition; facial recognition; fingerprinting or biometric scan; automated kiosk; automobile ignition interlock device; or global positioning systems which may coordinate data with crime scene information.

(5) 'Hearing officer' means an impartial department employee or representative who has been selected and appointed to hear alleged cases regarding violations of probation for administrative sanctioning.

(6) 'Initial sanction' means the sanction set by the judge upon initial sentencing.

(7) 'Intensive probation' means a level of probation supervision which includes, but is not limited to, curfews, community service, drug testing, program participation, special conditions of probation, and general conditions of probation as set forth in Code Section 42-8-35.

(8) 'Options system day reporting center' means a state facility providing supervision of probationers which includes, but is not limited to, mandatory reporting, program participation, drug testing, community service, all special conditions of probation, and general conditions of probation as set forth in Code Section 42-8-35.

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

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

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

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

42-8-152.

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

(b) Where a defendant has been sentenced to the sentencing options system, the court shall retain jurisdiction throughout the period of the probated sentence as provided in subsection

(g) of Code Section 42-8-34, and may modify or revoke any part of a probated sentence as provided in Code Section 42-8-34.1 and subsection (c) of Code Section 42-8-38.

42-8-153.

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

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

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

- (1) Probation detention center or residential substance abuse treatment facility;
- (2) Probation boot camp;
- (3) Probation diversion center;
- (4) Intensive probation;
- (5) Options system day reporting center;
- (6) Electronic monitoring;
- (7) Community service; or
- (8) Probation supervision.

42-8-154.

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

42-8-155.

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

(b) Upon issuance of a petition outlining the alleged probation violations, the chief probation officer, or his or her designee, may conduct a hearing to determine whether an

options system probationer has violated a condition of probation. If the chief probation officer determines that the probationer has violated a condition of probation, the chief probation officer is authorized to impose sanctions consistent with paragraphs (4) through (8) of subsection (c) of Code Section 42-8-153. The failure of an options system probationer to comply with a sanction imposed by the chief probation officer shall constitute a violation of probation.

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

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

(d) The failure of a probationer to comply with the sanction or sanctions imposed by the chief probation officer or hearing officer shall constitute a violation of probation.

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

42-8-156.

(a) The hearing officer's decision shall be final unless the options system probationer files an appeal in the sentencing court. Such appeal shall name the commissioner as defendant and shall be filed within 30 days of the issuance of the decision by the department.

(b) This appeal shall be first reviewed by the judge upon the record. At the judge's discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not stay the department's decision.

(c) Where the sentencing judge does not act on the appeal within 30 days of the date of the filing of the appeal, the department's decision shall be affirmed by operation of law.

42-8-157.

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

42-8-158.

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

1 42-8-159.

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

3 48-8-160.

4 This article shall be repealed in its entirety on July 1, 2006."

5 **SECTION 8.**

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

7 **SECTION 9.**

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