

The Senate State Institutions and Property Committee offered the following substitute to SB 24:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, so as to provide for comprehensive provisions regarding management of probationers; to provide for the 'Probation Management Act'; to provide administrative sanctions as an alternative to judicial modification or revocation of probation; to provide for preliminary administrative hearings and hearing officers; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is amended by adding a new article to read as follows:

"ARTICLE 9

42-8-150.

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

42-8-151.

For purposes of this article, the term:

(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

23 interlock device, or global positioning systems which may coordinate data with crime
24 scene information.

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

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

29 (7) 'Intensive probation' means a level of probation supervision which includes, but is not
30 limited to, curfews, community service, drug testing, program participation, special
31 conditions of probation, and general conditions of probation as set forth in Code Section
32 42-8-35.

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

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

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

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

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

46 42-8-152.

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

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

55 42-8-153.

56 (a) The department is authorized to establish by rules and regulations a system of
57 administrative sanctions as an alternative to judicial modifications or revocations for

58 probationers who violate the terms and conditions of the sentencing options system
 59 established under this article. The department may not, however, sanction probationers for
 60 violations of special conditions of probation or general conditions of probation for which
 61 the sentencing judge has expressed an intention that such violations be heard by the court
 62 pursuant to Code Section 42-8-34.1.

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

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

67 (1) Probation detention center or residential substance abuse treatment facility;

68 (2) Probation boot camp;

69 (3) Department of Corrections day reporting center;

70 (4) Intensive probation;

71 (5) Electronic monitoring;

72 (6) Community service; or

73 (7) Probation supervision.

74 (d) The department may order offenders sanctioned pursuant to paragraphs (1) through (3)
 75 of subsection (c) of this Code section to be held in the local jail until transported to a
 76 designated facility.

77 42-8-154.

78 (a) Whenever an options system probationer is arrested on a warrant for an alleged
 79 violation of probation, an informal preliminary hearing shall be held within a reasonable
 80 time not to exceed 15 days.

81 (b) A preliminary hearing shall not be required when:

82 (1) The probationer is not under arrest on a warrant;

83 (2) The probationer signed a waiver of a preliminary hearing; or

84 (3) The administrative hearing referred to in Code Section 42-8-155 will be held within
 85 15 days of arrest.

86 42-8-155.

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

90 (b) Upon issuance of a petition outlining the alleged probation violations, the chief
 91 probation officer, or his or her designee, may conduct a hearing to determine whether an
 92 options system probationer has violated a condition of probation. If the chief probation

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

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

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

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

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

111 42-8-156.

112 (a) The hearing officer's decision shall be final unless the options system probationer files
113 a request for review with the senior hearing officer. A request for review must be filed
114 within 15 days of the issuance of the department's decision. Such request shall not stay the
115 department's decision. The senior hearing officer shall issue a response within seven days
116 of receipt of the review request.

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

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

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

126 42-8-157.

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

129 42-8-158.

130 This article shall only apply in judicial circuits where the department has allocated certified
131 hearing officers.

132 42-8-159.

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

134 **SECTION 2.**

135 This Act shall become effective upon its approval by the Governor or upon its becoming law
136 without such approval.

137 **SECTION 3.**

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