

The House Committee on Judiciary Non-civil offers the following substitute to HB 859:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 42-8-36 of the Official Code of Georgia Annotated, relating to the
2 duty of probationer to inform probation supervisor of residence and whereabouts and
3 violations, so as to clarify provisions relating to tolling of probated sentences when a
4 probationer fails to report to probation or otherwise absconds; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 42-8-36 of the Official Code of Georgia Annotated, relating to the duty of
9 probationer to inform probation supervisor of residence and whereabouts and violations, is
10 amended by revising subsection (a) as follows:

11 ~~“(a)(1) Any other provision of this article to the contrary notwithstanding, it~~ It shall be
12 the duty of a probationer, as a condition of probation, to keep his or her probation
13 supervisor informed as to his or her residence. Upon the recommendation of the
14 probation supervisor, the court may also require, as a condition of probation and under
15 such terms as the court deems advisable, that the probationer keep the probation
16 supervisor informed as to his or her whereabouts.

17 (2) The running of a probated sentence shall be tolled upon:

18 (A) The failure of a probationer to report to his or her probation supervisor as directed
19 or failure to appear in court for a probation revocation hearing; either of such failures
20 may be evidenced by an affidavit from the probation supervisor setting forth such
21 failure; or

22 (B) The filing of a return of non est inventus or other return to a warrant, for the
23 violation of the terms and conditions of probation, that the probationer cannot be found
24 in the county that appears from the records of the probation supervisor to be the
25 probationer's county of residence ~~shall automatically suspend the running of the~~
26 ~~probated sentence until the probationer shall personally report to the probation~~

27 ~~supervisor, is taken into custody in this state, or is otherwise available to the court; and~~
28 ~~such period of time shall not be included in computing creditable time served on~~
29 ~~probation or as any part of the time that the probationer was sentenced to serve. The~~
30 ~~effective date of the tolling of the sentence shall be the date that the officer returns the~~
31 ~~warrant showing non est inventus. Any officer authorized by law to issue or serve~~
32 ~~warrants may return the warrant for the absconded probationer showing non est~~
33 ~~inventus.~~

34 ~~(2)(3) The effective date of the tolling of the sentence shall be the date the court enters~~
35 ~~a tolling order and shall continue~~ In addition to the provisions of paragraph (1) of this
36 subsection, if the probation supervisor submits an affidavit to the court stating that a
37 probationer has absconded and cannot be found, the running of the probated sentence
38 shall be suspended effective on the date such affidavit is submitted to the court and
39 ~~continuing~~ until the probationer shall personally report to the probation supervisor, is
40 taken into custody in this state, or is otherwise available to the court.

41 (4) Any tolled period of time shall not be included in computing creditable time served
42 on probation or as any part of the time that the probationer was sentenced to serve."

43 **SECTION 2.**

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