

House Bill 720

By: Representatives Sainz of the 180<sup>th</sup>, Efstoration of the 104<sup>th</sup>, Fleming of the 121<sup>st</sup>, Burchett of the 176<sup>th</sup>, Momtahan of the 17<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,  
2 relating to procedure for sentencing and imposition of punishment, so as to clarify that a term  
3 of probation shall follow the mandatory term of imprisonment for persons convicted of a  
4 sexual offense; to provide that for felonies such probation may be for life in the court's  
5 discretion; to provide that probation for sexual offenses shall require such persons to wear  
6 a device capable of tracking the location of the probationer by means including electronic  
7 surveillance or global positioning satellite systems; to amend Title 42 of the Official Code  
8 of Georgia Annotated, relating to penal institutions, so as to make conforming changes; to  
9 cure an unconstitutional provision; to revise terms and conditions of probation and  
10 supervision to account for requirement of tracking persons on probation for sexual offenses;  
11 to amend Code Section 16-7-29 of the Official Code of Georgia Annotated, relating to  
12 interference with electronic monitoring devices, "electronic monitoring device" defined, and  
13 penalty, so as to revise a cross-reference; to provide for a response to *Park v. State*, 2019 Ga.  
14 LEXIS 138 (March 4, 2019); to provide for related matters; to provide for applicability; to  
15 repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **PART I**  
18 **SECTION 1-1.**

19 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to  
20 procedure for sentencing and imposition of punishment, is amended by revising subsection  
21 (b) of Code Section 17-10-6.2, relating to punishment for sexual offenders, as follows:

22 "(b)(1) Except as provided in subsection (c) of this Code section, and notwithstanding  
23 any other provisions of law to the contrary, any person convicted of a sexual offense shall  
24 be sentenced to a split sentence which shall include the minimum term of imprisonment  
25 specified in the Code section applicable to such sexual offense. No portion of the

26 mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred,  
 27 or withheld by the court. Any such sentence shall ~~include~~, in addition to the mandatory  
 28 term of imprisonment, ~~an additional probated sentence of~~ be followed by probation for  
 29 at least one year; provided, however, that:

30 (A) When ~~when~~ a court imposes consecutive sentences for sexual offenses, the  
 31 requirement that the court impose a probated sentence ~~of at least one year~~ shall only  
 32 apply to the final consecutive sentence imposed;

33 (B) For convictions that are felonies, such probation in the court's discretion may be  
 34 for life; and

35 (C) All such probation shall be subject to the requirements of paragraph (14) of  
 36 subsection (a) of Code Section 42-8-35.

37 (2) No person convicted of a sexual offense shall be sentenced as a first offender  
 38 pursuant to Article 3 of Chapter 8 of Title 42 or any other provision of Georgia law  
 39 relating to the sentencing of first offenders."

#### 40 SECTION 1-2.

41 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
 42 by revising paragraph (9) of subsection (b) and paragraph (12) of subsection (i) of Code  
 43 Section 42-1-12, relating to state sexual offender registry, as follows:

44 "(9) If required by Code Section ~~42-1-14~~ 17-10-6.2, place any required electronic  
 45 monitoring system on the ~~sexually dangerous predator~~ sexual offender and explain its  
 46 operation and cost."

47 "(12) If required by Code Section ~~42-1-14~~ 17-10-6.2, place any electronic monitoring  
 48 system on the ~~sexually dangerous predator~~ sexual offender and explain its operation and  
 49 cost;"

#### 50 SECTION 1-3.

51 Said title is further amended by repealing Code Section 42-1-14, relating to risk assessment  
 52 classification, classification as "sexually dangerous predator", and electronic monitoring, in  
 53 its entirety and enacting a new Code Section 42-1-14 to read as follows:

54 "42-1-14.

55 (a)(1) The board shall determine the likelihood that a sexual offender will engage in  
 56 another crime against a victim who is a minor or a dangerous sexual offense. Any sexual  
 57 offender who changes residence from another state or territory of the United States or any  
 58 other place to this state and who is not already designated under Georgia law as a  
 59 sexually dangerous predator, sexual predator, or sexually violent predator shall have his  
 60 or her required registration information forwarded by the sheriff of his or her county of

61 registration to the board for the purpose of risk assessment classification. The board shall  
62 also make such determination upon the request of a superior court judge for purposes of  
63 considering a petition to be released from registration restrictions or residency or  
64 employment restrictions as provided for in Code Section 42-1-19.

65 (2) A sexual offender shall be placed into Level I risk assessment classification, Level  
66 II risk assessment classification, or sexually dangerous predator classification based upon  
67 the board's assessment criteria and information obtained and reviewed by the board. The  
68 sexual offender may provide the board with information, including, but not limited to,  
69 psychological evaluations, sexual history polygraph information, treatment history, and  
70 personal, social, educational, and work history, and may agree to submit to a  
71 psychosexual evaluation or sexual history polygraph conducted by the board. If the  
72 sexual offender has undergone treatment or supervision through the Department of  
73 Corrections or the Department of Community Supervision, such treatment records shall  
74 also be submitted to the board for evaluation. The prosecuting attorney shall provide the  
75 board with any information available to assist the board in rendering an opinion,  
76 including, but not limited to, criminal history and records related to previous criminal  
77 history. The board shall utilize the Georgia Bureau of Investigation to assist it in  
78 obtaining information relative to its evaluation of sexual offenders and the Georgia  
79 Bureau of Investigation shall provide the board with information as requested by the  
80 board. The board shall be authorized to obtain information from supervision records of  
81 the State Board of Pardons and Paroles regarding such sexual offender, but such records  
82 shall remain confidential state secrets in accordance with Code Section 42-9-53 and shall  
83 not be made available to any other person or entity or be subject to subpoena unless  
84 declassified by the State Board of Pardons and Paroles. The clerk of court shall send a  
85 copy of the sexual offender's conviction to the board and notify the board that a sexual  
86 offender's evaluation will need to be performed. The board shall render its  
87 recommendation for risk assessment classification within:

88 (A) Sixty days of receipt of a request for an evaluation if the sexual offender is being  
89 sentenced pursuant to subsection (c) of Code Section 17-10-6.2;

90 (B) Six months prior to the sexual offender's proposed release from confinement if the  
91 offender is incarcerated;

92 (C) Sixty days of receipt of the required registration information from the sheriff when  
93 the sexual offender changes residence from another state or territory of the United  
94 States or any other place to this state and is not already classified;

95 (D) Sixty days if the sexual offender is sentenced to a probated or suspended sentence;  
96 and

97       (E) Ninety days if such classification is requested by the court pursuant to a petition  
98       filed under Code Section 42-1-19.

99       (3) The board shall notify the sexual offender by first-class mail of its determination of  
100       risk assessment classification and shall send a copy of such classification to the Georgia  
101       Bureau of Investigation, the Department of Corrections, the Department of Community  
102       Supervision, the sheriff of the county where the sexual offender is registered, and the  
103       sentencing court, if applicable.

104       (b) If the board determines that a sexual offender should be classified as a Level II risk  
105       assessment classification or as a sexually dangerous predator, the sexual offender may  
106       petition the board to reevaluate his or her classification. To file a petition for reevaluation,  
107       the sexual offender shall be required to submit his or her written petition for reevaluation  
108       to the board within 30 days from the date of the letter notifying the sexual offender of his  
109       or her classification. The sexual offender shall have 60 days from the date of the  
110       notification letter to submit information as provided in subsection (a) of this Code section  
111       in support of the sexual offender's petition for reevaluation. If the sexual offender fails to  
112       submit the petition or supporting documents within the time limits provided, the  
113       classification shall be final. The board shall notify the sexual offender by first-class mail  
114       of its decision on the petition for reevaluation of risk assessment classification and shall  
115       send a copy of such notification to the Georgia Bureau of Investigation, the Department of  
116       Corrections, the Department of Community Supervision, the sheriff of the county where  
117       the sexual offender is registered, and the sentencing court, if applicable.

118       (c) A sexual offender who is classified by the board as a Level II risk assessment  
119       classification or as a sexually dangerous predator may file a petition for judicial review of  
120       his or her classification within 30 days of the date of the notification letter or, if the sexual  
121       offender has requested reevaluation pursuant to subsection (b) of this Code section, within  
122       30 days of the date of the letter denying the petition for reevaluation. The petition for  
123       judicial review shall name the board as defendant, and the petition shall be filed in the  
124       superior court of the county where the offices of the board are located. Within 30 days  
125       after service of the appeal on the board, the board shall submit a summary of its findings  
126       to the court and mail a copy, by first-class mail, to the sexual offender. The findings of the  
127       board shall be considered prima-facie evidence of the classification. The court shall also  
128       consider any relevant evidence submitted, and such evidence and documentation shall be  
129       mailed to the parties as well as submitted to the court. The court may hold a hearing to  
130       determine the issue of classification. The court may uphold the classification of the board,  
131       or, if the court finds by a preponderance of the evidence that the sexual offender is not  
132       placed in the appropriate classification level, the court shall place the sexual offender in the  
133       appropriate risk assessment classification. The court's determination shall be forwarded

134 by the clerk of the court to the board, the sexual offender, the Georgia Bureau of  
 135 Investigation, and the sheriff of the county where the sexual offender is registered.  
 136 (d) Any individual who was classified as a sexually violent predator prior to July 1, 2006,  
 137 shall be classified as a sexually dangerous predator on and after July 1, 2006.  
 138 (e) In addition to the requirements of registration for all sexual offenders, a sexually  
 139 dangerous predator shall report to the sheriff of the county where such predator resides six  
 140 months following his or her birth month and update or verify his or her required  
 141 registration information."

#### 142 **SECTION 1-4.**

143 Said title is further amended by revising subsection (a) of Code Section 42-8-35, relating to  
 144 terms and conditions of probation and supervision, as follows:

145 "(a) Except as required by subsection (b) of Code Section 17-10-6.2, the ~~The~~ court shall  
 146 determine the terms and conditions of probation and may provide that the probationer shall:

- 147 (1) Avoid injurious and vicious habits;
- 148 (2) Avoid persons or places of disreputable or harmful character;
- 149 (3) Report to the officer as directed;
- 150 (4) Permit the officer to visit the probationer at the probationer's home or elsewhere;
- 151 (5) Work faithfully at suitable employment insofar as may be possible;
- 152 (6) Remain within a specified location; provided, however, that the court shall not banish  
 153 a probationer to any area within this state:
  - 154 (A) That does not consist of at least one entire judicial circuit as described by Code  
 155 Section 15-6-1; or
  - 156 (B) In which any service or program in which the probationer must participate as a  
 157 condition of probation is not available;
- 158 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused  
 159 by the probationer's offense, in an amount to be determined by the court. Unless  
 160 otherwise provided by law, no reparation or restitution to any aggrieved person for the  
 161 damage or loss caused by the probationer's offense shall be made if the amount is in  
 162 dispute unless the same has been adjudicated;
- 163 (8) Make reparation or restitution as reimbursement to a municipality or county for the  
 164 payment for medical care furnished the person while incarcerated pursuant to the  
 165 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local  
 166 governmental unit for the provision of medical care shall be made if the amount is in  
 167 dispute unless the same has been adjudicated;

- 168 (9) Repay the costs incurred by any municipality or county for wrongful actions by an  
 169 inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section  
 170 42-4-71;
- 171 (10) Support the probationer's legal dependents to the best of the probationer's ability;
- 172 (11) Violate no local, state, or federal laws and be of general good behavior;
- 173 (12) If permitted to move or travel to another state, agree to waive extradition from any  
 174 jurisdiction where the probationer may be found and not contest any effort by any  
 175 jurisdiction to return the probationer to this state;
- 176 (13) Submit to evaluations and testing relating to rehabilitation and participate in and  
 177 successfully complete rehabilitative programming as directed by DCS;
- 178 (14) Wear a device capable of tracking the location of the probationer by means  
 179 including electronic surveillance or global positioning satellite systems. DCS shall assess  
 180 and collect fees from the probationer for such monitoring at levels set by regulation of  
 181 the Board of Community Supervision;
- 182 (15) Complete a residential or nonresidential program for substance abuse or mental  
 183 health treatment as indicated by a risk and needs assessment;
- 184 (16) Agree to the imposition of graduated sanctions when, in the discretion of the officer,  
 185 the probationer's behavior warrants a graduated sanction; and
- 186 (17) Pay for the cost of drug screening. DCS shall assess and collect fees from the  
 187 probationer for such screening at levels set by regulation of the Board of Community  
 188 Supervision."

189 **PART II**

190 **SECTION 2-1.**

191 Code Section 16-7-29 of the Official Code of Georgia Annotated, relating to interference  
 192 with electronic monitoring devices, "electronic monitoring device" defined, and penalty, is  
 193 amended by revising subsection (b) as follows:

194 "(b) It shall be unlawful for any person to knowingly and without authority remove,  
 195 destroy, or circumvent the operation of an electronic monitoring device which is being used  
 196 for the purpose of monitoring a person who is:

- 197 (1) Complying with a home arrest program as set forth in Code Section 42-1-8;
- 198 (2) Wearing an electronic monitoring device as a condition of bond or pretrial release;
- 199 (3) Wearing an electronic monitoring device as a condition of probation; or
- 200 (4) Wearing an electronic monitoring device as a condition of parole; ~~or~~
- 201 ~~(5) Wearing an electronic monitoring device as required in Code Section 42-1-14."~~

202

**PART III**

203

**SECTION 3-1.**

204 This Act shall apply to offenses that occur on and after July 1, 2020.

205

**SECTION 3-2.**

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