

House Bill 984

By: Representatives Burchett of the 176th, Fleming of the 121st, Boddie of the 62nd, Sainz of the 180th, McLaurin of the 51st, 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 the procedure for sentencing and imposition of punishment, so as to change
3 provisions relating to sentencing; to provide credit for time served; to change provisions
4 relating to the commencement of a sentence when the case has been appealed; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
9 procedure for sentencing and imposition of punishment, is amended by revising
10 subsection (f) of Code Section 17-10-1, relating to fixing of sentence, change in sentence,
11 eligibility for parole, prohibited modifications, and exceptions, as follows:

12 "(f) Within one year of the date upon which the sentence is imposed, or within 120 days
13 after receipt by the sentencing court of the remittitur upon affirmance of the judgment after
14 direct appeal, whichever is later, the court imposing the sentence has the jurisdiction,
15 power, and authority to correct or reduce the sentence and to suspend or probate all or any
16 part of the sentence imposed. The time periods prescribed in this subsection require the
17 defendant to file a motion within such time periods; however, the court shall not be
18 constrained to issue its order or hear the matter within such time periods. Prior to entering
19 any order correcting, reducing, or modifying any sentence, the court shall afford notice and
20 an opportunity for a hearing to the prosecuting attorney. Any order modifying a sentence
21 which is entered without notice and an opportunity for a hearing as provided in this
22 subsection shall be void. This subsection shall not limit any other jurisdiction granted to
23 the court in this Code section or as provided for in subsection (g) of Code Section 42-8-34."

24 **SECTION 2.**

25 Said article is further amended by revising Code Section 17-10-9, relating to specification
 26 by the judge imposing the sentence of time from which a penal sentence runs and the effect
 27 of an appeal, as follows:

28 "17-10-9.

29 (a) In the imposition of sentence for violation of the penal laws, it shall be the duty of the
 30 judge to specify that the term of service under the sentence shall be computed from the date
 31 of sentence if the defendant is confined in jail or otherwise incarcerated and has no appeal
 32 or motion for new trial pending.

33 (b) In cases which are appealed to the Georgia Court of Appeals or the Georgia Supreme
 34 Court for reversal of the conviction, the sentence shall be computed from the date the
 35 remittitur of the appellate court is made the judgment of the court in which the conviction
 36 is had, provided the defendant is not at liberty under bond but is incarcerated or in custody
 37 of the sheriff of the county where convicted. If the defendant was at liberty under bond
 38 during the pendency of the appeal, once the remittitur of the appellate court is made the
 39 judgment of the court in which the conviction is had, the prosecuting attorney shall have
 40 the burden of securing the commencement of the sentence within 90 days of such
 41 remittitur. When the prosecuting attorney fails to take such action, the sentence shall be
 42 computed from the date of such remittitur.

43 (c) If a defendant has been convicted and sentenced but, because of his or her failure or
 44 inability to post bond or bail for any reason, he or she has been incarcerated pending the
 45 prosecution of an appeal to any court, the time of the original imposition of his or her
 46 sentence until the time when the remittitur of the appellate court is made the judgment of
 47 the court in which the conviction is had shall be counted as time spent under sentence for
 48 all purposes."

49 **SECTION 3.**

50 Said article is further amended by revising Code Section 17-10-11, relating to granting of
 51 credit generally, use in determining parole eligibility, and applicability of Code section, as
 52 follows:

53 "17-10-11.

54 (a) ~~Each person convicted of a crime in this state~~ Except as provided in subsection (b) of
 55 this Code section, upon conviction for an offense, a person shall be given full credit for
 56 each day spent in confinement awaiting trial and for each day spent in confinement, in
 57 connection with and resulting from a court order entered in the criminal proceedings for
 58 which sentence was imposed, in any penal institution or facility and in any institution or

59 facility for treatment or examination ~~of~~ for a disability, as such term is defined in Code
 60 Section 37-1-1, infirmity, or other physical or mental disability condition, including:
 61 (1) Pretrial confinement, for any reason, from the date of arrest for such offense; and
 62 (2) Posttrial confinement awaiting the remittitur from an appellate court or transfer to the
 63 Department of Corrections or other court ordered institution or facility.
 64 (b) The court may exclude credit for time served in pretrial confinement when its sentence:
 65 (1) Requires the person to complete a program at a probation detention center as set forth
 66 in Code Section 42-8-35.4;
 67 (2) Allows the person to participate in a work release program as set forth in Code
 68 Section 42-1-4; or
 69 (3) Is for a misdemeanor offense for time spent in confinement in a jurisdiction other
 70 than the one in which the arrest for such offense occurred.
 71 (c) The credit or credits set forth in subsection (a) of this Code section shall be applied
 72 toward the convicted person's sentence and shall also be considered by parole authorities
 73 the State Board of Pardons and Paroles in determining the eligibility of the such person for
 74 parole.
 75 ~~(b)~~(d) This Code section applies shall apply to sentences for all crimes, whether classified
 76 as violations, misdemeanors, or felonies, and to all courts having criminal jurisdiction
 77 located within the boundaries of this state."

78

SECTION 4.

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