

Senate Bill 23

By: Senators Douglas of the 17th, Rogers of the 21st, Schaefer of the 50th, Hawkins of the 49th, Staton of the 18th and others

AS PASSED

**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 criminal sentencing procedure, so as to provide that in making determinations with
3 respect to probation and suspension of sentences, the court may inquire into and consider the
4 legality of a prisoner's presence in the United States; to amend Article 2 of Chapter 9 of Title
5 42 of the Official Code of Georgia Annotated, relating to granting of pardons, parole, and
6 other relief in general, so as to provide that the State Board of Pardons and Paroles may
7 inquire into and consider the legality of a prisoner's presence in the United States when
8 making parole decisions; to make a statement of legislative findings and intent with respect
9 to applicability; to provide for related matters; to provide an effective date; to repeal
10 conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
14 criminal sentencing procedure, is amended by adding a new Code section to read as follows:
15 "17-10-1.3.

16 (a) In determining whether to probate all or any part of any sentence of confinement in any
17 felony, misdemeanor, or ordinance violation case, the sentencing court shall be authorized
18 to make inquiry into whether the person to be sentenced is lawfully present in the United
19 States under federal law.

20 (b) If the court determines that the person to be sentenced is not lawfully present in the
21 United States, the court shall be authorized to make inquiry into whether the person to be
22 sentenced would be legally subject to deportation from the United States while serving a
23 probated sentence.

24 (c) If the court determines that the person to be sentenced would be legally subject to
25 deportation from the United States while serving a probated sentence, the court may:

(1) Consider the interest of the state in securing certain and complete execution of its judicial sentences in criminal and quasi-criminal cases;

(2) Be authorized to consider the likelihood that deportation may intervene to frustrate that state interest if probation is granted; and

(3) Where appropriate, be authorized to decline to probate a sentence in furtherance of the state interest in certain and complete execution of sentences.

(d) This Code section shall apply with respect to a judicial determination as to whether to suspend all or any part of a sentence of confinement in the same manner as this Code section applies to determinations with respect to probation."

SECTION 2.

Article 2 of Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to granting of pardons, parole, and other relief in general, is amended by inserting a new Code Section 42-9-43.1 to read as follows:

"42-9-43.1.

(a) In determining whether to grant parole the board shall be authorized to make inquiry into whether the prisoner is lawfully present in the United States under federal law.

(b) If the board determines that the prisoner is not lawfully present in the United States, the board shall be authorized to make inquiry into whether the prisoner would be legally subject to deportation from the United States while on parole.

(c) If the board determines that the prisoner would be legally subject to deportation from the United States while on parole, the board may:

(1) Consider the interest of the state in securing certain and complete execution of its judicial sentences in criminal cases;

(2) Be authorized to consider the likelihood that deportation may intervene to frustrate that state interest if parole is granted; and

(3) Where appropriate, be authorized to decline to grant parole in furtherance of the state interest in certain and complete execution of sentences."

SECTION 3.

The General Assembly finds that this Act states factors for consideration in discretionary decision-making processes within the criminal justice system. The General Assembly finds that such factors could have been considered prior to or without the enactment of this Act. Accordingly, it is the intention of the General Assembly that this Act may be applied with respect to offenses committed prior to its effective date as well as offenses committed on or after its effective date. However, if there should be a judicial determination that retrospective

1 application is prohibited, it is the intention of the General Assembly that retrospective
2 application should be severable.

3 **SECTION 4.**

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

6 **SECTION 5.**

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