House Bill 194

By: Representatives Sainz of the 180th, Burchett of the 176th, Efstration of the 104th, and Hitchens of the 161st

A BILL TO BE ENTITLED

AN ACT

To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of punishment, so as to clarify that a term of probation shall follow the mandatory term of imprisonment for persons convicted of a sexual offense; to provide that for certain felonies that such probation shall be for life; to provide that probation for sexual offenses shall require such persons to wear a device capable of tracking the location of the probationer by electronic means including global positioning satellite systems; to revise procedures; to amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to revise the name of the Sexual Offender Registration Review Board; to remove the registration fee; to provide for the transfer investigators from the Georgia Bureau of Investigation to the Sexual Offender Risk Review Board; to revise terms and conditions of probation and supervision to account for requirement of tracking persons on probation for sexual offenses; to provide for risk assessment classification of sexual offenders; to require certain persons convicted of a sexual offense to post a residential notice on October 31 of each year; to provide for a criminal penalty; to provide for termination of certain probated sentences; to make conforming changes; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(b)(1) Except as provided in subsection (c) of this Code section, and notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to such sexual offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the court. Any such sentence shall ~~include~~, in addition to the mandatory term of imprisonment, ~~an additional probated sentence of~~ be followed by probation for at least one year; provided, however, that:

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

(B)(i) For convictions that are felonies and that are for a second or subsequent conviction for a sexual offense arising out of events that are different from events of a previous conviction, such probation shall be for life; and

(ii) As used in this subparagraph, the term 'sexual offense' means the following offenses that are felonies:

(I) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(II) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(III) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;

(IV) Rape in violation of Code Section 16-6-1;

(V) Aggravated sodomy in violation of Code Section 16-6-2;

(VI) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(VII) Child molestation in violation of Code Section 16-6-4;

(VIII) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(IX) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(X) Improper sexual contact by employee or agent in the first degree in violation of Code Section 16-6-5.1, unless the punishment imposed was not subject to Code Section 17-10-6.2;

(XI) Incest in violation of Code Section 16-6-22;

(XII) A second or subsequent conviction for sexual battery in violation of Code Section 16-6-22.1;

(XIII) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(XIV) Sexual exploitation of children in violation of Code Section 16-12-100; or

(XV) Computer or electronic pornography and child exploitation in violation of Code Section 16-12-100.2.

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

(D) Any law enforcement agency of competent jurisdiction may, on October 30 and 31 of each year, post a sign upon the front of the residence of any person on such probation, stating the following: 'No candy or treats at this residence.' Such signs shall further be in the form as provided for by the department.

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

"(d) If the court imposes a probated sentence, the defendant shall submit to review by the Sexual Offender ~~Registration~~ Risk Review Board for purposes of risk assessment classification within ~~ten~~ 60 days of being sentenced and shall otherwise comply with Article 2 of Chapter 1 of Title 42."

SECTION 2.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended in Code Section 42-1-12, relating to state sexual offender registry, by revising paragraph (5) of subsection (a), paragraph (9) of subsection (b), and paragraphs (12) through (14) of subsection (i) as follows:

"(5) 'Board' means the Sexual Offender ~~Registration~~ Risk Review Board."

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

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

(13) Provide current information on names and addresses of all registered sexual offenders to campus police with jurisdiction for the campus of an institution of higher education if the campus is within the sheriff's jurisdiction.~~; and~~

~~(14) Collect the annual $250.00 registration fee from the sexual offender and transmit such fees to the state for deposit into the general fund.~~"

SECTION 3.

Said title is further amended by revising Code Section 42-1-13, relating to Sexual Offender Registration Review Board, composition, appointment, administration and duties, and immunity from liability, as follows:

"42-1-13.

(a) The Sexual Offender ~~Registration~~ Risk Review Board shall be composed of three professionals licensed under Title 43 and knowledgeable in the field of the behavior and treatment of sexual offenders; at least one representative from a victims' rights advocacy group or agency; and at least two representatives from law enforcement, each of whom is either employed by a law enforcement agency as a certified peace officer under Title 35 or retired from such employment. The members of the board shall be appointed by the commissioner of behavioral health and developmental disabilities for terms of four years. On and after July 1, 2006, successors to the members of the board shall be appointed by the Governor. Members of the board shall take office on the first day of September immediately following the expired term of that office and shall serve for a term of four years and until the appointment of their respective successors. No member shall serve on the board more than two consecutive terms. Vacancies occurring on the board, other than those caused by expiration of a term of office, shall be filled in the same manner as the original appointment to the position vacated for the remainder of the unexpired term and until a successor is appointed. Members shall be entitled to an expense allowance and travel cost reimbursement the same as members of certain other boards and commissions as provided in Code Section 45-7-21.

(b) The board shall be attached to the Department of Behavioral Health and Developmental Disabilities for administrative purposes and, provided there is adequate funding, shall:

(1) Exercise its quasi-judicial, rule-making, or policy-making functions independently of the department and without approval or control of the department;

(2) Prepare its budget, if any, and submit its budgetary requests, if any, through the department; and

(3) Hire its own personnel, including but not limited to administrative personnel, ~~and~~ clinical evaluators, and investigators.

(c) Investigative positions which, as of June 30, 2021, were under the Georgia Bureau of Investigation, shall be transferred to the board on July 1, 2021, ~~Any investigator who, as of June 30, 2012, was employed by the board shall be transferred to the Georgia Bureau of Investigation on July 1, 2012,~~ and shall no longer be under the administration or supervision of the ~~board, except as required to provide the board with information as set forth in paragraph (15) of subsection (a) of Code Section 35-3-4~~ Georgia Bureau of Investigation; provided, however, that one position shall remain with the Georgia Bureau of Investigation to facilitate the provision of information to the board from the Georgia Crime Information Center and National Crime Information Center. The director of the Georgia Bureau of Investigation and the executive director of the board shall arrange administratively for the transfer of any equipment relating to the transfer of such personnel.

(d) Members of the board shall be immune from liability for good faith conduct under this article."

SECTION 4.

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

"42-1-14.

(a)(1) The board shall determine the likelihood that a sexual offender will engage in another crime against a victim who is a minor or a dangerous sexual offense. Any sexual offender who changes residence from another state or territory of the United States or any other place to this state and who is not already designated under Georgia law as a

sexually dangerous predator, sexual predator, or sexually violent predator shall have his or her required registration information forwarded by the sheriff of his or her county of registration to the board for the purpose of risk assessment classification. The board shall also make such risk assessment classification upon the request of a superior court judge for purposes of considering a petition to be released from registration requirements or residency or employment restrictions as provided for in Code Section 42-1-19.

(2) A sexual offender shall be placed into Level I risk assessment classification, Level II risk assessment classification, or sexually dangerous predator classification based upon the board's assessment criteria and by information obtained and reviewed by the board. The sexual offender may provide the board with information, including, but not limited to, psychological evaluations, sexual history polygraph information, treatment history, and personal, social, educational, and work history. If the sexual offender has undergone treatment or supervision through the Department of Corrections or the Department of Community Supervision, such treatment records shall also be submitted to the board for evaluation. The prosecuting attorney shall provide the board with any information available to assist the board in rendering an opinion, including, but not limited to, criminal history and records related to previous criminal history. The board shall be authorized to obtain available information from supervision records prior to July 1, 2015, and all public records obtained and electronically retained by the State Board of Pardons and Paroles during its investigation of such sexual offender, but if such records are classified as confidential state secrets, such records shall remain confidential state secrets in accordance with Code Section 42-9-53 and shall not be made available to any other person or entity or be subject to subpoena unless declassified by the State Board of Pardons and Paroles. The clerk of the court of appropriate jurisdiction where the offender resides shall send a copy of the sexual offender's conviction to the board and notify the board that a sexual offender's risk assessment evaluation will need to be performed. The board shall render its recommendation for risk assessment classification within:

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

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

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

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

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

(3) The board shall notify the sexual offender by first-class mail of its determination of risk assessment classification and shall send a copy of such classification to the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, the Department of Community Supervision, the sheriff of the county in which the sexual offender is registered, and the sentencing court, if applicable.

(b) If the board determines that a sexual offender should be classified as a Level II risk assessment classification or as a sexually dangerous predator, the sexual offender may petition the board to reevaluate his or her classification. To file a petition for reevaluation, the sexual offender shall be required to submit his or her written petition for reevaluation to the board within 30 days from the date of the letter notifying the sexual offender of his or her classification. The sexual offender shall have 120 days from the date of the notification letter to submit information as provided in subsection (a) of this Code section in support of such sexual offender's petition for reevaluation. If the sexual offender fails to submit the petition or supporting documents within the time limits provided, the classification shall be final. The board shall notify the sexual offender by first-class mail of its decision on the petition for reevaluation of risk assessment classification and shall

send a copy of such notification to the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, the Department of Community Supervision, the sheriff of the county in which the sexual offender is registered, and the sentencing court, if applicable. The sexual offender may request reevaluation after ten years following his or her initial classification and no more than once every five years thereafter.

(c) A sexual offender who is classified by the board as a Level II risk assessment classification or as a sexually dangerous predator may file a petition for judicial review of his or her classification within 30 days of the date of the notification letter or, if the sexual offender has requested reevaluation pursuant to subsection (b) of this Code section, within 30 days of the date of the letter denying the petition for reevaluation. The petition for judicial review shall name the board as defendant, and the petition shall be filed in the superior court of the county in which the offices of the board are located. Within 30 days after service of the appeal on the board, the board shall submit a summary of its findings to the court and mail a copy, by first-class mail, to the sexual offender. The findings of the board shall be considered prima-facie evidence of the classification. The court shall also consider any relevant evidence submitted, and such evidence and documentation shall be mailed to the parties as well as submitted to the court. The court shall hold a hearing to determine the issue of classification. The court may uphold the classification of the board, or, if the court finds by a preponderance of the evidence that the sexual offender is not placed in the appropriate classification level, the court shall place the sexual offender in the appropriate risk assessment classification. The court's determination shall be forwarded by the clerk of the court to the board, the sexual offender, the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, and the Department of Community Supervision, and the sheriff of the county in which the sexual offender is registered.

(d) Any individual who was classified as a sexually violent predator prior to July 1, 2006, shall be classified as a sexually dangerous predator on and after July 1, 2006.

(e) In addition to the requirements of registration for all sexual offenders, a sexually dangerous predator shall report to the sheriff of the county in which such predator resides six months following his or her birth month and update or verify his or her required registration information."

SECTION 5.

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

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

(1) Avoid injurious and vicious habits;

(2) Avoid persons or places of disreputable or harmful character;

(3) Report to the officer as directed;

(4) Permit the officer to visit the probationer at the probationer's home or elsewhere;

(5) Work faithfully at suitable employment insofar as may be possible;

(6) Remain within a specified location; provided, however, that the court shall not banish a probationer to any area within this state:

(A) That does not consist of at least one entire judicial circuit as described by Code Section 15-6-1; or

(B) In which any service or program in which the probationer must participate as a condition of probation is not available;

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by the probationer's offense, in an amount to be determined by the court. Unless otherwise provided by law, no reparation or restitution to any aggrieved person for the

damage or loss caused by the probationer's offense shall be made if the amount is in dispute unless the same has been adjudicated;

(8) Make reparation or restitution as reimbursement to a municipality or county for the payment for medical care furnished the person while incarcerated pursuant to the provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local governmental unit for the provision of medical care shall be made if the amount is in dispute unless the same has been adjudicated;

(9) Repay the costs incurred by any municipality or county for wrongful actions by an inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section 42-4-71;

(10) Support the probationer's legal dependents to the best of the probationer's ability;

(11) Violate no local, state, or federal laws and be of general good behavior;

(12) If permitted to move or travel to another state, agree to waive extradition from any jurisdiction where the probationer may be found and not contest any effort by any jurisdiction to return the probationer to this state;

(13) Submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming as directed by DCS;

(14) Wear a device capable of tracking the location of the probationer by means including electronic surveillance or global positioning satellite systems. DCS shall assess and collect fees from the probationer for such monitoring at levels set by regulation of the Board of Community Supervision;

(15) Complete a residential or nonresidential program for substance abuse or mental health treatment as indicated by a risk and needs assessment;

(16) Agree to the imposition of graduated sanctions when, in the discretion of the officer, the probationer's behavior warrants a graduated sanction; and

(17) Pay for the cost of drug screening. DCS shall assess and collect fees from the probationer for such screening at levels set by regulation of the Board of Community Supervision."

SECTION 6.

Said title is further amended in Code Section 42-8-37, relating to effect of termination of probated portion of sentence, review of cases of persons receiving probated sentence, and reports, by adding a new subsection to read as follows:

"(e)(1) When a probationer is on probation for life as provided for in Code Section 17-10-6.2, DCS shall file a petition to terminate his or her probation if, after serving ten years on probation, the probationer has:

(A) Paid all restitution owed;

(B) Not had his or her probation revoked during such period; and

(C) Not been arrested for anything other than a nonserious traffic offense as defined in Code Section 35-3-37.

(2) When the court is presented with such petition, it shall take whatever action it determines to be for the best interest of justice and the welfare of society. When such petition is unopposed, the court shall issue an order as soon as possible or otherwise set the matter for a hearing within 90 days of receiving such petition.

(3) This subsection is intended to be retroactive and applied to any probationer under the supervision of DCS.

(4) If a petition for a probationer who is on probation for life as provided for in Code Section 17-10-6.2 is not granted, a petition shall be filed every five years thereafter where the probationer meets the requirements under paragraph (1) of this subsection."

SECTION 7.

Said title is further amended in Code Section 42-9-53, relating to preservation of documents, classification of information and documents, divulgence of confidential state secrets, and conduct of hearings, by revising paragraph (2) of subsection (b) as follows:

"(2) The department may make supervision records of the department available to officials employed with the Department of Corrections and the Sexual Offender ~~Registration~~ Risk Review Board, provided that the same shall remain confidential and not available to any other person or subject to subpoena unless declassified by the commissioner of community supervision."

SECTION 8.

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