

House Bill 335

By: Representatives Kennard of the 102nd, McLaurin of the 51st, Beverly of the 143rd, Kendrick of the 93rd, Mitchell of the 88th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 and Chapter 8 of Title 42 of the Official Code
2 of Georgia Annotated, relating to procedure for sentencing and imposition of punishment and
3 probation, respectively, so as to provide that no court shall impose a period of probation that
4 exceeds 24 months; to provide for conforming changes; to revise requirements for active
5 probation supervision; to eliminate probation for life for persons convicted of certain serious
6 violent felonies; to eliminate certain special terms of probation; to revise certain probation
7 requirements; to provide for related matters; to provide for applicability; to repeal conflicting
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
12 procedure for sentencing and imposition of punishment, is amended by revising
13 subsection (a) of Code Section 17-10-1, relating to fixing of sentence, suspension or
14 probation of sentence, change in sentence, eligibility for parole, prohibited modifications,
15 and exceptions, as follows:

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16 "(a)(1)(A) Except in cases in which life imprisonment, life without parole, or the death
17 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
18 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
19 shall prescribe a determinate sentence for a specific number of months or years which
20 shall be within the minimum and maximum sentences prescribed by law as the
21 punishment for the crime. The judge imposing the sentence is granted power and
22 authority to suspend or probate all or any part of the entire sentence under such rules
23 and regulations as the judge deems proper, including service of a probated sentence in
24 the sentencing options system, as provided by Article 6 of Chapter 3 of Title 42, and
25 including the authority to revoke the suspension or probation when the defendant has
26 violated any of the rules and regulations prescribed by the court, even before the
27 probationary period has begun, subject to the conditions set out in this subsection and
28 Code Section 17-10-1.5; provided, however, that such action shall be subject to the
29 provisions of Code Sections 17-10-6.1 and 17-10-6.2.

30 (B) When a defendant with no prior felony conviction is convicted of felony offenses
31 or is charged with felony offenses and is sentenced pursuant to subsection (a) or (c) of
32 Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42, and the court imposes a
33 sentence of probation or not more than 12 months of imprisonment followed by a term
34 of probation, the court shall include a behavioral incentive date in its sentencing order
35 that does not exceed three years from the date such sentence is imposed. Within 60
36 days of the expiration of such incentive date, if the defendant has not been arrested for
37 anything other than a nonserious traffic offense as defined in Code Section 35-3-37, has
38 been compliant with the general and special conditions of probation imposed, and has
39 paid all restitution owed, the Department of Community Supervision shall notify the
40 prosecuting attorney and the court of such facts. The Department of Community
41 Supervision shall provide the court with an order to terminate such defendant's
42 probation which the court shall execute unless the court or the prosecuting attorney

requests a hearing on such matter within 30 days of the receipt of such order. The court shall take whatever action it determines would be for the best interest of justice and the welfare of society.

~~(2)(A) Active probation supervision shall terminate in all cases no later than two years from the commencement of active probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, that in those cases involving:~~

~~(i) The collection of restitution, the period of active probation supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs;~~

~~(ii) A conviction under Chapter 15 of Title 16, the 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation supervision shall remain in effect until the termination of the sentence, but shall not exceed five years unless as otherwise provided in this paragraph; or~~

~~(iii) A conviction that requires the defendant to register on the state sexual offender registry pursuant to Code Section 42-1-12, the period of active probation supervision shall remain in effect until the court orders unsupervised probation, or until termination of the sentence, whichever first occurs.~~

~~(B)(2)~~ Probation supervision shall not be required for defendants sentenced to probation while the defendant is in the legal custody of the Department of Corrections or the State Board of Pardons and Paroles.

(3)(A) Any part of a sentence of probation revoked for a violation other than a subsequent commission of any felony, a violation of a special condition, or a misdemeanor offense involving physical violence resulting in bodily injury to an innocent victim which in the opinion of the trial court constitutes a danger to the community or a serious infraction occurring while the defendant is assigned to an alternative probation confinement facility shall be served in a probation detention

center, probation boot camp, weekend lock up, or confinement in a local jail or detention facility, or other community correctional alternatives available to the court or provided by the Department of Corrections.

(B) A parolee or probationer charged with a misdemeanor involving physical injury or an attempt to commit physical injury or terroristic threats or with a new felony shall not be entitled to bond pending a hearing on the revocation of his or her parole or probation, except by order of a judge of the superior, state, or magistrate court wherein the alleged new offense occurred after a hearing and upon determination of the superior, state, or magistrate court that the parolee or probationer does not constitute a threat to the community; provided, however, that this subparagraph does not authorize state or magistrate court judges to grant bail for a person charged with any offense listed in subsection (a) of Code Section 17-6-1.

(4) In cases of imprisonment followed by probation, the sentence shall specifically provide that the period of probation shall not begin until the defendant has completed service of the confinement portion of the sentence. No revocation of any part of a probated sentence shall be effective while a defendant is in the legal custody of the State Board of Pardons and Paroles.

(5)(A) When a defendant has been sentenced to probation, the court shall retain jurisdiction throughout the period of the probated sentence as provided for in subsection (g) of Code Section 42-8-34. Without limiting the generality of the foregoing, the court may shorten the period of active probation supervision or unsupervised probation on motion of the defendant or on its own motion, or upon the request of a community supervision officer, if the court determines that probation is no longer necessary or appropriate for the ends of justice, the protection of society, and the rehabilitation of the defendant. Prior to entering any order for shortening a period of probation, the court shall afford notice to the victim or victims of all sex related offenses or violent offenses resulting in serious bodily injury or death and, upon request

of the victim or victims so notified, shall afford notice and an opportunity for hearing to the defendant and the prosecuting attorney.

(B) The Department of Community Supervision shall establish a form document which shall include the elements set forth in this Code section concerning notification of victims and shall make copies of such form available to prosecuting attorneys in this state. When requested by the victim, the form document shall be provided to the victim by the prosecuting attorney. The form shall include the address of the community supervision office having jurisdiction over the case and contain a statement that the victim must maintain a copy of his or her address with the community supervision office and must notify the office of any change of address in order to maintain eligibility for notification by the Department of Community Supervision as required in this Code section.

(6)(A) Except as otherwise authorized by law, no court shall modify, suspend, probate, or alter a previously imposed sentence so as to reduce or eliminate a period of incarceration or probation and impose a financial payment which:

(i) Exceeds the statutorily specified maximum fine, plus all penalties, fees, surcharges, and restitution permitted or authorized by law; or

(ii) Is to be made to an entity which is not authorized by law to receive fines, penalties, fees, surcharges, or restitution.

(B) The prohibitions contained in this paragraph shall apply regardless of whether a defendant consents to the modification, suspension, probation, or alteration of such defendant's sentence and the imposition of such payment.

(C) Nothing in this paragraph shall prohibit or prevent a court from requiring, as a condition of suspension, modification, or probation of a sentence in a criminal case involving child abandonment, that the defendant pay all or a portion of child support which is owed to the custodial parent of a child which is the subject of such case.

(7) As used in this subsection, the term:

(A) 'Active probation supervision' means the period of a probated sentence in which a probationer actively reports to his or her community supervision officer or is otherwise under the direct supervision of a community supervision officer.

(B) 'Unsupervised probation' means the period of a probated sentence that follows active probation supervision in which:

(i) All of the conditions and limitations imposed by the court remain intact;

(ii) A probationer may have reduced reporting requirements; and

(iii) A community supervision officer shall not actively supervise such probationer."

SECTION 2.

Said article is further amended by adding a new Code section to read as follows:

"17-10-1.5.

No court shall impose a period of probation that exceeds 24 months."

SECTION 3.

Said article is further amended by revising paragraph (2) of subsection (b) of Code Section 17-10-6.1, relating to punishment for serious violent offenders and authorization for reduction in mandatory minimum sentencing, as follows:

"(2) Except as provided in subsection (e) of this Code section, the sentence of any person convicted of the serious violent felony of:

(A) Kidnapping involving a victim who is less than 14 years of age;

(B) Rape;

(C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4, unless subject to the provisions of paragraph (2) of subsection (d) of Code Section 16-6-4;

(D) Aggravated sodomy, as defined in Code Section 16-6-2; or

(E) Aggravated sexual battery, as defined in Code Section 16-6-22.2

shall, unless sentenced to life imprisonment, be a split sentence which shall include a mandatory minimum term of imprisonment of 25 years, followed by probation ~~for life~~, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court."

SECTION 4.

Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is amended by revising subsection (c) of Code Section 42-8-34, relating to sentencing hearings and determinations, presentence investigations, payment of fees, fines, and costs, post-conviction, presentence bond, continuing jurisdiction, and transferal of probation supervision, as follows:

"(c) Subject to the provisions of subsection (a) of Code Section 17-10-1, Code Section 17-10-1.5, and subsection (f) of Code Section 17-10-3, if it appears to the court upon a hearing of the matter that the defendant is not likely to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion shall impose sentence upon the defendant but may stay and suspend the execution of the sentence or any portion thereof or may place him or her on probation under the supervision and control of the officer ~~for the duration of the sentence~~. The period of probation or suspension shall not exceed the maximum sentence of confinement which could be imposed on the defendant."

SECTION 5.

Said chapter is further amended by repealing subsection (g) of Code Section 42-8-34.1, relating to revocation of probated or suspended sentence, alternative sentencing, burden of proof, and length of probation supervision.

SECTION 6.

Said chapter is further amended by revising Code Section 42-8-35.2, relating to special term of probation, when imposed, revocation, and suspension, as follows:

"42-8-35.2.

~~(a) Notwithstanding any other provisions of law, the court, when imposing a sentence of imprisonment after a conviction of a violation of subsection (b) or (d) of Code Section 16-13-30 or after a conviction of a violation of Code Section 16-13-31, shall impose a special term of probation of three years in addition to such term of imprisonment; provided, however, that upon a second or subsequent conviction of a violation of the provisions of such Code sections, the special term of probation shall be six years in addition to any term of imprisonment.~~

~~(b) A special term of probation imposed under this Code section may be revoked if the terms and conditions of probation are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special term of probation and the resulting new term of imprisonment shall not be diminished by the time which was spent on special probation. A person whose special term of probation has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special term of probation provided for in this Code section shall be in addition to, and not in lieu of, any other probation provided for by law and shall be supervised in the same manner as other probations as provided in this chapter.~~

~~(c) Upon written application by the probationer to the trial court, the court may, in its discretion, suspend the balance of any special term of probation, provided that at least one-half of such special term of probation has been completed and all fines associated with the original sentence have been paid and all other terms of the original sentence and the terms of the special probation have been met by the probationer Reserved.~~"

SECTION 7.

Said chapter is further amended by revising 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, as follows:

"42-8-37.

(a) Upon the termination of the probated portion of a sentence, the probationer shall be released from probation and shall not be liable to sentence for the crime for which probation was allowed; provided, however, that the foregoing shall not be construed to prohibit the conviction and sentencing of the probationer for the subsequent commission of the same or a similar offense or for the subsequent continuation of the offense for which he or she was previously sentenced.

(b) The court may at any time cause the probationer to appear before it to be admonished or commended and, when satisfied that its action would be for the best interest of justice and the welfare of society, may discharge the probationer from further supervision.

~~(c)(1) The case of each person receiving a probated sentence of three years or more shall be reviewed by the officer responsible for such case after service of three years on probation, and a written report of the probationer's progress shall be submitted to the sentencing court along with the officer's recommendation as to early termination. The report shall specifically state whether the probationer has been arrested for anything other than a nonserious traffic offense as defined in Code Section 35-3-37, whether the probationer has been compliant with the general and special conditions of probation imposed, and the status of the probationer's payments toward restitution or any fines and fees imposed. Each such case shall be reviewed and a written report submitted annually thereafter until the termination, expiration, or other disposition of the case.~~

~~(2) This subsection is intended to be retroactive and applied to any case when a person received a probated sentence of three years or more.~~

~~(d)(1) When a probationer is on probation for a qualified offense, DCS shall file a petition to terminate his or her probation if, after serving three 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 would 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."~~

SECTION 8.

Said chapter is further amended by revising subsection (b) of Code Section 42-8-102, relating to probation and supervision, determination of fees, fines, and restitution, converting moneys owed to community service or educational advancement, continuing jurisdiction, revocation, and transfer, as follows:

"(b) If it appears to the court upon a hearing of the matter that the defendant is not likely to engage in an unlawful course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion may place the defendant on probation under the supervision and control of a probation officer or private probation officer for all or a portion of the sentence or may impose a sentence upon the defendant but stay and suspend the execution of such sentence or any portion thereof. Subject to Code Section 17-10-1.5, the ~~The~~ period of probation or suspension shall not exceed the maximum sentence of confinement which

250 could be imposed on the defendant; provided, however, that nothing in this chapter shall
251 be construed to limit the ability of a court to toll a sentence as provided in this article."

252 **SECTION 9.**

253 This Act shall apply to sentencing that occurs on or after July 1, 2021.

254 **SECTION 10.**

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