

The Senate Committee on Judiciary offered the following substitute to SB 105:

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, and Article 2 of Chapter 8
3 of Title 42 of the Official Code of Georgia Annotated, relating to state-wide probation
4 system, so as to revise the conditions and procedures under which probation may be
5 terminated early; to provide for related matters; to provide an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

14 "(a)(1)(A) Except in cases in which life imprisonment, life without parole, or the death
15 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
16 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence

shall prescribe a determinate sentence for a specific number of months or years which shall be within the minimum and maximum sentences prescribed by law as the punishment for the crime. The judge imposing the sentence is granted power and authority to suspend or probate all or any part of the entire sentence under such rules and regulations as the judge deems proper, including service of a probated sentence in the sentencing options system, as provided by Article 6 of Chapter 3 of Title 42, and including the authority to revoke the suspension or probation when the defendant has violated any of the rules and regulations prescribed by the court, even before the probationary period has begun, subject to the conditions set out in this subsection; provided, however, that such action shall be subject to the provisions of Code Sections 17-10-6.1 and 17-10-6.2.

(B)(i) When a defendant with no prior felony conviction is convicted of felony offenses or is charged with felony offenses and is sentenced pursuant to subsection (a) or (c) of Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42, and the court imposes a sentence of probation or not more than 12 months of imprisonment followed by a term of probation, the court shall include a behavioral incentive date in its sentencing order that does not exceed three years from the date such sentence is imposed. Within 60 days of the expiration of such incentive date, if the defendant has ~~not been arrested for anything other than a nonserious traffic offense as defined in Code Section 35-3-37, has been compliant with the general and special conditions of probation imposed, and has paid all restitution owed~~ (1) paid all restitution owed; (2) not had his or her probation revoked in the immediately preceding 24 months, or when the court includes a behavioral incentive date less than two years from the date a sentence was imposed, not had his or her probation revoked during such period; and (3) not been arrested for anything other than a nonserious traffic offense as defined in Code Section 35-3-37, the Department of Community Supervision shall notify the prosecuting attorney and the court of such facts. The Department of Community

Supervision shall provide the court with an order to terminate such defendant's 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 set the matter for a hearing as soon as possible but not more than 90 days after receiving the order to terminate. The court shall take whatever action it determines would be for the best interest of justice and the welfare of society.

(ii) This subparagraph is intended to be retroactive and shall be applied to any case in which a person with no prior felony conviction was convicted of felony offenses or was charged with felony offenses and was sentenced pursuant to subsection (a) or (c) of Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42, and the court imposed a sentence of probation or a sentence of not more than 12 months of imprisonment followed by a term of probation. A behavioral incentive date shall as a matter of law be included in the sentencing order, but in a case where it was not, the behavioral incentive date shall be three years from the date such sentence was imposed.

(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) 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

97 service of the confinement portion of the sentence. No revocation of any part of a
98 probated sentence shall be effective while a defendant is in the legal custody of the State
99 Board of Pardons and Paroles.

100 (5)(A) When a defendant has been sentenced to probation, the court shall retain
101 jurisdiction throughout the period of the probated sentence as provided for in
102 subsection (g) of Code Section 42-8-34. Without limiting the generality of the
103 foregoing, the court may shorten the period of active probation supervision or
104 unsupervised probation on motion of the defendant or on its own motion, or upon the
105 request of a community supervision officer, if the court determines that probation is no
106 longer necessary or appropriate for the ends of justice, the protection of society, and the
107 rehabilitation of the defendant. When the court is presented with a petition to shorten
108 the period of active probation supervision or unsupervised probation, the court shall set
109 the matter for a hearing as soon as possible but not more than 90 days after receiving
110 such motion. Prior to entering any order for shortening a period of probation, the court
111 shall afford notice to the victim or victims of all sex related offenses or violent offenses
112 resulting in serious bodily injury or death and, upon request of the victim or victims so
113 notified, shall afford notice and an opportunity for hearing to the defendant and the
114 prosecuting attorney.

115 (B) The Department of Community Supervision shall establish a form document which
116 shall include the elements set forth in this Code section concerning notification of
117 victims and shall make copies of such form available to prosecuting attorneys in this
118 state. When requested by the victim, the form document shall be provided to the victim
119 by the prosecuting attorney. The form shall include the address of the community
120 supervision office having jurisdiction over the case and contain a statement that the
121 victim must maintain a copy of his or her address with the community supervision
122 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.

Article 2 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to state-wide probation system, is 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~~ had his or her probation revoked in the immediately preceding 24 months, and the status of the probationer's payments toward any 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. If early termination is recommended in the written report, DCS shall notify the prosecuting

attorney and simultaneously provide the court with an order to terminate such probation.
The court shall execute the order to terminate 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 set the matter for a hearing as soon as possible but not more than 90 days after
receiving the order to terminate. The court shall take whatever action it determines
would be for the best interest of justice and the welfare of society.

(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~~ probationer under the supervision of
DCS.

(d)(1) When a probationer is on probation for a qualified offense, DCS shall ~~file a~~
~~petition~~ provide the court with an order 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~~ in the immediately
preceding 24 months; 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~~ order, it shall execute the order to
terminate 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 set the matter for a hearing
as soon as possible but not more than 90 days after receiving the order to terminate. The
court 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."

202 **SECTION 3.**

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

205 **SECTION 4.**

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