

House Bill 34

By: Representatives Petrea of the 166th, Hitchens of the 161st, Stephens of the 164th, Kelley of the 16th, Reeves of the 34th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions,
2 so as to provide for reforms in the probation and paroles systems and in the accessibility of
3 information related to certain offenders; to make reports, files, records, and information of
4 certain probationers and parolees open records; to remove certain duties from the State Board
5 of Pardons and Paroles pertaining to determining and taking action on violations of parole
6 and placing such duties with the superior court that imposed the sentence that the parolee is
7 serving; to provide for a definition; to make files for offenders under sentence who were
8 convicted of a serious offense open records; to clarify the ability of the trial court to impose
9 conditions on parole; to remove the duty of supervision of persons who are paroled from the
10 State Board of Pardons and Paroles to the Department of Community Supervision; to require
11 certain notices and a public hearing before an offender may be released on parole, be granted
12 a pardon, or have a death sentence commuted; to require the State Board of Pardons and
13 Paroles to enter and distribute a written order upon denying or granting parole to any person;
14 to remove certain duties from the State Board of Pardons and Paroles pertaining to revoking
15 parole and placing such duties with the superior court that imposed the sentence; to remove
16 certain duties from the State Board of Pardons and Paroles pertaining to issuance of
17 subpoenas and place such duties with the district attorney; to provide for the classification
18 of certain information and documents of the State Board of Pardons and Paroles as
19 confidential state secrets; to provide for related matters; to repeal conflicting laws; and for
20 other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
24 by revising Code Section 42-8-40, relating to confidentiality of reports, files, records, and
25 other information related to supervision; exemption from subpoena; and declassification, as
26 follows:

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27 "42-8-40.

28 All reports, files, records, and information of whatever kind relative to the supervision of
 29 probationers and parolees ~~are declared to be confidential and shall be available only to the~~
 30 ~~probation system officials, the judge handling a particular case, the Board of Community~~
 31 ~~Supervision, DCS, the Department of Corrections, the Department of Juvenile Justice, and~~
 32 ~~the State Board of Pardons and Paroles, as appropriate. Such reports, files, records, and~~
 33 ~~information shall not be subject to process of subpoena; provided, however, that the~~
 34 ~~commissioner of community supervision may by written order declassify any such records~~
 35 shall be subject to the provisions of Article 4 of Chapter 18 of Title 50."

36 **SECTION 2.**

37 Said title is further amended by revising subsection (a) of Code Section 42-9-20, relating to
 38 general duties of board, as follows:

39 "(a) In all cases in which the chairperson of the board or any other member designated by
 40 the board has suspended the execution of a death sentence to enable the full board to
 41 consider and pass on same, it shall be mandatory that the board act within a period not
 42 exceeding 90 days from the date of the suspension order. In the cases which the board has
 43 power to consider, the board shall be charged with the duty of determining which inmates
 44 serving sentences imposed by a court of this state may be released on pardon or parole and
 45 fixing the time and conditions thereof. ~~The board shall also be charged with the duty of~~
 46 ~~determining violations of parole and taking action with reference thereto and making such~~
 47 ~~investigations as may be necessary.~~ It shall be the duty of the board personally to study the
 48 cases of those inmates whom the board has power to consider so as to determine their
 49 ultimate fitness for such relief as the board has power to grant. The board by an affirmative
 50 vote of a majority of its members shall have the power to commute a sentence of death to
 51 one of life imprisonment."

52 **SECTION 3.**

53 Said title is further amended by revising subsection (c) of Code Section 42-9-21, relating to
 54 supervision of persons placed on parole or other conditional release, contracts for services
 55 and programs, and collection of sums for restitution, as follows:

56 "(c) During the parole period, the department shall enforce any condition imposed as part
 57 of the sentence and, in ~~In~~ all cases where restitution is applicable, the department shall
 58 collect ~~during the parole period~~ those sums determined to be owed to the victim."

59

SECTION 4.

60 Said title is further amended by revising subsection (b) of, and adding a new subsection to,
 61 Code Section 42-9-41, relating to duty of board to obtain and place in records information
 62 respecting persons subject to relief or placed on probation, investigations, and rules, as
 63 follows:

64 "(b) The board in its discretion may also obtain and place in its permanent records similar
 65 information on each person who may be placed on probation. The board shall immediately
 66 examine such records and any other records obtained and make such other investigation
 67 as it may deem necessary. It shall be the duty of the court and of all community
 68 supervision officers and other appropriate officers to furnish to the board, upon its request,
 69 such information as may be in their possession or under their control. The Department of
 70 Behavioral Health and Developmental Disabilities and all other state, county, and city
 71 agencies, all sheriffs and their deputies, and all peace officers shall cooperate with the
 72 board and shall aid and assist it in the performance of its duties. Subject to provisions of
 73 law, the ~~The~~ board may make such rules as to the privacy or privilege of such information
 74 and as to its use by persons other than the board and its staff as may be deemed expedient
 75 in the performance of its duties.

76 (c)(1) As used in this subsection, the term 'serious offense' shall have the same meaning
 77 as provided for in paragraph (1) of subsection (b) of Code Section 42-9-42.

78 (2) Notwithstanding any other provision of law, files for offenders under sentence who
 79 were convicted of a serious offense shall be subject to the provisions of Article 4 of
 80 Chapter 18 of Title 50."

81

SECTION 5.

82 Said title is further amended by revising subsections (d) and (e) of Code Section 42-9-42,
 83 relating to procedure for granting relief from sentence, conditions and prerequisites, public
 84 access to information, and violation of parole, as follows:

85 "(d)(1) Any person who is paroled shall be released on such terms and conditions as the
 86 board shall prescribe, including but not limited to any condition imposed as part of the
 87 sentence. The board shall diligently see that no peonage is allowed in the guise of parole
 88 relationship or supervision. The parolee shall ~~remain in~~ be transferred to the legal
 89 custody of the ~~board~~ department until the expiration of the maximum term specified in
 90 his or her sentence or until he or she is pardoned by the board.

91 (2) The ~~board~~ department may require the payment of a parole supervision fee of at least
 92 \$10.00 per month as a condition of parole or other conditional release. The monthly
 93 amount shall be set by rule of the ~~board~~ department and shall be uniform state wide. The
 94 ~~board~~ department may require or the parolee or person under conditional release may

95 request that up to 24 months of the supervision fee be paid in advance of the time to be
 96 spent on parole or conditional release. In such cases, any advance payments are
 97 nonreimbursable in the event of parole or conditional release revocation or if parole or
 98 conditional release is otherwise terminated prior to the expiration of the sentence being
 99 served on parole or conditional release. Such fees shall be collected by the department
 100 to be paid into the general fund of the state treasury.

101 (e) If a parolee violates the terms of his or her parole, he or she shall be subject to rearrest
 102 or extradition for placement in the actual custody of the ~~board~~ department, to be redelivered
 103 to any state or county correctional institution of this state."

104 **SECTION 6.**

105 Said title is further amended by revising paragraph (1) of subsection (d) of Code Section
 106 42-9-43, relating to information to be considered by board generally, conduct of investigation
 107 and examination, and determination as to grant relief, as follows:

108 "(d)(1) Before releasing any person on parole, granting a pardon, or commuting a death
 109 sentence, the board may have the person appear before it and may personally examine
 110 him or her and consider any information it deems relevant or necessary. When objections
 111 to relief have been tendered, the board ~~may~~ shall hold a public hearing and consider oral
 112 testimony after giving notice of such hearing to the district attorney of the county in
 113 which the person was sentenced; any victim of crimes against the person or, if such
 114 victim is deceased, the spouse, children, or parents of the deceased victim if such person's
 115 contact information is provided pursuant to Code Section 17-17-13 ten days prior to the
 116 hearing; and the person; provided, however, that notice to the district attorney shall be
 117 given by statutory overnight delivery. At the hearing, any member of the public may
 118 attend, and the board shall receive all evidence provided by any interested party as to
 119 whether granting release is consistent with the board's primary goal of protecting society.
 120 Upon consideration of the records, papers, documents, and oral testimony submitted, the
 121 board shall make its findings and determine whether or not such person shall be granted
 122 a pardon, parole, or other relief within the power of the board and determine the terms
 123 and conditions thereof."

124 **SECTION 7.**

125 Said title is further amended by revising Code Section 42-9-44, relating to terms and
 126 conditions of parole, adoption of general and specific rules, violation of parole, and certain
 127 parolees to obtain high school diploma or general educational development (GED) diploma,
 128 as follows:

129 "42-9-44.

130 (a) The ~~board~~ department, upon ~~placing~~ receiving a person placed on parole by the board,
131 shall specify in writing the terms and conditions thereof. A certified copy of the conditions
132 shall be given to the parolee. Thereafter, a copy shall be sent to the clerk of the court in
133 which the person was convicted. The ~~board~~ department shall adopt general rules
134 concerning the terms and conditions of parole and concerning what shall constitute a
135 violation thereof and shall make special rules to govern particular cases. The rules, both
136 general and special, may include, among other things, a requirement that the parolee shall
137 not leave this state or any definite area in this state without the consent of the board; that
138 the parolee shall contribute to the support of his or her dependents to the best of the
139 parolee's ability; that the parolee shall make reparation or restitution for his or her crime;
140 that the parolee shall abandon evil associates and ways; and that the parolee shall carry out
141 the instructions of his or her community supervision officer, and, in general, so comport
142 himself or herself as the parolee's officer shall determine. A violation of the terms of
143 parole may render the parolee liable to arrest and a return to a penal institution to serve out
144 the term for which the parolee was sentenced.

145 (b) Each parolee who does not have a high school diploma or a general educational
146 development (GED) diploma shall be required as a condition of parole to obtain a high
147 school diploma or general educational development (GED) diploma or to pursue a trade
148 at a vocational or technical school. Any such parolee who demonstrates to the satisfaction
149 of the ~~board~~ department an existing ability or skill which does in fact actually furnish the
150 parolee a reliable, regular, and sufficient income shall not be subject to this provision. Any
151 parolee who is determined by the department ~~or the board~~ to be incapable of completing
152 such requirements shall only be required to attempt to improve his or her basic educational
153 skills. Failure of any parolee subject to this requirement to attend the necessary schools or
154 courses or to make reasonable progress toward fulfillment of such requirement shall be
155 grounds for revocation of parole. The ~~board~~ department shall establish regulations
156 regarding reasonable progress as required by this subsection. This subsection shall apply
157 to paroles granted on or after July 1, 1995."

158 **SECTION 8.**

159 Said title is further amended by revising Code Section 42-9-46, relating to cases in which
160 inmate has failed to serve time required for automatic initial consideration, as follows:

161 "42-9-46.

162 (a) Notwithstanding any other provisions of law to the contrary, if the board is to consider
163 any case in which an inmate has failed to serve the time required by law for automatic
164 initial consideration, the board shall notify in writing, at least ten days prior to

165 consideration, the sentencing judge, the district attorney of the county in which the person
 166 was sentenced, and any victim of crimes against the person or, if such victim is deceased,
 167 the spouse, children, or parents of the deceased victim if such person's contact information
 168 is provided pursuant to Code Section 17-17-13. The sentencing judge, district attorney, or
 169 victim or, if such victim is deceased, the spouse, children, or parents of the deceased victim
 170 may appear at a hearing held by the board or make a written statement to the board
 171 expressing their views and making their recommendation as to whether the person should
 172 be paroled.

173 (b) Within a reasonable time after the hearing provided for under subsection (a) of this
 174 Code section, the board shall enter an order denying parole or conditional release and
 175 returning the inmate to serve the sentence theretofore imposed upon him or her or granting
 176 parole or conditional release or shall enter such other order as the board may deem proper.
 177 The order shall indicate the board's reasons for denying or granting parole or conditional
 178 release or for taking such other action and indicate the evidence relied upon in determining
 179 the facts which form the basis for its decision. The district attorney of the county in which
 180 the person was sentenced and the inmate who is the subject of the board's decision shall be
 181 furnished with a copy of this written statement."

182 **SECTION 9.**

183 Said title is further amended by revising Code Section 42-9-51, relating to final hearing for
 184 parole or conditional release violator, order and statement as to disposition of violator, and
 185 revocations without hearing and temporary revocations, as follows:

186 "42-9-51.

187 (a) A parolee who has allegedly violated the terms of his or her parole or conditional
 188 release shall, except as otherwise provided in this subsection, have a right to a final hearing
 189 before the ~~board~~ superior court that imposed the sentence that he or she is serving, to be
 190 held within a reasonable time after the occurrence of one of the events listed in this
 191 subsection. No final hearing shall be required or permitted if the parolee or conditional
 192 releasee has been convicted of or entered any form of guilty plea or plea of nolo contendere
 193 in any federal or state court of record to any felony crime, or misdemeanor involving
 194 physical injury, committed by the parolee or conditional releasee during a term of parole
 195 or conditional release, and which new conviction results in imposition by the convicting
 196 court of a term of imprisonment, and, in such cases, the ~~board~~ superior court that imposed
 197 the sentence that he or she is serving shall revoke the entire unexpired term of parole or
 198 conditional release. In no case shall a final hearing be required if the parolee or conditional
 199 releasee has signed a waiver of final hearing. The final hearing, if any, shall be held within
 200 a reasonable time:

- 201 (1) After an arrest warrant has been issued by a ~~member of the board~~ the superior court
202 that imposed the sentence that he or she is serving and probable cause for revocation has
203 been found by the preliminary hearing officer;
- 204 (2) After a ~~majority of the board~~ the superior court that imposed the sentence that he or
205 she is serving overrules a determination by the preliminary hearing officer that probable
206 cause does not exist;
- 207 (3) After the ~~board or two of its members are~~ superior court that imposed the sentence
208 that he or she is serving is informed of an alleged violation and ~~decide~~ decides to consider
209 the matter of revocation without issuing a warrant for the alleged violator's arrest; or
- 210 (4) After a determination has been made that no preliminary hearing is required under
211 subsection (a) of Code Section 42-9-50.
- 212 (b) The purpose of the hearing shall be to determine whether the alleged violator has in
213 fact committed any acts which would constitute a violation of the terms and conditions of
214 his or her parole or conditional release and whether those acts are of such a nature as to
215 warrant revocation of parole or conditional release.
- 216 (c) When a parolee or conditional releasee has been convicted of any crime, whether a
217 felony or a misdemeanor, or has entered a plea of guilty or nolo contendere thereto in a
218 court of record, his or her parole or conditional release may be revoked without a hearing
219 before the ~~board~~ superior court that imposed the sentence that he or she is serving.
220 Moreover, whenever it shall appear to the ~~board~~ superior court that imposed the sentence
221 that he or she is serving that a parolee or conditional releasee either has absconded or has
222 been convicted of another crime in a federal court or in a court of record of another state,
223 the ~~board~~ superior court may issue an order of temporary revocation of parole or
224 conditional release, together with its warrant for such violator, which shall suspend the
225 running of the parolee's or conditional releasee's time from the date of the temporary
226 revocation of parole or conditional release to the date of the determination by the ~~board~~
227 superior court as to whether the temporary revocation shall be made permanent. If the
228 ~~board~~ superior court that imposed the sentence that he or she is serving determines that
229 there has been no violation of the conditions of the parole or conditional release, then the
230 parolee or the releasee shall be reinstated upon his original parole or conditional release
231 without any loss of time and the order of temporary revocation of parole or conditional
232 release and the warrant shall be withdrawn.
- 233 (d) In all cases in which there is a hearing before the ~~board~~ superior court, the alleged
234 violator shall be given written notice of the time and place of the hearing and of the
235 claimed violations of parole or conditional release. In addition, this notice shall advise him
236 or her of the following rights:

237 (1) His or her right to disclosure of evidence introduced against him or her; provided,
 238 however, that this right shall not be construed to require the ~~board~~ superior court or
 239 district attorney to disclose to an alleged violator confidential information contained in
 240 its files which has no direct bearing on the matter of parole revocation;

241 (2) His or her opportunity to be heard in person and to present witnesses and
 242 documentary evidence;

243 (3) His or her right to confront and cross-examine adverse witnesses, unless a ~~majority~~
 244 ~~of the board~~ the court determines by a preponderance of the evidence that disclosure of
 245 a particular informant's identity would cause that informant or a member of his or her
 246 family to suffer a risk of harm; and

247 (4) His or her right to subpoena witnesses and documents through the ~~board~~ court as
 248 provided in subsections (e) and (f) of this Code section.

249 The notice shall be served by delivering it to the alleged violator in person, by delivering
 250 it to a person 18 years of age or older at his or her last known place of residence, or by
 251 depositing it in the mail properly addressed to his or her last known place of residence.

252 (e) The ~~board~~ district attorney shall have the power to issue subpoenas to compel the
 253 attendance of witnesses at the hearing provided for by this Code section. The subpoenas
 254 shall be issued without discrimination between public and private parties. When a
 255 subpoena is disobeyed, any party may apply ~~to the superior court of the county in which~~
 256 ~~the hearing provided for by this Code section is held~~ for an order requiring obedience.
 257 Failure to comply with the order shall be cause for punishment as for contempt of court.
 258 The manner of service of subpoenas and costs of securing the attendance of witnesses,
 259 including fees and mileage, shall be determined, computed, and assessed in the same
 260 manner as prescribed by law for cases in the superior court.

261 (f) The ~~board~~ district attorney shall have the power to issue subpoenas for the production
 262 of documents or other written evidence at the hearing provided for by this Code section,
 263 but upon written request made promptly and before the hearing the ~~board~~ district attorney
 264 may seek to quash or modify the subpoena if it is unreasonable or oppressive or may
 265 condition denial of the request upon the advancement by the person in whose behalf the
 266 subpoena is issued of the reasonable cost of producing the documents or other written
 267 evidence. Enforcement of such subpoenas may be sought in the same manner as is
 268 provided in subsection (e) of this Code section for subpoenas to compel attendance of
 269 witnesses.

270 (g) Within a reasonable time after the hearing provided for by this Code section, the ~~board~~
 271 superior court shall enter an order (1) rescinding parole or conditional release and returning
 272 the parolee or conditional releasee to serve the sentence theretofore imposed upon him or
 273 her, with benefit of computing the time so served on parole or conditional release as a part

274 of his sentence; or (2) reinstating the parole or conditional release or shall enter such other
 275 order as it may deem proper. The ~~board~~ superior court shall issue a written statement
 276 which shall indicate its reasons for revoking or not reinstating parole or conditional release
 277 or for taking such other action as it deems appropriate and shall also indicate the evidence
 278 relied upon in determining the facts which form the basis for these reasons. The parolee
 279 or conditional releasee who is the subject of the ~~board's~~ superior court's decision and the
 280 district attorney shall be furnished with a copy of this written statement."

281 **SECTION 10.**

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

285 "(b)(1) All information, both oral and written, received by the members of the board in
 286 the performance of their duties under this chapter and all records, papers, and documents
 287 coming into their possession by reason of the performance of their duties under this
 288 chapter shall be ~~classified as confidential state secrets until declassified by the board;~~
 289 ~~provided, however, that the board shall be authorized to disclose to an alleged violator~~
 290 ~~of parole or conditional release the evidence introduced against him or her at a final~~
 291 ~~hearing on the matter of revocation of parole or conditional release~~ subject to the
 292 provisions of Article 4 of Chapter 18 of Title 50.

293 ~~(2) The department may make supervision records of the department available to~~
 294 ~~officials employed with the Department of Corrections and the Sexual Offender~~
 295 ~~Registration Review Board, provided that the same shall remain confidential and not~~
 296 ~~available to any other person or subject to subpoena unless declassified by the~~
 297 ~~commissioner of community supervision~~ This subsection shall not apply to the votes or
 298 ballots of any board member or to the file of any person sentenced to death. All votes of
 299 the board and the files of any person sentenced to death shall be classified as confidential
 300 state secrets until declassified by the board."

301 **SECTION 11.**

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