

Senate Bill 248

By: Senators Anderson of the 43rd, Jones II of the 22nd, Jones of the 10th, Butler of the 55th,
Jordan of the 6th 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 60 months; to provide for applicability; to provide for retroactive relief; to provide
5 for conforming changes; to eliminate probation for life for persons convicted of certain
6 serious violent felonies; to revise certain probation requirements; to provide for related
7 matters; to provide for applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
11 procedure for sentencing and imposition of punishment, is amended by revising paragraphs
12 (1) and (2) of subsection (a) of Code Section 17-10-1, relating to fixing of sentence,
13 suspension or probation of sentence, change in sentence, eligibility for parole, prohibited
14 modifications, and exceptions, as follows:

15 "(a)(1)(A) Except in cases in which life imprisonment, life without parole, or the death
16 penalty may be imposed, upon a verdict or plea of guilty in any case involving a

S. B. 248

- 1 -

17 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
18 shall prescribe a determinate sentence for a specific number of months or years which
19 shall be within the minimum and maximum sentences prescribed by law as the
20 punishment for the crime. The judge imposing the sentence is granted power and
21 authority to suspend or probate all or any part of the entire sentence under such rules
22 and regulations as the judge deems proper, including service of a probated sentence in
23 the sentencing options system, as provided by Article 6 of Chapter 3 of Title 42, and
24 including the authority to revoke the suspension or probation when the defendant has
25 violated any of the rules and regulations prescribed by the court, even before the
26 probationary period has begun, subject to the conditions set out in this subsection and
27 Code Section 17-10-1.5; provided, however, that such action shall be subject to the
28 provisions of Code Sections 17-10-6.1 and 17-10-6.2.

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

43 shall take whatever action it determines would be for the best interest of justice and the
44 welfare of society.

45 (2)(A) Active probation supervision shall terminate in all cases no later than two years
46 from the commencement of active probation supervision unless specially extended or
47 reinstated by the sentencing court upon notice and hearing and for good cause shown;
48 provided, however, that, subject to the provisions of Code Section 17-10-1.5, in those
49 cases involving:

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

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

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

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

64 **SECTION 2.**

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

66 "17-10-1.5.

67 (a) On and after July 1, 2021, no court shall impose a period of probation that exceeds 60
68 months.

69 (b) An individual who was sentenced prior to July 1, 2021, to a probation period of greater
70 than 60 months may petition the court in which he or she was convicted for a term of
71 probation consistent with this Code section.

72 (c) In considering a petition pursuant to this Code section, the court may consider any
73 evidence introduced by the petitioner or by the prosecuting attorney and any other evidence
74 relevant to the case.

75 (d) After considering the evidence, the court may issue an order retroactively revising the
76 petitioner's term of probation. If such order is issued, the court shall send a copy of the
77 order to the petitioner, the prosecuting attorney, and the Georgia Crime Information Center.

78 (e) There shall be no filing fee charged for a petition filed pursuant to this Code section."

79

SECTION 3.

80 Said article is further amended by revising paragraph (2) of subsection (b) of Code Section
81 17-10-6.1, relating to punishment for serious violent offenders and authorization for
82 reduction in mandatory minimum sentencing, as follows:

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

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

86 (B) Rape;

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

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

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

92 shall, unless sentenced to life imprisonment, be a split sentence which shall include a
93 mandatory minimum term of imprisonment of 25 years, followed by probation ~~for life,~~

94 and no portion of the mandatory minimum sentence imposed shall be suspended, stayed,
95 probated, deferred, or withheld by the sentencing court."

96 **SECTION 4.**

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

102 "(c) Subject to the provisions of subsection (a) of Code Section 17-10-1, Code Section
103 17-10-1.5, and subsection (f) of Code Section 17-10-3, if it appears to the court upon a
104 hearing of the matter that the defendant is not likely to engage in a criminal course of
105 conduct and that the ends of justice and the welfare of society do not require that the
106 defendant shall presently suffer the penalty imposed by law, the court in its discretion shall
107 impose sentence upon the defendant but may stay and suspend the execution of the
108 sentence or any portion thereof or may place him or her on probation under the supervision
109 and control of the officer ~~for the duration of the sentence~~. The period of probation or
110 suspension shall not exceed the maximum sentence of confinement which could be
111 imposed on the defendant."

112 **SECTION 5.**

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

117 "(b) If it appears to the court upon a hearing of the matter that the defendant is not likely
118 to engage in an unlawful course of conduct and that the ends of justice and the welfare of

119 society do not require that the defendant shall presently suffer the penalty imposed by law,
120 the court in its discretion may place the defendant on probation under the supervision and
121 control of a probation officer or private probation officer for all or a portion of the sentence
122 or may impose a sentence upon the defendant but stay and suspend the execution of such
123 sentence or any portion thereof. Subject to Code Section 17-10-1.5, the ~~The~~ period of
124 probation or suspension shall not exceed the maximum sentence of confinement which
125 could be imposed on the defendant; provided, however, that nothing in this chapter shall
126 be construed to limit the ability of a court to toll a sentence as provided in this article."

127 **SECTION 6.**

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