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CRIMES AND OFFENSES

State-Wide Probation Act: Revise Certain Provisions

CODE SECTION:	O.C.G.A. § 42-8-34.1 (new)
BILL NUMBER:	SB 434
ACT NUMBER:	1458
SUMMARY:	The Act revises the State-Wide Probation Act by creating a maximum period for probation and suspended sentences, setting standards for the revocation of such sentences, and limiting the amount of time that can be revoked, depending on the offense that constitutes the violation.
EFFECTIVE DATE:	July 1, 1988

History

Prison overcrowding is of major concern in Georgia. The Senate Committee on Corrections estimates that by 1991 the state prison system will have 10,000 more inmates than available bedspace.¹ As of September 1, 1987, there were 18,242 inmates in the prison system, which has a capacity of only 17,041.² In an effort to deal with present and future dilemmas created by overpopulation in the Georgia prison system, Governor Joe Frank Harris appointed a twelve-member committee to study the problem and to propose possible solutions. The Advisory Committee on Crime and Punishment analyzed the situation and made various recommendations. The proposals included abolishing the practice of split sentencing, limiting probationary terms to a maximum period of five years, prohibiting the imposition of prison sentences for misdemeanants and most non-violent first offenders, requesting funds for the construction of new prisons, and requiring that probation violations be substantive offenses before a prison sentence could be imposed as a penalty.³

The Governor disagreed with the committee's recommendation regarding the amount of funding to be requested for new prisons. He also objected to the prohibition against imprisonment of nonviolent first offend-

1. Riner, *Judicial Guidelines Suggested as Prison Crisis Fix*, Atlanta J., June 26, 1987, at 2B, col. 2.

2. THE GOVERNOR'S ADVISORY COMMITTEE ON CRIME AND PUNISHMENT, *FOURTH ANNUAL REPORT TO THE GOVERNOR: A CORRECTIONAL POPULATION PROPOSAL*, at 1 (1987) (copy on file at *Georgia State University Law Review* office).

3. *Id.* at 21—22.

ers and those who had committed only technical violations of their probations or suspended sentences.⁴ However, he did concur with the committee's views regarding the length of probation terms,⁵ the abolition of split sentencing, and the requirement that misdemeanants be given a form of punishment other than imprisonment.⁶ Two bills contained in the Governor's legislative package for the 1988 General Assembly reflected these three objectives.⁷ The first bill, SB 429, involved the prohibition against prison sentences for misdemeanants; it was ultimately unsuccessful.⁸ The second bill, SB 434, concerned the abolition of split sentencing and the limitation on probationary periods.⁹ It is the subject of the following discussion.

SB 434

O.C.G.A. § 42-8-34(c) gives courts discretion in deciding whether a convicted defendant should receive a prison sentence, a suspended sentence, or probation.¹⁰ When suspending a sentence or imposing probation, a court previously was bound only by the requirement that the period of suspension or probation could not exceed the maximum period of imprisonment available for a specific offense, except in cases of abandonment of children.¹¹ In its original form, SB 434 struck O.C.G.A. § 42-8-34(c) and replaced it with a new section.¹² The new section would adopt the Advisory Committee's recommendation and limit probation terms to a maximum of five years, retaining the exception for abandonment cases.¹³

The limitation drew staunch opposition from the Council of Superior Court Judges, whose members maintained that a five-year probationary period might be insufficient in certain circumstances.¹⁴ The judges cited instances in which a longer period might be necessary in order to collect restitution, fines, or costs; to protect victims of certain crimes, such as child molestation; to deal with alcoholics and drug abusers who might

4. May, *Harris Proposes Sentence Limits to Ease Prisons*, Atlanta J., Jan. 6, 1988, at 5A, col. 4.

5. The committee proposed the changes in the State-Wide Probation Act because of the tremendous number of inmates imprisoned for violations of probation or parole conditions. In 1986, of the 13,716 inmates admitted to the prison system, 6233 were probationers or parolees who were incarcerated after revocation proceedings. Wood, *Changes In Sentencing Proposed*, Fulton County Daily Rep., Aug. 10, 1987, at 1, col. 2.

6. *Id.* at 1, col. 4.

7. *Id.*

8. Final Composite Status Sheet, Mar. 7, 1988.

9. SB 434, as introduced, 1988 Ga. Gen. Assem.

10. O.C.G.A. § 42-8-34(c) (1985).

11. *Id.*

12. SB 434, as introduced, 1988 Ga. Gen. Assem.

13. *Id.*

14. Wood, *Judges Oppose Changes in Sentencing Rules*, Fulton County Daily Rep., Jan. 12, 1988, at 3, col. 2 [hereinafter Wood].

require longer care; and to supervise those offenders who will not be rehabilitated by a prison sentence, but rather are in need of a long period of probation.¹⁵ The judges' concerns were addressed in the Senate committee substitute¹⁶ as well as in the substitute offered by the House committee.¹⁷ Both substitutes gave the court the authority to impose the maximum period of probation or suspension followed by an additional period of supervision if there was concern regarding the safety of victims or the payment of restitution, fines, or other costs.¹⁸

The final version of SB 434 addresses these same concerns; although the maximum period for supervision of offenders on probation or parole is reduced from five years to four years, the maximum may be exceeded "upon written order of the court for the purpose of enforcing restitution or fines or for the protection of the victim or class of victims as defined by age or gender or by type of crime committed."¹⁹ In addition, the final version provides that the payment of fines, restitution, or costs can be ordered to be made in one lump sum or periodic payments.²⁰ Thus, if a court desires to keep a defendant on probation only to ensure that money is paid, it may order all of the money paid at once, thereby eliminating the need for probation.²¹ Furthermore, if circumstances indicate that periodic payments are the only feasible alternative, the Act provides that the court can order that payment be made to its clerk or to the assigned probation officer.²²

In addition to proposing a maximum period of probation and devising procedures for payment of monies owed, the original version of SB 434 also included a provision that would abolish the practice of split sentencing, a mechanism by which judges sentence a defendant to a jail term followed by a period of probation.²³ The Council of Superior Court Judges opposed the proposal regarding split sentences for several reasons.²⁴ First, the judges viewed split sentencing as a means of achieving sentencing goals of removal, rehabilitation, deterrence, and retribution.²⁵ Second, the option of split sentencing provides judges with a means of giving minimum prison time while retaining authority over the defendant so that money owed is paid.²⁶ Finally, members of the judges' council asserted that defendants might face longer prison terms if the option of

15. *Id.*

16. SB 434 (SCS), 1988 Ga. Gen. Assem.

17. SB 434 (HCS), 1988 Ga. Gen. Assem.

18. SB 434 (SCS), 1988 Ga. Gen. Assem.; SB 434 (HCS), 1988 Ga. Gen. Assem.

19. O.C.G.A. § 42-8-34.1 (Supp. 1988).

20. *Id.*

21. *Id.*

22. *Id.*

23. SB 434, as introduced, 1988 Ga. Gen. Assem.

24. Wood, *supra* note 14.

25. *Id.*

26. *Id.*

split sentencing was no longer available.²⁷ Some legislators also feared that if judges were forced to penalize without the option of split sentences, more defendants would be sent to jail for longer periods, thereby compounding the problem of prison overcrowding.²⁸ The provision regarding split sentencing did not become part of the final version of SB 434.²⁹

The sponsors of SB 434 believed that the abolition of split sentencing and the limitation on maximum periods of probation would be most effective in controlling prison overcrowding.³⁰ The theory is that with less people on probation for shorter periods of time, there will be fewer revocations of the probated or suspended sentences, and therefore, fewer of these type offenders in the prison system.³¹ Although not included in the original version of SB 434, provisions regarding revocations appeared in all subsequent versions of the legislation.³²

Before this Act, courts heard the evidence presented regarding alleged violations and then decided whether to revoke the probated or suspended sentence.³³ The statute provided only a very general procedure for revocation, and no guidelines were given to assist courts in determining whether there should be a revocation.³⁴ As passed, SB 434 limits revocations to two situations by providing: "[N]o court may revoke any part of any probated or suspended sentence unless the defendant admits the violation as alleged or unless the evidence produced at the revocation hearing establishes by a preponderance of the evidence the violation or violations alleged."³⁵

After a violation had been proved by the defendant's admission or by a preponderance of the evidence, the court would have to determine what portion of the probated or suspended sentence should be revoked. The lack of substantial guidelines pertaining to the amount of time that could be revoked threatened to exacerbate prison overcrowding. The substitute proposed by the Senate Committee on Judiciary would have allowed revoking courts to order the defendant to serve the balance of the original sentence or any portion of that sentence.³⁶ The House committee substitute proposed that defendants with revoked probation or suspended

27. *Id.*

28. Secrest, *Senate Passes Major Prison Sentencing Reforms*, Atlanta J. & Const., Jan. 30, 1988, at 1B, col. 2.

29. O.C.G.A. § 42-8-34.1 (Supp. 1988).

30. Telephone interview with Senator Roy Barnes, Senate District No. 33 (Apr. 29, 1988) [hereinafter Barnes Interview].

31. *Id.*

32. Compare SB 434, as introduced, with SB 434 (SCS); SB 434 (HCS); SB 434 (HFSFA), 1988 Ga. Gen. Assem.; and O.C.G.A. § 42-8-34.1 (Supp. 1988).

33. O.C.G.A. § 42-8-38 (1985).

34. *Id.*

35. O.C.G.A. § 42-8-34.1 (Supp. 1988).

36. SB 434 (SCS), 1988 Ga. Gen. Assem.

sentences be subject to imprisonment for either the balance of probation or suspension or for three years, whichever was less.³⁷ The final version of SB 434 provides that a court cannot revoke more than six months of a probated or suspended sentence, unless the violation occurs by the commission of a new felony or by the violation of any special condition imposed on a particular defendant.³⁸ In such situations, the bill authorizes the court to revoke the lesser of the balance of probation or the maximum time of the sentence that exists for the crime that constituted the violation of probation.³⁹

In addition, the court is not limited by the six-month maximum regarding revocation in cases involving defendants sentenced under O.C.G.A. § 42-8-35.1.⁴⁰ These defendants have been assigned, as a condition of probation, to "special alternative incarceration units" for a ninety-day period.⁴¹ If these defendants do not satisfactorily complete the program, their probations may be revoked.⁴² As passed, SB 434 allows a court either to revoke the remainder of probation or to impose two-years' incarceration, whichever is less.⁴³

The limitations on the amount of time that can be revoked were designed to control the problems that revocations added to the prison overpopulation crisis.⁴⁴ Coupled with the provisions that limit the maximum period of probation and create limited situations in which probated and suspended sentences can be revoked, perhaps these changes in Georgia's State-Wide Probation Act will serve to alleviate both present and future overcrowding crises in the state's prison system.

A. Ware

37. SB 434 (HCS), 1988 Ga. Gen. Assem.

38. O.C.G.A. § 42-8-34.1 (Supp. 1988).

39. *Id.*

40. *Id.*

41. O.C.G.A. § 42-8-35.1 (1985).

42. *Id.*

43. O.C.G.A. § 42-8-34.1 (Supp. 1988).

44. Barnes Interview, *supra* note 30.