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# CRIMES AND OFFENSES Sexual Offenses: Forfeiture of Motor Vehicles, Proceeds and Money Used to Facilitate Child Prostitution; Offenses Against Public Administration: Change Penalties for Escape; Criminal Procedure: Sentencing; Penal Institutions: Probation; Revocation

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## CRIMES AND OFFENSES

***Sexual Offenses: Forfeiture of Motor Vehicles, Proceeds and Money Used to Facilitate Child Prostitution; Offenses Against Public Administration: Change Penalties for Escape; Criminal Procedure: Sentencing; Penal Institutions: Probation; Revocation.***

CODE SECTIONS:	O.C.G.A. §§ 16-6-13.2 (amended), -13.3 (new), 16-10-52, 17-10-1, 42-8-34, -34.1 (amended)
BILL NUMBER:	SB 34
ACT NUMBER:	20
GEORGIA LAWS:	2001 Ga. Laws 94
SUMMARY:	The Act, entitled the "2001 Crime Prevention Act," amends several sections of the Georgia Code relating to crimes, including changing the penalties for escape. The Act provides for forfeiture of motor vehicles, money and proceeds that facilitate sexual offenses. The Act also changes the authority of trial judges over sentencing and probation, as well as the penalties relating thereto.
EFFECTIVE DATE:	July 1, 2001 <sup>1</sup>

### *History*

The purpose of SB 34 was to strengthen and clarify certain sections of the Georgia Code pertaining to penalties for escape, child prostitution, forfeiture, sentencing, and probation.<sup>2</sup> At the start of the 2001 General Assembly, several problems lurked amidst the various Code sections relating to these issues.<sup>3</sup>

For instance, prior to the 2001 session, escape was considered a misdemeanor and was only chargeable if the escapee had actually been

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1. See 2001 Ga. Laws 94, §§ 8-9, at 99. The Act is applicable to all escapes committed on or after July 1, 2001. See *id.*, § 8, at 99.

2. See Audio Recording of Senate Proceedings, Feb. 22, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio]; Telephone Interview with Sen. Greg Hecht, Senate District No. 34 (May 3, 2001) [hereinafter Hecht Interview].

3. See Hecht Interview, *supra* note 2.

*convicted* of a predicate crime requiring imprisonment.<sup>4</sup> The Georgia Sheriff's Association realized that such minor penalties would not effectively deter such individuals from escaping.<sup>5</sup> In one case exemplifying the confusing nature of the escape statute, a Douglas County prisoner escaped before the court could convict him of his charged crime.<sup>6</sup> Although the judge wanted to sentence the prisoner for the escape, the law was decidedly against him.<sup>7</sup>

The laws regarding prostitution, pimping, and forfeiture also contained problems.<sup>8</sup> Over the years, there has been a growing problem with children as young as ten years old being lured into prostitution.<sup>9</sup> Pimps, using motor vehicles to mobilize these child prostitutes, richly profited from the exploitation of these children.<sup>10</sup>

Another concern was judges' lack of authority to modify sentences and revoke probation.<sup>11</sup> On July 10, 2000, the Georgia Supreme Court overruled Chief Judge Michael Stoddard of the Cobb Superior Court in the case of *Glover v. State*.<sup>12</sup> Appearing before Judge Thomas E. Cauthorn, the defendant pled guilty to aggravated child molestation and other offenses; Glover received a thirty year sentence, with seven years to serve and twenty-three years on probation.<sup>13</sup>

One year after his release from prison, police arrested Glover for a probation violation when he followed a young girl into a restroom.<sup>14</sup> Following a revocation hearing, Judge Stoddard revoked ten years of the defendant's probation, over objection by Glover's counsel.<sup>15</sup> Glover had served two years of his revoked time when he obtained a new attorney,

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4. See 1997 Ga. Laws 1040, § 10, at 1070.

5. See Hecht Interview, *supra* note 2.

6. See *id.*

7. See Telephone Interview with Sen. Bill Hamrick, Senate District No. 30 (Apr. 17, 2001).

8. See Hecht Interview, *supra* note 2.

9. See Rhonda Cook, *Anti-Pimping Bill Gets Final House Approval, 2001 Georgia Legislature*, ATLANTA J. CONST. Mar. 15, 2001, at C5.

10. See Senate Audio, *supra* note 2.

11. See Hecht Interview, *supra* note 2.

12. 272 Ga. 639 (2000). See Telephone Interview with Chief Judge Michael Stoddard, Cobb Superior Court (May 4, 2001) [hereinafter Stoddard Interview].

13. See Stoddard Interview, *supra* note 12; *Glover*, 272 Ga. at 639.

14. See Stoddard Interview, *supra* note 12; *Glover*, 272 Ga. at 639; Yolanda Rodriguez, *Convicted Molester Ordered Released*, ATLANTA J. CONST., Mar. 9, 2001, at D13.

15. See Stoddard Interview, *supra* note 12; *Glover*, 272 Ga. at 639; Rodriguez, *supra* note 14, at D13.

who filed a motion to release.<sup>16</sup> Judge Stoddard denied the motion.<sup>17</sup> The Georgia Court of Appeals affirmed.<sup>18</sup>

However, the Georgia Supreme Court, in a four-three decision, reversed the Court of Appeals, thus requiring Judge Stoddard to release the defendant from custody. The Supreme Court found the relevant statute ambiguous, and the majority refused to attempt to construe the ambiguity.<sup>19</sup> Judge Stoddard later commented that the community is certainly not any safer after Glover's release.<sup>20</sup> Because of his concern that Code section 42-8-34(c) was considered meaningless, and his belief that judges should be empowered with more sentencing authority, including the right to revoke probation, Judge Stoddard approached Representative Jim Martin of the 47th District and asked that the legislature address this problem.<sup>21</sup> Senator Greg Hecht of the 34th District later incorporated Judge Stoddard's concerns into SB 34.<sup>22</sup>

## *SB 34*

### *Introduction*

Senators Greg Hecht of the 34th District, Vincent Fort of the 39th District, Terrell Starr of the 44th District, Rene' Kemp of the 3rd District, William Hamrick of the 30th District, and Billy Ray of the 48th District sponsored SB 34.<sup>23</sup> Senator Hecht introduced the bill on the Senate floor on January 12, 2001, and the Senate assigned it to the Senate Judiciary Committee.<sup>24</sup> The Committee favorably reported the bill as substituted on February 15, 2001.<sup>25</sup> The Senate adopted the Committee substitute and passed the bill on February 22, 2001.<sup>26</sup> On February 26, 2001, the House assigned SB 34 to its Special Judiciary Committee, which created its own substitute, and favorably reported the bill on March 8, 2001.<sup>27</sup> The House adopted the Special Judiciary

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16. See Stoddard Interview, *supra* note 12; *Glover*, 272 Ga. at 639.

17. See Stoddard Interview, *supra* note 12; *Glover*, 272 Ga. at 639.

18. See Stoddard Interview, *supra* note 12; *Glover*, 272 Ga. at 639.

19. See Stoddard Interview, *supra* note 12; *Glover*, 272 Ga. at 639; *see also* Rodriguez, *supra* note 14, at D13.

20. See Stoddard Interview, *supra* note 12.

21. See *id.*

22. See *id.*

23. See SB 34, as introduced, 2001 Ga. Gen. Assem.

24. See State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001.

25. See *id.*

26. See Georgia Senate Voting Record, SB 34 (Feb. 22, 2001).

27. See State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001.

Committee substitute, along with several floor amendments, and passed the bill on March 19, 2001.<sup>28</sup> The bill returned to the Senate, which concurred with the House substitute.<sup>29</sup> The General Assembly forwarded the bill to Governor Roy Barnes, who signed SB 34 into law on March 27, 2001.<sup>30</sup>

### *Consideration by the Senate Judiciary Committee*

After introduction, the Senate assigned SB 34 to its Judiciary Committee.<sup>31</sup> The Committee favorably reported the bill, as substituted.<sup>32</sup> The Senate adopted the Committee substitute and unanimously passed the bill, as substituted, on February 22, 2001.<sup>33</sup>

The Committee substitute removed sections of the original version of the bill and made various other changes within the sections.<sup>34</sup> The Senate Committee substitute revised Code section 16-10-52(b), relating to escape, by dividing it into four sub-parts for greater clarification.<sup>35</sup> In addition, the Committee deleted the language "lawful custody" due to a controversy over the definitions of confinement and custody.<sup>36</sup>

The Committee also removed all references to Code section 16-6-3, relating to the pandering of minors, as the subject matter was addressed by a related bill, SB 33.<sup>37</sup>

The Committee both added and removed language from provisions governing Code section 16-6-13.2, which deals with forfeiture of motor vehicles.<sup>38</sup> To make the section more useful, the Committee removed the language "provided that said forfeiture shall not be absolute unless the defendant is convicted of said offense."<sup>39</sup> The Committee removed this language because otherwise, the section was quite toothless, as it could

28. See Georgia House Voting Record, SB 34 (Mar. 19, 2001).

29. See State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001.

30. See 2001 Ga. Laws 94, § 9, at 99.

31. See State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001.

32. See *id.*

33. See Georgia Senate Voting Record, SB 34 (Feb. 22, 2001).

34. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

35. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

36. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

See also Hecht Interview, *supra* note 2.

37. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.; compare SB 34, 2001 Ga. Gen. Assem., with SB 33, 2001 Ga. Gen. Assem. See also Hecht Interview, *supra* note 2.

38. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

39. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.; see also Hecht Interview, *supra* note 2.

take years to convict a defendant.<sup>40</sup> The Committee also added language that would allow the State to mandate forfeiture of motor vehicles by persons who simply *facilitate* pimping or prostitution.<sup>41</sup>

The Committee also revised proposed Code section 16-6-13.3, relating to forfeiture, by removing the introductory language and restructuring the numbering from numbers to lower case letters.<sup>42</sup> The Committee removed the introductory language which subjected those convicted of violating Code section 16-6-10, relating to prostitution, to the forfeiture provisions in the new Code section; the Committee reincorporated the language into subsection (a).<sup>43</sup> However, just as it had done with Code section 16-6-13.2, relating to forfeiture of motor vehicles, the Committee chose not to incorporate the “convicted” language in this Code section.<sup>44</sup> Rather, the Committee broadened the language to allow any property used to *facilitate* prostitution subject to forfeiture.<sup>45</sup> Thus, property could be seized even without a conviction.

After reviewing Code section 17-10-1, which related to sentencing, the Committee made major changes, including switching the subsections to be amended.<sup>46</sup> Rather than amending subsections (4), (5) and (6) of subsection (a) as proposed by Senator Hecht, the Committee removed these subsections in their entirety from the bill and replaced them with subsection (2) and subsection (3)(A).<sup>47</sup>

Subsections (4), (5) and (6) of Code section 17-10-1 stated that probation should not begin until after imprisonment, and once probation began, the court would retain jurisdiction throughout the period of the probated sentence.<sup>48</sup> Further, these paragraphs required the Department of Corrections to notify victims of crimes and also restricted the courts’ ability to modify sentences.<sup>49</sup>

In place of these paragraphs, the Committee proposed to amend subsections (2) and (3)(A) of Code section 17-10-1, which imposed a two-year restriction on probation supervision as well as waiver of supervision while the defendant is incarcerated, and provided that any

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40. See Hecht Interview, *supra* note 2.

41. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

42. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

43. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

44. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

45. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

46. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

47. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

48. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

49. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

violation of special conditions of probation were punishable by prison or jail incarceration.<sup>50</sup>

Finally, the Committee added language to Code section 42-8-34.1, relating to probation revocation and victim restitution, and removed subsection (a)(3).<sup>51</sup> The additional language expanded the term “special condition of probation” to include court-ordered fines and fees.<sup>52</sup> The term was further expanded by removal of subsection (a)(3), which had limited special conditions to those “related to public safety.”<sup>53</sup> The Senate passed the bill, as substituted, on February 22, 2001.<sup>54</sup>

### *From the Senate Floor to the House Special Judiciary Committee*

Upon introduction, the House assigned the bill to its Special Judiciary Committee, which favorably reported the bill, as substituted, on March 8, 2001.<sup>55</sup> The Committee made only one change to the Senate Committee substitute.<sup>56</sup> The Committee added language to Code section 16-6-13.3(b), relating to forfeiture of property, which would require that no less than fifty percent of forfeited proceeds be distributed to help fund programs for crime victims.<sup>57</sup> The House Special Judiciary Committee added this language because there was a desire to return at least some ill-gotten funds to help the child victims of these crimes.<sup>58</sup>

### *From the House Special Judiciary Committee to the House Floor*

The House adopted the Special Judiciary Committee substitute and several floor amendments and unanimously passed the bill on March 19, 2001.<sup>59</sup> The floor amendments that were introduced and adopted

50. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem. The Act defines “special condition of probation or suspension of the sentence” as a condition of a probated or suspended sentence which is expressly imposed in addition to general conditions and is identified in writing that a violation of which would authorize the court to revoke the probation or suspension. Any probation sentence including fines, restitution, or other ongoing requirements would subject a probationer to supervision throughout the natural term of the requirement. See SB 34 (SCS), 2001 Ga. Gen. Assem.

51. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

52. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

53. Compare SB 34, as introduced, 2001 Ga. Gen. Assem., with SB 34 (SCS), 2001 Ga. Gen. Assem.

54. See Georgia Senate Voting Record, SB 34 (Feb. 22, 2001).

55. See State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001.

56. Compare SB 34 (SCS), 2001 Ga. Gen. Assem., with SB 34 (HCS), 2001 Ga. Gen. Assem.

57. Compare SB 34 (SCS), 2001 Ga. Gen. Assem., with SB 34 (HCS), 2001 Ga. Gen. Assem.

58. See Hecht Interview, *supra* note 2. Senator Hecht noted that some of these child victims are as young as eleven years old and may have mothers who are prostitutes themselves. See *id.* In such a situation, those children have little or no chance without state assistance. See *id.*

59. Compare SB 34 (HCS), 2001 Ga. Gen. Assem., with SB 34 (HCSFA), 2001 Ga. Gen. Assem. See

provided various changes to SB 34.<sup>60</sup> In addition to the amendments that provided minor language changes throughout the Act, Representatives Larry Walker of the 141st District and Glenn Richardson of the 26th District proposed an amendment to delete section 3 of the Act in its entirety, which related to Code section 16-5-70, outlining the offense of cruelty to children.<sup>61</sup> Representatives Walker and Richardson were concerned that the choice of whether to merge certain crimes should be left to the discretion of a judge or prosecutor.<sup>62</sup> The House passed the amendment.<sup>63</sup>

A final amendment that passed on the House floor was proposed by Representative Arnold Ragas of the 64th District. The amendment deleted in its entirety section 5 of the bill, eliminating provisions relating to property forfeiture.<sup>64</sup> Representative Ragas was concerned that as the bill was written, an entire innocent family could lose their home should the state affect forfeiture of that property.<sup>65</sup>

### *Subsequent Senate Treatment*

Dissatisfied with the version of the bill sent back by the House, Senators Greg Hecht of the 34th District and Robert Brown of the 26th District proposed an amendment which re-inserted a section regarding property forfeiture. Included in the amendment were revisions to Code section 16-6-13.2; instead of allowing “property” to be seized by the State, only “proceeds or money” were subject to seizure.<sup>66</sup> The purpose of this amendment was to narrow the items that could be forfeited to the State, simultaneously preserving some criminal penalties and garnering

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Georgia House of Representatives Voting Record, SB 34 (Mar. 19, 2001).

60. See Audio Recording of House Proceedings, Mar. 19, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio]. Of substantive import was the amendment suggested by Rep. Robert Reichert of the 126th House District. The amendment deleted the word “misdemeanor” from the escape provisions, thus eliminating the specter of an escapee serving a felony sentence based on a misdemeanor predicate crime. Compare SB 34 (HCS), 2001 Ga. Gen. Assem., with SB 34 (HCSFA), 2001 Ga. Gen. Assem.

61. See SB 34 (HCSFA), 2001 Ga. Gen. Assem.

62. See Hecht Interview, *supra* note 2.

63. See SB 34 (HCSFA), 2001 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001. A subsequent proposed amendment by Rep. Kathy Cox of the 105th District sought to reinstate language governing negligent child endangerment; however, the amendment failed to garner sufficient support. See Failed House Floor Amendment to SB 34, introduced by Rep. Kathy Cox, Mar. 19, 2001.

64. See SB 34 (HCSFA), 2001 Ga. Gen. Assem.

65. See *id.*

66. Compare SB 34 (HCSFA), 2001 Ga. Gen. Assem., with SB 34, as passed, 2001 Ga. Gen. Assem.



support for the baseline forfeiture provisions.<sup>67</sup> By changing the language to “proceeds or money,” in order for an item to be forfeited, the State would actually have to prove that a forfeited item was bought with “proceeds,” an obviously difficult task.<sup>68</sup> Thus, this change would help protect peoples’ homes from being taken by the State, especially in those cases where there are spouses or children involved who might not have any alternative housing prospects.<sup>69</sup>

Another part of the proposed Hecht and Brown amendment included adding a new subsection (f) to Code section 17-10-1, relating to sentencing, which would allow a judge to have continuing authority to modify a sentence for one year after the judge imposed the sentence.<sup>70</sup> The House approved the Senators’ amendment on March 21, 2001, and sent SB 34 back to the Senate on the same day.<sup>71</sup> The Senate then adopted the House substitute, as amended, on March 21, 2001.<sup>72</sup> Governor Roy Barnes signed SB 34 into law on March 27, 2001.<sup>73</sup>

### *The Act*

Section 1 of the Act provides the short title, “2001 Crime Prevention Act.”<sup>74</sup> Section 2 of the Act deals with the offense of escape.<sup>75</sup> The Act amends Code section 16-10-52 by enumerating escape as a felony, as long as the underlying predicate crime was itself a felony.<sup>76</sup> The former version punished escape only a misdemeanor, regardless of the crime necessitating incarceration.<sup>77</sup> Now, under the new law, if a person is convicted of a felony and then escapes, then that escape is also a felony.<sup>78</sup> Likewise, if a person is convicted of a misdemeanor and then escapes, then that escape is a misdemeanor.<sup>79</sup> Further, any person

67. See Hecht Interview, *supra* note 2.

68. See *id.*

69. See *id.*

70. See *id.*

71. See Georgia House of Representatives Voting Record, SB 34 (Mar. 21, 2001).

72. See State of Georgia Final Composite Status Sheet, SB 34, Mar. 21, 2001.

73. See 2001 Ga. Laws 94, § 9, at 99.

74. See *id.*, § 1, at 94.

75. See *id.*

76. Compare 1997 Ga. Laws 1040, § 10, at 1070 (formerly found at O.C.G.A. § 16-10-52 (Supp. 2000)), with O.C.G.A. § 16-10-52 (Supp. 2001).

77. Compare 1997 Ga. Laws 1040, § 10, at 1070 (formerly found at O.C.G.A. § 16-10-52 (Supp. 2000)), with O.C.G.A. § 16-10-52 (Supp. 2001).

78. See Telephone Interview with Sen. Billy Ray, Senate District No. 48 (Apr. 20, 2001) [hereinafter Ray Interview]; Hecht Interview, *supra* note 2.

79. See Ray Interview, *supra* note 78; Hecht Interview, *supra* note 2.

*charged* with a felony and convicted of escape during the pendency of trial is subject to imprisonment of between one to five years.<sup>80</sup> The former version applied only to one actually *convicted* of a felony.<sup>81</sup> Previously, the law had no provisions for those who were only charged and not yet convicted of a felony.<sup>82</sup> The Act also provides that regardless of the underlying crime, those prisoners escaping while armed with a dangerous weapon may now be punished by a sentence of one to twenty years.<sup>83</sup>

The Act amends Code section 16-6-13.2 by replacing subsection (c) with a new (c)(1) and (c)(2).<sup>84</sup> The Act provides that a person who operates a motor vehicle to *facilitate* child prostitution subjects that vehicle to forfeiture.<sup>85</sup> The former Code section only provided for forfeiture upon conviction of prostitution, pandering, or related crime.<sup>86</sup> Further, the Act expands the forfeiture provisions to include not only violations of Code section 16-6-12, involving pandering of minors, but also violations of Code section 16-6-11, involving pimping of a person under the age of eighteen.<sup>87</sup> The former Code section only referred to violations involving pandering.<sup>88</sup>

Section 4 of the Act creates a new Code section 16-6-13.3, relating to sexual offenses and forfeiture of proceeds or money.<sup>89</sup> The new section mandates forfeiture of any proceeds or money that facilitate child prostitution.<sup>90</sup> The Act sets out the procedures for forfeiture and the disposition of the proceeds, including an allocation of at least fifty percent of the forfeited proceeds to child victims.<sup>91</sup>

80. See O.C.G.A. § 16-10-52 (Supp. 2001).

81. Compare 1997 Ga. Laws 1040, § 10, at 1070 (formerly found at O.C.G.A. § 16-10-52 (2000)), with O.C.G.A. § 16-10-52 (Supp. 2001).

82. Compare 1997 Ga. Laws 1040, § 10, at 1070 (formerly found at O.C.G.A. § 16-10-52 (2000)), with O.C.G.A. § 16-10-52 (Supp. 2001).

83. Compare 1997 Ga. Laws 1040, § 10, at 1070 (formerly found at O.C.G.A. § 16-10-52 (2000)), with O.C.G.A. § 16-10-52 (Supp. 2001).

84. Compare 1999 Ga. Laws 472, § 1, at 474 (formerly found at O.C.G.A. § 16-13.2 (2000)), with O.C.G.A. § 16-6-13.2 (Supp. 2001).

85. See O.C.G.A. § 16-6-13.2 (Supp. 2001).

86. Compare 1999 Ga. Laws 472, § 1, at 474 (formerly found at O.C.G.A. § 16-13.2 (2000)), with O.C.G.A. § 16-6-13.2 (Supp. 2001).

87. Compare 1999 Ga. Laws 472, § 1, at 474 (formerly found at O.C.G.A. § 16-13.2 (2000)), with O.C.G.A. § 16-6-13.2 (Supp. 2001).

88. Compare 1999 Ga. Laws 472, § 1, at 474 (formerly found at O.C.G.A. § 16-13.2 (2000)), with O.C.G.A. § 16-6-13.2 (Supp. 2001).

89. See O.C.G.A. § 16-6-13.3 (Supp. 2001).

90. See *id.*

91. See *id.*

Section 5 of the Act, relating to sentencing, amends Code section 17-10-1 by giving judges the authority to revoke suspension or probation when a defendant violates any court rules or regulations.<sup>92</sup> A court may revoke a probationary sentence before it even begins and can modify a sentence within one year of being imposed or within 120 days of the remittitur.<sup>93</sup> In addition, the Act provides that the defendant need not be supervised while in the custody of the Department of Corrections or the State Board of Pardons and Paroles.<sup>94</sup> The Act also adds a new subsection (f), which allows the court imposing the sentence to have jurisdiction to correct, reduce, or modify any sentence, provided that the court gives notice to the prosecuting attorney.<sup>95</sup>

Section 6 of the Act, relating to probation, amends Code section 42-8-34 by allowing the sentencing judge to retain jurisdiction to revoke, rescind, modify or change a probated sentence.<sup>96</sup> The former version of the Code section only stated that a judge shall not lose jurisdiction during the term of the probated sentence.<sup>97</sup>

Finally, section 7 of the Act, relating to probation revocation, restitution, and limitation on supervision, amends Code section 42-8-34.1.<sup>98</sup> The Act defines “special condition of probation or suspension of the sentence” as a condition of a probated or suspended sentence which is expressly imposed in addition to general conditions and is identified in writing that a violation of which would authorize the court to revoke the probation or suspension.<sup>99</sup>

The Act allows a court to revoke a defendant’s probation and require the defendant to serve the remainder of his original sentence in confinement if he violates a special condition of probation.<sup>100</sup> Under the

92. Compare 1994 Ga. Laws 1960, § 9, at 1964 (formerly found at O.C.G.A. § 17-10-1 (2000)), with O.C.G.A. § 17-10-1 (Supp. 2001).

93. Compare 1994 Ga. Laws 1960, § 9, at 1964 (formerly found at O.C.G.A. § 17-10-1 (2000)), with O.C.G.A. § 17-10-1 (Supp. 2001).

94. Compare 1994 Ga. Laws 1960, § 9, at 1964 (formerly found at O.C.G.A. § 17-10-1 (2000)), with O.C.G.A. § 17-10-1 (Supp. 2001).

95. Compare 1994 Ga. Laws 1960, § 9, at 1964 (formerly found at O.C.G.A. § 17-10-1 (2000)), with O.C.G.A. § 17-10-1 (Supp. 2001).

96. Compare 1958 Ga. Laws 1, § 8, at 20 (formerly found at O.C.G.A. § 42-8-34 (2000)), with O.C.G.A. § 42-8-34 (Supp. 2001).

97. Compare 1958 Ga. Laws 1, § 8, at 20 (formerly found at O.C.G.A. § 42-8-34 (2000)), with O.C.G.A. § 42-8-34 (Supp. 2001).

98. Compare 1988 Ga. Laws 1911, § 1 (formerly found at O.C.G.A. § 42-8-34.1 (2000)), with O.C.G.A. § 42-8-34.1 (Supp. 2001).

99. Compare 1988 Ga. Laws 1911, § 1 (formerly found at O.C.G.A. § 42-8-34.1 (2000)), with O.C.G.A. § 42-8-34.1 (Supp. 2001).

100. Compare 1988 Ga. Laws 1911, § 1 (formerly found at O.C.G.A. § 42-8-34.1 (2000)), with O.C.G.A.

former law, the judge had little or no authority in sentencing a probationer who violated a special condition of probation.<sup>101</sup> However, this new provision is part of the legislative response to *Glover*, a decision that starkly illustrated judges' concern in that area.<sup>102</sup> The Act effectively rids judges of the concerns that the *Glover* decision produced.

*Teresa Byokawski*

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§ 42-8-34.1 (Supp. 2001).

101. Compare 1958 Ga. Laws 1, § 8, at 20 (formerly found at O.C.G.A. § 42-8-34 (2000)), with O.C.G.A. § 42-8-34 (Supp. 2001).

102. See Stoddard Interview, *supra* note 12.