

House Bill 1169

By: Representatives Holmes of the 48<sup>th</sup>, Post 1, Bruce of the 45<sup>th</sup>, Williams of the 128<sup>th</sup>, Stephens of the 124<sup>th</sup>, Post 2, Stanley-Turner of the 43<sup>rd</sup>, Post 2, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, so as to provide for uniformity in sentencing; to provide for definitions; to provide for target sentences and ranges; to provide for exceptions; to provide for classification of offenses and offenders; to provide a method for calculating sentences; to provide for reasons for departing from target sentences and ranges; to provide for related matters; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by adding a new Chapter 10A to read as follows:

"CHAPTER 10A

17-10A-1.

As used in this chapter, the term:

(1) '12 months' shall mean one year.

(2) 'Controlled substances' shall have the same definition as provided in Code Section 16-13-21.

(3) 'Departure sentence' shall mean a sentence that is imposed that exceeds or is less than the upper and lower limits for the particular Felony Level and Offender Level as specified in this chapter but within the range of punishment set by law for such crime.

(4) 'Felony Level' shall mean the classification of the offense for which the defendant is convicted in accordance with Code Section 17-10A-3.

(5) 'Involve a firearm' shall mean possession of a firearm as provided in Code Section 16-11-106.

(6) 'Marijuana' shall have the same definition as provided in Code Section 16-13-21.

(7) 'Nondeparture sentence' shall mean a sentence that is imposed that is within the upper and lower limits for the particular Felony Level and Offender Level as specified in this chapter.

(8) 'Offender Level' shall mean the classification of the defendant's previous criminal conduct in accordance with Code Section 17-10A-4.

(9) 'Probation' shall mean a sentence under which the person convicted of a crime is allowed to serve the sentence under court supervision other than in prison and includes sentences involving probation boot camps, detention centers, substance abuse centers, diversion centers, intensive probation supervision, day report centers, and electronic monitoring.

(10) 'Residential structure' shall mean the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another.

(11) 'Substantial commercial activity' shall mean the presence of three or more of the following factors:

(A) Possession of more than one pound of marijuana or one ounce of any controlled substance;

(B) Possession of a large amount of cash at the time of arrest;

(C) Possession of packaging materials for controlled substances or marijuana;

(D) Possession of drug transaction records or customer lists;

(E) Possession of paraphernalia and equipment for manufacturing controlled substances, including laboratory, lighting, ventilation, and power generating equipment; precursor chemicals; and recipes for manufacturing controlled substances;

(F) Modification of structures or buildings by fortification, painting, wiring, plumbing, or lighting to protect, conceal, or facilitate the sale, possession, use, or manufacture of controlled substances or marijuana; and

(G) Sale of a controlled substance or marijuana to a stranger.

(12) 'Target' or 'target sentence' means the preferred sentence length and method of punishment through either imprisonment, probation, or a combination of imprisonment and probation.

17-10A-2.

Notwithstanding any provision of law to the contrary, persons convicted of felonies in the superior courts of this state, except convictions for the offense of malice murder or felony murder as defined in Code Section 16-5-1, feticide as defined in Code Section 16-5-80, and convictions for possession of a firearm or knife in the commission of a crime as defined in Code Section 16-11-106, shall be sentenced in accordance with this chapter.

1 17-10A-3.

2 (a) For the purposes of sentencing under this chapter, felonies not involving controlled  
3 substances or marijuana shall be ranked as provided in this Code section in descending  
4 order of offense levels as Level A1, Level A2, Level B1, Level B2, Level C, Level D, and  
5 Level E. Offenses involving controlled substances or marijuana shall be ranked as  
6 provided in this Code section in descending order of offense levels as Level T, Level S1,  
7 Level S2, Level S3, Level S4, Level P1, Level P2, and Level P3.

8 (b) Level A1 felonies shall be:

9 (1) Aggravated child molestation as defined by Code Section 16-6-4;

10 (2) Aggravated sexual battery as defined by Code Section 16-6-22.2;

11 (3) Aggravated sodomy as defined by Code Section 16-6-2;

12 (4) Armed robbery as defined by Code Section 16-8-41;

13 (5) Hijacking an aircraft as defined by Code Section 16-5-44;

14 (6) Hijacking a motor vehicle as defined by Code Section 16-5-44.1;

15 (7) Kidnapping as defined by Code Section 16-5-40;

16 (8) Rape as defined by Code Section 16-6-1;

17 (9) Reckless abandonment as defined by Code Section 16-5-72;

18 (10) Treason as defined by Code Section 16-11-1; and

19 (11) Voluntary manslaughter as defined by Code Section 16-5-2.

20 (c) Level A2 felonies shall be:

21 (1) Aggravated assault with intent to rape, rob, or murder as defined by Code Section  
22 16-5-21;

23 (2) Aggravated assault on a peace officer, a person 65 years of age or older, or a  
24 correctional officer as defined by Code Section 16-5-21;

25 (3) Aggravated assault using a firearm on a student, teacher, or other school personnel  
26 within a school safety zone as defined by Code Section 16-5-21;

27 (4) Aggravated assault in a public transit vehicle or station as defined by Code Section  
28 16-5-21;

29 (5) Aggravated assault by discharging a firearm from within a motor vehicle as defined  
30 by Code Section 16-5-21;

31 (6) Aggravated battery as defined by Code Section 16-5-24;

32 (7) Child molestation as defined by Code Section 16-6-4;

33 (8) Incest as defined by Code Section 16-6-22;

34 (9) Inciting to insurrection as defined by Code Section 16-11-3;

35 (10) Insurrection as defined by Code Section 16-11-2;

36 (11) Involuntary manslaughter as defined by subsection (a) of Code Section 16-5-3;

1 (12) Manufacturing, transporting, distributing, possessing with intent to distribute, or  
2 offering to distribute an explosive device as defined by Code Sections 16-7-82 and  
3 16-7-83;

4 (13) Possessing, transporting, or receiving explosives or destructive devices with intent  
5 to kill, injure, or intimidate individuals or destroy public buildings as defined by Code  
6 Section 16-7-88;

7 (14) Racketeering as defined by Code Section 16-14-4;

8 (15) Robbery as defined by Code Section 16-8-40; and

9 (16) Vehicular homicide as defined by Code Section 40-6-393.

10 (d) Level B1 felonies shall be:

11 (1) Attempted murder or threatening of witnesses in official proceedings as defined by  
12 Code Section 16-10-32;

13 (2) Arson in the first degree as defined by Code Section 16-7-60;

14 (3) Burglary as defined by Code Section 16-7-1 of a residential structure;

15 (4) Cruelty to children in the first degree as defined by Code Section 16-5-70 when such  
16 offense involves a physical injury or the infliction of physical or mental pain to a child;

17 (5) Enticing a child for indecent purposes as defined by Code Section 16-6-5;

18 (6) Family violence battery as defined by Code Section 16-5-23.1 when such offense  
19 constitutes a felony;

20 (7) Keeping a place of prostitution as defined by Code Section 16-6-10 when such  
21 offense involves keeping a place of prostitution for a person under the age of 18 years to  
22 perform an act of prostitution or when such offense involves the assembly of two or more  
23 persons under the age of 18 years at a fixed place for the purpose of being solicited by  
24 others to perform an act of prostitution;

25 (8) Pimping as defined by Code Section 16-6-11 when such offense involves pimping  
26 for a person under the age of 18 years to perform an act of prostitution;

27 (9) Pandering as defined by Code Section 16-6-12 when such offense involves the  
28 solicitation of a person under the age of 18 years to perform an act of prostitution;

29 (10) Reckless conduct as defined by Code Section 16-5-60 when such offense constitutes  
30 a felony;

31 (11) Sexual exploitation of children as defined by Code Section 16-12-100; and

32 (12) Statutory rape as defined by Code Section 16-6-3 when the victim is under 14 years  
33 of age.

34 (e) Level B2 felonies shall be:

35 (1) Aggravated assault as defined by Code Section 16-5-21 other than those instances  
36 which are classified as Level A2 felonies;

37 (2) Aggravated stalking as defined by Code Section 16-5-91;

- 1 (3) Arson in the second degree as defined by Code Section 16-7-61;
- 2 (4) Burglary as defined by Code Section 16-7-1 involving other than a residential
- 3 structure;
- 4 (5) Computer pornography and child exploitation as defined by Code Section
- 5 16-12-100.2;
- 6 (6) Cruelty to children in the first degree as defined by Code Section 16-5-70 when such
- 7 offense does not involve a physical injury or the infliction of physical or mental pain to
- 8 a child;
- 9 (7) Cruelty to a person 65 years of age or older as defined by Code Section 16-5-100;
- 10 (8) Escape as defined by Code Section 16-10-52 after being convicted of or after being
- 11 charged with a felony;
- 12 (9) Escape as defined by Code Section 16-10-52 while armed with a dangerous weapon;
- 13 (10) False imprisonment as defined by Code Section 16-5-41;
- 14 (11) False imprisonment under color of legal process as defined by Code Section
- 15 16-5-42;
- 16 (12) Obstructing a law enforcement officer as defined by Code Section 16-10-24;
- 17 (13) Obstructing a firefighter as defined by Code Section 16-10-24.1;
- 18 (14) Obstructing emergency medical technicians or professionals as defined by Code
- 19 Section 16-10-24.2;
- 20 (15) Offering to assist in commission of suicide as defined by Code Section 16-5-5;
- 21 (16) Operating a motor vehicle after having been declared an habitual violator as defined
- 22 by Code Section 40-5-58 when, at the time of the commission of the offense, the offender
- 23 also committed the offense of driving under the influence of drugs or alcohol as defined
- 24 by Code Section 40-6-391;
- 25 (17) Serious injury by vehicle as defined by Code Section 40-6-394;
- 26 (18) Sexual assault against a person in custody as defined by Code Section 16-6-5.1;
- 27 (19) Stalking as defined by Code Section 16-5-91 when such offense constitutes a
- 28 felony; and
- 29 (20) Statutory rape as defined by Code Section 16-6-3 when the victim is 14 years of age
- 30 or older.
- 31 (f) Level C felonies shall be:
  - 32 (1) Contributing to the delinquency of a minor as defined by Code Section 16-12-1 when
  - 33 such offense constitutes a felony;
  - 34 (2) Using false, fictitious, or fraudulent identification documents as defined by Code
  - 35 Section 16-9-4 when such offense constitutes a felony;
  - 36 (3) Operating a motor vehicle after having been declared an habitual violator as defined
  - 37 by Code Section 40-5-58 when such offense constitutes a felony except when, at the time

1 of the commission of the offense, the offender also committed the offense of driving  
2 under the influence of drugs or alcohol as defined by Code Section 40-6-391;

3 (4) Owning, operating, or conducting a chop shop as defined by Code Section 16-8-83;

4 (5) Influencing a witness as defined by Code Section 16-10-93;

5 (6) Participating in criminal street gang activity as defined by Code Section 16-15-4;

6 (7) Committing perjury as defined by Code Section 16-10-70;

7 (8) Possession of firearm by convicted felon as defined by Code Section 16-11-131;

8 (9) Committing subornation of perjury as defined by Code Section 16-10-72; and

9 (10) Tampering with evidence as defined by Code Section 16-10-94.

10 (g) Level D felonies shall be:

11 (1) Bail jumping as defined by Code Section 16-10-51 when such offense constitutes a  
12 felony;

13 (2) Bribery as defined by Code Section 16-10-2;

14 (3) Criminal damage to property in the first degree as defined by Code Section 16-7-22;

15 (4) Making false statements in government matters as defined in Code Section 16-10-20;

16 (5) False swearing as defined by Code Section 16-10-71;

17 (6) Forgery in the first degree as defined by Code Section 16-9-1;

18 (7) Financial transaction card theft as defined by Code Section 16-9-31 when the amount  
19 of the theft exceeds \$5,000.00;

20 (8) Making terroristic threats as defined by Code Section 16-11-37;

21 (9) Theft by bringing stolen property into the state as defined by Code Section 16-8-9  
22 when the value of the property exceeds \$5,000.00;

23 (10) Theft by conversion as defined by Code Section 16-8-4 when the value of the  
24 property exceeds \$5,000.00;

25 (11) Theft by deception as defined by Code Section 16-8-3 when the value of the  
26 property exceeds \$5,000.00;

27 (12) Theft by extortion as defined by Code Section 16-8-16 when the value of the  
28 property exceeds \$5,000.00;

29 (13) Theft by receiving stolen property as defined by Code Section 16-8-7 when the  
30 value of the property exceeds \$5,000.00;

31 (14) Theft by receiving property stolen in another state as defined by Code Section  
32 16-8-8 when the value of the property exceeds \$5,000.00;

33 (15) Theft by shoplifting as defined by Code Section 16-8-14 when the value of the  
34 property exceeds \$5,000.00;

35 (16) Theft by taking as defined by Code Section 16-8-2 when the value of the property  
36 exceeds \$5,000.00;

1 (17) Theft of lost or mislaid property as defined by Code Section 16-8-6 when the value  
2 of the property exceeds \$5,000.00; and

3 (18) Theft of services as defined by Code Section 16-8-5 when the value of the services  
4 exceeds \$5,000.00.

5 (h) Level E felonies shall be:

6 (1) Battery as defined by Code Section 16-5-23.1 when such offense constitutes a felony;

7 (2) Carrying a concealed weapon as defined by Code Section 16-11-126 when such  
8 offense is a felony;

9 (3) Carrying a weapon at school as defined by Code Section 16-11-127.1;

10 (4) Conspiring to defraud the state or any of its political subdivisions as defined by Code  
11 Section 16-10-21;

12 (5) Criminal damage to property in the second degree as defined by Code Section  
13 16-7-23;

14 (6) Criminal use of an article with an altered identification mark as defined by Code  
15 Section 16-9-70;

16 (7) Cruelty to children in the second degree as defined by subsection (e) of Code Section  
17 16-5-70 when such offense constitutes a felony;

18 (8) Dogfighting as defined by Code Section 16-12-37;

19 (9) Financial transaction card theft as defined by Code Section 16-9-31 when the amount  
20 of the theft is \$5,000.00 or less;

21 (10) Forgery of a financial transaction card as defined by Code Section 16-9-32;

22 (11) Hindering apprehension or punishment of a criminal as defined by Code Section  
23 16-10-50;

24 (12) Impersonating a public officer or employee as defined by Code Section 16-10-23;

25 (13) Impersonating another in the acknowledgment of recognizance, bail, or judgment  
26 as defined by Code Section 16-10-73;

27 (14) Impersonating another in the course of an action, proceeding, or prosecution as  
28 defined in Code Section 16-10-96;

29 (15) Interfering with custody as defined in Code Section 16-5-45 when such offense  
30 constitutes a felony;

31 (16) Interfering with government property as defined by Code Section 16-7-24;

32 (17) Issuing bad checks as defined by Code Section 16-9-20 when such offense is a  
33 felony;

34 (18) Peeping Tom as defined by Code Section 16-11-61;

35 (19) Possessing tools for the commission of a crime as defined by Code Section 16-7-20;

36 (20) Theft by bringing stolen property into the state as defined by Code Section 16-8-9  
37 when the value of the property equals or is less than \$5,000.00;

(21) Theft by conversion as defined by Code Section 16-8-4 when the value of the property equals or is less than \$5,000.00;

(22) Theft by deception as defined by Code Section 16-8-3 when the value of the property equals or is less than \$5,000.00;

(23) Theft by extortion as defined by Code Section 16-8-16 when the value of the property equals or is less than \$5,000.00;

(24) Theft by receiving stolen property as defined by Code Section 16-8-7 when the value of the property equals or is less than \$5,000.00;

(25) Theft by receiving property stolen in another state as defined by Code Section 16-8-8 when the value of the property equals or is less than \$5,000.00;

(26) Theft by shoplifting as defined by Code Section 16-8-14 when the value of the property equals or is less than \$5,000.00;

(27) Theft by taking as defined by Code Section 16-8-2 when the value of the property equals or is less than \$5,000.00;

(28) Theft of lost or mislaid property as defined by Code Section 16-8-6 when the value of the property equals or is less than \$5,000.00;

(29) Theft of services as defined by Code Section 16-8-5 when the value of the services equals or is less than \$5,000.00;

(30) Transmitting false public alarm as defined by Code Section 16-10-28; and

(31) Any other felony, not involving controlled substances or marijuana, that is not specifically assigned an offense level in this Code section.

(i) A Level T felony shall be trafficking in cocaine, illegal drugs, marijuana, or methamphetamine as defined by Code Section 16-13-31.

(j) A Level S1 felony shall be the manufacture, sale, delivery, distribution, dispensing, administering, or possession with intent to distribute of any controlled substance or marijuana as defined by Code Section 16-13-30 that involves a firearm.

(k) A Level S2 felony shall be the manufacture, delivery, distribution, dispensing, administering, sale, or possession with intent to distribute of any controlled substance or marijuana as defined by Code Section 16-13-30 that involves substantial commercial activity.

(l) A Level S3 felony shall be the manufacture, delivery, distribution, dispensing, administering, sale, or possession with intent to distribute of any controlled substance as defined by Code Section 16-13-30 that does not involve a firearm or substantial commercial activity.

(m) A Level S4 felony shall be the manufacture, delivery, distribution, dispensing, administering, sale, or possession with intent to distribute of marijuana as defined by Code Section 16-13-30 that does not involve a firearm or substantial commercial activity.



(n) A Level P1 felony shall be the possession of a controlled substance or marijuana as defined by Code Section 16-13-30 when the amount of the controlled substance is one ounce or more or the amount of marijuana is one pound or more.

(o) A Level P2 felony shall be the possession of a controlled substance or marijuana as defined by Code Section 16-13-30 when the amount of the controlled substance is less than one ounce.

(p) A Level P3 felony shall be the possession of marijuana as defined by Code Section 16-13-30 when the amount of marijuana is less than one pound.

(q) Criminal attempt to commit a felony shall be considered to be at the level immediately below the level of the felony which was attempted, except that criminal attempt to commit Level E felonies shall be Level E felonies, criminal attempt to commit Level S4 felonies shall be Level S4 felonies, and criminal attempt to commit Level P3 felonies shall be Level P3 felonies.

17-10A-4.

(a) In sentencing a person who has been convicted of a felony, the sentencing court shall determine the person's Offender Level as provided in this Code section by adding the points specified in this Code section for each prior conviction. A person with no points or one point shall be Offender Level 1; a person with two, three, or four points shall be Offender Level 2; a person with five or six points shall be Offender Level 3; a person with seven, eight, or nine points shall be Offender Level 4; and a person with ten or more points shall be Offender Level 5.

(b)(1) A person shall receive five points for each conviction for the following felony offenses:

(A) Murder as defined by Code Section 16-5-1;

(B) Aggravated assault as defined by Code Section 16-5-21;

(C) Aggravated child molestation as defined by Code Section 16-6-4;

(D) Aggravated sexual battery as defined by Code Section 16-6-22.2;

(E) Aggravated sodomy as defined by Code Section 16-6-2;

(F) Armed robbery as defined by Code Section 16-8-41;

(G) Attempted murder or threatening of witnesses in official proceedings as defined by Code Section 16-10-32;

(H) Child molestation as defined by Code Section 16-6-4;

(I) Cruelty to children in the first degree as defined by Code Section 16-5-70 when such offense involves a physical injury or the infliction of physical or mental pain to a child;

(J) Enticing a child for indecent purposes as defined by Code Section 16-6-5;

- (K) Family violence battery as defined by Code Section 16-5-23.1 when such offense constitutes a felony;
- (L) Feticide as defined by Code Section 16-5-80;
- (M) Hijacking an aircraft as defined by Code Section 16-5-44;
- (N) Hijacking a motor vehicle as defined by Code Section 16-5-44.1;
- (O) Incest as defined by Code Section 16-6-22;
- (P) Involuntary manslaughter as defined by subsection (a) of Code Section 16-5-3;
- (Q) Kidnapping as defined by Code Section 16-5-40;
- (R) Rape as defined by Code Section 16-6-1;
- (S) Reckless abandonment as defined by Code Section 16-5-72;
- (T) Robbery as defined by Code Section 16-8-40;
- (U) Sexual exploitation of children as defined by Code Section 16-12-100;
- (V) Statutory rape as defined by Code Section 16-6-3; and
- (W) Voluntary manslaughter as defined by Code Section 16-5-2.

(2) A person shall receive two points for each conviction for the following felony offenses:

- (A) Arson in the first degree as defined by Code Section 16-7-60;
- (B) Burglary as defined by Code Section 16-7-1;
- (C) Criminal damage to property in the first degree as defined by Code Section 16-7-22;
- (D) Criminal damage to property in the second degree as defined by Code Section 16-7-23;
- (E) Financial transaction card theft as defined by Code Section 16-9-31;
- (F) Forgery in the first degree as defined by Code Section 16-9-1;
- (G) Forgery of a financial transaction card as defined by Code Section 16-9-32;
- (H) Manufacturing, transporting, distributing, possessing with intent to distribute, or offering to distribute an explosive device as defined by Code Sections 16-7-82 and 16-7-83;
- (I) Possessing, transporting, or receiving explosives or destructive devices with intent to kill, injure, or intimidate individuals or destroy public buildings as defined by Code Section 16-7-88;
- (J) Possession of tools for the commission of a crime as defined by Code Section 16-7-20;
- (K) Theft by bringing stolen property into the state as defined by Code Section 16-8-9;
- (L) Theft by conversion as defined by Code Section 16-8-4;
- (M) Theft by deception as defined by Code Section 16-8-3;
- (N) Theft by extortion as defined by Code Section 16-8-16;

- 1 (O) Theft by receiving stolen property as defined by Code Section 16-8-7;  
2 (P) Theft by receiving property stolen in another state as defined by Code Section  
3 16-8-8;  
4 (Q) Theft by shoplifting as defined by Code Section 16-8-14;  
5 (R) Theft by taking as defined by Code Section 16-8-2;  
6 (S) Theft of lost or mislaid property as defined by Code Section 16-8-6; and  
7 (T) Theft of services as defined by Code Section 16-8-5.

8 (3) A person shall receive two points for each conviction for the following felony  
9 offenses:

10 (A) Manufacture, sale, delivery, distribution, dispensing, administering, and possession  
11 with intent to distribute of any controlled substance or marijuana as defined by Code  
12 Section 16-13-30;

13 (B) Possession of a controlled substance or marijuana as defined by Code Section  
14 16-13-30; and

15 (C) Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine as defined  
16 by Code Section 16-13-31.

17 (4) A person shall receive one point for each conviction for a felony for which a point  
18 value is not otherwise assigned by this Code section.

19 (5) A person shall receive one point if such person has been convicted of two or more  
20 nontraffic misdemeanor offenses.

21 (6) For convictions under federal law or from other states, the sentencing court shall  
22 determine the point value such conviction would have received had the conviction  
23 occurred in this state and assign such point value to the conviction.

24 17-10A-5.

25 (a) For persons convicted of a Level A1 felony:

26 (1) The target sentence for Offender Level 1 shall be 120 months' imprisonment with a  
27 nondeparture sentence range of 120 months' to 156 months' imprisonment;

28 (2) The target sentence for Offender Level 2 shall be 132 months' imprisonment with a  
29 nondeparture sentence range of 120 months' to 180 months' imprisonment;

30 (3) The target sentence for Offender Level 3 shall be 156 months' imprisonment with a  
31 nondeparture sentence range of 132 months' to 204 months' imprisonment;

32 (4) The target sentence for Offender Level 4 shall be 168 months' imprisonment with a  
33 nondeparture sentence range of 144 months' to 216 months' imprisonment; and

34 (5) The target sentence for Offender Level 5 shall be 180 months' imprisonment with a  
35 nondeparture sentence range of 168 months' to 240 months' imprisonment.

36 (b) For persons convicted of a Level A2 felony:

1 (1) The target sentence for Offender Level 1 shall be 48 months' imprisonment or  
2 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
3 range of 36 months' to 60 months' imprisonment or probation, or a combination of  
4 imprisonment and probation;

5 (2) The target sentence for Offender Level 2 shall be 52 months' imprisonment or  
6 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
7 range of 40 months' to 72 months' imprisonment or probation, or a combination of  
8 imprisonment and probation;

9 (3) The target sentence for Offender Level 3 shall be 60 months' imprisonment or  
10 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
11 range of 54 months' to 86 months' imprisonment or probation, or a combination of  
12 imprisonment and probation;

13 (4) The target sentence for Offender Level 4 shall be 66 months' imprisonment or  
14 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
15 range of 60 months' to 96 months' imprisonment or probation, or a combination of  
16 imprisonment and probation; and

17 (5) The target sentence for Offender Level 5 shall be 76 months' imprisonment with a  
18 nondeparture sentence range of 70 months' to 140 months' imprisonment or probation,  
19 or a combination of imprisonment and probation.

20 (c) For persons convicted of a Level B1 felony:

21 (1) The target sentence for Offender Level 1 shall be 34 months' imprisonment or  
22 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
23 range of 16 months' to 40 months' imprisonment or probation, or a combination of  
24 imprisonment and probation;

25 (2) The target sentence for Offender Level 2 shall be 40 months' imprisonment or  
26 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
27 range of 22 months' to 54 months' imprisonment or probation, or a combination of  
28 imprisonment and probation;

29 (3) The target sentence for Offender Level 3 shall be 46 months' imprisonment or  
30 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
31 range of 36 months' to 72 months' imprisonment or probation, or a combination of  
32 imprisonment and probation;

33 (4) The target sentence for Offender Level 4 shall be 54 months' imprisonment or  
34 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
35 range of 48 months' to 86 months' imprisonment or probation, or a combination of  
36 imprisonment and probation; and

(5) The target sentence for Offender Level 5 shall be 65 months' imprisonment with a nondeparture sentence range of 60 months' to 120 months' imprisonment or probation, or a combination of imprisonment and probation.

(d) For persons convicted of a Level B2 felony:

(1) The target sentence for Offender Level 1 shall be 18 months' probation with a nondeparture sentence range of 12 months' to 24 months' probation;

(2) The target sentence for Offender Level 2 shall be 20 months' probation with a nondeparture sentence range of 15 months' to 30 months' probation;

(3) The target sentence for Offender Level 3 shall be 24 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 18 months' to 36 months' imprisonment or probation, or a combination of imprisonment and probation;

(4) The target sentence for Offender Level 4 shall be 30 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 24 months' to 48 months' imprisonment or probation, or a combination of imprisonment and probation; and

(5) The target sentence for Offender Level 5 shall be 42 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 36 months' to 60 months' imprisonment or probation, or a combination of imprisonment and probation.

(e) For persons convicted of a Level C felony:

(1) The target sentence for Offender Level 1 shall be 12 months' probation with a nondeparture sentence range of 12 months' to 18 months' probation;

(2) The target sentence for Offender Level 2 shall be 15 months' probation with a nondeparture sentence range of 12 months' to 24 months' probation;

(3) The target sentence for Offender Level 3 shall be 18 months' probation with a nondeparture sentence range of 15 months' to 30 months' probation;

(4) The target sentence for Offender Level 4 shall be 24 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 18 months' to 36 months' imprisonment or probation, or a combination of imprisonment and probation; and

(5) The target sentence for Offender Level 5 shall be 36 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 24 months' to 48 months' imprisonment or probation, or a combination of imprisonment and probation.

(f) For persons convicted of a Level D felony:

(1) The target sentence for Offender Level 1 shall be a period of probation within the limits of the sentence which may lawfully be imposed;

(2) The target sentence for Offender Level 2 shall be a period of probation within the limits of the sentence which may lawfully be imposed;

(3) The target sentence for Offender Level 3 shall be 12 months' probation with a nondeparture sentence range of 12 months' to 18 months' probation;

(4) The target sentence for Offender Level 4 shall be 12 months' probation with a nondeparture sentence range of 12 months' to 24 months' probation; and

(5) The target sentence for Offender Level 5 shall be 18 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 15 months' to 30 months' imprisonment or probation, or a combination of imprisonment and probation.

(g) For persons convicted of a Level E felony:

(1) The target sentence for Offender Level 1 shall be a period of probation within the limits of the sentence which may lawfully be imposed;

(2) The target sentence for Offender Level 2 shall be a period of probation within the limits of the sentence which may lawfully be imposed;

(3) The target sentence for Offender Level 3 shall be a period of probation within the limits of the sentence which may lawfully be imposed;

(4) The target sentence for Offender Level 4 shall be 12 months' probation with a nondeparture sentence range of 12 months' to 18 months' probation; and

(5) The target sentence for Offender Level 5 shall be 15 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 12 months' to 24 months' imprisonment or probation, or a combination of imprisonment and probation.

(h) For persons convicted of a Class T felony, the target sentence shall be a period of imprisonment within the limits of the sentence which may lawfully be imposed.

(i) For persons convicted of a Level S1 felony:

(1) The target sentence for Offender Level 1 shall be 60 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 36 months' to 72 months' imprisonment or probation, or a combination of imprisonment and probation;

(2) The target sentence for Offender Level 2 shall be 84 months' imprisonment with a nondeparture sentence range of 48 months' to 96 months' imprisonment;

(3) The target sentence for Offender Level 3 shall be 120 months' imprisonment with a nondeparture sentence range of 72 months' to 144 months' imprisonment;

(4) The target sentence for Offender Level 4 shall be 138 months' imprisonment with a nondeparture sentence range of 96 months' to 168 months' imprisonment; and

(5) The target sentence for Offender Level 5 shall be 156 months' imprisonment with a nondeparture sentence range of 120 months' to 180 months' imprisonment.

(j) For persons convicted of a Level S2 felony:

(1) The target sentence for Offender Level 1 shall be 30 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 24 months' to 36 months' imprisonment or probation, or a combination of imprisonment and probation;

(2) The target sentence for Offender Level 2 shall be 36 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 30 months' to 48 months' imprisonment or probation, or a combination of imprisonment and probation;

(3) The target sentence for Offender Level 3 shall be 48 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 36 months' to 60 months' imprisonment or probation, or a combination of imprisonment and probation;

(4) The target sentence for Offender Level 4 shall be 66 months' imprisonment with a nondeparture sentence range of 48 months' to 72 months' imprisonment; and

(5) The target sentence for Offender Level 5 shall be 84 months' imprisonment with a nondeparture sentence range of 60 months' to 120 months' imprisonment.

(k) For persons convicted of a Level S3 felony:

(1) The target sentence for Offender Level 1 shall be 15 months' probation with a nondeparture sentence range of 12 months' to 24 months' probation;

(2) The target sentence for Offender Level 2 shall be 18 months' probation with a nondeparture sentence range of 15 months' to 30 months' probation;

(3) The target sentence for Offender Level 3 shall be 24 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 18 months' to 36 months' imprisonment or probation, or a combination of imprisonment and probation;

(4) The target sentence for Offender Level 4 shall be 30 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 24 months' to 48 months' imprisonment or probation, or a combination of imprisonment and probation; and

(5) The target sentence for Offender Level 5 shall be 42 months' imprisonment with a nondeparture sentence range of 36 months' to 60 months' imprisonment.

(l) For persons convicted of a Level S4 felony:

1 (1) The target sentence for Offender Level 1 shall be 12 months' probation with a  
2 nondeparture sentence range of 12 months' to 18 months' probation;

3 (2) The target sentence for Offender Level 2 shall be 18 months' probation with a  
4 nondeparture sentence range of 12 months' to 24 months' probation;

5 (3) The target sentence for Offender Level 3 shall be 24 months' probation with a  
6 nondeparture sentence range of 15 months' to 30 months' probation;

7 (4) The target sentence for Offender Level 4 shall be 30 months' imprisonment or  
8 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
9 range of 18 months' to 36 months' imprisonment or probation, or a combination of  
10 imprisonment and probation; and

11 (5) The target sentence for Offender Level 5 shall be 36 months' imprisonment with a  
12 nondeparture sentence range of 24 months' to 48 months' imprisonment.

13 (m) For persons convicted of a Level P1 felony:

14 (1) The target sentence for Offender Level 1 shall be 18 months' probation with a  
15 nondeparture sentence range of 12 months' to 36 months' probation;

16 (2) The target sentence for Offender Level 2 shall be 24 months' probation with a  
17 nondeparture sentence range of 18 months' to 42 months' probation;

18 (3) The target sentence for Offender Level 3 shall be 40 months' imprisonment or  
19 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
20 range of 24 months' to 60 months' imprisonment or probation, or a combination of  
21 imprisonment and probation;

22 (4) The target sentence for Offender Level 4 shall be 48 months' imprisonment or  
23 probation, or a combination of imprisonment and probation, with a nondeparture sentence  
24 range of 36 months' to 72 months' imprisonment or probation, or a combination of  
25 imprisonment and probation; and

26 (5) The target sentence for Offender Level 5 shall be 60 months' imprisonment with a  
27 nondeparture sentence range of 48 months' to 84 months' imprisonment.

28 (n) For persons convicted of a Level P2 felony:

29 (1) The target sentence for Offender Level 1 shall be 12 months' probation with a  
30 nondeparture sentence range of 12 months' to 18 months' probation;

31 (2) The target sentence for Offender Level 2 shall be 15 months' probation with a  
32 nondeparture sentence range of 12 months' to 21 months' probation;

33 (3) The target sentence for Offender Level 3 shall be 18 months' probation with a  
34 nondeparture sentence range of 15 months' to 24 months' probation;

35 (4) The target sentence for Offender Level 4 shall be 21 months' probation with a  
36 nondeparture sentence range of 18 months' to 30 months' probation; and



(5) The target sentence for Offender Level 5 shall be 24 months' imprisonment or probation, or a combination of imprisonment and probation, with a nondeparture sentence range of 18 months' to 36 months' imprisonment or probation, or a combination of imprisonment and probation.

(o) For persons convicted of a Level P3 felony:

(1) The target sentence for Offender Level 1 shall be 12 months' probation with a nondeparture sentence range of 12 months' to 15 months' probation;

(2) The target sentence for Offender Level 2 shall be 12 months' probation with a nondeparture sentence range of 12 months' to 18 months' probation;

(3) The target sentence for Offender Level 3 shall be 15 months' probation with a nondeparture sentence range of 12 months' to 21 months' probation;

(4) The target sentence for Offender Level 4 shall be 18 months' probation with a nondeparture sentence range of 12 months' to 24 months' probation; and

(5) The target sentence for Offender Level 5 shall be 21 months' probation with a nondeparture sentence range of 12 months' to 36 months' probation.

(p) If the maximum sentence for a particular offense set by law is less than the target sentence, the target sentence shall not apply. If the maximum sentence for a particular offense set by law is less than the maximum nondeparture sentence range, the maximum nondeparture sentence range shall be the maximum sentence set by law. If the minimum sentence for a particular offense set by law is greater than the target sentence, the target sentence shall not apply. If the minimum sentence for a particular offense set by law is greater than the minimum nondeparture sentence range, the minimum nondeparture sentence range shall be the minimum sentence set by law.

17-10A-6.

(a) The sentencing court shall sentence the defendant within the minimum and maximum sentences set by law for the offense for which the defendant was convicted. In an ordinary case with no mitigating or aggravating factors, the court should sentence the defendant in accordance with the target sentences set forth in Code Section 17-10A-5.

(b) For sentences that are above or below the target sentence for a particular Offender Level and Felony Level but within the nondeparture sentence range for the Offender Level and Felony Level, the sentencing court may make findings and state the reasons for departing from the target sentence in the court's discretion.

(c) For sentences that are above or below the nondeparture sentence range for a particular Offender Level and Felony Level, that impose a prison sentence when the target sentence is for a probated sentence, or that impose probation when the target sentence is a sentence

1 for time in prison, the court shall make specific findings and state specifically the basis  
2 justifying a departure from the target sentence and nondeparture sentence range.

3 (d) The sentencing court may depart from the target sentence and nondeparture sentence  
4 range for any one or more of the following factors:

5 (1) Impact of the crime on the victim;

6 (2) Prior violence against the victim by the defendant;

7 (3) Age and mental and physical capacity of the victim;

8 (4) Economic impact of the crime;

9 (5) Abuse of a position of trust by the defendant;

10 (6) Age and mental and physical capacity of the defendant;

11 (7) Degree of intended harm by the defendant;

12 (8) Restitution by the defendant;

13 (9) Type of drug involved;

14 (10) Quantity of drug involved;

15 (11) Defendant's participation in a criminal enterprise or organization;

16 (12) Conduct of the defendant;

17 (13) Location of the crime;

18 (14) Amount of cash or currency involved or present at the crime scene or in the  
19 possession of the defendant;

20 (15) Addiction of the defendant to drugs or alcohol;

21 (16) Whether the defendant has sought and obtained treatment for drug or alcohol  
22 addiction or abuse;

23 (17) Possession and use of a weapon during the crime by the defendant;

24 (18) Role of the defendant in the crime;

25 (19) Assistance to law enforcement given by the defendant;

26 (20) Community or family support of the defendant;

27 (21) Acceptance of responsibility by the defendant;

28 (22) Negotiated plea of the defendant;

29 (23) Application of sentencing factors overstates or understates the prior record of the  
30 defendant;

31 (24) Misdemeanor convictions of the defendant;

32 (25) Juvenile record of the defendant;

33 (26) Same offense type;

34 (27) Previous failure of the defendant while under supervision;

35 (28) Defendant's legal status at time of arrest;

36 (29) Frequency of the offense; and

37 (30) Any other factor specified by the sentencing court justifying departure."

**SECTION 2.**

1

2 This Act shall become effective on July 1, 2004, and shall apply to all felony convictions  
3 occurring on and after such date.

**SECTION 3.**

4

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