

Senate Bill 521

By: Senator Smith of the 52nd

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 16, 17, 37, and 42 of the Official Code of Georgia Annotated, relating,  
2 respectively, to crimes and offenses, criminal procedure, mental health, and penal  
3 institutions, so as to provide for enhanced penalties and civil commitment for certain sex  
4 offenses when aggravating circumstances are found beyond a reasonable doubt; to provide  
5 for legislative findings; to change punishment provisions relating to rape; to change  
6 punishment provisions relating to sodomy and aggravated sodomy; to change punishment  
7 provisions relating to child molestation and aggravated child molestation; to change  
8 punishment provisions relating to aggravated sexual battery; to provide for lesser punishment  
9 for certain sexual offenses committed by persons of certain ages; to change certain provisions  
10 relating to punishment of serious violent offenders; to provided for enhanced penalties for  
11 certain sex offenses; to provide for notice of enhanced punishment; to provide for bifurcated  
12 proceedings if enhanced penalties are sought and practice and procedure related thereto; to  
13 provide for aggravating circumstances; to provide for involuntary civil commitment of  
14 sexually violent predators; to provide for legislative intent; to provide for definitions; to  
15 establish multidisciplinary teams; to provide for notice to prosecuting attorneys and  
16 multidisciplinary teams of the release of persons convicted of sexually violent offenses; to  
17 require certain information to be provided to certain persons; to provide for practice and  
18 procedure of civil commitment; to provide for circumstances where a person is released from  
19 total confinement; to provide for time limitations on assessment, notification, and filing a  
20 petition to hold a person in custody; to provide for the contents of the civil commitment  
21 petition; to provide for the determination of probable cause, hearing, and evaluation; to  
22 provide for the Department of Human Resources to enter into contracts for facilities and  
23 services related to civil commitment; to provide for rules of procedure and evidence; to  
24 provide for trial proceedings, the right to counsel and experts, and jury trials; to provide for  
25 indigent persons to have the right to counsel and other experts; to provide for the  
26 commitment procedure, mistrials, housing, and counsel and costs in indigent appellate cases;  
27 to provide for examinations, notice, and court hearings for release of committed persons; to  
28 provide for the burden of proof; to provide authorization for persons to petition for release

1 and the procedure therefor; to provide for rights of persons committed; to provide for release  
2 of records to agencies, multidisciplinary teams, and the prosecuting attorney; to provide for  
3 the right of habeas corpus; to provide for constitutional considerations; to provide for  
4 immunity from civil liability; to provide for applicability; to provide for notice to victims of  
5 release of persons committed as sexually violent predators; to provide for penalties for  
6 escape from civil commitment; to provide for subsistence fees and costs of treatment; to  
7 provide for program costs; to provide for establishment of rules; to provide for quarterly  
8 reports; to provide for other related matters; to provide for an effective date and applicability;  
9 to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The General Assembly finds that a small but extremely dangerous number of sexually violent  
13 predators exist who generally have antisocial personality features which are unamenable to  
14 existing mental illness treatment modalities, and those features render them likely to engage  
15 in criminal, sexually violent behavior. The General Assembly further finds that the  
16 likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence  
17 is high. The existing involuntary commitment procedures in Georgia for the treatment and  
18 care of mentally ill persons are inadequate to address the risk these sexually violent predators  
19 pose to society. The General Assembly further finds that the prognosis for rehabilitating  
20 sexually violent predators in a prison setting is poor; the treatment needs of this population  
21 are very long term; and the treatment modalities for this population are very different from  
22 the traditional treatment modalities for people appropriate for commitment under current law.  
23 It is therefore the intent of the legislature to create a civil commitment procedure for the  
24 long-term care and treatment of sexually violent predators.

25 **SECTION 2.**

26 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
27 amended by striking Code Section 16-6-1, relating to rape, and inserting in lieu thereof the  
28 following:

29 "16-6-1.

30 (a) A person commits the offense of rape when he has carnal knowledge of:

31 (1) A female forcibly and against her will; or

32 (2) A female who is less than ten years of age.

1 Carnal knowledge in rape occurs when there is any penetration of the female sex organ by  
 2 the male sex organ. The fact that the person allegedly raped is the wife of the defendant  
 3 shall not be a defense to a charge of rape.

4 (b) A person convicted of the offense of rape shall be punished by death, by imprisonment  
 5 for life without parole, by imprisonment for life, or by imprisonment for not less than ten  
 6 nor more than 20 years. Any person convicted under this Code section shall, in addition,  
 7 be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1,  
 8 17-10-6.2, and 17-10-7.

9 (c) When evidence relating to an allegation of rape is collected in the course of a medical  
 10 examination of the person who is the victim of the alleged crime, the law enforcement  
 11 agency investigating the alleged crime shall be responsible for the cost of the medical  
 12 examination to the extent that expense is incurred for the limited purpose of collecting  
 13 evidence."

### 14 SECTION 3.

15 Said title is further amended by striking Code Section 16-6-2, relating to sodomy and  
 16 aggravated sodomy, and inserting in lieu thereof the following:

17 "16-6-2.

18 (a)(1) A person commits the offense of sodomy when he or she performs or submits to  
 19 any sexual act involving the sex organs of one person and the mouth or anus of another.

20 (2) A person commits the offense of aggravated sodomy when he or she commits  
 21 sodomy with force and against the will of the other person or when he or she commits  
 22 sodomy with a person who is less than ten years of age. The fact that the person  
 23 allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of  
 24 aggravated sodomy.

25 (b)(1) Except as provided in paragraph (2) of this subsection, a A person convicted of  
 26 the offense of sodomy shall be punished by imprisonment for not less than one nor more  
 27 than 20 years.

28 (2) If the victim is 14 or 15 years of age and the person convicted of sodomy is no more  
 29 than three years older than the victim, such person shall be guilty of a misdemeanor.

30 (3) A person convicted of the offense of aggravated sodomy shall be punished by  
 31 imprisonment for life or by imprisonment for not less than ten nor more than 30 years.  
 32 Any person convicted under this Code section of the offense of aggravated sodomy shall,  
 33 in addition, be subject to the sentencing and punishment provisions of Code Sections  
 34 17-10-6.1, 17-10-6.2, and 17-10-7.

35 (c) When evidence relating to an allegation of aggravated sodomy is collected in the  
 36 course of a medical examination of the person who is the victim of the alleged crime, the

1 law enforcement agency investigating the alleged crime shall be financially responsible for  
 2 the cost of the medical examination to the extent that expense is incurred for the limited  
 3 purpose of collecting evidence."

#### 4 SECTION 4.

5 Said title is further amended by striking Code Section 16-6-4, relating to child molestation  
 6 and aggravated child molestation, and inserting in lieu thereof the following:

7 "16-6-4.

8 (a) A person commits the offense of child molestation when he or she does any immoral  
 9 or indecent act to or in the presence of or with any child under the age of 16 years with the  
 10 intent to arouse or satisfy the sexual desires of either the child or the person.

11 ~~(b)(1) Except as provided in paragraph (2) of this subsection, a~~ A person convicted of  
 12 a first offense of child molestation shall be punished by imprisonment for not less than  
 13 five nor more than 20 years and shall be subject to the sentencing and punishment  
 14 provisions of Code Section 17-10-7. ~~Upon such first conviction of the offense of child~~  
 15 ~~molestation, the judge may probate the sentence; and such probation may be upon the~~  
 16 ~~special condition that the defendant undergo a mandatory period of counseling~~  
 17 ~~administered by a licensed psychiatrist or a licensed psychologist. However, if the judge~~  
 18 ~~finds that such probation should not be imposed, he or she shall sentence the defendant~~  
 19 ~~to imprisonment; provided, further, that upon a defendant's~~ Upon a defendant being  
 20 incarcerated on a conviction for such a first offense, the Department of Corrections shall  
 21 provide counseling to such defendant. Upon a second or subsequent conviction of an  
 22 offense of child molestation, the defendant shall be punished by imprisonment for not less  
 23 than ten years nor more than 30 years or by imprisonment for life and shall be subject to  
 24 the sentencing and punishment provisions of Code Section 17-10-7; provided, however,  
 25 that prior to trial, a defendant shall be given notice, in writing, that the state intends to  
 26 seek a punishment of life imprisonment. Adjudication of guilt or imposition of sentence  
 27 for a conviction of a second or subsequent offense of child molestation, including a plea  
 28 of nolo contendere, shall not be suspended, probated, deferred, or withheld.

29 (2) If the victim is 14 or 15 years of age and the person convicted of a first offense of  
 30 child molestation is no more than three years older than the victim, such person shall be  
 31 guilty of a misdemeanor.

32 (c) A person commits the offense of aggravated child molestation when such person  
 33 commits an offense of child molestation which act physically injures the child or involves  
 34 an act of sodomy.

35 (d)(1) Except as provided in paragraph (2) of this subsection, a A person convicted of  
 36 the offense of aggravated child molestation shall be punished by imprisonment for not

1 less than ten nor more than 30 years. Any person convicted under this Code section of  
 2 the offense of aggravated child molestation shall, in addition, be subject to the sentencing  
 3 and punishment provisions of Code Sections 17-10-6.1, 17-10-6.2, and 17-10-7.

4 (2) A person convicted of the offense of aggravated child molestation when:

5 (A) The victim is 14 or 15 years of age;

6 (B) The person so convicted is no more than three years older than the victim; and

7 (C) The basis of the charge of aggravated child molestation involves an act of sodomy

8 shall be guilty of a misdemeanor and shall not be subject to the sentencing and  
 9 punishment provisions of Code Section 17-10-6.1.

10 ~~(2) The court sentencing a person who has been convicted of a first offense of aggravated~~  
 11 ~~child molestation when the victim is 16 years of age or younger at the time of the offense~~  
 12 ~~is authorized to require, before sentencing, that the defendant undergo a psychiatric~~  
 13 ~~evaluation to ascertain whether or not medroxyprogesterone acetate chemical treatment~~  
 14 ~~or its equivalent would be effective in changing the defendant's behavior. If it is~~  
 15 ~~determined by a qualified mental health professional that such treatment would be~~  
 16 ~~effective, the court may require, as a condition of probation and upon provisions arranged~~  
 17 ~~between the court and the defendant, the defendant to undergo medroxyprogesterone~~  
 18 ~~acetate treatment or its chemical equivalent which must be coupled with treatment by a~~  
 19 ~~qualified mental health professional. In case of a person sentenced to probation who is~~  
 20 ~~required to undergo such treatment or its chemical equivalent and is in the custody of a~~  
 21 ~~law enforcement agency or confined in a jail at the time of sentencing, when he or she~~  
 22 ~~becomes eligible for probation, such person shall begin medroxyprogesterone acetate~~  
 23 ~~treatment and counseling prior to his or her release from custody or confinement. A~~  
 24 ~~person sentenced to probation who is required to undergo such treatment and who is not~~  
 25 ~~in the custody of a law enforcement agency or confined in a jail at the time of sentencing~~  
 26 ~~shall be taken into custody or confined until treatment can begin. Additional treatment~~  
 27 ~~may continue after such defendant's release from custody or confinement until the~~  
 28 ~~defendant demonstrates to the court that such treatment is no longer necessary. No such~~  
 29 ~~treatment shall be administered until such person has been fully informed of the side~~  
 30 ~~effects of hormonal chemical treatment and has consented to the treatment in writing.~~  
 31 ~~The administration of the treatment shall conform to the procedures and conditions set~~  
 32 ~~out in subsection (c) of Code Section 42-9-44.2.~~

33 ~~(3) Any physician or qualified mental health professional who acts in good faith in~~  
 34 ~~compliance with the provisions of this Code section and subsection (c) of Code Section~~  
 35 ~~42-9-44.2 in the administration of treatment or provision of counseling provided for in~~  
 36 ~~this Code section shall be immune from civil or criminal liability for his or her actions~~  
 37 ~~in connection with such treatment or counseling."~~



1 (2) No person convicted of a serious violent felony ~~as defined in subsection (a) of this~~  
2 ~~Code section~~ shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of  
3 Title 42, relating to probation for first offenders, or any other provision of Georgia law  
4 relating to the sentencing of first offenders. The State of Georgia shall have the right to  
5 appeal any sentence which is imposed by the superior court which does not conform to  
6 the provisions of this subsection in the same manner as is provided for other appeals by  
7 the state in accordance with Chapter 7 of Title 5, relating to appeals or certiorari by the  
8 state.

9 (c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a first  
10 conviction of a serious violent felony in which the defendant has been sentenced to life  
11 imprisonment, that person shall not be eligible for any form of parole or early release  
12 administered by the State Board of Pardons and Paroles until that person has served a  
13 minimum of 14 years in prison. The minimum term of imprisonment shall not be reduced  
14 by any earned time, early release, work release, leave, or other sentence-reducing  
15 measures under programs administered by the Department of Corrections.

16 (2) For a first conviction of a serious violent felony in which the defendant has been  
17 sentenced to death but the sentence of death has been commuted to life imprisonment,  
18 that person shall not be eligible for any form of parole or early release administered by  
19 the State Board of Pardons and Paroles until that person has served a minimum of 25  
20 years in prison. The minimum term of imprisonment shall not be reduced by any earned  
21 time, early release, work release, leave, or other sentence-reducing measures under  
22 programs administered by the Department of Corrections.

23 (3) Any sentence imposed for the first conviction of any serious violent felony other than  
24 a sentence of life imprisonment or life without parole or death shall be served in its  
25 entirety as imposed by the sentencing court and shall not be reduced by any form of  
26 parole or early release administered by the State Board of Pardons and Paroles or by any  
27 earned time, early release, work release, leave, or other sentence-reducing measures  
28 under programs administered by the Department of Corrections, the effect of which  
29 would be to reduce the period of incarceration ordered by the sentencing court.

30 (d) For purposes of this Code section, a first conviction of any serious violent felony  
31 means that the person has never been convicted of a serious violent felony under the laws  
32 of this state or of an offense under the laws of any other state or of the United States, which  
33 offense if committed in this state would be a serious violent felony. Conviction of two or  
34 more crimes charged on separate counts of one indictment or accusation, or in two or more  
35 indictments or accusations consolidated for trial, shall be deemed to be only one  
36 conviction."

**SECTION 7.**

Said title is further amended by adding a new Code section to follow Code Section 17-10-6.1, relating to punishment for serious violent offenders, to read as follows:

"17-10-6.2.

(a) As used in this Code section, the term 'sexually violent offense' means rape, aggravated sodomy, aggravated sexual battery, or aggravated child molestation, unless subject to the provisions of paragraph (2) of subsection (d) of Code Section 16-6-4.

(b) At any time after the filing of an indictment for a sexually violent offense, but not later than the arraignment, the state shall notify the defendant of its intention to seek the enhanced penalties authorized by subsection (f) of this Code section. The notice shall be in writing and shall allege the specific statutory aggravating factors as specified in subsection (e) of this Code section.

(c) In a case where notice has been given pursuant to subsection (b) of this Code section, the trier of fact shall initially determine the defendant's guilt on the charge or charges. If the trier of fact finds the defendant guilty of such a charge or charges, the trial shall immediately be recommenced to receive evidence relevant to determining the existence of any aggravating circumstances as set forth in the notice given. The trial shall resume before the jury that heard the case unless the defendant waives the right to a trial by jury for purposes of sentencing pursuant to this Code section. The hearing shall be conducted in the same manner as provided in Code Section 17-10-2. The trier of fact shall consider the statutory aggravating circumstances and any mitigating circumstances.

(d) The judge, in charging the jury at the conclusion of the sentencing hearing, shall include in the instructions to the jury any mitigating circumstances or aggravating circumstances otherwise authorized by law and the statutory aggravating circumstances set forth in subsection (e) of this Code section which may be supported by the evidence. The statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of enhanced sentencing, shall designate in writing, signed by the foreperson of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in subsection (e) of this Code section is so found, the enhanced penalties shall not be imposed.

(e) Aggravating circumstances include evidence that:

- (1) The victim was less than 13 years of age;
- (2) The victim was related to the defendant by blood, marriage, or adoption;
- (3) The victim was in a fiduciary relationship with the defendant;
- (4) The victim was in the custody or control of the defendant;

- 1 (5) There were threats of torture or violence made to the victim;
  - 2 (6) There were previous threats of violence made to the victim;
  - 3 (7) The victim was held against his or her will or was kidnapped;
  - 4 (8) The victim or the victim's family was stalked before or after the defendant was
  - 5 arrested;
  - 6 (9) The defendant used the Internet to lure, attract, or identify the victim;
  - 7 (10) The defendant used any method of communication to harass or intimidate the victim
  - 8 or the victim's family, including, but not limited to, the telephone, Internet, or mail;
  - 9 (11) The defendant was using controlled substances or marijuana during the commission
  - 10 of the crime;
  - 11 (12) The defendant intentionally inflicted serious physical harm to the victim. 'Physical
  - 12 harm' means any physical injury that results in broken bones or disfiguring lacerations
  - 13 requiring multiple sutures or cosmetic surgery or any physical injury that results in death;
  - 14 (13) The sexually violent offense occurred while the defendant was engaged in the
  - 15 commission of burglary;
  - 16 (14) The sexually violent offense was committed for the purpose of facilitating
  - 17 prostitution;
  - 18 (15) The sexually violent offense was committed for the purpose of permitting the victim
  - 19 to engage in sexually explicit conduct for the purpose of producing a visual medium
  - 20 depicting such conduct;
  - 21 (16) The defendant was in an authoritative, supervisory, or disciplinary relationship with
  - 22 the victim, including, but not limited to, the defendant's capacity as a teacher, minister,
  - 23 probation officer, parole officer, or a law enforcement officer involved with the victim,
  - 24 if the offense occurred while the defendant was actually or ostensibly performing his or
  - 25 her job; or
  - 26 (17) The defendant had previously been convicted of a serious violent felony as such
  - 27 term is defined in Code Section 17-10-6.1.
- 28 (f) If the trier of fact determines beyond a reasonable doubt that one or more of the
- 29 aggravating circumstances occurred, the judge shall enhance the sentence imposed as
- 30 follows:
- 31 (1) The defendant shall be subject to involuntary civil commitment pursuant to Chapter
  - 32 11 of Title 37; and
  - 33 (2) The defendant may imprisoned for life and shall not be eligible for any form of
  - 34 parole or early release until the defendant has served at least 90 percent of the sentence
  - 35 imposed by the sentencing court."



1 (A) Rape, aggravated sodomy, aggravated sexual battery, or aggravated child  
2 molestation unless subject to the provisions of paragraph (2) of subsection (d) of Code  
3 Section 16-6-4; or

4 (B) Any conviction for a felony offense in effect at any time before July 1, 2006, which  
5 is comparable to a sexually violent offense under subparagraph (A) or any federal  
6 conviction or conviction in another state for a felony offense that in this state would be  
7 a sexually violent offense.

8 (9) 'Sexually violent predator' means any person who:

9 (A) Has been convicted of a sexually violent offense; and

10 (B) Suffers from a mental abnormality or personality disorder that makes the person  
11 likely to engage in acts of sexual violence if not confined in a secure facility for  
12 long-term control, care, and treatment.

13 (10) 'Total confinement' means that the person is currently being held in any physically  
14 secure facility being operated or contractually operated for the Department of  
15 Corrections, the department, or the division. A person shall also be deemed to be in total  
16 confinement for applicability of provisions under this chapter if the person is serving an  
17 incarcerative sentence under the custody of the Department of Corrections and is being  
18 held in any other secure facility for any reason.

19 37-11-3.

20 (a) The agency with jurisdiction over a person who has been convicted of a sexually  
21 violent offense shall provide the multidisciplinary team with the following information:

22 (1) The person's name; identifying characteristics; anticipated future residence; the type  
23 of supervision the person will receive in the community, if any; and the person's offense  
24 history;

25 (2) The person's criminal history, including police reports; victim statements;  
26 presentence investigation reports; postsentence investigation reports, if available; and any  
27 other documents containing facts of the person's criminal incidents;

28 (3) The person's mental health, mental status, and medical records, including all clinical  
29 records and notes concerning the person;

30 (4) Documentation of institutional adjustment of and any treatment received by the  
31 person; and

32 (5) If the person was returned to custody after a period of supervision, documentation of  
33 adjustment during supervision and any treatment received.

34 (b) The agency with jurisdiction shall give written notice to:

35 (1) The multidisciplinary team and a copy to the prosecuting attorney of the circuit  
36 where the person was last convicted of a sexually violent offense;

1 (2) The multidisciplinary team and a copy to the prosecuting attorney of the circuit  
2 where the person was last convicted of any offense in this state if the person has never  
3 been convicted of a sexually violent offense in this state but has been convicted of a  
4 sexually violent offense in another state or in federal court; or

5 (3) The multidisciplinary team and a copy to the prosecuting attorney of the circuit  
6 where the person plans to reside upon release or, if no residence in this state is planned,  
7 the prosecuting attorney in the circuit where the facility from which the person to be  
8 released is located if the person is being confined in this state pursuant to interstate  
9 compact and has a prior or current conviction for a sexually violent offense.

10 (c) Except as provided in Code Section 37-11-5, the written notice shall be given:

11 (1) At least 545 days prior to the anticipated release from total confinement of a person  
12 serving a sentence in the custody of the Department of Corrections, except that in the case  
13 of persons who are totally confined for a period of less than 545 days, written notice shall  
14 be given as soon as practicable; or

15 (2) At least 180 days prior to the anticipated hearing regarding possible release of a  
16 person committed to the custody of the department who has been found not guilty by  
17 reason of insanity of a sexually violent offense.

18 (d) Within 180 days after receiving notice, there shall be a written assessment as to  
19 whether the person meets the definition of a sexually violent predator followed by a written  
20 recommendation, which shall be provided to the prosecuting attorney by the department  
21 and shall include the written report of the multidisciplinary team.

22 (e) The provisions of this Code section shall not be jurisdictional, and failure to comply  
23 with such provisions shall not prevent the prosecuting attorney from proceeding against a  
24 person otherwise subject to the provisions of this chapter.

25 37-11-4.

26 (a) The commissioner or his or her designee shall establish a multidisciplinary team or  
27 teams.

28 (b) The multidisciplinary team shall assess and evaluate each person referred to such team.  
29 The assessment and evaluation shall include a review of the person's institutional history  
30 and treatment record, if any; the person's criminal background; and any other factor  
31 relevant to determining whether such person is a sexually violent predator.

32 (c) Before recommending that a person meets the definition of a sexually violent predator,  
33 the multidisciplinary team shall offer the person a personal interview. If the person agrees  
34 to participate in a personal interview, at least one member of the multidisciplinary team  
35 who is a licensed psychiatrist or psychologist shall conduct a personal interview of the  
36 person. If the person refuses to fully participate in a personal interview, the

1 multidisciplinary team may proceed with its recommendation without a personal interview  
2 of the person.

3 (d) The Attorney General shall serve as legal counsel to the multidisciplinary team.

4 37-11-5.

5 (a) If the anticipated release from total confinement of a person who has been convicted  
6 of a sexually violent offense becomes immediate for any reason, the agency with  
7 jurisdiction shall upon immediate release from total confinement transfer that person to the  
8 custody of the department to be held in an appropriate secure facility.

9 (b) Within 72 hours after transfer, the multidisciplinary team shall assess whether the  
10 person meets the definition of a sexually violent predator. If the multidisciplinary team  
11 determines that the person does not meet the definition of a sexually violent predator, that  
12 person shall be immediately released. If the multidisciplinary team determines that the  
13 person meets the definition of a sexually violent predator, the team shall provide the  
14 prosecuting attorney, as designated in Code Section 37-11-3, with its written assessment  
15 and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend  
16 or holiday, within the next working day thereafter.

17 (c) Within 48 hours after receipt of the written assessment and recommendation from the  
18 multidisciplinary team, the prosecuting attorney, as designated in Code Section 37-11-3,  
19 may file a petition with the superior court alleging that the person is a sexually violent  
20 predator and stating facts sufficient to support such allegation. No fee shall be charged for  
21 the filing of such petition. If a petition is not filed within 48 hours after receipt of the  
22 written assessment and recommendation by the prosecuting attorney, the person shall be  
23 immediately released. If a petition is filed pursuant to this Code section and the judge  
24 determines that there is probable cause to believe that the person is a sexually violent  
25 predator, the judge shall order that the person be maintained in custody and held in an  
26 appropriate secure facility for further proceedings in accordance with this chapter.

27 (d) The provisions of this Code section shall not be jurisdictional, and failure to comply  
28 with the time limitations, which results in the release of a person who has been convicted  
29 of a sexually violent offense, shall not be dispositive of the case and shall not prevent the  
30 prosecuting attorney from proceeding against a person otherwise subject to the provisions  
31 of this chapter.

32 37-11-6.

33 (a) When the prosecuting attorney files a petition seeking to have a person declared a  
34 sexually violent predator, the judge shall determine whether probable cause exists to  
35 believe that the person named in the petition is a sexually violent predator. If the judge

1 determines that there is probable cause to believe that the person is a sexually violent  
2 predator, the judge shall order that the person remain in custody and be immediately  
3 transferred to an appropriate secure facility if the person's incarcerative sentence expires.

4 (b) Upon the expiration of the incarcerative sentence and before the release from custody  
5 of a person whom the multidisciplinary team recommends for civil commitment, but after  
6 the prosecuting attorney files a petition pursuant to Code Section 37-11-5, the court may  
7 conduct an adversarial probable cause hearing if it determines such hearing is necessary.  
8 Such hearing shall be considered only in cases where the failure to begin a trial is not the  
9 result of any delay caused by the respondent. The person shall be provided with notice of,  
10 and an opportunity to appear in person at, an adversarial hearing. At such hearing, the  
11 judge shall:

12 (1) Receive evidence and hear argument from the person and the prosecuting attorney;  
13 and

14 (2) Determine whether probable cause exists to believe that the person is a sexually  
15 violent predator.

16 (c) At the adversarial probable cause hearing, the person shall have the right to:

17 (1) Be represented by counsel;

18 (2) Present evidence;

19 (3) Cross-examine any witnesses who testify against the person; and

20 (4) View and copy all petitions and reports in the court file.

21 (d) If the court again concludes that there is probable cause to believe that the person is a  
22 sexually violent predator, the court shall order that the person be held in an appropriate  
23 secure facility upon the expiration of his or her incarcerative sentence.

24 (e) After a court finds probable cause to believe that the person is a sexually violent  
25 predator, the person shall be held in custody in a secure facility without opportunity for  
26 pretrial release or release during the trial proceedings.

27 37-11-7.

28 (a) The department may contract with a private entity or state agency for use of and  
29 operation of facilities to comply with the requirements of this chapter. The department  
30 may also contract with the Department of Administrative Services to issue a request for  
31 proposals and monitor contract compliance for these services.

32 (b) The department may enter into contracts with health care practitioners, health care  
33 facilities, and other entities or agents as may be necessary to provide basic medical care to  
34 persons civilly committed pursuant to this chapter.

35 (c) The department may develop and propose for consideration by the General Assembly  
36 a system of procedures for intermediate levels of civil commitment that are less restrictive

1 than the civil commitment provided by this chapter; provided, however, that no such  
2 system shall become effective except as may be provided by general law.

3 37-11-8.

4 (a) In all civil commitment proceedings for sexually violent predators under this chapter,  
5 the following shall apply:

6 (1) The Georgia Rules of Civil Procedure apply unless otherwise specified in this  
7 chapter;

8 (2) The Georgia Rules of Evidence apply unless otherwise specified in this chapter;

9 (3) The psychotherapist-patient privilege under Code Section 24-9-21 or 24-9-40 shall  
10 neither exist nor apply for communications relevant to an issue in proceedings to  
11 involuntarily commit a person under this chapter;

12 (4) The court may consider evidence of prior behavior by a person who is subject to  
13 proceedings under this chapter if such evidence is relevant to proving that the person is  
14 a sexually violent predator;

15 (5) Hearsay evidence, including reports of a member of the multidisciplinary team or  
16 reports produced on behalf of the multidisciplinary team, shall be admissible in  
17 proceedings under this chapter unless the court finds that such evidence is not reliable.

18 In a trial, however, hearsay evidence may not be used as the sole basis for committing a  
19 person under this chapter;

20 (6) Rules adopted under Code Section 37-11-24 shall not constitute:

21 (A) An evidentiary predicate for the admission of any physical evidence or testimony;

22 (B) A basis for excluding or otherwise limiting the presentation of any physical  
23 evidence or testimony in judicial proceedings under this chapter; or

24 (C) Elements of the cause of action that the state needs to allege or prove in judicial  
25 proceedings under this chapter; and

26 (7) If the person who is subject to proceedings under this chapter refuses to be  
27 interviewed by or fully cooperate with members of the multidisciplinary team or any state  
28 mental health experts, the court may, in its discretion:

29 (A) Order the person to allow members of the multidisciplinary team and any state  
30 mental health experts to review all mental health reports, tests, and evaluations by the  
31 person's mental health expert or experts; or

32 (B) Prohibit the person's mental health experts from testifying concerning mental  
33 health tests, evaluations, or examinations of the person.

34 (b) The failure of any party to comply with the rules as set forth in this Code section shall  
35 not constitute a defense in any judicial proceedings under this chapter.

1 37-11-9.

2 (a) Within 30 days after the determination of probable cause, the court shall conduct a trial  
3 to determine whether the person is a sexually violent predator.

4 (b) The trial may be continued upon the request of either party and a showing of good  
5 cause, or by the court on its own motion in the interests of justice, when the person will not  
6 be substantially prejudiced.

7 (c) At all adversarial proceedings under the provisions of this chapter, the person subject  
8 to such provisions shall be entitled to the assistance of counsel, and, if the person is  
9 indigent, the court shall appoint the public defender or, if a conflict exists or a public  
10 defender's office is not established in the circuit, other counsel to assist the person.

11 (d) If the person is subjected to a mental health examination under this chapter, the person  
12 also may retain experts or mental health professionals to perform an examination. If the  
13 person wishes to be examined by a professional of the person's own choice, the examiner  
14 shall be provided reasonable access to the person, as well as to all relevant medical and  
15 mental health records and reports. In the case of a person who is indigent, the court, upon  
16 the person's request, shall determine whether such an examination is necessary. If the  
17 court determines that an examination is necessary, the court shall appoint a mental health  
18 professional and determine the reasonable compensation for the professional's services,  
19 which shall be paid by the state.

20 (e) The person or the prosecuting attorney has the right to demand that the trial be before  
21 a jury of 12 members. A demand for a jury trial shall be filed, in writing, at least five days  
22 before the trial. If no such demand is made, the person shall be tried before the court.

23 37-11-10.

24 (a) The court or the jury shall determine beyond a reasonable doubt whether the person is  
25 a sexually violent predator. If the determination is made by the jury, the verdict shall be  
26 unanimous. If the jury is unable to reach a unanimous verdict, the court shall declare a  
27 mistrial and set a retrial within 45 days of the date of the mistrial unless the prosecuting  
28 attorney earlier moves to dismiss the petition. The retrial may be continued upon the  
29 request of either party upon a showing of good cause in accordance with subsection (b) of  
30 Code Section 37-11-9. In no event shall a person be released from confinement prior to  
31 retrial or dismissal of the case. The determination that a person is a sexually violent  
32 predator may be appealed.

33 (b) If the court or the jury determines that the person is a sexually violent predator, upon  
34 the expiration of the incarcerative portion of all criminal sentences and disposition of any  
35 detainers other than detainers for deportation by the United States Bureau of Citizenship  
36 and Immigration Services, the person shall be committed to the custody of the department

1 for control, care, and treatment until such time as the person's mental abnormality or  
2 personality disorder has so changed that it is safe for the person to be at large. At all times,  
3 persons who are detained or committed under this chapter shall be kept in a secure facility  
4 segregated from patients of the department who are not detained or committed under this  
5 chapter.

6 (c) The public defender of the circuit in which a person was determined to be a sexually  
7 violent predator shall be appointed to represent the person on appeal. If the public defender  
8 is unable to represent the person on appeal due to a conflict or if a public defender office  
9 is not established for the circuit, the court shall appoint other counsel, who shall be  
10 compensated at a rate not less than that provided for appointed counsel in criminal cases.  
11 Filing fees for indigent appeals under this chapter shall be waived. Costs and fees related  
12 to such appeals, including the amounts paid for records, transcripts, and compensation of  
13 appointed counsel, shall be authorized by the trial court and paid from state funds that are  
14 appropriated for such purposes.

15 37-11-11.

16 (a) The mental health of a person committed under this chapter shall be examined once  
17 every year or more frequently at the court's discretion. The person may retain or, if the  
18 person is indigent and so requests, the court may appoint, a qualified professional to  
19 examine the person. Such a professional shall have access to all records concerning the  
20 person. The results of the examination shall be provided to the court that committed the  
21 person under this chapter. Upon receipt of the report, the court shall conduct a review of  
22 the person's status.

23 (b) The department shall provide the person with annual written notice of the person's  
24 right to petition the court for release over the objection of the director of the facility where  
25 the person is housed. The notice shall contain a waiver of rights. The director of the  
26 facility shall forward the notice and waiver form to the court.

27 (c) The court shall hold a limited hearing to determine whether there is probable cause to  
28 believe that the person's condition has so changed that it is safe for the person to be at large  
29 and that the person will not engage in acts of sexual violence if discharged. The person has  
30 the right to be represented by counsel at the probable cause hearing, but the person is not  
31 entitled to be present. If the court determines that there is probable cause to believe it is  
32 safe to release the person, the court shall set a trial before the court on the issue.

33 (d) At the trial before the court, the person is entitled to be present and is entitled to the  
34 benefit of all constitutional protections afforded the person at the initial trial, except for the  
35 right to a jury. The prosecuting attorney shall represent the state and has the right to have  
36 the person examined by professionals chosen by the state. At the hearing, the state bears

1 the burden of proving, beyond a reasonable doubt, that the person's mental condition  
2 remains such that it is not safe for the person to be at large and that, if released, the person  
3 is likely to engage in acts of sexual violence.

4 37-11-12.

5 (a) Any person subjected to restricted liberty as a sexually violent predator pursuant to this  
6 chapter shall not forfeit any legal right or suffer any legal disability as a consequence of  
7 any actions taken or orders made, other than as specifically provided in this chapter.

8 (b) Any person committed pursuant to this chapter has the right to adequate care and  
9 individualized treatment. The department shall keep records detailing all medical, expert,  
10 and professional care and treatment received by a committed person and shall keep copies  
11 of all reports of periodic examinations made pursuant to this chapter. All such records and  
12 reports shall be made available upon request only to the committed person, his or her  
13 attorney, the prosecuting attorney, the court, or another expert or professional who, upon  
14 proper showing, demonstrates a need for access to such records.

15 (c) At the time a person is taken into custody or transferred into a facility pursuant to a  
16 petition under this chapter, the professional in charge of such facility or his or her designee  
17 shall take reasonable precautions to inventory and safeguard the personal property of the  
18 persons detained or transferred. A copy of the inventory, signed by the staff member, shall  
19 be given to the person detained and shall be open to inspection to any responsible relative,  
20 subject to limitations, if any, specifically imposed by the detained person. For purposes  
21 of this subsection, 'responsible relative' includes the guardian, conservator, attorney,  
22 spouse, parent, adult child, or adult sibling of the person. The facility shall not disclose the  
23 contents of the inventory to any other person without consent of the person or order of the  
24 court.

25 (d) Nothing in this chapter shall prohibit a person presently committed from exercising a  
26 right presently available to him or her for the purpose of obtaining release from  
27 confinement, including the right to petition for a writ of habeas corpus pursuant to Code  
28 Section 37-11-16.

29 37-11-13.

30 (a) If the commissioner or the commissioner's designee at any time determines that the  
31 person is not likely to commit acts of sexual violence if discharged, the commissioner or  
32 the commissioner's designee shall authorize the person to petition the court for release.  
33 The petition shall be served upon the court and the prosecuting attorney. The court, upon  
34 receipt of such a petition, shall order a trial before the court within 30 days, unless  
35 continued for good cause.

1 (b) The prosecuting attorney shall represent the state and has the right to have the person  
2 examined by professionals of the prosecuting attorney's choice. The state bears the burden  
3 of proving, beyond a reasonable doubt, that the person's mental condition remains such that  
4 it is not safe for the person to be at large and that, if released, the person is likely to engage  
5 in acts of sexual violence.

6 37-11-14.

7 A person is not prohibited from filing a petition for discharge at any time after commitment  
8 under this chapter. However, if the person has previously filed such a petition without the  
9 approval of the commissioner or the commissioner's designee and the court determined  
10 that the petition was without merit, a subsequent petition shall be denied unless the petition  
11 contains facts upon which a court could find that the person's condition has so changed that  
12 a probable cause hearing is warranted.

13 37-11-15.

14 (a) In order to protect the public, relevant information and records that are otherwise  
15 confidential or privileged shall be released to the agency with jurisdiction, to a  
16 multidisciplinary team, or to the prosecuting attorney for the purpose of meeting the notice  
17 requirements of this chapter and determining whether a person is or continues to be a  
18 sexually violent predator. A person, agency, or entity receiving confidential information  
19 under this Code section shall not subject such information to public inspection or disclosure  
20 as permitted under Article 4 of Chapter 18 of Title 50 and shall maintain the confidentiality  
21 of that information. Such information shall not lose its confidential status by release under  
22 this Code section.

23 (b) Psychological or psychiatric reports, drug and alcohol reports, treatment records,  
24 medical records, or victim impact statements that have been submitted to the court or  
25 admitted into evidence under this chapter shall be part of the record but shall be sealed and  
26 may be opened only pursuant to a court order.

27 37-11-16.

28 (a)(1) At any time after exhausting all administrative remedies, a person held in a secure  
29 facility under this chapter may file a petition for habeas corpus in the superior court for  
30 the county in which the facility is located alleging that:

31 (A) The person's conditions of confinement violate a statutory right under state law or  
32 a constitutional right under the Georgia Constitution or the United States Constitution;  
33 or

1 (B) The facility in which the person is confined is not an appropriate secure facility,  
2 as that term is used in Code Section 37-11-6.

3 (2) Upon filing a legally sufficient petition stating a prima-facie case under subsection  
4 (a) of this Code section, the court may direct the department to file a response. If  
5 necessary, the court may conduct an evidentiary proceeding and issue an order to correct  
6 a violation of state or federal rights found to exist by the court. A final order entered  
7 under this Code section may be appealed to the Court of Appeals. An appeal by the  
8 department shall stay the trial court's order until disposition of the appeal.

9 (b) Any claim referred to in subsection (a) of this Code section may be asserted only as  
10 provided in this Code section. No such claim shall be considered in commitment  
11 proceedings brought under this chapter. A person shall not have a right to appointed  
12 counsel in any proceeding initiated under this Code section.

13 (c) Relief granted on a petition filed under this Code section shall be narrowly drawn and  
14 may not exceed that which is minimally necessary to correct, in the least intrusive manner  
15 possible, the violation of the state or federal rights of a particular petitioner. A court  
16 considering a petition under this Code section shall give substantial weight to whether the  
17 granting of relief would adversely impact the operation of the detention and treatment  
18 facility or would adversely impact public safety.

19 (d) The court may not enter an order releasing a person from secure detention unless the  
20 court expressly finds that no relief short of release will remedy the violation of state or  
21 federal rights which is found to have occurred.

22 37-11-17.

23 The long-term control, care, and treatment of a person committed under this chapter shall  
24 conform to constitutional requirements.

25 37-11-18.

26 The agency with jurisdiction and its officers and employees; the department and its officers  
27 and employees; members of the multidisciplinary team; the prosecuting attorney and the  
28 prosecuting attorney's employees; the Department of Law and its officers and employees;  
29 and those involved in the evaluation, care, and treatment of sexually violent predators  
30 committed under this chapter shall be immune from any civil liability for good faith  
31 conduct under this chapter.

1 37-11-19.

2 This chapter applies to all persons currently in custody who have been convicted of a  
3 sexually violent offense, as well as to all persons convicted of a sexually violent offense  
4 and sentenced to total confinement in the future.

5 37-11-20.

6 (a) As soon as is practicable, the department shall give written notice of the release of a  
7 person committed as a sexually violent predator to any victim of the committed person who  
8 is alive and whose address is known to the department or, if the victim is deceased, to the  
9 victim's family, if the family's address is known to the department. Failure to notify is not  
10 a reason for postponement of release. As used in this Code section, the term 'victim' shall  
11 have the same meaning as in Code Section 17-17-3. This Code section shall not create a  
12 cause of action against the state or an employee of the state acting within the scope of the  
13 employee's employment as a result of the failure to notify pursuant to this Code section.

14 (b) If a sexually violent predator who has an active or pending term of probation, parole,  
15 conditional release, or other court ordered supervision is released from custody, the  
16 department shall immediately notify the Department of Corrections. The State Board of  
17 Pardons and Paroles shall also be immediately notified of any release of a sexually violent  
18 predator who has an active or pending term of parole, conditional release, or other  
19 supervision that is administered by the State Board of Pardons and Paroles.

20 37-11-21.

21 (a) A person who is held in lawful custody pursuant to a judicial finding of probable cause  
22 under Code Section 37-11-6 or pursuant to a commitment as a sexually violent predator  
23 under Code Section 37-11-9 and who escapes or attempts to escape while in such custody  
24 shall be guilty of a felony, punishable by imprisonment for not less than five nor more than  
25 20 years.

26 (b) If a person who is held in custody pursuant to a finding of probable cause or  
27 commitment as a sexually violent predator escapes while in custody, the department shall  
28 immediately notify the victim in accordance Code Section 37-11-20. The prosecuting  
29 attorney that filed the petition for civil commitment of the escapee shall also be  
30 immediately notified by the department. If the escapee has an active or pending term of  
31 probation, conditional release, or other court ordered supervision, the department shall also  
32 immediately notify the Department of Corrections. The State Board of Pardons and  
33 Paroles shall also be immediately notified of an escape if the escapee has an active or  
34 pending term of parole, conditional release, or other supervision that is administered by the  
35 State Board of Pardons and Paroles.

1 37-11-22.

2 (a) Each person committed under this chapter shall upon order of the court committing the  
3 person:

4 (1) Disclose all revenue or assets to the department; and

5 (2) Pay from such income and assets, except where such income is exempt by state or  
6 federal law, all or a fair portion of the person's daily subsistence and treatment costs,  
7 based upon the person's ability to pay, the liability or potential liability of the person to  
8 the victim or the guardian or the estate of the victim, and the needs of his or her  
9 dependents.

10 (b)(1) Any person who is directed to pay all or a fair portion of daily subsistence and  
11 treatment costs is entitled to reasonable advance notice of the assessment and shall be  
12 afforded an opportunity to present reasons for opposition to the assessment.

13 (2) An order directing payment of all or a fair portion of a person's daily subsistence and  
14 treatment costs may survive against the estate of the person.

15 37-11-23.

16 The department shall be responsible for all costs relating to the evaluation and treatment  
17 of persons committed to the department's custody as sexually violent predators. A county  
18 shall not be obligated to fund costs for psychological examinations, expert witnesses, court  
19 appointed counsel, or other costs required by this chapter. Other costs for psychological  
20 examinations, expert witnesses, and court appointed counsel required by this chapter shall  
21 be paid from state funds appropriated by general law.

22 37-11-24.

23 The department shall adopt rules for:

24 (1) Procedures that shall be followed by members of the multidisciplinary teams when  
25 assessing and evaluating persons subject to this chapter;

26 (2) Education and training requirements for members of the multidisciplinary teams and  
27 professionals who assess and evaluate persons under this chapter;

28 (3) The criteria used by a multidisciplinary team to recommend to a prosecuting attorney  
29 that a petition should be filed to involuntarily commit a person under this chapter. The  
30 criteria shall include, but are not limited to, whether:

31 (A) The person has a propensity to engage in future acts of sexual violence;

32 (B) The person should be placed in a secure, residential facility; and

33 (C) The person needs long-term treatment and care;

34 (4) The designation of secure facilities for sexually violent predators who are subject to  
35 involuntary commitment under this chapter;

1 (5) The components of the basic treatment plan for all committed persons under this  
2 chapter; and

3 (6) The protocol to inform a person that he or she is being examined to determine  
4 whether he or she is a sexually violent predator under this chapter.

5 37-11-25.

6 (a) Beginning January 1, 2007, the Department of Corrections shall collect information  
7 and compile quarterly reports with statistics profiling inmates released the previous quarter  
8 who fit the criteria and were referred to the department pursuant to this chapter. The  
9 quarterly reports shall be produced beginning April 1, 2007. At a minimum, the  
10 information that shall be collected and compiled for inclusion in the reports includes:

11 (1) The nature of the qualifying offense;

12 (2) The most serious sexual offense;

13 (3) The total number of distinct victims of the sexual offense;

14 (4) Whether the victim was known to the offender;

15 (5) Whether the sexual act was consensual;

16 (6) Whether the sexual act involved multiple victims;

17 (7) Whether direct violence was involved in the sexual offense;

18 (8) The age of each victim at the time of the offense;

19 (9) The age of the offender at the time of the first sexual offense;

20 (10) Whether a weapon was used;

21 (11) The length of time since the most recent sexual offense; and

22 (12) The total number of prior and current sexual offense convictions.

23 (b) In addition, the department shall implement a long-term study to determine the overall  
24 efficacy of the provisions of this chapter."

## 25 SECTION 9.

26 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
27 by striking in its entirety Code Section 42-9-44.2, relating to chemical treatment and  
28 counseling as a condition of parole for child molesters, and inserting in lieu thereof the  
29 following:

30 "42-9-44.2.

31 ~~(a) The Board of Pardons and Paroles may in the exercise of its discretion in considering~~  
32 ~~the grant of parole to a person who has been convicted of a second or subsequent offense~~  
33 ~~of child molestation of a child who was 16 years of age or younger at the time of the~~  
34 ~~offense or who has been convicted of a first offense of aggravated child molestation of a~~  
35 ~~child who was 16 years of age or younger at the time of the offense require, as a condition~~

1 of parole, that such person undergo medroxyprogesterone acetate treatment or its chemical  
 2 equivalent. While undergoing such treatment, such person must participate in and pay for  
 3 counseling currently available from a private or public provider of outpatient mental health  
 4 services. No such treatment shall be administered until such person has consented thereto  
 5 in writing.

6 (b) A person who is required to undergo medroxyprogesterone acetate treatment or its  
 7 chemical equivalent and counseling as a condition of parole shall begin such treatment  
 8 prior to his or her release from confinement in the state correctional institution or other  
 9 institution, but additional treatment may continue after such defendant's release on parole  
 10 until the defendant demonstrates to the board that such treatment is no longer necessary.

11 (c) The provision of treatment required as a condition of parole shall be administered by  
 12 the State Board of Pardons and Paroles through licensed medical personnel employed by  
 13 the defendant and approved by the board. Any physician or qualified mental health  
 14 professional who acts in good faith in compliance with the provisions of this Code section  
 15 in the administration of treatment or provision of counseling provided for in this Code  
 16 section shall be immune from civil or criminal liability for his or her actions in connection  
 17 with such treatment. The Department of Corrections shall permit access by such licensed  
 18 medical personnel for such purpose to any person required to begin the treatment and  
 19 counseling while confined in a facility of the department. The medical personnel utilized  
 20 or approved by the board shall be required to inform the person about the effect of  
 21 hormonal chemical treatment and any side effects that may result from it. A person subject  
 22 to treatment under this Code section shall acknowledge in writing the receipt of this  
 23 information. Reserved."

#### 24 SECTION 10.

25 (a) This Act shall become effective July 1, 2006. OR

26 (a) This Act shall become effective only if funds are specifically appropriated for purposes  
 27 of this Act in an appropriations Act making specific reference to this Act and when funds so  
 28 appropriated become available for expenditure.

29 (b) The provisions of this Act shall not affect or abate the status as a crime of any such act  
 30 or omission which occurred prior to the effective date of the Act repealing, repealing and  
 31 reenacting, or amending such law, nor shall the prosecution of such crime be abated as a  
 32 result of such repeal, repeal and reenactment, or amendment.

#### 33 SECTION 11.

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