

The Senate Judiciary Committee offered the following substitute to HB 1059:

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 16, 17, 35, and 42 of the Official Code of Georgia Annotated, relating
2 respectively to crimes and offenses, criminal procedure, law enforcement officers and
3 agencies, and penal institutions, so as to change provisions relating to sexual offenders; to
4 change punishment provisions, registration requirements, and residency requirements for
5 sexual offenders; to provide for legislative findings; to change punishment provisions related
6 to aggravated assault with the intent to rape; to change punishment provisions related to
7 kidnapping; to change punishment provisions related to false imprisonment; to change
8 punishment provisions related to rape; to change certain provisions relating to sodomy and
9 aggravated sodomy; to provide for lesser punishment for certain sexual offenses committed
10 by persons of certain ages; to change certain provisions relating to statutory rape; to change
11 certain provisions relating to child molestation and aggravated child molestation; to change
12 certain provisions relating to enticing a child for indecent purposes; to change certain
13 provisions relating to persons convicted of sexual assault against persons in custody; to
14 change certain provisions relating to incest; to change certain provisions relating to sexual
15 battery; to change certain provisions relating to aggravated sexual battery; to provide that it
16 shall be unlawful to have carnal knowledge with a disabled person who is incapable of
17 granting consent; to provide for a penalties; to change certain restrictions on granting an
18 appeal bond; to allow for judicial discretion for mandatory minimum sentences under certain
19 circumstances; to create a new crime involving withholding information concerning a sexual
20 offender and provide for penalties; to change a provision relating to the fixing of a sentence
21 by a judge; to change certain provisions relating to punishment of serious violent offenders
22 and increase the mandatory minimum term of imprisonment for certain offenses; to require
23 persons convicted of certain sexual crimes to receive a mandatory split sentence including
24 a minimum sentence of imprisonment; to add a provision relating to statutory aggravating
25 circumstances for the imposition of the death penalty; to require the Georgia Crime
26 Information Center to collect certain data; to provide that notice of conviction and release of
27 a person who is required to register as a sexual offender shall be made for offenders
28 sentenced directly to probation or who are newly established residents in a county; to permit

1 publication of such notice in the legal organ of the county in which such person resides based
2 on information available; to amend Article 2 of Chapter 5 of Title 40 of the Official Code of
3 Georgia Annotated, relating to issuance, expiration, and renewal of drivers' licenses, so as
4 to require registered sex offenders to have identifiable drivers' licenses; to provide for
5 procedures related to issuance of such licenses; to reorganize and change provisions related
6 to the State Sexual Offender Registry; to change and add certain definitions; to change
7 provisions relating to registration requirements for sexual offenders; to provide for an annual
8 registration fee; to provide that sexual offenders register prior to release from prison; to
9 require each sheriff to maintain and update a list of all sexual offenders residing in the
10 county; to provide for duties and responsibilities for sheriffs, the Department of Corrections,
11 the Georgia Bureau of Investigation, and sexual offenders; to require registered sexual
12 offenders to verify required registration information with the sheriff whenever any changes
13 occur to certain information and verify information at least annually within 72 hours of the
14 sexual offender's birthday; to increase the duration for registration requirement; to provide
15 for a procedure for certain sexual offenders to petition a court to be relieved of registration
16 requirements; to require the sheriff to notify certain people and entities of the presence of
17 sexual offenders in their community; to increase punishment for failure to comply with
18 registration requirements; to change the appointing authority for the Sexual Offender
19 Registration Review Board; to require the Sexual Offender Registration Review Board to
20 classify sexual offenders; to require sexually dangerous predators to wear an electronic
21 monitoring device for the balance of his or her life and to pay for such device; to require
22 sexually dangerous predators to update required registration information twice yearly; to
23 provide for employment restrictions for sexual offenders; to prohibit sexual offenders from
24 loitering in certain locations; to correct cross-references; to change provisions relating to
25 sexual offenders conditions for parole; to change provisions relating to chemical treatment
26 and counseling as a condition of parole for child molesters; to amend Title 5 of the Official
27 Code of Georgia Annotated, relating to appeal and error, so as to allow the state and the
28 defendant the right of direct appeal under certain circumstances; to provide for other related
29 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
30 other purposes.

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

32 **SECTION 1.**

33 The General Assembly finds and declares that recidivist sexual offenders, sexual offenders
34 who use physical violence, and sexual offenders who prey on children are sexual predators
35 who present an extreme threat to the public safety. Many sexual offenders are extremely

1 likely to use physical violence and to repeat their offenses; and some sexual offenders
2 commit many offenses, have many more victims than are ever reported, and are prosecuted
3 for only a fraction of their crimes. The General Assembly finds that this makes the cost of
4 sexual offender victimization to society at large, while incalculable, clearly exorbitant. The
5 General Assembly further finds that the high level of threat that a sexual predator presents
6 to the public safety, and the long-term effects suffered by victims of sex offenses, provide
7 the state with sufficient justification to implement a strategy that includes:

8 (1) Incarcerating sexual offenders and maintaining adequate facilities to ensure that
9 decisions to release sexual predators into the community are not made on the basis of
10 inadequate space;

11 (2) Requiring the registration of sexual offenders, with a requirement that complete and
12 accurate information be maintained and accessible for use by law enforcement
13 authorities, communities, and the public;

14 (3) Providing for community and public notification concerning the presence of sexual
15 offenders;

16 (4) Collecting data relative to sexual offenses and sexual offenders;

17 (5) Requiring sexual predators who are released into the community to wear electronic
18 monitoring devices for the rest of their natural life and to pay for such device; and

19 (6) Prohibiting sexual predators from working with children, either for compensation or
20 as a volunteer.

21 The General Assembly further finds that the state has a compelling interest in protecting the
22 public from sexual offenders and in protecting children from predatory sexual activity, and
23 there is sufficient justification for requiring sexual offenders to register and for requiring
24 community and public notification of the presence of sexual offenders. The General
25 Assembly declares that in order to protect the public, it is necessary that the sexual offenders
26 be registered and that members of the community and the public be notified of a sexual
27 offender's presence. The designation of a person as a sexual offender is neither a sentence
28 nor a punishment but simply a regulatory mechanism and status resulting from the conviction
29 of certain crimes. Likewise, the designation of a person as a sexual predator is neither a
30 sentence nor a punishment but simply a regulatory mechanism and status resulting from
31 findings by the Sexual Offender Registration Review Board and a court if requested by a
32 sexual offender.

33 **SECTION 2.**

34 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
35 by striking subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed
36 directly appealable, and inserting in lieu thereof the following:

- 1 (2) From an order, decision, or judgment arresting judgment of conviction or
 2 adjudication of delinquency upon legal grounds;
- 3 (3) From an order, decision, or judgment sustaining a plea or motion in bar, when the
 4 defendant has not been put in jeopardy;
- 5 (4) From an order, decision, or judgment suppressing or excluding evidence illegally
 6 seized or excluding the results of any test for alcohol or drugs in the case of motions
 7 made and ruled upon prior to the impaneling of a jury or the defendant being put in
 8 jeopardy, whichever occurs first;
- 9 (5) From an order, decision, or judgment of a court where the court does not have
 10 jurisdiction or the order is otherwise void under the Constitution or laws of this state;
- 11 (6) From an order, decision, or judgment of a superior court transferring a case to the
 12 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28;
- 13 (7) From an order, decision, or judgment of a superior court granting a motion for new
 14 trial or an extraordinary motion for new trial; ~~or~~
- 15 (8) From an order, decision, or judgment denying a motion by the state to recuse or
 16 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or
- 17 (9) From an order, decision, or judgment issued pursuant to subsection (c) of Code
 18 Section 17-10-6.2."

19 SECTION 4.

20 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 21 amended by striking Code Section 16-5-21, relating to aggravated assault, and inserting in
 22 lieu thereof the following:

23 "16-5-21.

24 (a) A person commits the offense of aggravated assault when he or she assaults:

25 (1) With intent to murder, to rape, or to rob;

26 (2) With a deadly weapon or with any object, device, or instrument which, when used
 27 offensively against a person, is likely to or actually does result in serious bodily injury;
 28 or

29 (3) A person or persons without legal justification by discharging a firearm from within
 30 a motor vehicle toward a person or persons.

31 (b) Except as provided in subsections (c) through ~~(j)~~ (k) of this Code section, a person
 32 convicted of the offense of aggravated assault shall be punished by imprisonment for not
 33 less than one nor more than 20 years.

34 (c) A person who knowingly commits the offense of aggravated assault upon a peace
 35 officer while the peace officer is engaged in, or on account of the performance of, his or

1 her official duties shall, upon conviction thereof, be punished by imprisonment for not less
2 than five nor more than 20 years.

3 (d) Any person who commits the offense of aggravated assault against a person who is 65
4 years of age or older shall, upon conviction thereof, be punished by imprisonment for not
5 less than three nor more than 20 years.

6 (e)(1) As used in this subsection, the term 'correctional officer' shall include
7 superintendents, wardens, deputy wardens, guards, and correctional officers of state,
8 county, and municipal penal institutions who are certified by the Georgia Peace Officer
9 Standards and Training Council pursuant to Chapter 8 of Title 35 and employees of the
10 Department of Juvenile Justice who are known to be employees of the department or who
11 have given reasonable identification of their employment. The term 'correctional officer'
12 shall also include county jail officers who are certified or registered by the Georgia Peace
13 Officer Standards and Training Council pursuant to Chapter 8 of Title 35.

14 (2) A person who knowingly commits the offense of aggravated assault upon a
15 correctional officer while the correctional officer is engaged in, or on account of the
16 performance of, his or her official duties shall, upon conviction thereof, be punished by
17 imprisonment for not less than five nor more than 20 years.

18 (f) Any person who commits the offense of aggravated assault in a public transit vehicle
19 or station shall, upon conviction thereof, be punished by imprisonment for not less than
20 three nor more than 20 years. For purposes of this Code section, 'public transit vehicle' has
21 the same meaning as in subsection (c) of Code Section 16-5-20.

22 ~~(f.1)~~(g) Any person who commits the offense of aggravated assault upon a person in the
23 course of violating Code Section 16-8-2 where the property that was the subject of the theft
24 was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto,
25 including without limitation any such trailer, semitrailer, container, or other associated
26 equipment, or the cargo being transported therein or thereon, shall upon conviction be
27 punished by imprisonment for not less than five years nor more than 20 years, a fine not
28 less than \$50,000.00 nor more than \$200,000.00, or both such fine and imprisonment. For
29 purposes of this subsection, the term 'vehicle' includes without limitation any railcar.

30 ~~(g)~~(h) A person convicted of an offense described in paragraph (3) of subsection (a) of this
31 Code section shall be punished by imprisonment for not less than five nor more than 20
32 years.

33 ~~(h)~~(i) Any person who commits the offense of aggravated assault involving the use of a
34 firearm upon a student or teacher or other school personnel within a school safety zone as
35 defined in paragraph (1) of subsection (a) of Code Section 16-11-127.1 shall, upon
36 conviction thereof, be punished by imprisonment for not less than five nor more than 20
37 years.

1 ~~(i)~~(j) If the offense of aggravated assault is committed between past or present spouses,
 2 persons who are parents of the same child, parents and children, stepparents and
 3 stepchildren, foster parents and foster children, or other persons excluding siblings living
 4 or formerly living in the same household, the defendant shall be punished by imprisonment
 5 for not less than three nor more than 20 years.

6 (k) Any person who commits the offense of aggravated assault with intent to rape against
 7 a child under the age of 14 years shall be punished by imprisonment for not less than 25
 8 nor more than 50 years. Any person convicted under this subsection shall, in addition, be
 9 subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

10 SECTION 5.

11 Said title is further amended by striking Code Section 16-5-40, relating to kidnapping, and
 12 inserting in lieu thereof the following:

13 "16-5-40.

14 (a) A person commits the offense of kidnapping when he abducts or steals away any
 15 person without lawful authority or warrant and holds such person against his will.

16 (b) A person convicted of the offense of kidnapping shall be punished by:

17 (1) Imprisonment ~~imprisonment~~ for not less than ten nor more than 20 years, ~~provided~~
 18 ~~that a person convicted of the offense of kidnapping for ransom shall be punished by~~ if
 19 the kidnapping involved a victim who was 14 years of age or older;

20 (2) Imprisonment for life or by imprisonment for not less than 25 nor more than 50 years
 21 if the kidnapping involved a victim who is less than 14 years of age;

22 (3) Life ~~life~~ imprisonment or by death and ~~provided, further, that, if the person kidnapped~~
 23 ~~shall have received bodily injury, the person convicted shall be punished by~~ if the
 24 kidnapping was for ransom; or

25 (4) Life ~~life~~ imprisonment or by death if the person kidnapped received bodily injury.

26 (c) Any person convicted under this Code section shall, in addition, be subject to the
 27 sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

28 SECTION 6.

29 Said title is further amended by striking Code Section 16-5-41, relating to false
 30 imprisonment, and inserting in lieu thereof the following:

31 "16-5-41.

32 (a) A person commits the offense of false imprisonment when, in violation of the personal
 33 liberty of another, he arrests, confines, or detains such person without legal authority.

34 (b) A person convicted of the offense of false imprisonment shall be punished by
 35 imprisonment for not less than one nor more than ten years.

1 (c) Any person convicted under this Code section wherein the victim is not the child of the
 2 defendant and the victim is less than 14 years of age shall, in addition, be subject to the
 3 sentencing and punishment provisions of Code Section 17-10-6.2."

4 SECTION 7.

5 Said title is further amended by striking subsection (a) of Code Section 16-5-110, relating
 6 to the publication of notices and information required for registered sex offenders,
 7 assessment for costs, and certain immunity, and inserting in lieu thereof the following:

8 "(a) When a person who has been convicted of a crime for which that person is required
 9 to register under Code Section 42-1-12 makes his or her first report to a sheriff after such
 10 person's release from confinement, placement on probation, or upon establishing residency
 11 in the county, the sheriff shall cause to be published a notice of conviction and release from
 12 confinement of such person. ~~Such notice shall be published in the manner of legal notices~~
 13 ~~in the legal organ of the county in which person resides.~~ Such notice shall be one column
 14 wide by two inches long and shall contain the photograph taken by the arresting law
 15 enforcement agency at the time of arrest; ~~or a subsequent photograph~~; the name and address
 16 of the convicted person; ~~and~~; if available, the date, time, place of arrest; ~~;~~ and the disposition
 17 of the case. The notice and shall be published at or near the time the person registers with
 18 the sheriff at least once, and, at the sheriff's option, may be published more than once, in
 19 the legal organ of the appropriate county ~~in the second week following such person's~~
 20 ~~release from confinement or as soon thereafter as publication may be made.~~ The notice
 21 shall include the address of the Georgia Bureau of Investigation website for additional
 22 information regarding the sexual offender registry."

23 SECTION 8.

24 Said title is further amended by striking Code Section 16-6-1, relating to rape, and inserting
 25 in lieu thereof the following:

26 "16-6-1.

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

- 28 (1) A female forcibly and against her will; or
 29 (2) A female who is less than ten years of age.

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

33 (b) A person convicted of the offense of rape shall be punished by death, by imprisonment
 34 for life without parole, by imprisonment for life, or by imprisonment for not less than ~~ten~~
 35 25 nor more than ~~20~~ 50 years. Any person convicted under this Code section shall, in

1 addition, be subject to the sentencing and punishment provisions of Code Sections
2 17-10-6.1 and 17-10-7.

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

8 SECTION 9.

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

11 "16-6-2.

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

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

19 (b)(1) Except as provided in subsection (d) of this Code section, a ~~A~~ person convicted
20 of the offense of sodomy shall be punished by imprisonment for not less than one nor
21 more than 20 years and shall be subject to the sentencing and punishment provisions of
22 Code Section 17-10-6.2.

23 (2) A person convicted of the offense of aggravated sodomy shall be punished by
24 imprisonment for life or by imprisonment for not less than ~~ten~~ 25 nor more than ~~30~~ 50
25 years. Any person convicted under this Code section of the offense of aggravated
26 sodomy shall, in addition, be subject to the sentencing and punishment provisions of
27 Code Sections 17-10-6.1 and 17-10-7.

28 (c) When evidence relating to an allegation of aggravated sodomy is collected in the
29 course of a medical examination of the person who is the victim of the alleged crime, the
30 law enforcement agency investigating the alleged crime shall be financially responsible for
31 the cost of the medical examination to the extent that expense is incurred for the limited
32 purpose of collecting evidence.

33 (d) If the victim is at least 13 but less than 16 years of age and the person convicted of
34 sodomy is 18 years of age or younger and is no more than four years older than the victim,
35 such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and
36 punishment provisions of Code Section 17-10-6.2."

1 molestation, the defendant shall be punished by imprisonment for not less than ten years
 2 nor more than 30 years or by imprisonment for life and shall be subject to the sentencing
 3 and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however,
 4 that prior to trial, a defendant shall be given notice, in writing, that the state intends to
 5 seek a punishment of life imprisonment. ~~Adjudication of guilt or imposition of sentence~~
 6 ~~for a conviction of a second or subsequent offense of child molestation, including a plea~~
 7 ~~of nolo contendere, shall not be suspended, probated, deferred, or withheld.~~

8 (2) If the victim is at least 13 but less than 16 years of age and the person convicted of
 9 child molestation is 18 years of age or younger and is no more than four years older than
 10 the victim, such person shall be guilty of a misdemeanor and shall not be subject to the
 11 sentencing and punishment provisions of Code Section 17-10-6.2.

12 (c) A person commits the offense of aggravated child molestation when such person
 13 commits an offense of child molestation which act physically injures the child or involves
 14 an act of sodomy.

15 (d)(1) Except as provided in paragraph (2) of this subsection, a A person convicted of
 16 the offense of aggravated child molestation shall be punished by imprisonment for life
 17 or by imprisonment for not less than ten 25 nor more than 30 50 years. ~~Any person~~
 18 ~~convicted under this Code section of the offense of aggravated child molestation shall,~~
 19 ~~in addition, and shall~~ be subject to the sentencing and punishment provisions of Code
 20 Sections 17-10-6.1 and 17-10-7.

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

22 (A) The victim is at least 13 but less than 16 years of age;

23 (B) The person convicted of aggravated child molestation is 18 years of age or younger
 24 and is no more than four years older than the victim; and

25 (C) The basis of the charge of aggravated child molestation involves an act of sodomy
 26 shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment
 27 provisions of Code Section 17-10-6.1.

28 (2) ~~The court sentencing a person who has been convicted of a first offense of aggravated~~
 29 ~~child molestation when the victim is 16 years of age or younger at the time of the offense~~
 30 ~~is authorized to require, before sentencing, that the defendant undergo a psychiatric~~
 31 ~~evaluation to ascertain whether or not medroxyprogesterone acetate chemical treatment~~
 32 ~~or its equivalent would be effective in changing the defendant's behavior. If it is~~
 33 ~~determined by a qualified mental health professional that such treatment would be~~
 34 ~~effective, the court may require, as a condition of probation and upon provisions arranged~~
 35 ~~between the court and the defendant, the defendant to undergo medroxyprogesterone~~
 36 ~~acetate treatment or its chemical equivalent which must be coupled with treatment by a~~
 37 ~~qualified mental health professional. In case of a person sentenced to probation who is~~

1 required to undergo such treatment or its chemical equivalent and is in the custody of a
 2 law enforcement agency or confined in a jail at the time of sentencing, when he or she
 3 becomes eligible for probation, such person shall begin medroxyprogesterone acetate
 4 treatment and counseling prior to his or her release from custody or confinement. A
 5 person sentenced to probation who is required to undergo such treatment and who is not
 6 in the custody of a law enforcement agency or confined in a jail at the time of sentencing
 7 shall be taken into custody or confined until treatment can begin. Additional treatment
 8 may continue after such defendant's release from custody or confinement until the
 9 defendant demonstrates to the court that such treatment is no longer necessary. No such
 10 treatment shall be administered until such person has been fully informed of the side
 11 effects of hormonal chemical treatment and has consented to the treatment in writing.
 12 The administration of the treatment shall conform to the procedures and conditions set
 13 out in subsection (c) of Code Section 42-9-44.2.

14 (3) ~~Any physician or qualified mental health professional who acts in good faith in~~
 15 ~~compliance with the provisions of this Code section and subsection (c) of Code Section~~
 16 ~~42-9-44.2 in the administration of treatment or provision of counseling provided for in~~
 17 ~~this Code section shall be immune from civil or criminal liability for his or her actions~~
 18 ~~in connection with such treatment or counseling."~~

19 SECTION 12.

20 Said title is further amended by striking Code Section 16-6-5, relating to enticing a child for
 21 indecent purposes, and inserting in lieu thereof the following:

22 "16-6-5.

23 (a) A person commits the offense of enticing a child for indecent purposes when he or she
 24 solicits, entices, or takes any child under the age of 16 years to any place whatsoever for
 25 the purpose of child molestation or indecent acts.

26 (b) Except as provided in subsection (c) of this Code section, a A person convicted of the
 27 offense of enticing a child for indecent purposes shall be punished by imprisonment for not
 28 less than ~~one~~ ten nor more than ~~20~~ 30 years. Any person convicted under this Code section
 29 of the offense of enticing a child for indecent purposes shall, in addition, be subject to the
 30 sentencing and punishment provisions of Code Section 17-10-6.2. Upon a first conviction
 31 of the offense of enticing a child for indecent purposes, the judge may probate the sentence;
 32 and such probation may be upon the special condition that the defendant undergo a
 33 mandatory period of counseling administered by a licensed psychiatrist or a licensed
 34 psychologist. However, if the judge finds that such probation should not be imposed, he
 35 shall sentence the defendant to imprisonment. Upon a second or third conviction of such
 36 offense, the defendant shall be punished by imprisonment for not less than five years. For

1 a fourth or subsequent conviction of the offense of enticing a child for indecent purposes,
 2 the defendant shall be punished by imprisonment for 20 years. Adjudication of guilt or
 3 imposition of sentence for a conviction of a third, fourth, or subsequent offense of enticing
 4 a child for indecent purposes, including a plea of nolo contendere, shall not be suspended,
 5 probated, deferred, or withheld.

6 (c) If the victim is at least 13 but less than 16 years of age and the person convicted of
 7 enticing a child for indecent purposes is 18 years of age or younger and is no more than
 8 four years older than the victim, such person shall be guilty of a misdemeanor and shall not
 9 be subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

10 SECTION 13.

11 Said title is further amended by striking Code Section 16-6-5.1, relating to sexual assault
 12 against persons in custody, and inserting in lieu thereof the following:

13 "16-6-5.1.

14 (a) As used in this Code section, the term:

15 (1) 'Actor' means a person accused of sexual assault.

16 (2) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of a
 17 person.

18 (3) 'Psychotherapy' means the professional treatment or counseling of a mental or
 19 emotional illness, symptom, or condition.

20 (4) 'Sexual contact' means any contact between for the purpose of sexual gratification of
 21 the actor and a person not married to the actor involving with the intimate parts of a
 22 person not married to the actor either person for the purpose of sexual gratification of the
 23 actor.

24 (b) A probation or parole officer or other custodian or supervisor of another person
 25 referred to in this Code section commits sexual assault when he or she engages in sexual
 26 contact with another person who is a probationer or parolee under the supervision of said
 27 probation or parole officer or who is in the custody of law or who is enrolled in a school
 28 or who is detained in or is a patient in a hospital or other institution and such actor has
 29 supervisory or disciplinary authority over such other person. A person convicted of sexual
 30 assault shall be punished by imprisonment for not less than one ten nor more than three 30
 31 years; provided, however, that any person convicted of the offense of sexual assault under
 32 this subsection of a child under the age of 14 years shall be punished by imprisonment for
 33 not less than 25 nor more than 50 years. Any person convicted under this subsection of the
 34 offense of sexual assault shall, in addition, be subject to the sentencing and punishment
 35 provisions of Code Section 17-10-6.2.

1 (c)(1) A person commits sexual assault when such person has supervisory or disciplinary
 2 authority over another person and such person engages in sexual contact with that other
 3 person who is:

4 (A) In the custody of law; or

5 (B) Detained in or is a patient in a hospital or other institution.

6 (2) A person commits sexual assault when, as an actual or purported practitioner of
 7 psychotherapy, he or she engages in sexual contact with another person who the actor
 8 knew or should have known is the subject of the actor's actual or purported treatment or
 9 counseling, or, if the treatment or counseling relationship was used to facilitate sexual
 10 contact between the actor and said person.

11 (3) Consent of the victim shall not be a defense to a prosecution under this subsection.

12 (4) A person convicted of sexual assault under this subsection shall be punished by
 13 imprisonment for not less than ~~one~~ ten nor more than ~~three~~ 30 years; provided, however,
 14 that any person convicted of the offense of sexual assault under this subsection of a child
 15 under the age of 14 years shall be punished by imprisonment for not less than 25 nor
 16 more than 50 years. Any person convicted under this subsection of the offense of sexual
 17 assault shall, in addition, be subject to the sentencing and punishment provisions of Code
 18 Section 17-10-6.2.

19 (d) A person who is an employee, agent, or volunteer at any facility licensed or required
 20 to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code
 21 Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant
 22 to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, commits
 23 sexual assault when such person engages in sexual contact with another person who has
 24 been admitted to or is receiving services from such facility, person, or entity. A person
 25 convicted of sexual assault pursuant to this subsection shall be punished by imprisonment
 26 for not less than ~~one~~ ten nor more than ~~five~~ 30 years, or a fine of not more than \$5,000.00,
 27 or both. Any violation of this subsection shall constitute a separate offense. Any person
 28 convicted under this subsection of the offense of sexual assault shall, in addition, be subject
 29 to the sentencing and punishment provisions of Code Section 17-10-6.2."

30 SECTION 14.

31 Said title is further amended by striking Code Section 16-6-22, relating to incest, and
 32 inserting in lieu thereof the following:

33 "16-6-22.

34 (a) A person commits the offense of incest when ~~he~~ the person engages in sexual
 35 intercourse or oral or anal sex with a person to whom he or she knows he or she is related
 36 either by blood or by marriage as follows:

1 (1) Father and ~~daughter or stepdaughter~~ child or stepchild;

2 (2) Mother and ~~son or stepson~~ child or stepchild;

3 (3) Sibling ~~Brother and sister~~ of the whole blood or of the half blood and sibling of the
4 whole blood or of the half blood;

5 (4) Grandparent and grandchild;

6 (5) Aunt and niece or nephew; or

7 (6) Uncle and niece or nephew.

8 As used in this Code section, the term 'oral or anal sex' means performing or submitting to
9 any sexual act involving the sex organs of one person and the mouth or anus of another
10 person.

11 (b) A person convicted of the offense of incest shall be punished by imprisonment for not
12 less than ~~one ten~~ ten nor more than ~~20~~ 30 years; provided, however, that any person convicted
13 of the offense of incest under this subsection with a child under the age of 14 years shall
14 be punished by imprisonment for not less than 25 nor more than 50 years. Any person
15 convicted under this Code section of the offense of incest shall, in addition, be subject to
16 the sentencing and punishment provisions of Code Section 17-10-6.2."

17 SECTION 15.

18 Said title is further amended by striking Code Section 16-6-22.1, relating to sexual battery,
19 and inserting in lieu thereof the following:

20 "16-6-22.1.

21 (a) For the purposes of this Code section, the term 'intimate parts' means the primary
22 genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a
23 female.

24 (b) A person commits the offense of sexual battery when he or she intentionally makes
25 physical contact with the intimate parts of the body of another person without the consent
26 of that person.

27 (c) Except as otherwise provided in this Code section, a person convicted of the offense
28 of sexual battery shall be punished as for a misdemeanor of a high and aggravated nature.

29 (d) A person convicted of the offense of sexual battery against any child under the age of
30 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by
31 imprisonment for not less than one nor more than five years.

32 (e) Upon a second or subsequent conviction under this Code section, a person shall, in
33 addition, be subject to the sentencing and punishment provisions of Code Section
34 17-10-6.2."

1 commits a felony and shall be punished by imprisonment for not less than five nor more
2 than 20 years.

3 16-6-26.

4 (a) As used in this Code section, the term 'disabled person' means any person with a mental
5 or emotional illness, developmental disability, or addictive disease.

6 (b) It shall be unlawful for any person to have carnal knowledge with a disabled person
7 of the age of majority whom he or she knows or reasonably should know is incapable of
8 giving consent to such activity.

9 (c) A person convicted of violating the provisions of this Code section shall be punished
10 by imprisonment for not less than ten nor more than 20 years."

11 SECTION 18.

12 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
13 amended by striking subsection (g) of Code Section 17-6-1, relating to where offenses are
14 bailable and appeal bonds, and inserting in lieu thereof the following:

15 "(g) No appeal bond shall be granted to any person who has been convicted of murder,
16 rape, aggravated sodomy, armed robbery, aggravated child molestation, child molestation,
17 kidnapping, trafficking in cocaine or marijuana, aggravated stalking, or aircraft hijacking
18 and who has been sentenced to serve a period of incarceration of ~~seven~~ five years or more.
19 The granting of an appeal bond to a person who has been convicted of any other felony
20 offense or of any misdemeanor offense involving an act of family violence as defined in
21 Code Section 19-13-1, or of any offense delineated as a high and aggravated misdemeanor
22 or of any offense set forth in Code Section 40-6-391, shall be in the discretion of the
23 convicting court. Appeal bonds shall terminate when the right of appeal terminates, and
24 such bonds shall not be effective as to any petition or application for writ of certiorari
25 unless the court in which the petition or application is filed so specifies."

26 SECTION 19.

27 Said title is further amended by striking paragraph (1) of subsection (a) of Code Section
28 17-10-1, relating to the fixing of a sentence, and inserting in lieu thereof the following:

29 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death
30 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
31 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
32 shall prescribe a determinate sentence for a specific number of months or years which
33 shall be within the minimum and maximum sentences prescribed by law as the
34 punishment for the crime. The judge imposing the sentence is granted power and

1 authority to suspend or probate all or any part of the entire sentence under such rules and
 2 regulations as the judge deems proper, including service of a probated sentence in the
 3 sentencing options system, as provided by Article 9 of Chapter 8 of Title 42, and
 4 including the authority to revoke the suspension or probation when the defendant has
 5 violated any of the rules and regulations prescribed by the court, even before the
 6 probationary period has begun, subject to the conditions set out in this subsection;
 7 provided, however, that such action shall be subject to the provisions of Code ~~Section~~
 8 Sections 17-10-6.1 and 17-10-6.2."

9 SECTION 20.

10 Said title is further amended by striking Code Section 17-10-6.1, relating to punishment for
 11 serious violent offenders, and inserting in lieu thereof the following:

12 "17-10-6.1.

13 (a) As used in this Code section, the term 'serious violent felony' means:

- 14 (1) Murder or felony murder, as defined in Code Section 16-5-1;
- 15 (2) Armed robbery, as defined in Code Section 16-8-41;
- 16 (3) Kidnapping, as defined in Code Section 16-5-40;
- 17 (4) Rape, as defined in Code Section 16-6-1;
- 18 (5) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
 19 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
 20 16-6-4;
- 21 (6) Aggravated sodomy, as defined in Code Section 16-6-2; or
- 22 (7) Aggravated sexual battery, as defined in Code Section 16-6-22.2.

23 (b)(1) Notwithstanding any other provisions of law to the contrary, any person convicted
 24 of a the serious violent felony as defined in paragraphs (2) through (7) of subsection (a)
 25 of this Code section of kidnapping involving a victim who is 14 years of age or older or
 26 armed robbery shall be sentenced to a mandatory minimum term of imprisonment of ten
 27 years and no portion of the mandatory minimum sentence imposed shall be suspended,
 28 stayed, probated, deferred, or withheld by the sentencing court and shall not be reduced
 29 by any form of pardon, parole, or commutation of sentence by the State Board of Pardons
 30 and Paroles.

31 (2) Notwithstanding any other provisions of law to the contrary, any person convicted
 32 of the serious violent felony of:

- 33 (A) Kidnapping involving a victim who is less than 14 years of age;
- 34 (B) Rape;

1 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
 2 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
 3 16-6-4;

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

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

6 shall be sentenced to a split sentence which shall include a mandatory minimum term of
 7 imprisonment of 25 years followed by probation for life. No portion of the mandatory
 8 minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld
 9 by the sentencing court and shall not be reduced by any form of pardon, parole, or
 10 commutation of sentence by the State Board of Pardons and Paroles.

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

19 (c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a first
 20 conviction of a serious violent felony in which the defendant has been sentenced to life
 21 imprisonment, that person shall not be eligible for any form of parole or early release
 22 administered by the State Board of Pardons and Paroles until that person has served a
 23 minimum of ~~14~~ 20 years in prison. The minimum term of imprisonment shall not be
 24 reduced by any earned time, early release, work release, leave, or other sentence-reducing
 25 measures under programs administered by the Department of Corrections.

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

33 (3) Any sentence imposed for the first conviction of any serious violent felony other than
 34 a sentence of life imprisonment or life without parole or death shall be served in its
 35 entirety as imposed by the sentencing court and shall not be reduced by any form of
 36 parole or early release administered by the State Board of Pardons and Paroles or by any
 37 earned time, early release, work release, leave, or other sentence-reducing measures

1 under programs administered by the Department of Corrections, the effect of which
2 would be to reduce the period of incarceration ordered by the sentencing court.

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

10 SECTION 21.

11 Said title is further amended by adding a new Code section to follow Code Section
12 17-10-6.1, relating to punishment for serious violent offenders, to read as follows:

13 "17-10-6.2.

14 (a) As used in this Code section, the term 'sexual offense' means:

- 15 (1) Aggravated assault with the intent to rape, as defined in Code Section 16-5-21;
- 16 (2) False imprisonment, as defined in Code Section 16-5-41, if the victim is not the child
17 of the defendant and the victim is less than 14 years of age;
- 18 (3) Sodomy, as defined in Code Section 16-6-2, unless subject to the provisions of
19 subsection (d) of Code Section 16-6-2;
- 20 (4) Statutory rape, as defined in Code Section 16-6-3, if the person convicted of the
21 crime is 21 years of age or older;
- 22 (5) Child molestation, as defined in subsection (a) of Code Section 16-6-4, unless subject
23 to the provisions of paragraph (2) of subsection (b) of Code Section 16-6-4;
- 24 (6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, unless
25 subject to the provisions of subsection (c) of Code Section 16-6-5;
- 26 (7) Sexual assault against persons in custody, as defined in Code Section 16-6-5.1;
- 27 (8) Incest, as defined in Code Section 16-6-22;
- 28 (9) A second or subsequent conviction for sexual battery, as defined in Code Section
29 16-6-22.1; or
- 30 (10) Sexual exploitation of children, as defined in Code Section 16-12-100.

31 (b) Except as provided in subsection (c) of this Code section, and notwithstanding any
32 other provisions of law to the contrary, any person convicted of a sexual offense shall be
33 sentenced to a split sentence which shall include the minimum term of imprisonment
34 specified in the Code section applicable to the offense. No portion of the mandatory
35 minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by
36 the sentencing court and such sentence shall include, in addition to the mandatory

1 imprisonment, an additional probated sentence of at least one year. No person convicted
 2 of a sexual offense shall be sentenced as a first offender pursuant to Article 3 of Chapter
 3 8 of Title 42, relating to probation for first offenders, or any other provision of Georgia law
 4 relating to the sentencing of first offenders.

5 (c)(1) In the court's discretion, the court may deviate from the mandatory minimum
 6 sentence as set forth in subsection (b) of this Code section, or any portion thereof,
 7 provided that:

8 (A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of
 9 Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any
 10 offense under federal law or the laws of another state or territory of the United States
 11 which consists of the same or similar elements of offenses prohibited by Chapter 6 of
 12 Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;

13 (B) The defendant did not use a deadly weapon or any object, device, or instrument
 14 which when used offensively against a person would be likely to or actually did result
 15 in serious bodily injury during the commission of the offense;

16 (C) The court has not found evidence of a relevant similar transaction;

17 (D) The victim did not suffer any serious physical injury during the commission of the
 18 offense;

19 (E) The offense did not involve the asportation against the will of the victim; and

20 (F) The victim was not physically restrained during the commission of the offense.

21 (2) If the court deviates in sentencing pursuant to this subsection, the judge shall issue
 22 a written order setting forth the judge's reasons. Any such order shall be appealable by
 23 the defendant pursuant to Code Section 5-6-34, or by the State of Georgia pursuant to
 24 Code Section 5-7-1.

25 (d) If the court imposes a probated sentence, the defendant shall submit to review by the
 26 Sexual Offender Registration Review Board for purposes of risk assessment classification
 27 within ten days of being sentenced and shall otherwise comply with Article 2 of Chapter
 28 1 of Title 42."

29 **SECTION 22.**

30 Said title is further amended in subsection (b) of Code Section 17-10-30, relating to the
 31 procedure for implementation of the death penalty generally, by striking "or" at the end of
 32 paragraph (9), by adding "; or" at the end of paragraph (10), and by adding a new paragraph
 33 (11) to read as follows:

34 "(11) The offense of murder, rape, or kidnapping was committed by a person previously
 35 convicted of rape, aggravated sodomy, aggravated child molestation, or aggravated
 36 sexual battery."

SECTION 23.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by striking subparagraph (A) of paragraph (4) of Code Section 35-3-30, relating to definitions used for the Georgia Crime Information Center article, and inserting in lieu thereof the following:

"(A) 'Criminal history record information' means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. Such term also includes the age and sex of each victim as provided by criminal justice agencies. The term does not include identification information, such as fingerprint records, to the extent that such information does not indicate involvement of the individual in the criminal justice system."

SECTION 24.

Article 2 of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to issuance, expiration, and renewal of drivers' licenses, is amended by adding a new Code Section 40-5-38 to read as follows:

"40-5-38.

(a)(1) Whenever any person is convicted on or after July 1, 2006, of a crime for which such person is required to register pursuant to Code Section 42-1-12, the court in which such conviction was entered shall issue an order canceling the person's driver's license.

(2) Upon entering an order as required in this Code section, the court in which such conviction was entered shall require the surrender to it of any driver's license then held by the person so convicted and the court shall thereupon forward the same to the department, together with a copy of the order reflecting the cancellation of the person's driver's license.

(3) Any person subject to an order of license cancellation entered pursuant to this Code section shall surrender his or her driver's license immediately to the court. If the license is lost or for any other reason surrender to the court is impossible, the court shall include such information in the order.

(4) Upon receipt of an order issued pursuant to this Code section, the department shall cancel the driver's license of the person so convicted and no new driver's license shall be issued to the person unless he or she shall apply for a new license.

(b)(1) Any person whose driver's license has been canceled in accordance with subsection (a) of this Code section may apply for a new driver's license which shall be identifiable to law enforcement officers as a license issued to a convicted sex offender

1 subject to registration. The department shall verify that the applicant is registered in
2 accordance with Code Section 42-1-12 and, upon verification, shall issue a new driver's
3 license in accordance with this Code section. If the sexual offender is not registered, the
4 department shall not issue a new driver's license.

5 (2) Any person who was convicted prior to July 1, 2006, who is required to register
6 pursuant to Code Section 42-1-12, and whose driver's license expires or is canceled shall
7 apply for a new driver's license which shall be identifiable to law enforcement officers
8 as a license issued to a convicted sexual offender subject to registration. The department
9 shall verify that the applicant is registered in accordance with Code Section 42-1-12 and,
10 upon verification, shall issue a new driver's license in accordance with this Code section.
11 If the sexual offender is not registered, the department shall not issue a new driver's
12 license.

13 (3) Any person who is subject to the registration requirements of Code Section 42-1-12
14 shall only have a driver's license which is identifiable to law enforcement officers as a
15 license issued to a convicted sexual offender subject to registration unless and until he or
16 she provides satisfactory proof to the department that he or she is no longer subject to
17 registration pursuant to Code Section 42-1-12.

18 (4) Any person who is subject to the provisions of this Code section shall not be eligible
19 to renew, replace, or otherwise obtain his or her driver's license by any means other than
20 appearance in person.

21 (c) The department shall, by rule and regulation, provide that all licenses issued to
22 applicants subject to this Code section shall be so designated as to be readily
23 distinguishable by law enforcement officers from all other licenses issued to other
24 applicants.

25 (d) The department shall provide a list annually to the Georgia Bureau of Investigation
26 containing the name, address, date of birth, and driver's license number of each person to
27 whom a driver's license was issued pursuant to this Code section."

28 SECTION 25.

29 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
30 by designating Code Sections 42-1-1 through 42-1-11 as Article 1 of Chapter 1, striking in
31 their entirety Code Sections 42-1-12 and 42-1-13, and inserting in their place a new Article
32 2 to read as follows:

"ARTICLE 2

42-1-12.

(a) As used in this article, the term:

(1) 'Address' means the street or route address of the sexual offender's residence. For purposes of this Code section, the term does not mean a post office box, and homeless does not constitute an address.

(2) 'Appropriate official' means:

(A) With respect to a sexual offender who is sentenced to probation without any sentence of incarceration in the state prison system or who is sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, the Division of Probation of the Department of Corrections;

(B) With respect to a sexual offender who is sentenced to a period of incarceration in a prison under the jurisdiction of the Department of Corrections and who is subsequently released from prison or placed on probation, the commissioner of corrections or his or her designee;

(C) With respect to a sexual offender who is placed on parole, the chairperson of the State Board of Pardons and Paroles or his or her designee; and

(D) With respect to a sexual offender who is placed on probation through a private probation agency, the director of the private probation agency or his or her designee.

(3) 'Area where minors congregate' shall include all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, bus stops, and all other places established for the public to congregate and wait for public transportation.

(4) 'Assessment criteria' means the tests that the board members use to determine the likelihood that a sexual offender will commit another criminal offense against a victim who is a minor or commit a dangerous sexual offense.

(5) 'Board' means the Sexual Offender Registration Review Board.

(6) 'Child care facility' means all public and private pre-kindergarten facilities, day-care centers, child care learning centers, preschool facilities, and long-term care facilities for children.

(7) 'Church' means a place of public religious worship.

(8) 'Conviction' includes a final judgment of conviction entered upon a verdict or finding of guilty of a crime, a plea of guilty, or a plea of nolo contendere. A defendant who is discharged without adjudication of guilt and who is not considered to have a criminal conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall be subject to the registration requirements of this Code section for the period of time prior

1 to the defendant's discharge after completion of his or her sentence or upon the defendant
2 being adjudicated guilty. Unless otherwise required by federal law, a defendant who is
3 discharged without adjudication of guilt and who is not considered to have a criminal
4 conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall
5 not be subject to the registration requirements of this Code section upon the defendant's
6 discharge.

7 (9)(A) 'Criminal offense against a victim who is a minor' with respect to convictions
8 occurring on or before June 30, 2001, means any criminal offense under Title 16 or any
9 offense under federal law or the laws of another state or territory of the United States
10 which consists of:

- 11 (i) Kidnapping of a minor, except by a parent;
- 12 (ii) False imprisonment of a minor, except by a parent;
- 13 (iii) Criminal sexual conduct toward a minor;
- 14 (iv) Solicitation of a minor to engage in sexual conduct;
- 15 (v) Use of a minor in a sexual performance;
- 16 (vi) Solicitation of a minor to practice prostitution; or
- 17 (vii) Any conviction resulting from an underlying sexual offense against a victim
18 who is a minor.

19 (B) 'Criminal offense against a victim who is a minor' with respect to convictions
20 occurring after June 30, 2001, means any criminal offense under Title 16 or any offense
21 under federal law or the laws of another state or territory of the United States which
22 consists of:

- 23 (i) Kidnapping of a minor, except by a parent;
- 24 (ii) False imprisonment of a minor, except by a parent;
- 25 (iii) Criminal sexual conduct toward a minor;
- 26 (iv) Solicitation of a minor to engage in sexual conduct;
- 27 (v) Use of a minor in a sexual performance;
- 28 (vi) Solicitation of a minor to practice prostitution;
- 29 (vii) Use of a minor to engage in any sexually explicit conduct to produce any visual
30 medium depicting such conduct;
- 31 (viii) Creating, publishing, selling, distributing, or possessing any material depicting
32 a minor or a portion of a minor's body engaged in sexually explicit conduct;
- 33 (ix) Transmitting, making, selling, buying, or disseminating by means of a computer
34 any descriptive or identifying information regarding a child for the purpose of
35 offering or soliciting sexual conduct of or with a child or the visual depicting of such
36 conduct;

1 (x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors
2 engaged in sexually explicit conduct; or

3 (xi) Any conduct which, by its nature, is a sexual offense against a minor.

4 (C) For purposes of subparagraph (a)(9)(B) of this Code section, conduct which is
5 punished as for a misdemeanor or which is prosecuted in juvenile court shall not be
6 considered a criminal offense against a victim who is a minor.

7 (10)(A) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
8 2006, means any criminal offense under Title 16 as specified in this paragraph or any
9 offense under federal law or the laws of another state or territory of the United States
10 which consists of the same or similar elements of the following offenses:

11 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-2;

12 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
13 is less than 14 years of age, except by a parent;

14 (iii) False imprisonment in violation of Code Section 16-5-41 which involves a
15 victim who is less than 14 years of age, except by a parent;

16 (iv) Rape in violation of Code Section 16-6-1;

17 (v) Sodomy in violation of Code Section 16-6-2;

18 (vi) Aggravated sodomy in violation of Code Section 16-6-2;

19 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
20 of the offense is 21 years of age or older;

21 (viii) Child molestation in violation of Code Section 16-6-4;

22 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
23 person was convicted of a misdemeanor offense;

24 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

25 (xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

26 (xii) Incest in violation of Code Section 16-6-22;

27 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

28 (xiv) Aggravated sexual battery in violation of Code Section 16-6-23;

29 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;

30 (xvi) Electronically furnishing obscene material to minors in violation of Code
31 Section 16-12-100.1;

32 (xvii) Computer pornography and child exploitation prevention in violation of Code
33 Section 16-12-100.2;

34 (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

35 (xix) Any conduct which, by its nature, is a sexual offense against a minor or an
36 attempt to commit a sexual offense against a minor.

1 (B) For purposes of this paragraph, conduct which is punished as for a misdemeanor
2 or which is prosecuted in juvenile court shall not be considered a dangerous sexual
3 offense.

4 (11) 'Institution of higher education' means a private or public community college, state
5 university, state college, or independent postsecondary institution.

6 (12) 'Level I risk assessment classification' means the sexual offender is a low sex
7 offense risk and low recidivism risk for future sexual offenses.

8 (13) 'Level II risk assessment classification' means the sexual offender is an intermediate
9 sex offense risk and intermediate recidivism risk for future sexual offenses and includes
10 all sexual offenders who do not meet the criteria for classification either as a sexually
11 dangerous predator or for Level I risk assessment.

12 (14) 'Minor' means any individual under the age of 18 years and any individual that the
13 sexual offender believed at the time of the offense was under the age of 18 years if such
14 individual was the victim of an offense.

15 (15) 'Required registration information' means:

16 (A) Name; social security number; age; race; sex; date of birth; height; weight; hair
17 color, eye color, fingerprints; and photograph;

18 (B) Address of any permanent residence and address of any current temporary
19 residence, within the state or out of state, and, if applicable in addition to the address,
20 a rural route address and a post office box;

21 (C) If the place of residence is a motor vehicle or trailer, provide the vehicle
22 identification number, the license tag number, and a description, including color
23 scheme, of the motor vehicle or trailer;

24 (D) If the place of residence is a mobile home, provide the mobile home location
25 permit number; the name and address of the owner of the home; a description, including
26 the color scheme of the mobile home; and, if applicable, a description of where the
27 mobile home is located on the property;

28 (E) If the place of residence is a manufactured home, provide the name and address of
29 the owner of the home; a description, including the color scheme of the manufactured
30 home; and, if applicable, a description of where the manufactured home is located on
31 the property;

32 (F) If the place of residence is a vessel, live-aboard vessel, or houseboat, provide the
33 hull identification number; the manufacturer's serial number; the name of the vessel,
34 live-aboard vessel, or houseboat; the registration number; and a description, including
35 color scheme, of the vessel, live-aboard vessel, or houseboat;

36 (G) Date of employment, place of any employment, and address of employer;

37 (H) Place of vocation and address of the place of vocation;

1 (I) Vehicle make, model, color, and license tag number;

2 (J) If enrolled, employed, or carrying on a vocation at an institution of higher education
3 in this state, the name, address, and county of each institution, including each campus
4 attended, and enrollment or employment status; and

5 (K) The name of the crime or crimes for which the sexual offender is registering and
6 the date released from prison or placed on probation, parole, or supervised release.

7 (16) 'Risk assessment classification' means the notification level into which a sexual
8 offender is placed based on the board's assessment.

9 (17) 'School' means all public and private kindergarten, elementary, and secondary
10 schools.

11 (18) 'Sexual offender' means any individual:

12 (A) Who has been convicted of a criminal offense against a victim who is a minor or
13 any dangerous sexual offense; or

14 (B) Who has been convicted under the laws of another state or territory, under the laws
15 of the United States, under the Uniform Code of Military Justice, or in a tribal court of
16 a criminal offense against a victim who is a minor or a dangerous sexual offense.

17 (19) 'Sexually dangerous predator' means a sexual offender:

18 (A) Who was designated as a sexually violent offender between July 1, 1996, and June
19 30, 2006; or

20 (B) Who has been convicted on or after July 1, 2006, of a dangerous sexual offense;
21 and

22 who is determined by the Sexual Offender Registration Review Board to be at risk of
23 perpetrating any future dangerous sexual offense.

24 (20) 'Vocation' means any full-time, part-time, or volunteer employment with or without
25 compensation exceeding 14 consecutive days or for an aggregate period of time
26 exceeding 30 days during any calendar year.

27 (b) Before a sexual offender who is required to register under this Code section is released
28 from prison or placed on parole, supervised release, or probation, the appropriate official
29 shall:

30 (1) Inform the sexual offender of the obligation to register, the amount of the registration
31 fee, and how to maintain registration;

32 (2) Obtain the information necessary for the required registration information;

33 (3) Inform the sexual offender that, if the sexual offender changes any of the required
34 registration information, other than residence address, the sexual offender shall give the
35 new information to the sheriff of the county with whom the sexual offender is registered
36 within 72 hours of the change of information; if the information is the sexual offender's
37 new residence address, the sexual offender shall give the information to the sheriff of the

1 county with whom the sexual offender last registered within 72 hours prior to moving and
2 to the sheriff of the county to which the sexual offender is moving within 72 hours after
3 the change of information;

4 (4) Inform the sexual offender that he or she shall also register in any state where he or
5 she is employed, carries on a vocation, or is a student;

6 (5) Inform the sexual offender that, if he or she changes residence to another state, the
7 sexual offender shall register the new address with the sheriff of the county with whom
8 the sexual offender last registered, and that the sexual offender shall also register with a
9 designated law enforcement agency in the new state within 72 hours after establishing
10 residence in the new state;

11 (6) Obtain fingerprints and a current photograph of the sexual offender;

12 (7) Require the sexual offender to read and sign a form stating that the obligations of the
13 sexual offender have been explained;

14 (8) Obtain and forward any information obtained from the clerk of court pursuant to
15 Code Section 42-5-50 to the sheriff's office of the county in which the sexual offender
16 will reside; and

17 (9) If required by Code Section 42-1-14, place any required electronic monitoring device
18 on the sexually dangerous predator and explain its operation and cost.

19 (c) The Department of Corrections shall:

20 (1) Forward to the Georgia Bureau of Investigation a copy of the form stating that the
21 obligations of the sexual offender have been explained;

22 (2) Forward any required registration information to the Georgia Bureau of Investigation;

23 (3) Forward the sexual offender's fingerprints and photograph to the sheriff's office of
24 the county where the sexual offender is going to reside;

25 (4) Inform the board and the prosecuting attorney for the jurisdiction in which a sexual
26 offender was convicted of the impending release of a sexual offender at least eight
27 months prior to such release so as to facilitate compliance with Code Section 42-1-14;
28 and

29 (5) Keep all records of sexual offenders in a secure facility until official proof of death
30 of a registered sexual offender and thereafter the records shall be destroyed in accordance
31 with Code Sections 15-1-10, 15-6-62, and 15-6-62.1.

32 (d) No sexual offender shall be released from prison or placed on parole, supervised
33 release, or probation until:

34 (1) The appropriate official has provided the Georgia Bureau of Investigation and the
35 sheriff's office in the county where the sexual offender will be residing with the sexual
36 offender's required registration information and risk assessment classification level; and

1 (2) The sexual offender's name has been added to the list of sexual offenders maintained
2 by the Georgia Bureau of Investigation and the sheriff's office as required by this Code
3 section.

4 (e) Registration pursuant to this Code section shall be required by any individual who:

5 (1) Is convicted on or after July 1, 1996, of a criminal offense against a victim who is a
6 minor;

7 (2) Is convicted on or after July 1, 2006, of a dangerous sexual offense;

8 (3) Has previously been convicted of a criminal offense against a minor and may be
9 released from prison or placed on parole, supervised release, or probation on or after July
10 1, 1996;

11 (4) Has previously been convicted of a sexually violent offense and may be released
12 from prison or placed on parole, supervised release, or probation;

13 (5) Is a resident of Georgia who intends to reside in this state and who is convicted under
14 the laws of another state or the United States, under the Uniform Code of Military Justice,
15 or in a tribal court of a sexually violent offense, a criminal offense against a victim who
16 is a minor on or after July 1, 1999, or a dangerous sexual offense on or after July 1, 2006;

17 (6) Is a nonresident sexual offender who changes residence from another state or territory
18 of the United States to Georgia who is required to register as a sexual offender under
19 federal law, military law, tribal law, or the laws of another state or territory, regardless
20 of when the conviction occurred;

21 (7) Is a nonresident sexual offender who enters this state for the purpose of employment
22 or any other reason for a period exceeding 14 consecutive days or for an aggregate period
23 of time exceeding 30 days during any calendar year regardless of whether such sexual
24 offender is required to register under federal law, military law, tribal law, or the laws of
25 another state or territory; or

26 (8) Is a nonresident sexual offender who enters this state for the purpose of attending
27 school as a full-time or part-time student regardless of whether such sexual offender is
28 required to register under federal law, military law, tribal law, or the laws of another state
29 or territory.

30 (f) Any sexual offender required to register under this Code section shall:

31 (1) Provide the required registration information to the appropriate official before being
32 released from prison or placed on parole, supervised release, or probation;

33 (2) Register with the sheriff of the county in which the sexual offender resides within 72
34 hours after the sexual offender's release from prison or placement on parole, supervised
35 release, probation, or entry into this state;

36 (3) Maintain the required registration information with the sheriff of the county in which
37 the sexual offender resides;

1 (4) Renew the required registration information with the sheriff of the county in which
2 the sexual offender resides by reporting to the sheriff within 72 hours prior to such
3 offender's birthday each year to be photographed and fingerprinted;

4 (5) Update the required registration information with the sheriff of the county in which
5 the sexual offender resides within 72 hours of any change to the required registration
6 information, other than residence address; if the information is the sexual offender's new
7 residence address, the sexual offender shall give the information to the sheriff of the
8 county with whom the sexual offender last registered within 72 hours prior to any change
9 of residence address and to the sheriff of the county to which the sexual offender is
10 moving within 72 hours after establishing the new residence;

11 (6) If convicted of a dangerous sexual offense on or after July 1, 2006, pay to the sheriff
12 of the county where the sexual offender resides an annual registration fee of \$250.00
13 upon each anniversary of such registration; and

14 (7) Continue to comply with the registration requirements of this Code section for the
15 entire life of the sexual offender, including ensuing periods of incarceration.

16 (g)(1) Any sexual offender required to register under this Code section who meets the
17 criteria set forth in paragraph (2) of this Code section may petition the superior court of
18 the jurisdiction in which the sexual offender is registered to be released from the
19 registration requirements of this Code section. The court may issue an order releasing
20 the sexual offender from further registration if the court finds that the sexual offender
21 does not pose a substantial risk of perpetrating any future dangerous sexual offense.

22 (2) In order to petition the court pursuant to paragraph (1) of this subsection, the sexual
23 offender shall:

24 (A) Have been convicted of:

25 (i) Sodomy, as defined in Code Section 16-6-2;

26 (ii) Statutory rape, as defined in Code Section 16-6-3;

27 (iii) Child molestation, as defined in subsection (a) of Code Section 16-6-4;

28 (iv) Aggravated child molestation when the basis of the charge involves an act of
29 sodomy; or

30 (v) Enticing a child for indecent purposes, as defined in Code Section 16-6-5;

31 (B) Have been under 21 years of age at the time of the commission of the offense;

32 (C) Not have a prior conviction of an offense prohibited by Chapter 6 of Title 16 or
33 Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense
34 under federal law or the laws of another state or territory of the United States which
35 consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16
36 or Part 2 of Article 3 of Chapter 12 of Title 16;

1 (D) Not have used a deadly weapon or any object, device, or instrument which when
2 used offensively against a person would be likely to or actually did result in serious
3 bodily injury during the commission of the offense;

4 (E) Not have caused the victim to suffer any physical injury or visible bodily harm
5 during the commission of the offense;

6 (F) Have been declared a Level I risk assessment classification by the board if
7 convicted on or after July 1, 2006, or if convicted prior to July 1, 2006, have requested
8 the board for an evaluation and have been declared by the board to be a Level I risk
9 assessment classification; and

10 (G) Have had ten years elapse since his or her release from prison, parole, supervised
11 release, or probation.

12 (h)(1) The appropriate official or sheriff shall, within 72 hours after receipt of the
13 required registration information, forward such information to the Georgia Bureau of
14 Investigation. Once the data is entered into the Criminal Justice Information System by
15 the appropriate official or sheriff, the Georgia Crime Information Center shall notify the
16 sheriff of the sexual offender's county of residence, either permanent or temporary, the
17 sheriff of the county of employment, and the sheriff of the county where the sexual
18 offender attends an institution of higher education within 24 hours of entering the data
19 or any change to the data.

20 (2) The Georgia Bureau of Investigation shall:

21 (A) Transmit all information, including the conviction data and fingerprints, to the
22 Federal Bureau of Investigation within 24 hours of entering the data;

23 (B) Establish operating policies and procedures concerning record ownership, quality,
24 verification, modification, and cancellation; and

25 (C) Perform mail out and verification duties as follows:

26 (i) Send each month Criminal Justice Information System network messages to
27 sheriffs listing sexual offenders due for verification;

28 (ii) Create a photo image file from original entries and provide such entries to sheriffs
29 to assist in sexual offender identification and verification;

30 (iii) Mail a nonforwardable verification form to the last reported address of the sexual
31 offender within ten days prior to the sexual offender's birthday;

32 (iv) If the sexual offender changes residence to another state, notify the law
33 enforcement agency with which the sexual offender shall register in the new state; and

34 (v) Maintain records required under this Code section.

35 (i) The sheriff's office in each county shall:

36 (1) Prepare and maintain a list of all sexual offenders and sexually dangerous predators
37 residing in each county. Such list shall include the sexual offender's name; age; physical

1 description; address; crime of conviction, including conviction date and the jurisdiction
2 of the conviction; photograph; and the risk assessment classification level provided by
3 the board, and an explanation of how the board classifies sexual offenders and sexually
4 dangerous predators;

5 (2) Electronically submit and update all information provided by the sexual offender
6 within two working days to the Georgia Bureau of Investigation in a manner prescribed
7 by the Georgia Bureau of Investigation;

8 (3) Maintain and post a list of every sexual offender residing in each county:

9 (A) In the sheriff's office;

10 (B) In any county administrative building;

11 (C) In the main administrative building for any municipal corporation;

12 (D) In the office of the clerk of the superior court so that such list is available to the
13 public; and

14 (E) On a website maintained by the sheriff of the county for the posting of general
15 information;

16 (4) Update the public notices required by paragraph (3) of this Code section within two
17 working days;

18 (5) Inform the public of the presence of sexual offenders in each community;

19 (6) Update the list of sexual offenders residing in the county upon receipt of new
20 information affecting the residence address of a sexual offender or upon the registration
21 of a sexual offender moving into the county by virtue of release from prison, relocation
22 from another county, conviction in another state, federal court, military tribunal, or tribal
23 court. Such list, and any additions to such list, shall be delivered immediately to all
24 schools or institutions of higher education located in the county;

25 (7) Within 72 hours of the receipt of changed required registration information, notify
26 the Georgia Bureau of Investigation through the Criminal Justice Information System of
27 each change of information;

28 (8) Retain the verification form stating that the sexual offender still resides at the address
29 last reported;

30 (9) Enforce the criminal provisions of this Code section. The sheriff may request the
31 assistance of the Georgia Bureau of Investigation to enforce the provisions of this Code
32 section;

33 (10) Cooperate and communicate with other sheriffs' offices in this state and in the
34 United States to maintain current data on the location of sexual offenders;

35 (11) Determine the appropriate time of day for reporting by sexual offenders, which shall
36 be consistent with the reporting requirements of this Code section;

1 (12) If required by Code Section 42-1-14, place any electronic monitoring device on the
2 sexually dangerous predator and explain its operation and cost;

3 (13) Provide current information on names and addresses of all registered sexual
4 offenders to campus police with jurisdiction for the campus of an institution of higher
5 education if the campus is within the sheriff's jurisdiction; and

6 (14) Collect the annual \$250.00 registration fee from the sexual offender and transmit
7 such fees to the state for deposit into the General Fund.

8 (j)(1) The sheriff of the county where the sexual offender resides or last registered shall
9 be the primary law enforcement official charged with communicating the whereabouts
10 of the sexual offender and any changes in required registration information to the
11 sheriff's office of the county or counties where the sexual offender is employed,
12 volunteers, attends an institution of higher education, or moves.

13 (2) The sheriff's office may post the list of sexual offenders in any public building in
14 addition to those locations enumerated in subsection (h) of this Code section.

15 (k) The Georgia Crime Information Center shall create the Criminal Justice Information
16 System network transaction screens by which appropriate officials shall enter original data
17 required by this Code section. Screens shall also be created for sheriffs' offices for the
18 entry of record confirmation data; employment; changes of residence, institutions of higher
19 education, or employment; or other pertinent data to assist in sexual offender identification.

20 (l)(1) On at least an annual basis, the Department of Education shall obtain from the
21 Georgia Bureau of Investigation a complete list of the names and addresses of all
22 registered sexual offenders and shall send such list, accompanied by a hold harmless
23 provision, to each school in this state. In addition, the Department of Education shall
24 provide information to each school in this state on accessing and retrieving from the
25 Georgia Bureau of Investigation's website a list of the names and addresses of all
26 registered sexual offenders.

27 (2) On at least an annual basis, the Department of Early Care and Learning shall provide
28 current information to all child care programs regulated pursuant to Code Section
29 20-1A-10 and to all child care learning centers, day-care, group day-care, and family
30 day-care programs regulated pursuant to Code Section 49-5-12 on accessing and
31 retrieving from the Georgia Bureau of Investigation's website a list of the names and
32 addresses of all registered sexual offenders and shall include, on a continuing basis, such
33 information with each application for licensure, commissioning, or registration for early
34 care and education programs.

35 (3) On at least an annual basis, the Department of Human Resources shall provide
36 current information to all long-term care facilities for children on accessing and retrieving

1 from the Georgia Bureau of Investigation's website a list of the names and addresses of
2 all registered sexual offenders.

3 (m) Within ten days of the filing of a defendant's discharge and exoneration of guilt
4 pursuant to Article 3 of Chapter 8 of this title, the clerk of court shall transmit the order of
5 discharge and exoneration to the Georgia Bureau of Investigation and any sheriff
6 maintaining records required under this Code section.

7 (n) Any individual who:

8 (1) Is required to register under this Code section and who fails to comply with the
9 requirements of this Code section;

10 (2) Provides false information; or

11 (3) Fails to respond directly to the sheriff within 72 hours of such individual's birthday
12 shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor
13 more than 30 years; provided, however, that upon the conviction of the second offense
14 under this subsection, the defendant shall be punished by imprisonment for life.

15 (o) The information collected pursuant to this Code section shall be treated as private data
16 except that:

17 (1) Such information may be disclosed to law enforcement agencies for law enforcement
18 purposes;

19 (2) Such information may be disclosed to government agencies conducting confidential
20 background checks; and

21 (3) The Georgia Bureau of Investigation or any sheriff maintaining records required
22 under this Code section shall, in addition to the requirements of this Code section to
23 inform the public of the presence of sexual offenders in each community, release such
24 other relevant information collected under this Code section that is necessary to protect
25 the public concerning sexual offenders required to register under this Code section,
26 except that the identity of a victim of an offense that requires registration under this Code
27 section shall not be released.

28 (p) The Board of Public Safety is authorized to promulgate rules and regulations necessary
29 for the Georgia Bureau of Investigation and the Georgia Crime Information Center to
30 implement and carry out the provisions of this Code section.

31 (q) Law enforcement agencies, employees of law enforcement agencies, and state officials
32 shall be immune from liability for good faith conduct under this article.

33 42-1-13.

34 (a) The Sexual Offender Registration Review Board shall be composed of three
35 professionals licensed under Title 43 and knowledgeable in the field of the behavior and
36 treatment of sexual offenders; at least one representative from a victims' rights advocacy

1 group or agency; and at least two representatives from law enforcement, each of whom is
2 either employed by a law enforcement agency as a certified peace officer under Title 35
3 or retired from such employment. The members of the board shall be appointed by the
4 commissioner of human resources for terms of four years. On and after July 1, 2006,
5 successors to the members of the board shall be appointed by the Governor. Members of
6 the board shall take office on the first day of September immediately following the expired
7 term of that office and shall serve for a term of four years and until the appointment of their
8 respective successors. No member shall serve on the board more than two consecutive
9 terms. Vacancies occurring on the board, other than those caused by expiration of a term
10 of office, shall be filled in the same manner as the original appointment to the position
11 vacated for the remainder of the unexpired term and until a successor is appointed.
12 Members shall be entitled to an expense allowance and travel cost reimbursement the same
13 as members of certain other boards and commissions as provided in Code Section 45-7-21.

14 (b) The board shall be attached to the Department of Human Resources for administrative
15 purposes and, provided there is adequate funding, shall:

16 (1) Exercise its quasi-judicial, rule-making, or policy-making functions independently
17 of the department and without approval or control of the department;

18 (2) Prepare its budget, if any, and submit its budgetary requests, if any, through the
19 department; and

20 (3) Hire its own personnel if authorized by the Constitution of this state or by statute or
21 if the General Assembly provides or authorizes the expenditure of funds therefor.

22 (c) Members of the board shall be immune from liability for good faith conduct under this
23 article.

24 42-1-14.

25 (a) The board shall determine the likelihood that a sexual offender will engage in another
26 crime against a victim who is a minor or a dangerous sexual offense. The board shall make
27 such determination for any sexual offender convicted on or after July 1, 2006, of a criminal
28 act against a minor or a dangerous sexual offense and for any sexual offender incarcerated
29 on July 1, 2006, but convicted prior to July 1, 2006, of a criminal act against a minor. Such
30 determination shall not be required to be made by the board until January 1, 2007;
31 provided, however, that such persons shall be subject to this Code section. A sexual
32 offender shall be placed into Level I risk assessment classification, Level II risk assessment
33 classification, or sexually dangerous predator classification based upon the board's
34 assessment criteria and information obtained and reviewed by the board. The sexual
35 offender may provide the board with information including, but not limited to,
36 psychological evaluations, sexual history polygraph information, treatment history,

1 personal, social, educational, and work history, and may agree to submit to a psychosexual
2 evaluation or sexual history polygraph conducted by the board. If the sexual offender has
3 undergone treatment through the Department of Corrections, such treatment records shall
4 also be submitted to the board for evaluation. The prosecuting attorney shall provide the
5 board with any information available to assist the board in rendering an opinion, including,
6 but not limited to, criminal history and records related to previous criminal history. On and
7 after July 1, 2006, the clerk of court shall send a copy of the sexual offender's conviction
8 to the board and notify the board that a sexual offender's evaluation will need to be
9 performed. The board shall render its recommendation for risk assessment classification
10 within:

- 11 (1) Sixty days of receipt of a request for an evaluation if the sexual offender is being
12 sentenced pursuant to subsection (c) of Code Section 17-10-6.2;
- 13 (2) Six months prior to the sexual offender's proposed release from confinement if the
14 offender is incarcerated; and
- 15 (3) Forty-five days of receipt of the required registration information if the sexual
16 offender has entered this state from another state and registered as a sexual offender.

17 The board shall send a copy of its risk assessment classification to the Department of
18 Corrections, sexual offender, and sentencing court, if applicable.

19 (b)(1) If the sexual offender has been sentenced pursuant to subsection (c) of Code
20 Section 17-10-6.2, after receiving a recommendation from the board that he or she be
21 classified as a sexually dangerous predator, the sexual offender may request that the
22 sentencing court set a date to conduct a hearing affording the sexual offender the
23 opportunity to present testimony or evidence relevant to the recommended classification.
24 After the hearing and within 60 days of receiving the report, the court shall issue a ruling
25 as to whether or not the sexual offender shall be classified as a sexually dangerous
26 predator. If the court determines the sexual offender to be a sexually dangerous predator,
27 such fact shall be communicated in writing to the appropriate official, the Georgia Bureau
28 of Investigation, and the sheriff of the county where the sexual offender resides.

29 (2) If the sexual offender received a sentence of imprisonment and was sentenced for a
30 dangerous sexual offense on or after July 1, 2006, or if the sexual offender is incarcerated
31 on July 1, 2006, for a crime against a victim who is a minor, after receiving a
32 recommendation from the board that he or she be classified as a sexually dangerous
33 predator, the sexual offender may request that the sentencing court set a date to conduct
34 a hearing affording the sexual offender the opportunity to present testimony or evidence
35 relevant to the recommended classification. After the hearing and within 60 days of
36 receiving the report, the court shall issue a ruling as to whether or not the sexual offender
37 shall be classified as a sexually dangerous predator. If the court determines the sexual

1 offender to be a sexually dangerous predator, such fact shall be communicated in writing
2 to the appropriate official, the Georgia Bureau of Investigation, and the sheriff of the
3 county where the sexual offender resides.

4 (c) Any sexual offender who changes residence from another state or territory of the
5 United States to this state and who is not designated as a sexually dangerous predator,
6 sexual predator, or a sexually violent predator shall have his or her required registration
7 information forwarded by the sheriff of his or her county of registration to the board for the
8 purpose of risk assessment classification. After receiving a recommendation from the
9 board that he or she be classified as a sexually dangerous predator, the sexual offender
10 may, within 30 days after the issuance of such classification, request a hearing before an
11 administrative law judge. Such hearing shall be conducted in accordance with Chapter 13
12 of Title 50, the 'Georgia Administrative Procedure Act.' The decision of the administrative
13 law judge shall constitute the final decision of the board subject to the right of judicial
14 review in accordance with Chapter 13 of Title 50. If the final determination is that the
15 sexual offender is classified as a sexually dangerous predator, such fact shall be
16 communicated in writing to the appropriate official, the Georgia Bureau of Investigation,
17 and the sheriff of the county where the sexual offender resides.

18 (d) Any individual who was classified as a sexually violent predator prior to July 1, 2006,
19 shall be classified as a sexually dangerous predator on and after July 1, 2006.

20 (e) Any sexually dangerous predator shall be required to wear an electronic monitoring
21 device that, at a minimum, shall provide:

22 (1) Continuous near real-time tracking of the geographic location of the sexually
23 dangerous predator 24 hours per day, seven days per week using a global positioning
24 system based on satellite and other location technology;

25 (2) A continuous wear active global positioning system tracking device, permanently
26 attached to the sexually dangerous predator's body, which timely receives the location
27 information, stores and archives the location information, and transmits the location
28 information to a monitoring center to automatically report if the predator is in a
29 prohibited area or departs from a specified geographic limitation or if the predator
30 removes or tampers with the tracking device; and

31 (3) A system that automatically compares and correlates the geographic positions of
32 monitored predators with law enforcement agencies' reported crime incidents and
33 automatically generates a daily report showing whether the predator was in the proximity
34 of such reported crime incidents.

35 Such monitor shall be worn by a sexually dangerous predator for the remainder of his or
36 her natural life. The sexually dangerous predator shall pay the cost of such monitor to the
37 Department of Corrections if the sexually dangerous predator is on probation; to the Board

1 of Pardons and Paroles if the sexually dangerous predator is on parole; and to the sheriff
2 after the sexually dangerous predator completes his or her term of probation and parole or
3 if the sexually dangerous predator has moved to this state from another state, territory, or
4 country. The monitor shall be placed upon the sexually dangerous predator prior to his or
5 her release from confinement. If the sexual offender is not in custody, within 72 hours of
6 the decision classifying the sexual offender as a sexually dangerous predator by the court
7 in accordance with subsection (b) of this Code section or a final decision pursuant to
8 subsection (c) of this Code section, whichever applies to the sexual offender's situation,
9 the sexually dangerous predator shall report to the sheriff of the county of his or her
10 residence for purposes of having the monitor placed on the sexually dangerous predator.

11 (f) In addition to the requirements of registration for all sexual offenders, a sexually
12 dangerous predator shall report to the sheriff of the county where such predator resides six
13 months following his or her birth month and update or verify his or her required
14 registration information.

15 42-1-15.

16 (a) No individual required to register pursuant to Code Section 42-1-12 shall reside or
17 loiter within 1,000 feet of any child care facility, church, school, or area where minors
18 congregate. Such distance shall be determined by measuring from the outer boundary of
19 the property on which the individual resides to the outer boundary of the property of the
20 child care facility, church, school, or area where minors congregate at their closest points.

21 (b) No individual who is required to register under Code Section 42-1-12 shall be
22 employed by any child care facility, school, or church or by any business or entity that is
23 located within 1,000 feet of an area where minors congregate, a child care facility, a school,
24 or a church.

25 (c) Any sexual offender who knowingly violates the provisions of this Code section shall
26 be guilty of a felony and shall be punished by imprisonment for not less than ten nor more
27 than 30 years.

28 (d) Nothing in this Code section shall create, either directly or indirectly, any civil cause
29 of action against or result in criminal prosecution of any person, firm, corporation,
30 partnership, trust, or association other than an individual required to be registered under
31 Code Section 42-1-12.

32 42-1-16.

33 (a) An individual required to register pursuant to Code Section 42-1-12 shall not be
34 allowed to enter any school or child care facility for the purpose of conducting a parent
35 teacher meeting, visiting, working, or any other purpose except as provided in this Code

1 section. Prior to entering any school or child care facility, a sexual offender shall request
 2 permission in writing and receive from the school or facility administrator written
 3 authorization to enter the school or child care facility. The school or facility administrator
 4 shall respond to the request in writing regarding the decision to authorize such access
 5 within three business days from the receipt of the request.

6 (b) A sexual offender who is also a parent, legal guardian, or authorized caretaker of a child
 7 attending a school or child care facility shall not be denied access to enter the grounds of
 8 the school or child care facility for the specific purpose of dropping off or picking up such
 9 a child in a car pool line or for the purpose of picking up such a child in the event of a
 10 medical or family emergency; provided, however, that such access may be denied unless
 11 the sexual offender provides prior written notice to the school or facility administrator of
 12 his or her requirement to register as a sexual offender. Such notice shall be made at the
 13 beginning of the school year or at the time of registration or enrollment or at least five
 14 school days prior to dropping off or picking up a child at the school or child care facility.
 15 If such notice is not timely received, access to the school or child care facility may be
 16 denied.

17 (c) Any sexual offender who knowingly violates the requirements of this Code section
 18 shall be guilty of a misdemeanor."

19 SECTION 26.

20 Said title is further amended by striking subsection (b) of Code Section 42-8-35, relating to
 21 terms and conditions of probation, and inserting in lieu thereof the following:

22 "(b) In determining the terms and conditions of probation for a probationer who has been
 23 convicted of a criminal offense against a victim who is a minor or dangerous sexual offense
 24 as ~~that phrase is~~ those terms are defined in ~~subparagraph (a)(4)(B)~~ of Code Section
 25 42-1-12, the court may provide that the probationer shall be:

26 (1) Prohibited from entering or remaining present at a victim's school, place of
 27 employment, place of residence, or other specified place at times when a victim is present
 28 or from ~~entering or remaining present~~ loitering in areas where minors congregate, child
 29 care facilities, churches, or schools as those terms are defined in ~~subsection (a)~~ of Code
 30 Section ~~42-1-13~~ 42-1-12;

31 (2) Required to wear a device capable of tracking the location of the probationer by
 32 means including electronic surveillance or global positioning systems. The ~~Unless the~~
 33 ~~probationer is indigent, the~~ department shall assess and collect fees from the probationer
 34 for such monitoring at levels set by regulation by the department; and

35 (3) Prohibited from seeking election to a ~~Local Board of Education~~ local board of
 36 education."

SECTION 27.

Said title is further amended by striking Code Section 42-8-60, relating to probation prior to adjudication of guilt, and inserting in lieu thereof the following:

"42-8-60.

(a) Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication of guilt, in the case of a defendant who has not been previously convicted of a felony, the court may, without entering a judgment of guilt and with the consent of the defendant:

(1) Defer further proceeding and place the defendant on probation as provided by law;
or

(2) Sentence the defendant to a term of confinement as provided by law.

(b) Upon violation by the defendant of the terms of probation, upon a conviction for another crime during the period of probation, or upon the court determining that the defendant is or was not eligible for sentencing under this article, the court may enter an adjudication of guilt and proceed as otherwise provided by law. No person may avail himself or herself of this article on more than one occasion.

(c) The court shall not sentence a defendant under the provisions of this article and, if sentenced under the provisions of this article, shall not discharge the defendant upon completion of the sentence unless the court has reviewed the defendant's criminal record as such is on file with the Georgia Crime Information Center.

(d) The court shall not sentence a defendant under the provisions of this article who has been found guilty of or entered a plea of guilty of a plea of nolo contendere for:

(1) A serious violent felony as such term is defined in Code Section 17-10-6.1;

(2) A sexual offense as such term is defined in Code Section 17-10-6.2;

(3) Sexual exploitation of a minor as defined in Code Section 16-12-100;

(4) Electronically furnishing obscene material to a minor as defined in Code Section 16-12-100.1; or

(5) Computer pornography and child exploitation, as defined in Code Section 16-12-100.2."

SECTION 28.

Said title is further amended by striking in its entirety Code Section 42-9-44.1, relating to conditions of parole for sexual offenders, and inserting in lieu thereof the following:

"42-9-44.1.

~~(a) As used in this Code section, the term 'sexual offense' means a violation of Code Section 16-6-1, 16-6-2, 16-6-5.1, 16-6-22, or 16-6-22.2 when the victim was under 18 years of age at the time of the commission of the offense or a violation of Code Section~~

1 ~~16-6-3, 16-6-4, or 16-6-5 when the victim was under 14 years of age at the time of the~~
 2 ~~commission of the offense.~~

3 ~~(b)(1) The board shall adopt rules providing that with respect to any person who has been~~
 4 ~~convicted of a sexual offense, as a condition of parole, the offender shall be ordered to~~
 5 ~~give notice of his or her name and address, the crime for which he or she was convicted,~~
 6 ~~and the date of parole to:~~

7 ~~(A) The superintendent of the public school district where the offender will reside; and~~

8 ~~(B) The sheriff of the county wherein the offender will reside.~~

9 ~~(2) The offender shall provide the notice and information required in paragraph (1) of~~
 10 ~~this subsection within ten days of the release on parole or within ten days of setting up~~
 11 ~~residency in the locale where the offender plans to have his or her domicile.~~

12 ~~(c) Any sex offender who has been paroled and who moves his or her legal residence from~~
 13 ~~one county within this state to another county within this state shall be required to provide~~
 14 ~~the information and notice required in subsection (b) of this Code section with respect to~~
 15 ~~his or her new residence within ten days after moving during the period of his or her parole.~~

16 ~~(d) Any person who fails to comply with the requirements of this Code section or who~~
 17 ~~provides false information shall, in the case of a person on parole, be in violation of such~~
 18 ~~person's conditions of parole and shall be guilty of a misdemeanor.~~

19 ~~(e) It shall be the duty of the sheriff of each county within this state to maintain a register~~
 20 ~~of the names and addresses of all offenders providing information to the sheriff under this~~
 21 ~~Code section. Such register shall be open to public inspection.~~

22 ~~(f) The requirement that a sex offender provide notice and information pursuant to~~
 23 ~~subsections (b) and (c) of this Code section shall terminate upon the offender's satisfactory~~
 24 ~~completion of his or her terms of parole. Reserved.~~

25 **SECTION 29.**

26 Said title is further amended by striking in its entirety Code Section 42-9-44.2, relating to
 27 chemical treatment and counseling as a condition of parole for child molesters, and inserting
 28 in lieu thereof the following:

29 "42-9-44.2.

30 ~~(a) The Board of Pardons and Paroles may in the exercise of its discretion in considering~~
 31 ~~the grant of parole to a person who has been convicted of a second or subsequent offense~~
 32 ~~of child molestation of a child who was 16 years of age or younger at the time of the~~
 33 ~~offense or who has been convicted of a first offense of aggravated child molestation of a~~
 34 ~~child who was 16 years of age or younger at the time of the offense require, as a condition~~
 35 ~~of parole, that such person undergo medroxyprogesterone acetate treatment or its chemical~~
 36 ~~equivalent. While undergoing such treatment, such person must participate in and pay for~~

1 ~~counseling currently available from a private or public provider of outpatient mental health~~
 2 ~~services. No such treatment shall be administered until such person has consented thereto~~
 3 ~~in writing.~~

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

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

22 **SECTION 30.**

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

24 (b) Any person required to register pursuant to the provisions of Code Section 42-1-12,
 25 relating to the state sexual offender registry, and any person required not to reside within
 26 areas where minors congregate, as prohibited by Code Section 42-1-13, shall not be relieved
 27 of the obligation to comply with the provisions of said Code sections by the repeal and
 28 reenactment of said Code sections.

29 (c) 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 31.**

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