

House Bill 64

By: Representative Powell of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions,
2 so as to create the Division of Probation/Parole Community Based Supervision; to provide
3 for the responsibilities of the division with respect to supervision of probationers and
4 parolees; to transfer responsibility of certain functions of probation and parole supervision
5 to the division; to provide for the selection, service, and powers and duties of the director and
6 employees of the division; to provide for rules and regulations and forms; to provide for
7 administration; to authorize appropriation of funds; to provide for transfer of prior
8 appropriations; to provide for transfer of personnel, equipment, and facilities; to amend
9 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to
10 correct cross-references; to amend Title 17 of the Official Code of Georgia Annotated,
11 relating to criminal procedure, so as to change provisions relating to imposition and service
12 of split sentences; to provide for sentencing orders and their terms and effect; to provide that
13 where a person is sentenced to a term of imprisonment followed by a period of probation and
14 the person is paroled or released prior to service of the full period of imprisonment, the
15 person shall be subject to an increased period of probation and probation supervision but
16 shall not be subject to supervision by the State Board of Pardons and Paroles; to make
17 corresponding changes with respect to the jurisdiction and authority of the State Board of
18 Pardons and Paroles; to amend Titles 19, 40, and 45 of the Official Code of Georgia
19 Annotated, relating to domestic relations, motor vehicles and traffic, and public officers and
20 employees, respectively, so as to provide for certain changes in the administrative
21 organization of the Department of Corrections and the State Board of Pardons and Paroles
22 and to provide for conforming amendments; to provide for related matters; to provide for an
23 effective date and applicability; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1 (b) The director shall receive an annual salary to be set by the Governor which shall be his
2 or her total compensation for services as director. The director shall be reimbursed for all
3 actual and necessary expenses incurred by him or her in carrying out his or her official
4 duties.

5 (c) The duties of the division shall be performed by that division and not by any other
6 agency of state government, and the division shall not perform the duties of any other
7 agency of state government. The position of director of the division shall be a separate and
8 distinct position from any other position in state government. The duties of the director
9 shall be performed by the director and not by any other officer of state government, and the
10 director shall not perform the duties of any other officer of state government.

11 42-14-4.

12 (a) The director shall establish units within the division as he or she deems proper for its
13 administration and shall designate persons to be assistant directors of each unit and to
14 exercise authority as he or she may delegate to them in writing.

15 (b) The director shall have the authority to employ as many persons as he or she deems
16 necessary for the administration of the division and for the discharge of the duties of his
17 or her office. The director shall issue all necessary directions, instructions, orders, and
18 rules applicable to employees of the division. The director shall have authority, as the
19 director deems proper, to employ, assign, compensate, and discharge employees of the
20 division within the limitations of the division's appropriation and the restrictions set forth
21 by law.

22 (c) All employees of the division shall be compensated upon a fixed salary basis, and no
23 person shall be compensated for services to the division on a commission or contingent fee
24 basis.

25 (d) Neither the director nor any officer or employee of the division shall be given or
26 receive any fee, compensation, loan, gift, or other thing of value in addition to the
27 compensation and expense allowance provided by law for any service or pretended service
28 either rendered or to be rendered as director or as an officer or employee of the division.

29 42-14-5.

30 (a) The director shall have the power to make and publish reasonable rules and regulations
31 not inconsistent with this title or other laws or with the Constitution of this state or of the
32 United States for the administration of this chapter or any law which it is his or her duty
33 to administer.

1 (b) The director may prescribe forms as he or she deems necessary for the administration
 2 and enforcement of this chapter and Chapters 8 and 9 of this title or any law which it is his
 3 or her duty to administer.

4 (c) The following rules and regulations shall remain of full force and effect as rules and
 5 regulations of the division until amended, repealed, or superseded by rules or regulations
 6 adopted by the director of the division:

7 (1) All rules and regulations previously adopted by the Advisory Council for Probation
 8 which relate to functions transferred under this chapter from the state-wide probation
 9 system to the division;

10 (2) All rules and regulations previously adopted by corrections which relate to functions
 11 transferred under this chapter from corrections to the division; and

12 (3) All rules and regulations previously adopted by the board which relate to functions
 13 transferred under this chapter from the board to the division.

14 42-14-6.

15 (a) Appropriations to corrections and the board for functions transferred to the division
 16 pursuant to this chapter may be transferred to the division as provided for in Code
 17 Section 45-12-90. Personnel, equipment, and facilities previously employed by corrections
 18 and the board for transferred functions shall likewise be transferred to the division. Any
 19 disagreement as to any of the transfers shall be resolved by the Governor.

20 (b) The enactment of this chapter and the Act by which it is enacted shall not affect or
 21 abate the status of a probation revocation or parole revocation which occurred prior to
 22 July 1, 2007."

23 SECTION 2.

24 Said title is further amended by revising Code Section 42-1-10, relating to preliminary urine
 25 screen drug tests, as follows:

26 "42-1-10.

27 (a) Any probation/parole supervisor, probation officer, ~~parole officer~~, or other official or
 28 employee of the Department of Corrections or the Division of Probation/Parole Community

29 Based Supervision who supervises any person covered under the provisions of paragraphs

30 (1) through (7) of this subsection shall be exempt from the provisions of Chapter 22 of
 31 Title 31 for the limited purposes of administering a preliminary urine screen drug test to
 32 any person who is:

33 (1) Incarcerated;

34 (2) Released as a condition of probation for a felony or misdemeanor;

35 (3) Released as a condition of conditional release;

- 1 (4) Released as a condition of parole;
- 2 (5) Released as a condition of provisional release;
- 3 (6) Released as a condition of pretrial release; or
- 4 (7) Released as a condition of control release.
- 5 (b) The Department of Corrections, the Division of Probation/Parole Community Based
- 6 Supervision, and the State Board of Pardons and Paroles shall develop a procedure for the
- 7 performance of preliminary urine screen drug tests in accordance with the manufacturer's
- 8 standards for certification. Probation/parole supervisors, probation officers, parole officers,
- 9 or other officials or employees of the Department of Corrections or the Division of
- 10 Probation/Parole Community Based Supervision who are supervisors of any person
- 11 covered under paragraphs (1) through (7) of subsection (a) of this Code section shall be
- 12 authorized to perform preliminary urine screen drug tests in accordance with such
- 13 procedure. Such procedure shall include instructions as to a confirmatory test by a licensed
- 14 clinical laboratory where necessary."

15 SECTION 3.

16 Said title is further amended by revising Code Section 42-2-4, relating to the creation of the

17 Department of Corrections, as follows:

18 "42-2-4.

19 There is created the Department of Corrections. Within the department shall be the

20 Division of Probation/Parole Community Based Supervision."

21 SECTION 4.

22 Said title is further amended by revising Code Section 42-8-2, relating to the Advisory

23 Council for Probation's duties and responsibilities, as follows:

24 "42-8-2.

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

26 (1) 'Board' means the Board of Corrections.

27 (2) 'Corrections' means the Department of Corrections.

28 (3) 'Division' means the Division of Probation/Parole Community Based Supervision.

29 (b) The Advisory Council for Probation shall meet, consult, and advise with the Board of

30 Corrections board, the division, and the Department of Corrections corrections on questions

31 and matters of mutual concern and interest relative to policy, personnel, and budget which

32 pertain to probationary activities, powers, duties, and responsibilities of the board, and the

33 department division, and corrections. The advisory council shall institute such studies and

34 surveys and shall make such recommendations to the board, corrections, and department

35 the division as the council deems wise and necessary and which, in the opinion of the

1 council, will improve the effectiveness and efficiency of probation services rendered
 2 throughout the state. No change in existing policy of the board, corrections, or the
 3 ~~department~~ division relative to probation, if the magnitude of the change will result in a
 4 significant impact upon state-wide probationary services, or any such new policy, shall be
 5 instituted by the board, corrections, or ~~department~~ the division without opportunity being
 6 afforded to the advisory council to advise and consult with the board, corrections, or
 7 ~~department~~ the division on the proposed changes. However, the recommendations of the
 8 advisory council shall be advisory only and shall not bind the board, corrections, or
 9 ~~department~~ the division. The board, corrections, the ~~department~~ division, and the council
 10 shall meet periodically throughout each year for the purpose of improving the
 11 administration, efficiency, and effectiveness of probation services."

12 SECTION 5.

13 Said title is further amended by revising Code Section 42-8-21, relating to definitions in the
 14 "State-wide Probation Act," as follows:

15 "42-8-21.

16 As used in this article, the term:

17 (1) 'Board' means the Board of Corrections.

18 (2) 'Commissioner' means the commissioner of corrections.

19 (3) 'Corrections' means the Department of Corrections.

20 (4) 'Division' 'Department' means the Department of Corrections Division of
 21 Probation/Parole Community Based Supervision.

22 (5) 'Split sentence' means any felony sentence that includes a term of imprisonment
 23 followed by a term of probation."

24 SECTION 6.

25 Said title is further amended by revising Code Section 42-8-22, relating to creation and
 26 administration of the state-wide probation system, as follows:

27 "42-8-22.

28 There is created a state-wide probation system for felony offenders to be administered by
 29 the ~~Department of Corrections~~ Division of Probation/Parole Community Based
 30 Supervision. The probation system shall not be administered as part of the duties and
 31 activities of the State Board of Pardons and Paroles; but, with respect to a split sentence
 32 imposed on or after July 1, 2007, the division shall have jurisdiction over any increased
 33 period of probation resulting from a release of the defendant by the State Board of Pardons
 34 and Paroles as provided for in Code Section 17-10-1.3. Separate files and records shall be
 35 kept with relation to the system."

SECTION 10.

Said title is further amended by revising Code Section 42-8-26, relating to the qualifications of probation supervisors, compensation, expenses, conflicts of interest, and bonds, as follows:

"42-8-26.

(a) In order for a person to hold the office of probation/parole supervisor, he or she must be at least 21 years of age at the time of appointment and must have completed a standard two-year college course, provided that any person who is employed as a probation supervisor on or before July 1, 1972, shall not be required to meet the educational requirements specified in this Code section, nor shall he or she be prejudiced in any way for not possessing the requirements. The qualifications provided in this Code section are the minimum qualifications, and ~~the department~~ corrections is authorized to prescribe such additional and higher educational qualifications from time to time as it deems desirable; but not to exceed a four-year standard college course.

(b) The compensation of the probation/parole supervisors shall be set by the State Personnel Board and the State Merit System of Personnel Administration. Probation/parole supervisors shall also be allowed travel and other expenses as are other state employees.

(c)(1) No supervisor shall engage in any other employment, business, or activities which interfere or conflict with his or her duties and responsibilities as probation/parole supervisor.

(2) No supervisor shall own, operate, have any financial interest in, be an instructor at, or be employed by any private entity which provides drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services.

(3) No supervisor shall specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend. This paragraph shall not prohibit any supervisor from furnishing any probationer, upon request, the names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any supervisor violating this paragraph shall be guilty of a misdemeanor.

(d) Each probation/parole supervisor shall give bond in such amount as may be fixed by ~~the department~~ corrections payable to ~~the department~~ corrections for the use of the person or persons damaged by his or her misfeasance or malfeasance and conditioned on the faithful performance of his or her duties. The cost of the bond shall be paid by ~~the department~~ corrections; provided, however, that the bond may be procured, either by ~~the department~~ corrections or by the Department of Administrative Services, under a master policy or on a group blanket coverage basis, where only the number of positions in each judicial circuit and the amount of coverage for each position are listed in a schedule

1 attached to the bond; and in such case each individual shall be fully bonded and bound as
 2 principal, together with the surety, by virtue of his or her holding the position or
 3 performing the duties of probation/parole supervisor in the circuit or circuits, and his or her
 4 individual signature shall not be necessary for such bond to be valid in accordance with all
 5 the laws of this state. The bond or bonds shall be made payable to ~~the department~~
 6 corrections."

7 **SECTION 11.**

8 Said title is further amended by revising Code Section 42-8-27, relating to the duties of
 9 probation supervisors, as follows:

10 "42-8-27.

11 The probation/parole supervisor shall supervise and counsel probationers in the judicial
 12 circuit to which he or she is assigned. Each supervisor shall perform the duties prescribed
 13 in this chapter and ~~such other~~ duties as are prescribed by the ~~department~~ division and shall
 14 keep ~~such~~ records and files and make ~~such~~ any reports as are required of him or her."

15 **SECTION 12.**

16 Said title is further amended by revising Code Section 42-8-28, relating to the assignment
 17 of probation supervisors among the judicial circuits, as follows:

18 "42-8-28.

19 Probation/parole supervisors shall be assigned among the respective judicial circuits based
 20 generally on the relative number of persons on probation and parole in each circuit."

21 **SECTION 13.**

22 Said title is further amended by revising Code Section 42-8-29, relating to presentence
 23 investigations, supervision of probationers, and record keeping, as follows:

24 "42-8-29.

25 (a) It shall be the duty of the probation/parole supervisor to investigate all cases referred
 26 to him or her by the court and to make ~~his~~ findings and report thereon in writing to the
 27 court with ~~his~~ a recommendation. The superior court may require, before imposition of
 28 sentence, a presentence investigation and written report in each felony case in which the
 29 defendant has entered a plea of guilty or nolo contendere or has been convicted.

30 (b) The probation/parole supervisor shall cause to be delivered to each person placed on
 31 probation under his or her supervision a certified copy of the terms of probation and any
 32 change or modification thereof and shall cause the person to be instructed regarding the
 33 same. ~~He~~ The probation/parole supervisor shall keep informed concerning the conduct,
 34 habits, associates, employment, recreation, and whereabouts of the probationer by visits,

1 by requiring reports, or in other ways. ~~He~~ The probation/parole supervisor shall make ~~such~~
 2 reports in writing or otherwise as the court may require. ~~He~~ The probation/parole
 3 supervisor shall use all practicable and proper methods to aid and encourage persons on
 4 probation and to bring about improvements in their conduct and condition.

5 (c) The probation/parole supervisor ~~He~~ shall keep records on each probationer and parolee
 6 referred to ~~him~~ the probation/parole supervisor."

7 **SECTION 14.**

8 Said title is further amended by revising Code Section 42-8-29.1, relating to disposition of
 9 a probation supervisor's documents upon committing a convicted person to an institution,
 10 as follows:

11 "42-8-29.1.

12 (a) When a convicted person is committed to an institution under the jurisdiction of ~~the~~
 13 ~~department~~ corrections, any presentence or post-sentence investigation or psychological
 14 evaluation compiled by a probation/parole supervisor or other probation official shall be
 15 forwarded to ~~any~~ the division or any office designated by the commissioner.
 16 Accompanying this document or evaluation will be the case history form and the criminal
 17 history sheets from the Federal Bureau of Investigation or the Georgia Crime Information
 18 Center, if available, unless any ~~such~~ of this information has previously been sent to ~~the~~
 19 ~~department~~ corrections pursuant to Code Section 42-5-50. A copy of these same
 20 documents shall be made available for the State Board of Pardons and Paroles. A copy of
 21 one or more of these documents, based on need, may be forwarded to another institution
 22 to which the defendant may be committed.

23 (b) The prison or institution receiving these documents shall maintain the confidentiality
 24 of the documents and the information contained therein and shall not send them or release
 25 them or reveal them to any other person, institution, or agency without the express consent
 26 of the ~~probation~~ unit which originated or accumulated the documents."

27 **SECTION 15.**

28 Said title is further amended by revising Code Section 42-8-30, relating to supervision of
 29 juvenile offenders by probation supervisors, as follows:

30 "42-8-30.

31 In the counties where no juvenile probation system exists, juvenile offenders, upon
 32 direction of the court, shall be supervised by probation/parole supervisors. Other than in
 33 this respect, nothing in this article shall be construed to change or modify any law relative
 34 to probation as administered by any juvenile court in this state."

1 probation/parole supervisors. The bond shall bind the employee and ~~his~~ the surety in the
 2 performance of ~~his~~ the employee's duties.

3 (b) Any overpayment of fines, restitutions, or other moneys owed as a condition of
 4 probation shall not be refunded to the probationer if the amount of ~~such~~ the overpayment
 5 is less than \$5.00."

6 SECTION 19.

7 Said title is further amended by revising subsections (b), (c), and (d) of Code Section
 8 42-8-34, relating to probation hearings, as follows:

9 "(b) Prior to the hearing, the court may refer the case to the probation/parole supervisor of
 10 the circuit in which the court is located for investigation and recommendation. The court,
 11 upon such reference, shall direct the supervisor to make an investigation and to report to
 12 the court, in writing at a specified time, upon the circumstances of the offense and the
 13 criminal record, social history, and present condition of the defendant, together with the
 14 supervisor's recommendation; and it shall be the duty of the supervisor to carry out the
 15 directive of the court.

16 (c) Subject to the provisions of subsection (a) of Code Section 17-10-1 and subsection (f)
 17 of Code Section 17-10-3, if it appears to the court upon a hearing of the matter that the
 18 defendant is not likely to engage in a criminal course of conduct and that the ends of justice
 19 and the welfare of society do not require that the defendant shall presently suffer the
 20 penalty imposed by law, the court in its discretion shall impose sentence upon the
 21 defendant but may stay and suspend the execution of the sentence or any portion thereof
 22 or may place ~~him~~ the defendant on probation under the supervision and control of the
 23 probation/parole supervisor for the duration of ~~such probation~~ the sentence. The period of
 24 probation or suspension shall not exceed the maximum sentence of confinement which
 25 could be imposed on the defendant.

26 (d)(1) In every case that a court of this state or any other state sentences a defendant to
 27 probation or any pretrial release or diversion program under the supervision of the
 28 ~~department~~ division, in addition to any fine or order of restitution imposed by the court,
 29 there shall be imposed a probation fee as a condition of probation, release, or diversion
 30 in the amount equivalent to \$23.00 per each month under supervision, and in addition,
 31 a one-time fee of \$50.00 where such defendant was convicted of any felony. The
 32 probation fee may be waived or amended after administrative process by the ~~department~~
 33 division and approval of the court, or upon determination by the court, as to the undue
 34 hardship, inability to pay, or any other extenuating factors which prohibit collection of
 35 the fee; provided, however, that the imposition of sanctions for failure to pay fees shall
 36 be within the discretion of the court through judicial process or hearings. Probation fees

1 shall be waived on probationers incarcerated or detained in a ~~departmental~~ Department
 2 of Corrections or other confinement facility which prohibits employment for wages. All
 3 probation fees collected by the ~~department~~ division shall be paid into the general fund of
 4 the state treasury, except as provided in subsection (f) of Code Section 17-15-13, relating
 5 to sums to be paid into the Georgia Crime Victims Emergency Fund. Any fees collected
 6 by the court under this paragraph shall be remitted not later than the last day of the month
 7 after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority
 8 for deposit into the general fund of the state treasury.

9 (2) In addition to any other provision of law, any person convicted of a violation of Code
 10 Section 40-6-391 or subsection (b) of Code Section 16-13-2 who is sentenced to
 11 probation or a suspended sentence by a municipal, magistrate, probate, recorder's,
 12 mayor's, state, or superior court shall also be required by the court to pay a one-time fee
 13 of \$25.00. The clerk of court, or if there is no clerk the person designated to collect fines,
 14 fees, and forfeitures for such court, shall collect such fee and remit the same not later than
 15 the last day of the month after such fee is collected to the Georgia Superior Court Clerks'
 16 Cooperative Authority for deposit into the general fund of the state treasury."

17 **SECTION 20.**

18 Said title is further amended by revising subsection (a) of Code Section 42-8-34.2, relating
 19 to a defendant's delinquent payment of fines, costs, or restitution or reparation and costs of
 20 garnishment, as follows:

21 "(a) In the event that a defendant is delinquent in the payment of fines, costs, or restitution
 22 or reparation, as was ordered by the court as a condition of probation, the defendant's
 23 probation/parole supervisor ~~officer~~ is authorized, but not required, to execute a sworn
 24 affidavit wherein the amount of arrearage is set out. In addition, the affidavit shall contain
 25 a succinct statement as to what efforts the ~~department~~ division has made in trying to collect
 26 the delinquent amount. The affidavit shall then be submitted to the sentencing court for
 27 approval. Upon signature and approval of the court, said arrearage shall then be collectable
 28 through issuance of a writ of fieri facias by the clerk of the sentencing court; and the
 29 ~~department~~ division may enforce such collection through any judicial or other process or
 30 procedure which may be used by the holder of a writ of execution arising from a civil
 31 action."

32 **SECTION 21.**

33 Said title is further amended by revising Code Section 42-8-35, relating to terms and
 34 conditions of probation, as follows:

1 "42-8-35.

2 (a) The court shall determine the terms and conditions of probation and may provide that
3 the probationer shall:

4 (1) Avoid injurious and vicious habits;

5 (2) Avoid persons or places of disreputable or harmful character;

6 (3) Report to the probation/parole supervisor as directed;

7 (4) Permit the supervisor to visit the probationer at the probationer's home or elsewhere;

8 (5) Work faithfully at suitable employment insofar as may be possible;

9 (6) Remain within a specified location; provided, however, that the court shall not banish
10 a probationer to any area within the state:

11 (A) That does not consist of at least one entire judicial circuit as described by Code
12 Section 15-6-1; or

13 (B) In which any service or program in which the probationer must participate as a
14 condition of probation is not available;

15 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
16 by the probationer's offense, in an amount to be determined by the court. Unless
17 otherwise provided by law, no reparation or restitution to any aggrieved person for the
18 damage or loss caused by the probationer's offense shall be made if the amount is in
19 dispute unless the same has been adjudicated;

20 (8) Make reparation or restitution as reimbursement to a municipality or county for the
21 payment for medical care furnished the person while incarcerated pursuant to the
22 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local
23 governmental unit for the provision of medical care shall be made if the amount is in
24 dispute unless the same has been adjudicated;

25 (9) Repay the costs incurred by any municipality or county for wrongful actions by an
26 inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section
27 42-4-71;

28 (10) Support the probationer's legal dependents to the best of the probationer's ability;

29 (11) Violate no local, state, or federal laws and be of general good behavior;

30 (12) If permitted to move or travel to another state, agree to waive extradition from any
31 jurisdiction where the probationer may be found and not contest any effort by any
32 jurisdiction to return the probationer to this state; and

33 (13) Submit to evaluations and testing relating to rehabilitation and participate in and
34 successfully complete rehabilitative programming as directed by the department.

35 (b) In determining the terms and conditions of probation for a probationer who has been
36 convicted of a criminal offense against a victim who is a minor or dangerous sexual offense

1 as those terms are defined in Code Section 42-1-12, the court may provide that the
2 probationer shall be:

3 (1) Prohibited from entering or remaining present at a victim's school, place of
4 employment, place of residence, or other specified place at times when a victim is present
5 or from loitering in areas where minors congregate, child care facilities, churches, or
6 schools as those terms are defined in Code Section 42-1-12;

7 (2) Required to wear a device capable of tracking the location of the probationer by
8 means including electronic surveillance or global positioning systems. The ~~department~~
9 division shall assess and collect fees from the probationer for such monitoring at levels
10 set by regulation by the ~~department~~ division; and

11 (3) Prohibited from seeking election to a local board of education."

12 SECTION 22.

13 Said title is further amended by revising Code Section 42-8-35.1, relating to special
14 alternative incarceration, as follows:

15 "42-8-35.1.

16 (a) In addition to any other terms or conditions of probation provided for under this
17 chapter, the trial judge may provide that probationers sentenced for felony offenses
18 committed on or after July 1, 1993, to a period of time of not less than one year on
19 probation as a condition of probation must satisfactorily complete a program of
20 confinement in a 'special alternative incarceration—probation boot camp' unit of ~~the~~
21 ~~department~~ corrections for a period of 120 days computed from the time of initial
22 confinement in the unit; provided, however, ~~the department~~ that corrections may release
23 the defendant upon service of 90 days in recognition of excellent behavior.

24 (b) Before a court can place this condition upon the sentence, an initial investigation ~~will~~
25 shall be completed by the probation/parole supervisor ~~officer~~ which will indicate that the
26 probationer is qualified for such treatment in that the individual does not appear to be
27 physically or mentally disabled in a way that would prevent him or her from strenuous
28 physical activity, that the individual has no obvious contagious diseases, that the individual
29 is not less than 17 years of age nor more than 30 years of age at the time of sentencing, and
30 that ~~the department~~ corrections has granted provisional approval of the placement of the
31 individual in the 'special alternative incarceration—probation boot camp' unit.

32 (c) In every case where an individual is sentenced under the terms of this Code section, the
33 sentencing court shall, within its probation order, direct ~~the department~~ corrections to
34 arrange with the sheriff's office in the county of incarceration to have the individual
35 delivered to a designated unit of ~~the department~~ corrections within a specific date not more
36 than 15 days after the issuance of such probation order by the court.

1 (d) At any time during the individual's confinement in the unit, but at least five days prior
 2 to his or her expected date of release, ~~the department~~ corrections will certify to the trial
 3 court as to whether the individual has satisfactorily completed this condition of probation.

4 (e) Upon the receipt of a satisfactory report of performance in the program from ~~the~~
 5 ~~department~~ corrections, the trial court shall release the individual from confinement in the
 6 'special alternative incarceration—probation boot camp' unit. However, the receipt of an
 7 unsatisfactory report will be grounds for revocation of the probated sentence as would any
 8 other violation of a condition or term of probation.

9 (f) The satisfactory report of performance in the program from ~~the department~~ corrections
 10 shall, in addition to the other requirements specified in this Code section, require
 11 participation of the individual confined in the unit in such adult education courses
 12 necessary to attain the equivalency of a grade five competency level as established by the
 13 State Board of Education for elementary schools. Those individuals who are mentally
 14 disabled as determined by initial testing are exempt from mandatory participation. After
 15 the individual is released from the unit, it shall be a special condition of probation that the
 16 individual participate in an education program in the community until grade five level
 17 competency is achieved or active probation supervision terminates. It shall be the duty of
 18 ~~the department~~ corrections to certify to the trial court that such individual has satisfactorily
 19 completed this condition of probation while on active probation supervision. The receipt
 20 of an unsatisfactory report may be grounds for revocation of the probated sentence as
 21 would any other violation of a condition or term of probation. Under certain
 22 circumstances, the probationer may be exempt from this requirement if it is determined by
 23 the probation/parole supervisor ~~officer~~ that community education resources are inaccessible
 24 to the probationer."

25 SECTION 23.

26 Said title is further amended by revising subsection (c) of Code Section 42-8-35.4, relating
 27 to confinement in probation detention centers, as follows:

28 "(c) During the period of confinement, ~~the department~~ corrections may transfer the
 29 probationer to other facilities in order to provide needed physical and mental health care
 30 or for other reasons essential to the care and supervision of the probationer or as necessary
 31 for the effective administration and management of its facilities."

32 SECTION 24.

33 Said title is further amended by revising subsection (c) of Code Section 42-8-35.5, relating
 34 to confinement in probation diversion centers, as follows:

1 "(c) Corrections ~~The department~~ may assess and collect room and board fees from
 2 diversion center program participants at a level set by ~~the department~~ corrections."

3 SECTION 25.

4 Said title is further amended by revising Code Section 42-8-35.7, relating to drug and alcohol
 5 screening of probationers, as follows:

6 "42-8-35.7.

7 Unless the court has ordered more frequent such screenings, it shall be the duty of each
 8 probation/parole supervisor to administer or have administered a drug and alcohol
 9 screening not less than once every 60 days to any person who is placed on probation and
 10 who, as a condition of such probation, is required to undergo regular, random drug and
 11 alcohol screenings, provided that the drug and alcohol screenings required by this Code
 12 section shall be performed only to the extent that necessary funds therefor are appropriated
 13 in the state budget."

14 SECTION 26.

15 Said title is further amended by revising subsection (a) of Code Section 42-8-36, relating to
 16 a probationer's duties, as follows:

17 "(a)(1) Any other provision of this article to the contrary notwithstanding, it shall be the
 18 duty of a probationer, as a condition of probation, to keep his or her probation/parole
 19 supervisor informed as to his or her residence. Upon the recommendation of the
 20 probation/parole supervisor, the court may also require, as a condition of probation and
 21 under ~~such~~ any terms as the court deems advisable, that the probationer keep the
 22 probation/parole supervisor informed as to ~~his~~ the probationer's whereabouts. The failure
 23 of a probationer to report to his or her probation/parole supervisor as directed or a return
 24 of non est inventus or other return to a warrant, for the violation of the terms and
 25 conditions of probation, that the probationer cannot be found in the county that appears
 26 from the records of the probation/parole supervisor to be the probationer's county of
 27 residence shall automatically suspend the running of the probated sentence until the
 28 probationer shall personally report to the probation/parole supervisor, is taken into
 29 custody in this state, or is otherwise available to the court; and such period of time shall
 30 not be included in computing creditable time served on probation or as any part of the
 31 time that the probationer was sentenced to serve. The effective date of the tolling of the
 32 sentence shall be the date that the ~~officer~~ probation/parole supervisor returns the warrant
 33 showing non est inventus. Any officer authorized by law to issue or serve warrants may
 34 return the warrant for the absconded probationer showing non est inventus.

1 (2) In addition to the provisions of paragraph (1) of this subsection, if the
 2 probation/parole supervisor submits an affidavit to the court stating that a probationer has
 3 absconded and cannot be found, the running of the probated sentence shall be suspended
 4 effective on the date such affidavit is submitted to the court and continuing until the
 5 probationer shall personally report to the probation/parole supervisor, is taken into
 6 custody in this state, or is otherwise available to the court."

7 **SECTION 27.**

8 Said title is further amended by revising subsection (b) of Code Section 42-8-37, relating to
 9 terminating and reviewing probation cases, as follows:

10 "(b) Upon the request of the chief judge of the court from which said a person was
 11 sentenced, the case of each person receiving a probated sentence of more than two years
 12 shall be reviewed by the probation/parole supervisor responsible for that case after service
 13 of two years on probation, and a written report of the probationer's progress shall be
 14 submitted to the sentencing court along with the supervisor's recommendation as to early
 15 termination. Upon the request of the chief judge of the court from which said person was
 16 sentenced, each such case shall be reviewed and a written report submitted annually
 17 thereafter, or more often if required, until the termination, expiration, or other disposition
 18 of the case."

19 **SECTION 28.**

20 Said title is further amended by revising subsections (a) and (d) of Code Section 42-8-38,
 21 relating to the procedures in probation revocation matters, as follows:

22 "(a) Whenever, within the period of probation, a probation/parole supervisor believes that
 23 a probationer under his or her supervision has violated ~~his~~ the terms of probation in a
 24 material respect, ~~he~~ the probation/parole supervisor may arrest the probationer without
 25 warrant, wherever found, and return ~~him~~ the probationer to the court granting the probation
 26 or, if under supervision in a county or judicial circuit other than that of conviction, to a
 27 court of equivalent original criminal jurisdiction within the county wherein the probationer
 28 resides for purposes of supervision. Any officer authorized by law to issue warrants may
 29 issue a warrant for the arrest of the probationer upon the affidavit of one having knowledge
 30 of the alleged violation, returnable forthwith before the court in which revocation
 31 proceedings are being brought."

32 "(d) In cases where the probation is revoked in a county other than the county of original
 33 conviction, the clerk of court in the county revoking probation may record the order of
 34 revocation in the judge's minute docket, which recordation shall constitute sufficient
 35 permanent record of the proceedings in that court. The clerk shall send one copy of the

1 order revoking probation to ~~the department~~ corrections to serve as a temporary
 2 commitment and shall send the original order revoking probation and all other papers
 3 pertaining thereto to the county of original conviction to be filed with the original records.
 4 The clerk of court of the county of original conviction shall then issue a formal
 5 commitment to ~~the department~~ corrections."

6 **SECTION 29.**

7 Said title is further amended by revising Code Section 42-8-42, relating to the provision of
 8 office space and clerical help by the Department of Corrections and counties, as follows:

9 "42-8-42.

10 ~~The department~~ Corrections may provide office space and clerical help wherever needed.

11 The counties of this state shall cooperate in this respect and, wherever possible, shall
 12 furnish office space if needed."

13 **SECTION 30.**

14 Said title is further amended by revising subsections (b) and (c) of Code Section 42-8-72,
 15 relating to community service as a condition of probation, as follows:

16 "(b) The judge may confer with the prosecutor, defense attorney, probation/parole
 17 supervisor, community service officer, or other interested persons to determine if the
 18 community service program is appropriate for an offender. If community service is
 19 ordered as a condition of probation, the court shall order:

20 (1) Not less than 20 hours nor more than 250 hours in cases involving traffic or
 21 ordinance violations or misdemeanors, said service to be completed within one year; or

22 (2) Not less than 20 hours nor more than 500 hours in felony cases, said service to be
 23 completed within three years.

24 (c)(1) Any agency may recommend to the court that certain disabled persons are in need
 25 of a live-in attendant. The judge shall confer with the prosecutor, defense attorney,
 26 probation/parole supervisor, community service officer, or other interested persons to
 27 determine if a community service program involving a disabled person is appropriate for
 28 an offender. If community service as a live-in attendant for a disabled person is deemed
 29 appropriate and if both the offender and the disabled person consent to such service, the
 30 court may order such live-in community service as a condition of probation but for no
 31 longer than two years.

32 (2) The agency shall be responsible for coordinating the provisions of the cost of food
 33 or other necessities for the offender which the disabled person is not able to provide. The
 34 agency, with the approval of the court, shall determine a schedule which will provide the
 35 offender with certain free hours each week.

1 (3) Such live-in arrangement shall be terminated by the court upon the request of the
 2 offender or the disabled person. Upon termination of such an arrangement, the court shall
 3 determine if the offender has met the conditions of probation.

4 (4) The appropriate agency shall make personal contact with the disabled person on a
 5 frequent basis to ensure the safety and welfare of the disabled person."

6 SECTION 31.

7 Said title is further amended by revising subsection (b) of Code Section 42-8-111, relating
 8 to court ordered installation of ignition interlock devices, as follows:

9 "(b) Any resident of this state who is ordered to use an ignition interlock device, as a
 10 condition of probation, shall complete the DUI Alcohol or Drug Use Risk Reduction
 11 Program and submit to the court or ~~probation department~~ Division of Probation/Parole
 12 Community Based Supervision a certificate of completion of the DUI Alcohol or Drug Use
 13 Risk Reduction Program and certification of installation of a certified ignition interlock
 14 device to the extent required by subsection (a) of this Code section."

15 SECTION 32.

16 Said title is further amended by revising subsection (a) of Code Section 42-8-114, relating
 17 to specifying providers for ignition interlock devices, as follows:

18 "(a) No judicial officer, probation officer, probation/parole supervisor, law enforcement
 19 officer, or other officer or employee of a court; person who owns, operates, or is employed
 20 by a private company which has contracted to provide private probation services for
 21 misdemeanor cases; or professional bondsman or agent or employee thereof shall specify,
 22 directly or indirectly, a particular provider center which the person may or shall utilize
 23 when use of an ignition interlock device is required. This subsection shall not prohibit any
 24 judicial officer, probation officer, probation/parole supervisor, law enforcement officer, or
 25 other officer or employee of a court; owner, operator, or employee of a private company
 26 which has contracted to provide probation services for misdemeanor cases; or professional
 27 bondsman or agent or employee thereof from furnishing any person, upon request, the
 28 names of certified provider centers."

29 SECTION 33.

30 Said title is further amended by revising Code Section 42-8-116, relating to warning labels
 31 for ignition interlock devices, as follows:

32 "42-8-116.

33 The providers certified by the Department of Driver Services shall design and adopt
 34 pursuant to regulations of the ~~department~~ Department of Driver Services a warning label

1 which shall be affixed to each ignition interlock device upon installation. The label shall
 2 contain a warning that any person tampering, circumventing, or otherwise misusing the
 3 device is guilty of a misdemeanor and may be subject to civil liability."

4 **SECTION 34.**

5 Said title is further amended by revising Code Section 42-8-151, relating to definitions
 6 relative to the "Probation Management Act of 2004," and inserting in lieu thereof the
 7 following:

8 "42-8-151.

9 For purposes of this article, the term:

10 (1) 'Chief probation officer' means the highest ranking field probation officer in each
 11 judicial circuit.

12 (2) 'Commissioner' means the commissioner of corrections.

13 (3) ~~'Department' means the Department of Corrections~~ 'Division' means the Division of
 14 Probation/Parole Community Based Supervision.

15 (4) 'Electronic monitoring' means supervising, mapping, or tracking the location of a
 16 probationer by means including electronic surveillance, voice recognition, facial
 17 recognition, fingerprinting or biometric scan, automated kiosk, automobile ignition
 18 interlock device, or global positioning systems which may coordinate data with crime
 19 scene information.

20 (5) 'Hearing officer' means an impartial ~~department~~ division employee or representative
 21 who has been selected and appointed to hear alleged cases regarding violations of
 22 probation for administrative sanctioning.

23 (6) 'Initial sanction' means the sanction set by the judge upon initial sentencing.

24 (7) 'Intensive probation' means a level of probation supervision which includes, but is not
 25 limited to, curfews, community service, drug testing, program participation, special
 26 conditions of probation, and general conditions of probation as set forth in Code Section
 27 42-8-35.

28 (8) 'Options system day reporting center' means a state facility providing supervision of
 29 probationers which includes, but is not limited to, mandatory reporting, program
 30 participation, drug testing, community service, all special conditions of probation, and
 31 general conditions of probation as set forth in Code Section 42-8-35.

32 (9) 'Options system probationer' means a probationer who has been sentenced to the
 33 sentencing options system.

34 (10) 'Probation supervision' means a level of probation supervision which includes, but
 35 is not limited to, general conditions of probation as set forth in Code Section 42-8-35 and
 36 all special conditions of probation.

1 (11) 'Residential substance abuse treatment facility' means a state correctional facility
2 that provides inpatient treatment for alcohol and drug abuse.

3 (12) 'Sentencing options system' means a continuum of sanctions for probationers that
4 includes the sanctions set forth in subsection (c) of Code Section 42-8-153."

5 SECTION 35.

6 Said title is further amended by revising Code Section 42-8-153, relating to administrative
7 sanctions as alternative to judicial modification or revocation of probation, as follows:

8 "42-8-153.

9 (a) The ~~department~~ division is authorized to establish by rules and regulations a system of
10 administrative sanctions as an alternative to judicial modifications or revocations for
11 probationers who violate the terms and conditions of the sentencing options system
12 established under this article. The ~~department~~ division may not, however, sanction
13 probationers for violations of special conditions of probation or general conditions of
14 probation for which the sentencing judge has expressed an intention that such violations
15 be heard by the court pursuant to Code Section 42-8-34.1.

16 (b) The ~~department~~ division shall only impose restrictions which are equal to or less
17 restrictive than the initial sanction set by the sentencing judge.

18 (c) The administrative sanctions which may be imposed by the ~~department~~ division are as
19 follows, from most restrictive to least restrictive:

- 20 (1) Probation detention center or residential substance abuse treatment facility;
- 21 (2) Probation boot camp;
- 22 (3) Probation diversion center;
- 23 (4) Intensive probation;
- 24 (5) Options system day reporting center;
- 25 (6) Electronic monitoring;
- 26 (7) Community service; or
- 27 (8) Probation supervision."

28 SECTION 36.

29 Said title is further amended by revising Code Section 42-8-155, relating to hearings
30 regarding violations, as follows:

31 "42-8-155.

32 (a) If an options system probationer violates the conditions of probation, the ~~department~~
33 division may impose administrative sanctions as an alternative to judicial modification or
34 revocation of probation.

1 (b) Upon issuance of a petition outlining the alleged probation violations, the chief
 2 probation officer, or his or her designee, may conduct a hearing to determine whether an
 3 options system probationer has violated a condition of probation. If the chief probation
 4 officer determines that the probationer has violated a condition of probation, the chief
 5 probation officer is authorized to impose sanctions consistent with paragraphs (4) through
 6 (8) of subsection (c) of Code Section 42-8-153. The failure of an options system
 7 probationer to comply with a sanction imposed by the chief probation officer shall
 8 constitute a violation of probation.

9 (c)(1) Upon issuance of a petition outlining the alleged probation violations, the hearing
 10 officer may initiate an administrative proceeding to determine whether an options system
 11 probationer has violated a condition of probation. If the hearing officer determines by
 12 a preponderance of the evidence that the probationer has violated a condition of
 13 probation, the hearing officer may impose sanctions consistent with Code
 14 Section 42-8-153.

15 (2) The administrative proceeding provided for under this subsection shall be
 16 commenced within 15 days but not less than 48 hours after notice of the administrative
 17 proceeding has been served on the probationer. The administrative proceeding may be
 18 conducted electronically.

19 (d) The failure of a probationer to comply with the sanction or sanctions imposed by the
 20 chief probation officer or hearing officer shall constitute a violation of probation.

21 (e) An options system probationer may at any time waive a hearing and voluntarily accept
 22 the sanctions proposed by the ~~department~~ division."

23 SECTION 37.

24 Said title is further amended by revising Code Section 42-8-156, relating to finality of
 25 hearing officer's decision, as follows:

26 "42-8-156.

27 (a) The hearing officer's decision shall be final unless the options system probationer files
 28 an appeal in the sentencing court. Such appeal shall name the commissioner as defendant
 29 and shall be filed within 30 days of the issuance of the decision by the ~~department~~ division.

30 (b) This appeal shall be first reviewed by the judge upon the record. At the judge's
 31 discretion, a de novo hearing may be held on the decision. The filing of the appeal shall
 32 not stay the ~~department's~~ division's decision.

33 (c) Where the sentencing judge does not act on the appeal within 30 days of the date of the
 34 filing of the appeal, the ~~department's~~ division's decision shall be affirmed by operation of
 35 law."

SECTION 38.

Said title is further amended by revising Code Section 42-8-158, relating to application only in counties with certified options system day reporting center, as follows:

"42-8-158.

This article shall only apply in counties that have an options system day reporting center certified by the ~~department~~ division."

SECTION 39.

Said title is further amended by revising Code Section 42-9-3, relating to definitions related to the State Board of Pardons and Paroles, as follows:

"42-9-3.

As used in this chapter, the term:

(1) 'Board' 'board' means the State Board of Pardons and Paroles.

(2) 'Division' means the Division of Probation/Parole Community Based Supervision.

(3) 'Split sentence' means any felony sentence that includes a term of imprisonment followed by a term of probation."

SECTION 40.

Said title is further amended by revising Code Section 42-9-20, relating to general powers and duties of the State Board of Pardons and Paroles, as follows:

"42-9-20.

(a) In all cases in which the chairman of the board or any other member designated by the board has suspended the execution of a death sentence to enable the full board to consider and pass on same, it shall be mandatory that the board act within a period not exceeding 90 days from the date of the suspension order. In the cases which the board has power to consider, the board shall be charged with the duty of determining which inmates serving sentences imposed by a court of this state may be released on pardon or parole and fixing the time and conditions thereof. The board shall also be charged with the duty of supervising all persons placed on parole, of determining violations thereof and of taking action with reference thereto, of making ~~such~~ investigations as may be necessary, and of aiding parolees or probationers in securing employment. It shall be the duty of the board personally to study the cases of those inmates whom the board has power to consider so as to determine their ultimate fitness for ~~such~~ relief as the board has power to grant. The board by an affirmative vote of a majority of its members shall have the power to commute a sentence of death to one of life imprisonment.

(b) With respect to inmates sentenced under split sentences entered on or after July 1, 2007, and all persons paroled or otherwise released by the board prior to completion of his

1 or her sentence on or after July 1, 2007, the board shall have no duty to supervise inmates
 2 who have been paroled or otherwise released prior to completion of their sentence of
 3 confinement. Supervision of inmates paroled, released, or released from split sentence
 4 confinement shall be through an increase in their period of probation, as provided in Code
 5 Section 17-10-1.3. Any reference elsewhere in this chapter to duties of the board with
 6 respect to supervision of parolees and other persons released from confinement shall not
 7 include inmates released from confinement on or after July 1, 2007."

8 SECTION 41.

9 Said title is further amended by revising Code Section 42-9-21, relating to supervision of
 10 persons placed on parole or other conditional release, as follows:

11 "42-9-21.

12 (a) The board shall have the function and responsibility of supervising all persons placed
 13 on parole or other conditional release by the board prior to July 1, 2007. On and after
 14 July 1, 2007, the division shall have the function and responsibility of supervising all
 15 persons placed on parole or other conditional release by the board.

16 (b) The board is and the division are authorized to maintain and operate or to enter into
 17 memoranda of agreement or other written documents evidencing contracts with other state
 18 agencies, persons, or any other entities for transitional or intermediate or other services or
 19 for programs deemed by the board or the division to be necessary for parolees or others
 20 conditionally released from imprisonment by order of the board and to require as a
 21 condition of relief that the offender pay directly to the provider a reasonable fee for said
 22 services or programs.

23 (c) In all cases where restitution is applicable, the board or division shall collect during the
 24 parole period those sums determined to be owed to the victim."

25 SECTION 42.

26 Said title is further amended by revising subsection (d) of Code Section 42-9-42, relating to
 27 procedure for granting relief from sentence, conditions, and violations of parole, as follows:

28 "(d)(1) Any person who is paroled shall be released on ~~such~~ the terms and conditions as
 29 the board shall prescribe. The board shall diligently see that no peonage is allowed in the
 30 guise of parole relationship ~~or supervision~~. The parolee shall remain in the legal custody
 31 of the board until the expiration of the maximum term specified in ~~his~~ the parolee's
 32 sentence or until ~~he~~ the parolee is pardoned by the board and shall be supervised during
 33 this period of time by the division.

34 (2) The board may require the payment of a parole supervision fee of at least \$10.00 per
 35 month as a condition of parole or other conditional release. The monthly amount shall

1 be set by rule of the board and shall be uniform state wide. The board may require or the
 2 parolee or person under conditional release may request that up to 24 months of the
 3 supervision fee be paid in advance of the time to be spent on parole or conditional
 4 release. In such cases, any advance payments are nonreimbursable in the event of parole
 5 or conditional release revocation or if parole or conditional release is otherwise
 6 terminated prior to the expiration of the sentence being served on parole or conditional
 7 release. ~~Such~~ The fees shall be collected by ~~the board to~~ a probation/parole supervisor
 8 and shall be paid into the general fund of the state treasury."

9 SECTION 43.

10 Said title is further amended by revising Code Section 42-9-44, relating to terms and
 11 conditions of parole and violation of parole, as follows:

12 "42-9-44.

13 (a) The board, upon placing a person on parole, shall specify in writing the terms and
 14 conditions thereof. A certified copy of the conditions shall be given to the parolee.
 15 Thereafter, a copy shall be sent to the clerk of the court in which the person was convicted.
 16 The board shall adopt general rules concerning the terms and conditions of parole and
 17 concerning what shall constitute a violation thereof and shall make special rules to govern
 18 particular cases. The rules, both general and special, may include, among other things, a
 19 requirement that the parolee shall not leave this state or any definite area in this state
 20 without the consent of the board; that the parolee shall contribute to the support of his or
 21 her dependents to the best of the parolee's ability; that the parolee shall make reparation
 22 or restitution for his or her crime; that the parolee shall abandon evil associates and ways;
 23 and that the parolee shall carry out the instructions of his or her probation/parole
 24 supervisor, and, in general, so comport himself or herself as the ~~parolee's~~ supervisor shall
 25 determine. A violation of the terms of parole may render the parolee liable to arrest and
 26 a return to a penal institution to serve out the term for which the parolee was sentenced.

27 (b) Each parolee who does not have a high school diploma or a general educational
 28 development equivalency diploma (GED) shall be required as a condition of parole to
 29 obtain a high school diploma or general educational development equivalency diploma
 30 (GED) or to pursue a trade at a ~~vocational or technical school~~ college. Any such parolee
 31 who demonstrates to the satisfaction of the board an existing ability or skill which does in
 32 fact actually furnish the parolee a reliable, regular, and sufficient income shall not be
 33 subject to this provision. Any parolee who is determined by the ~~Department of Corrections~~
 34 division or the board to be incapable of completing such requirements shall only be
 35 required to attempt to improve ~~their~~ his or her basic educational skills. Failure of any
 36 parolee subject to this requirement to attend the necessary schools or courses or to make

1 reasonable progress toward fulfillment of such requirement shall be grounds for revocation
 2 of parole. The board shall establish regulations regarding reasonable progress as required
 3 by this subsection. This subsection shall apply to paroles granted on or after July 1, 1995."

4 SECTION 44.

5 Said title is further amended by revising subsection (d) of Code Section 42-9-48, relating to
 6 arrest of parolee or conditional release violator, as follows:

7 "(d) Any probation/parole supervisor, when he or she has reasonable ground to believe that
 8 a parolee or conditional releasee has violated the terms or conditions of his or her parole
 9 or conditional release in a material respect, shall notify the board or some member thereof;
 10 and proceedings shall thereupon be had as provided in this Code section."

11 SECTION 45.

12 Said title is further amended by revising Code Section 42-9-57, relating to the effect of parole
 13 on probation and the board's cooperation with local agencies, as follows:

14 "42-9-57.

15 Nothing contained in this chapter shall be construed as repealing any power given to any
 16 court of this state to place offenders on probation or to supervise the same nor any power
 17 of any probation agency set up in any county of ~~the~~ this state in conjunction with the
 18 courts. The board shall be authorized to cooperate with any such agencies, ~~except that it~~
 19 and specifically with the division for purposes of supervising parolees and persons released
 20 pursuant to conditional release. The board shall not assume or pay any financial
 21 obligations thereof. ~~The board shall also be authorized to cooperate with the courts for the~~
 22 ~~probation of offenders in those counties in which there is no existing probation agency,~~
 23 ~~when a court so requests~~ of other agencies but shall share appropriately in the financial
 24 obligation of the division for purposes of supervision needs of the board."

25 SECTION 46.

26 Said title is further amended by revising subsection (b) of Code Section 42-9-90, relating to
 27 application fee required for parolee transfer consideration, as follows:

28 "(b) The ~~Department of Corrections~~ division and the ~~State Board of Pardons and Paroles~~
 29 board are authorized to require any nonindigent ~~adult~~ offender to pay a \$25.00 application
 30 fee when applying to transfer his or her supervision from Georgia to any other state or
 31 territory pursuant to the provisions of Articles 3 and 4 of this chapter."

SECTION 47.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising subsection (b) of Code Section 16-6-5.1, relating to sexual assaults against persons in custody, detained, in hospitals, or involved in psychotherapy, as follows:

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

SECTION 48.

Said title is further amended by revising subsection (b) of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers, as follows:

"(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, correctional officer, probation/parole supervisor, ~~parole supervisor~~, or conservation ranger in the lawful discharge of his or her official duties by offering or doing violence to the person of such officer or legally authorized person is guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years."

SECTION 49.

Said title is further amended by revising subsection (a) of Code Section 16-10-33, relating to removal or attempted removal of a weapon from a public official and punishment therefor, as follows:

"(a) It shall be unlawful for any person knowingly to remove or attempt to remove a firearm, chemical spray, or baton from the possession of another person if:

- (1) The other person is lawfully acting within the course and scope of employment; and
- (2) The person has knowledge or reason to know that the other person is employed as:
 - (A) A peace officer as defined in paragraph (8) of Code Section 35-8-2;

1 (B) A probation officer, or other employee with the power of arrest, by the Department
2 of Corrections;

3 (C) A probation/parole supervisor, or other employee with the power of arrest, by the
4 ~~State Board of Pardons and Paroles~~ Division of Probation/Parole Community Based
5 Supervision;

6 (D) A jail officer or guard by a county or municipality and has the responsibility of
7 supervising inmates who are confined in a county or municipal jail or other detention
8 facility; or

9 (E) A juvenile correctional officer by the Department of Juvenile Justice and has the
10 primary responsibility for the supervision and control of youth confined in such
11 department's programs and facilities."

12 SECTION 50.

13 Said title is further amended by revising subsection (d) of Code Section 16-11-37, relating
14 to terroristic threats and acts and penalties therefor, as follows:

15 "(d) A person who commits or attempts to commit a terroristic threat or act with the intent
16 to retaliate against any person for:

17 (1) Attending a judicial or administrative proceeding as a witness, attorney, judge, or
18 party or producing any record, document, or other object in a judicial or official
19 proceeding; or

20 (2) Providing to a law enforcement officer, adult probation/parole supervisor or juvenile
21 probation officer, prosecuting attorney, or judge any information relating to the
22 commission or possible commission of an offense under the laws of this state or of the
23 United States or a violation of conditions of bail, pretrial release, probation, or parole
24 shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall
25 be punished, for a terroristic threat, by imprisonment for not less than five nor more than
26 ten years or by a fine of not less than \$50,000.00, or both, and, for a terroristic act, by
27 imprisonment for not less than five nor more than 20 years or by a fine of not less than
28 \$100,000.00, or both."

29 SECTION 51.

30 Said title is further amended by revising paragraph (1) of Code Section 16-11-124, relating
31 to exemptions from application of the "Georgia Firearms and Weapons Act," as follows:

32 "(1) A peace officer of any duly authorized police agency of this state or of any political
33 subdivision thereof, or a law enforcement officer of any department or agency of the
34 United States who is regularly employed and paid by the United States, this state, or any
35 such political subdivision, or an employee of the Department of Corrections of this state

1 who is authorized in writing by the commissioner of corrections to transfer or possess
 2 such firearms while in the official performance of his or her duties, or an employee of the
 3 Division of Probation/Parole Community Based Supervision of this state who is
 4 authorized in writing by the director of the Division of Probation/Parole Community
 5 Based Supervision to transfer or possess such firearms while in the official performance
 6 of his or her duties;”.

7 **SECTION 52.**

8 Said title is further amended by revising paragraph (12) of subsection (c) of Code Section
 9 16-11-127.1, relating to carrying weapons within school safety zones, at school functions,
 10 or on school property, as follows:

11 “(12) Probation supervisors employed by and under the authority of the Department of
 12 Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide
 13 Probation Act,' when specifically designated and authorized in writing by the director of
 14 the Division of Probation or an employee of the Division of Probation/Parole Community
 15 Based Supervision of this state who is authorized in writing by the director of the
 16 Division of Probation/Parole Community Based Supervision to transfer or possess such
 17 firearms while in the official performance of his or her duties;”.

18 **SECTION 53.**

19 Said title is further amended by revising subsections (a) and (b) of Code Section 16-11-130,
 20 relating to certain exemptions concerning carrying weapons, as follows:

21 “(a) Code Sections 16-11-126 through 16-11-128 shall not apply to or affect any of the
 22 following persons if such persons are employed in the offices listed below or when
 23 authorized by federal or state law, regulations, or order:

24 (1) Peace officers, as such term is defined in paragraph (11) of Code Section 16-1-3, and
 25 retired peace officers so long as they remain certified whether employed by the state or
 26 a political subdivision of the state or another state or a political subdivision of another
 27 state but only if such other state provides a similar privilege for the peace officers of this
 28 state;

29 (2) Wardens, superintendents, and keepers of correctional institutions, jails, or other
 30 institutions for the detention of persons accused or convicted of an offense;

31 (3) Persons in the military service of the state or of the United States;

32 (4) Persons employed in fulfilling defense contracts with the government of the United
 33 States or agencies thereof when possession of the weapon is necessary for manufacture,
 34 transport, installation, and testing under the requirements of such contract;

- 1 (5) District attorneys, investigators employed by and assigned to a district attorney's
2 office, assistant district attorneys, attorneys employed by the Prosecuting Attorneys'
3 Council of Georgia, and any retired district attorney, assistant district attorney, or district
4 attorneys investigator if such retired employee is receiving benefits under Title 47 or is
5 retired in good standing and receiving benefits from a county or municipal retirement
6 system;
- 7 (6) State court solicitors-general; investigators employed by and assigned to a state court
8 solicitor-general's office; assistant state court solicitors-general; the corresponding
9 personnel of any city court expressly continued in existence as a city court pursuant to
10 Article VI, Section X, Paragraph I, subparagraph (5) of the Constitution; and the
11 corresponding personnel of any civil court expressly continued as a civil court pursuant
12 to said provision of the Constitution;
- 13 (7) Those employees of the State Board of Pardons and Paroles when specifically
14 designated and authorized in writing by the members of the State Board of Pardons and
15 Paroles to carry a weapon and those employees of the Division of Probation/Parole
16 Community Based Supervision of this state who are authorized in writing by the director
17 of the Division of Probation/Parole Community Based Supervision to transfer or possess
18 such firearms while in the official performance of their duties;
- 19 (8) The Attorney General and those members of his or her staff whom he or she
20 specifically authorizes in writing to carry a weapon;
- 21 (9) Chief probation officers, probation officers, intensive probation officers, and
22 surveillance officers employed by and under the authority of the Department of
23 Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide
24 Probation Act,' when specifically designated and authorized in writing by the director of
25 Division of Probation;
- 26 (10) Public safety directors of municipal corporations;
- 27 (11) Explosive ordnance disposal technicians, as such term is defined by Code Section
28 16-7-80, and persons certified as provided in Code Section 35-8-13 to handle animals
29 trained to detect explosives, while in the performance of their duties;
- 30 (12) State and federal trial and appellate judges, full-time and permanent part-time
31 judges of municipal and city courts, and former state trial and appellate judges retired
32 from their respective offices under state retirement;
- 33 (13) United States Attorneys and Assistant United States Attorneys;
- 34 (14) County medical examiners and coroners and their sworn officers employed by
35 county government; and
- 36 (15) Clerks of the superior courts.

1 (b) Code Sections 16-11-126 through 16-11-128 shall not apply to or affect persons who
 2 at the time of their retirement from service with the Department of Corrections were chief
 3 probation officers, probation officers, intensive probation officers, or surveillance officers,
 4 when specifically designated and authorized in writing by the director of Division of
 5 Probation or were probation/parole supervisors of the Division of Probation/Parole
 6 Community Based Supervision of this state when specifically designated and authorized
 7 in writing by the director of the division of probation/parole community based supervision."

8 SECTION 54.

9 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 10 amended by revising subsection (a) of Code Section 17-10-1, relating to fixing and
 11 modification of sentences, as follows:

12 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death
 13 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
 14 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
 15 shall prescribe a determinate sentence for a specific number of months or years which
 16 shall be within the minimum and maximum sentences prescribed by law as the
 17 punishment for the crime. The judge imposing the sentence is granted power and
 18 authority to suspend or probate all or any part of the entire sentence under such rules and
 19 regulations as the judge deems proper, including service of a probated sentence in the
 20 sentencing options system, as provided by Article 9 of Chapter 8 of Title 42, and
 21 including the authority to revoke the suspension or probation when the defendant has
 22 violated any of the rules and regulations prescribed by the court, even before the
 23 probationary period has begun, subject to the conditions set out in this subsection;
 24 provided, however, that such action shall be subject to the provisions of Code Sections
 25 17-10-6.1 and 17-10-6.2.

26 (2) Probation supervision shall terminate in all cases no later than two years from the
 27 commencement of probation supervision unless specially extended or reinstated by the
 28 sentencing court upon notice and hearing and for good cause shown; provided, however,
 29 that, in those cases involving the collection of fines, restitution, or other funds, the period
 30 of supervision shall remain in effect for so long as any ~~such~~ obligation is outstanding, or
 31 until termination of the sentence, whichever first occurs; and provided, further, that,
 32 where a period of postincarceration probation is increased as a result of parole or other
 33 release as provided in Code Section 17-10-1.3, the otherwise applicable two-year
 34 maximum shall be increased by the amount of time for which the period of
 35 postincarceration probation is increased. Probation supervision shall not be required for

1 defendants sentenced to probation while the defendant is in the legal custody of the
2 Department of Corrections ~~or the State Board of Pardons and Paroles.~~

3 (3)(A) Any part of a sentence of probation revoked for a violation other than a
4 subsequent commission of any felony, a violation of a special condition, or a
5 misdemeanor offense involving physical violence resulting in bodily injury to an
6 innocent victim which in the opinion of the trial court constitutes a danger to the
7 community or a serious infraction occurring while the defendant is assigned to an
8 alternative probation confinement facility shall be served in a probation detention
9 center, probation boot camp, diversion center, weekend lock up, or confinement in a
10 local jail or detention facility, or other community correctional alternatives available
11 to the court or provided by the Department of Corrections.

12 (B) A parolee or probationer charged with a misdemeanor involving physical injury
13 or an attempt to commit physical injury or terroristic threats or with a new felony shall
14 not be entitled to bond pending a hearing on the revocation of his or her parole or
15 probation, except by order of a judge of the superior, state, or magistrate court wherein
16 the alleged new offense occurred after a hearing and upon determination of the
17 superior, state, or magistrate court that the parolee or probationer does not constitute
18 a threat to the community; provided, however, that this subparagraph does not authorize
19 state or magistrate court judges to grant bail for a person charged with any offense
20 listed in subsection (a) of Code Section 17-6-1.

21 (4) In cases of imprisonment followed by probation, the sentence shall specifically
22 provide that the period of probation shall not begin until the defendant has completed
23 service of the confinement portion of the sentence or been released from confinement by
24 the State Board of Pardons and Paroles as provided in Code Section 17-10-1.3. ~~No~~ With
25 respect to a sentence entered prior to July 1, 2007, no revocation of any part of a probated
26 sentence shall be effective while a defendant is in the legal custody of the State Board of
27 Pardons and Paroles.

28 (5)(A) Where a defendant has been sentenced to probation, the court shall retain
29 jurisdiction throughout the period of the probated sentence as provided for in subsection
30 (g) of Code Section 42-8-34. Without limiting the generality of the foregoing, the court
31 may shorten the period of probation on motion of the defendant or on its own motion,
32 if the court determines that probation is no longer necessary or appropriate for the ends
33 of justice, the protection of society, and the rehabilitation of the defendant. Prior to
34 entering any order for shortening a period of probation, the court shall afford notice to
35 the victim or victims of all sex related offenses or violent offenses resulting in serious
36 bodily injury or death, and, upon request of the victim or victims so notified, shall

1 afford notice and an opportunity for hearing to the defendant and the prosecuting
2 attorney.

3 (B) The ~~Department of Corrections~~ Division of Probation/Parole Community Based
4 Supervision shall establish a form document which shall include the elements set forth
5 in this Code section concerning notification of victims and shall make copies of such
6 form available to prosecuting attorneys in the state. When requested by the victim, the
7 form document shall be provided to the victim by the prosecuting attorney. The form
8 shall include the address of the probation/parole community based supervision office
9 having jurisdiction over the case and contain a statement that the victim must maintain
10 a copy of his or her address with the probation/parole community based supervision
11 office and must notify the office of any change of address in order to maintain
12 eligibility for notification by the ~~Department of Corrections~~ Division of
13 Probation/Parole Community Based Supervision as required in this Code section.

14 (6)(A) Except as otherwise authorized by law, no court shall modify, suspend, probate,
15 or alter a previously imposed sentence so as to reduce or eliminate a period of
16 incarceration or probation and impose a financial payment which:

17 (i) Exceeds the statutorily specified maximum fine, plus all penalties, fees,
18 surcharges, and restitution permitted or authorized by law; or

19 (ii) Is to be made to an entity which is not authorized by law to receive fines,
20 penalties, fees, surcharges, or restitution.

21 (B) The prohibitions contained in this paragraph shall apply regardless of whether a
22 defendant consents to the modification, suspension, probation, or alteration of such
23 defendant's sentence and the imposition of such payment.

24 (C) Nothing in this paragraph shall prohibit or prevent a court from requiring, as a
25 condition of suspension, modification, or probation of a sentence in a criminal case
26 involving child abandonment, that the defendant pay all or a portion of child support
27 which is owed to the custodial parent of a child which is the subject of such case."

28 SECTION 55.

29 Said title is further amended by adding immediately after Code Section 17-10-1.2, relating
30 to oral victim impact statements, a new Code Section 17-10-1.3 to read as follows:

31 "17-10-1.3.

32 (a) As used in this Code section, the term 'split sentence' means any felony sentence that
33 includes a term of imprisonment followed by a term of probation.

34 (b) In any case where a judge on or after July 1, 2007, sentences a defendant to a split
35 sentence, postincarceration supervision of the defendant shall be conducted exclusively by
36 the Division of Probation/Parole Community Based Supervision and not by the State Board

1 of Pardons and Paroles, regardless of whether the defendant has served the full period of
2 incarceration ordered in the sentence or has been released prior to the full period of
3 incarceration by parole, conditional release, or other action of the State Board of Pardons
4 and Paroles.

5 (c) Any split sentence order entered on or after July 1, 2007, shall provide that the
6 postincarceration period of probation ordered in the sentence shall be increased by an
7 amount of time equal to any amount of time by which the period of incarceration is
8 decreased by the State Board of Pardons and Paroles. Such increased portion of the period
9 of probation shall run concurrently with the period of time by which the period of
10 incarceration was decreased and shall commence upon the defendant's release from
11 incarceration. Any split sentence order entered on or after July 1, 2007, which by its terms
12 fails to so provide for the increased period of probation shall be deemed to so provide by
13 operation of law.

14 (d) In any case where a judge on or after July 1, 2007, sentences a defendant for a felony
15 offense to straight probation or to an alternative probation confinement facility, supervision
16 of the defendant shall be conducted exclusively by the Division of Probation/Parole
17 Community Based Supervision and not by the state-wide probation system.

18 (e) Nothing in this Code section shall apply to or affect any case in which a pardon is
19 granted by the State Board of Pardons and Paroles."

20 **SECTION 56.**

21 Said title is further amended by revising subsection (a) of Code Section 17-10-6, relating to
22 sentence review for sentences of imprisonment exceeding 12 years, as follows:

23 "(a) In any case, except cases in which the death penalty is imposed or cases involving a
24 serious violent felony as defined in subsection (a) of Code Section 17-10-6.1, in which a
25 sentence of 12 or more years, or several consecutive sentences which total 12 or more
26 years, has been fixed and imposed by a judge, without a jury, the defendant shall have the
27 right to have the sentence or sentences reviewed by a panel of three superior court judges
28 to determine whether the sentence or sentences so imposed are excessively harsh.
29 Consideration shall be given in the review to the nature of the crime for which the
30 defendant has been convicted and to the defendant's prior criminal record. Any defendant
31 seeking a review of such sentence or sentences shall make application therefor within 30
32 days of the date on which the sentence was imposed by a judge of the superior court or
33 after the remittitur from the Court of Appeals or Supreme Court affirming the conviction
34 is made the judgment of the sentencing court, whichever occurs last. The application shall
35 be filed with the clerk of the superior court in which the sentence was imposed. Upon the
36 filing of an application the clerk shall transmit the same to the three-judge panel created

1 under this Code section within ten days of the date on which the application was filed. For
 2 such service, the clerk shall receive the fees prescribed in Code Section 15-6-77 from the
 3 funds of the county, except where the clerk is on a salary. It shall be the duty of the judge
 4 imposing the sentence and any probation/parole supervisor officer to transmit, within ten
 5 days of the filing of an application for review of a sentence, a copy of any presentence or
 6 postsentence report prepared by the probation/parole supervisor officer, including the
 7 record of the defendant, to the three-judge panel."

8 **SECTION 57.**

9 Said title is further amended by revising subsections (c) and (d) of Code Section 17-10-9.1,
 10 relating to voluntary surrender to county jail or correctional institution and release of
 11 defendant, as follows:

12 "(c) When a defendant submits a request to the sentencing judge to be allowed to surrender
 13 voluntarily to a county jail or a correctional facility, the judge may consider the request and
 14 if, taking into the consideration the crime for which the defendant is being sentenced, the
 15 history of the defendant, and any other factors which may aid in the decision, the judge
 16 determines that the granting of the request will pose no threat to society, the defendant shall
 17 be remanded to the supervision of a probation/parole supervisor officer by the judge and
 18 ordered to surrender voluntarily to a county jail designated by the court or to a correctional
 19 institution as thereafter designated by the Department of Corrections. The surrender date
 20 shall be a date thereafter specified as provided in subsection (d) of this Code section. The
 21 sentence of any defendant who is released pursuant to this Code section shall not begin to
 22 run until such person surrenders to the facility designated by the court or by the ~~department~~
 23 Department of Corrections, provided that such person will receive credit toward his or her
 24 sentence for time spent in confinement awaiting trial as provided in Code Section
 25 17-10-11.

26 (d) In the event the defendant is ordered to surrender voluntarily to a county jail, the court
 27 shall designate the date on which the defendant shall surrender, which date shall not be
 28 more than 120 days after the date of conviction. When the sentencing judge issues an order
 29 requiring a defendant to surrender voluntarily to a correctional institution, the Department
 30 of Corrections shall authorize the commitment and designate the correctional institution
 31 to which the defendant shall report and the date on which the defendant is to report, which
 32 date shall not be more than 120 days after the date of conviction. Upon such designation,
 33 the ~~department~~ Department of Corrections shall notify the supervising defendant's
 34 probation/parole supervisor officer who shall notify the defendant accordingly.
 35 Subsistence and transportation expenses en route to the correctional institution shall be
 36 borne by the defendant."

SECTION 58.

Said title is further amended by revising Code Section 17-14-8, relating to apportionment of payments for fines and restitution, as follows:

"17-14-8.

(a) In any case in which a court sentences an offender to pay restitution and a fine, if the court permits the offender to pay such restitution and fine in other than a lump sum, the clerk of any superior court of this state, probation officer or ~~parole officer~~ probation/parole supervisor, or other official who receives such partial payments shall apply not less than one-half of each payment to the restitution before paying any portion of such fine or any forfeitures, costs, fees, or surcharges provided for by law to any agency, department, commission, committee, authority, board, or bureau of state or local government.

(b) The clerk of any court of this state, probation officer or ~~parole officer~~ probation/parole supervisor, or other official who receives partial payments for restitution shall pay the restitution amount to the victim as provided in the restitution order not later than the last day of each month, provided that the amount exceeds \$100.00. If the amount does not exceed \$100.00, the clerk of any court of this state, probation officer or ~~parole officer~~ probation/parole supervisor, or other official may allow the amount of restitution to accumulate until such time as it exceeds \$100.00 or until the end of the next calendar quarter, whichever occurs first."

SECTION 59.

Said title is further amended by revising subsection (c) of Code Section 17-14-14, relating to restitution payments, as follows:

"(c) Until such time as the restitution has been paid or the sentence has been completed, the clerk of court or the probation officer or ~~parole officer~~ probation/parole supervisor assigned to the case, whoever is responsible for collecting restitution, shall review the case not less frequently than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be made within a specific period of time, the case shall be reviewed at the end of the specific period of time to determine if the restitution has been paid in full. The final review shall be conducted before the sentence or probationary or parole period expires. If it is determined at any review that restitution is not being paid as ordered, a written report of the violation shall be filed with the court on a form prescribed by the Council of Superior Court Clerks of Georgia."

SECTION 60.

Said title is further amended by revising paragraph (5) of Code Section 17-17-3, relating to definitions in the "Crime Victims' Bill of Rights," as follows:

1 **SECTION 67.**

2 This Act shall become effective July 1, 2007, and shall apply with respect to sentences
3 entered on or after that date.

4 **SECTION 68.**

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