

House Bill 567 (COMMITTEE SUBSTITUTE)

By: Representatives Parsons of the 42nd and Willard of the 49th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 15, Title 17, and Article 3 of Chapter 9 of Title 24 of the
2 Official Code of Georgia Annotated, relating to juvenile proceedings, criminal procedure,
3 and examination of witnesses, respectively, so as to expand provisions relative to victims'
4 participation in the court system in juvenile and state courts; to change provisions relating
5 to victim impact statements in delinquency proceedings; to provide that victims may be
6 present in juvenile court hearings; to require courts to hear victim impact testimony; to
7 require the court to make a finding regarding restitution in sentencing every accused person;
8 to add legislative findings to the "Crime Victims' Bill of Rights"; to define certain terms; to
9 expand the list of crimes covered by the "Crime Victims' Bill of Rights"; to change
10 provisions relating to victim notification to the victim of matters relative to a criminal case;
11 to provide for victim notification of events when an accused is committed to the Department
12 of Behavioral Health and Developmental Disabilities; to change provisions relating to the
13 prosecuting attorney's duties relative to victim notification and provide for notice to victims
14 relating to restitution; to provide for procedures for a victim to be interviewed by an accused
15 or his or her attorney or agent; to require that victims of crimes be present in the courtroom
16 except under limited circumstances; to change provisions relative to the rule of sequestration;
17 to provide privilege protections to communications between victim assistance personnel and
18 victims; to require the Attorney General to notify prosecuting attorneys of certain matters in
19 death penalty cases; to provide for victims to prevent an accused from sending any form of
20 written, text, or electronic communication to such victim, the victim's family, or the victim's
21 household; to provide for related matters; to repeal conflicting laws; and for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

24 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile
25 proceedings, is amended by revising Code Section 15-11-64.2, relating to victim impact
26 statements in delinquency proceedings, as follows:

H. B. 567 (SUB)

"15-11-64.2.

(a) In any delinquency proceeding in which a petition has been filed, the juvenile court shall notify any victim of a delinquent child's alleged ~~offense~~ delinquent act that the victim may submit a victim impact ~~statement~~ form as provided in Code Section 17-10-1.1 if:

(1) The allegedly delinquent child, in conduct which would constitute a felony if committed by an adult, caused physical, psychological, or economic injury to the victim;
or

(2) The allegedly delinquent child, in conduct which would constitute a misdemeanor if committed by an adult, caused serious physical injury or death to the victim.

(b) The provisions of subsection (e) of Code Section 17-10-1.1 shall apply to the use and disclosure of the victim impact form. A victim impact statement submitted by a victim shall be attached to the case file and may be used by the district attorney or the judge during any stage of the proceedings against the child involving predisposition, disposition, or determination of restitution.

(c) A victim impact statement shall:

(1) ~~Identify the victim of the offense and the perpetrator;~~

(2) ~~Itemize any economic loss suffered by the victim as a result of the offense;~~

(3) ~~Identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;~~

(4) ~~Describe any change in the victim's personal welfare or familial relationships as a result of the offense;~~

(5) ~~Identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and~~

(6) ~~Contain any other information related to the impact of the offense upon the victim that the court requires.~~

~~(d)~~(c) The victim may complete the victim impact ~~statement~~ form and submit such form to the juvenile court. If the victim is unable to do so because of such victim's mental, emotional, or physical incapacity, or because of such victim's age, the victim's attorney or a family member may complete the victim impact ~~statement~~ form on behalf of the victim.

~~(e)~~(d) Prior to the imposition of a dispositional order for an allegedly delinquent child, the juvenile court shall permit the victim to address the juvenile court and present any information or opinions that concern the victim or the victim's family, including the impact of the delinquent act on the victim, the harm caused by the allegedly delinquent child and the delinquent act, the need for restitution, or the terms of the disposition order. Such statement shall be given in the presence of the allegedly delinquent child and shall be subject to cross-examination. The prosecuting attorney and the allegedly delinquent child shall be afforded the opportunity to explain, support, or deny the victim's statement. It

shall be the duty of the juvenile court to advise the victim of the right to address the court prior to the entry of a dispositional order for a delinquent child. The victim shall have the discretion to exercise the right to be present and be heard at the dispositional hearing. If the victim is voluntarily absent from the dispositional hearing, such absence shall constitute a waiver of the rights provided by this subsection. ~~The court shall, in the manner prescribed by rule of court, provide the child with a copy of the victim impact statement within a reasonable time prior to any hearing at which it is to be considered and allow the child to have the opportunity to rebut the victim's written statements.~~

~~(f)~~(e) Except as provided in subsection (d) of this Code section, no No disposition of the child shall be invalidated because of failure to comply with the provisions of this ~~subsection~~ Code section. This ~~subsection~~ Code section shall not be construed to create any cause of action or any right of appeal on behalf of ~~any person~~ the victim, the state, or the accused; provided, however, that if the court intentionally fails to comply with this Code section, the victim may file a complaint with the Judicial Qualifications Commission."

SECTION 2.

Said chapter is further amended by revising subsection (e) of Code Section 15-11-78, relating to exclusion of the public from juvenile court hearings, as follows:

"(e) Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, the victim, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court to hearings from which the public is excluded; provided, however, that when the conduct alleged in the deprivation proceeding could give rise to a criminal or delinquent prosecution, attorneys for the prosecution and the defense shall be admitted."

SECTION 3.

Said chapter is further amended by revising subsection (b) of code Section 15-11-155, relating to dispositional hearing for mental competency plans, as follows:

"(b) The persons required to be notified of the mental competency disposition hearing and witnesses identified by the plan manager shall be given at least ten days' prior notice of the disposition hearing and any subsequent hearing to review the child's condition and shall be afforded an opportunity to be heard at any such hearing. The victim, if any, of the child's delinquent or unruly act shall also be provided with the same ten days' prior notice regarding any such hearing and shall be afforded an opportunity to be heard and to present a victim impact ~~statement~~ form to the court at any such hearing. The judge shall make a determination regarding sequestration of witnesses in order to protect the privileges and confidentiality rights of the child."

99

SECTION 4.

100 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
101 amended by revising subsections (a) and (d) of Code Section 17-10-1.2, relating to oral
102 victim impact statements, as follows:

103 "(a)(1) In all cases in which the death penalty may be imposed, subsequent to an
104 adjudication of guilt and in conjunction with the procedures in Code Section 17-10-30,
105 the court shall allow evidence from the family of the victim, or such other witness having
106 personal knowledge of the victim's personal characteristics and the emotional impact of
107 the crime on the victim, the victim's family, or the community. Except as provided in
108 paragraph (4) of this subsection, such evidence shall be given in the presence of the
109 defendant and of the jury and shall be subject to cross-examination.

110 (2) The admissibility of the evidence described in paragraph (1) of this subsection and
111 the number of witnesses other than immediate family who may testify shall be in the sole
112 discretion of the judge and in any event shall be permitted only in such a manner and to
113 such a degree as not to inflame or unduly prejudice the jury. As used in this paragraph,
114 the term 'immediate family' means the victim's spouse, child, parent, stepparent,
115 grandparent, grandchild, sibling, stepbrother, stepsister, mother-in-law, father-in-law,
116 sister-in-law, or brother-in-law and the spouses of any such individuals.

117 (3) In all cases other than those in which the death penalty may be imposed, prior to
118 fixing of the sentence as provided for in Code Section 17-10-1 or the imposing of life
119 imprisonment as mandated by law, and before rendering the appropriate sentence,
120 including any order of restitution, the court shall allow ~~evidence from the victim, as such~~
121 term is defined in Code Section 17-17-3, the family of the victim, or such other witness
122 having personal knowledge of the crime to testify about the impact of the crime on the
123 victim, the family of the victim, or the community. Except as provided in paragraph (4)
124 of this subsection, such evidence shall be given in the presence of the defendant and shall
125 be subject to cross-examination. The admissibility of the ~~evidence described in this~~
126 ~~paragraph shall be in the sole discretion of the judge and in any event~~ testimony and
127 evidence in support of such testimony shall be in the sole discretion of the judge and in
128 any event shall be permitted only in such a manner as to allow for cross-examination by
129 the defendant and to such a degree as not to unduly prejudice the defendant. If the judge
130 excludes the testimony or evidence in support of such testimony, the state shall be
131 allowed to make a proffer of such testimony or evidence.

132 (4) Upon a finding by the court specific to the case and the witness that the witness
133 would not be able to testify in person without showing undue emotion or that testifying
134 in person will cause the witness severe physical or emotional distress or trauma, evidence
135 presented pursuant to this subsection may be in the form of, but not limited to, a written

statement or a prerecorded audio or video statement, provided that such witness is subject to cross-examination and the evidence itself will not be available to the jury during deliberations. Photographs of the victim may be included with any evidence presented pursuant to this subsection.

(5) If the accused has been convicted of a serious violent felony as defined in Code Section 17-10-6.1, attempted murder or attempted kidnapping, or any violation of Code Section 16-5-90, 16-5-91, 16-7-82, 16-7-84, or 16-7-86, and the victim or a representative of the victim is not present at the presentence hearing, it shall be the duty of the court to inquire of the prosecuting attorney whether or not the victim has been notified of the presentence hearing as provided in Code Section 17-17-5. If the court finds that the prosecuting attorney has not made a reasonable attempt to notify the victim, the presentence hearing shall be recessed in order to provide the victim the opportunity to attend prior to sentence being imposed; provided, however, that prior to recessing the presentence hearing, the court shall allow the state or the accused to call any witnesses who were subpoenaed and are present at such presentence hearing. Following any such testimony, the presentence hearing shall be recessed and the victim shall be notified of the date, time, and location when the presentence hearing shall resume."

"(d) No sentence shall be invalidated because of failure to comply with the provisions of this Code section. This Code section shall not be construed to create any cause of action or any right of appeal on behalf of ~~any person~~ the victim, the state, or the accused; provided, however, that if the court intentionally fails to comply with this Code section, the victim may file a complaint with the Judicial Qualifications Commission."

SECTION 5.

Said title is further amended by revising subsection (a) of Code Section 17-14-3, relating to the requirement of restitution by an offender as a condition of relief, generally, as follows:

"(a) Subject to the provisions of Code Section 17-14-10, notwithstanding the provisions contained in Chapter 11 of Title 15, and in addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to any such victim."

SECTION 6.

Said title is further amended by revising Code Section 17-17-1, relating to the declaration of policy for the "Crime Victims' Bill of Rights," as follows:

"17-17-1.

The General Assembly hereby finds and declares it to be the policy of this state that victims of crimes should be accorded certain basic rights just as the accused are accorded certain basic rights. These rights include:

(1) The right to reasonable, accurate, and timely notice of any scheduled court proceedings or any changes to such proceedings;

(2) The right to reasonable, accurate, and timely notice of the arrest, release, or escape of the accused;

(3) The right not to be excluded from any scheduled court proceedings, except as provided in this chapter or as otherwise required by law;

(4) The right to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused;

(5) The right to file a written objection in any parole proceedings involving the accused;

(6) The right to confer with the prosecuting attorney in any criminal prosecution related to the victim;

(7) The right to restitution as provided by law;

(8) The right to proceedings free from unreasonable delay; and

(9) The right to be treated fairly and with dignity by all criminal justice agencies involved in the case."

SECTION 7.

Said title is further amended by revising Code Section 17-17-3, relating to definitions, as follows:

"17-17-3.

As used in this chapter, the term:

(1) 'Accused' means a person suspected of and subject to arrest for, arrested for, or convicted of a crime against a victim.

(1.1) 'Arrest' means an actual custodial restraint of a person or the person's submission to custody and includes the taking of a child into custody.

(2) 'Arresting law enforcement agency' means any law enforcement agency, other than the investigating law enforcement agency, which arrests the accused.

(3) 'Compensation' means awards granted by the Georgia Crime Victims Compensation Board pursuant to Chapter 15 of this title.

(4) 'Crime' means an act committed in this state which constitutes any violation of Chapter 5 of Title 16, ~~relating to crimes against persons~~; Chapter 6 of Title 16, ~~relating to sexual offenses~~; ~~Article 1 or Article 3~~; Article 1, 3, or 4 of Chapter 7 of Title 16, ~~relating to burglary and arson~~; ~~Article 1 or Article 2 of Chapter 8 of Title 16, relating to~~

offenses involving theft and armed robbery; Code Section 16-12-100, relating to sexual exploitation of children; Chapter 9 of Title 16; Part 3 of Article 3 of Chapter 12 of Title 16; Code Section 30-5-8; Code Section 40-6-393, relating to homicide by vehicle; Code Section 40-6-393.1, relating to feticide by vehicle; or Code Section 40-6-394, relating to serious injury by vehicle.

(4.1) 'Criminal justice agency' means an arresting law enforcement agency, custodial authority, investigating law enforcement agency, prosecuting attorney, or the State Board of Pardons and Paroles.

(5) 'Custodial authority' means a warden, sheriff, jailer, deputy sheriff, police officer, correctional officer, officer or employee of the Department of Corrections or the Department of Juvenile Justice, or any other law enforcement officer having actual custody of the accused.

(6) 'Investigating law enforcement agency' means the law enforcement agency responsible for the investigation of the crime.

(7) 'Notice,' 'notification,' or 'notify' means a written notice when time permits or, failing such, a documented effort to reach the victim by telephonic or other means.

(8) 'Person' means an individual.

(9) 'Prompt notice,' 'prompt notification,' or 'promptly notify' means notification given to the victim as soon as practically possible so as to provide the victim with a meaningful opportunity to exercise his or her rights pursuant to this chapter.

(10) 'Prosecuting attorney' means the district attorney, the solicitor-general of a state court or the solicitor of any other court, the Attorney General, a county attorney opposing an accused in a habeas corpus proceeding, or the designee of any of these.

(11) 'Victim' means:

(A) A person against whom a crime has been perpetrated or has allegedly been perpetrated; or

(B) In the event of the death of the crime victim, the following relations if the relation is not either in custody for an offense or the defendant:

(i) The spouse;

(ii) An adult child if division (i) does not apply;

(iii) A parent if divisions (i) and (ii) do not apply;

(iv) A sibling if divisions (i) through (iii) do not apply; or

(v) A grandparent if divisions (i) through (iv) do not apply; or

(C) A parent, guardian, or custodian of a crime victim who is a minor or a legally incapacitated person except if such parent, guardian, or custodian is in custody for an offense or is the defendant."

SECTION 8.

Said title is further amended by revising Code Section 17-17-5, relating to notification to victim of accused's arrest, release from custody, and any judicial proceedings at which such release is considered, as follows:

"17-17-5.

(a) All victims, wherever practicable, shall be entitled to notification ~~as defined by paragraph (7) of Code Section 17-17-3~~ of:

(1) The accused's arrest, of the;

(2) The accused's release from custody, and of any;

(3) Any judicial proceeding at which the release of the accused will be considered;

(4) An escape by the accused and his or her subsequent rearrest; and

(5) If the accused is released from custody and the terms or conditions of such release require that the accused participate in an electronic release and monitoring program, the accused's violation of the terms or conditions of the electronic release and monitoring program, provided that an arrest warrant has been issued for the accused and the accused is prohibited from contacting the victim.

~~(b)~~ No such notification shall be required unless the victim provides a ~~landline telephone number other than a pocket pager or electronic communication device number~~ current address and telephone number to which such notice can be directed.

~~(b)(c)~~ The ~~investigating law enforcement agency, prosecuting attorney, or custodial authority who is required to provide notification pursuant to this chapter~~ criminal justice agency having knowledge of an event described in subsection (a) of this Code section shall provide notice to the victim of such event. Such agency shall advise the victim of his or her right to notification pursuant to this chapter and of the requirement of the victim's providing a ~~landline telephone number other than a pocket pager or electronic communication device~~ current address and telephone number to which the notification shall be directed. Such victim shall transmit the telephone number described in this subsection to the appropriate ~~investigating law enforcement agency, prosecuting attorney, criminal justice agency~~ or custodial authority as provided for in this chapter."

SECTION 9.

Said title is further amended by adding a new Code section to read as follows:

"17-17-5.1.

(a) If the accused is committed to the Department of Behavioral Health and Developmental Disabilities pursuant to the provisions of Part 2 of Article 6 of Chapter 7 of this title, the department shall, upon the written request of the victim, mail to the victim

at least ten days before the release or discharge of the accused notice of the release or discharge of the accused.

(b) The Department of Behavioral Health and Developmental Disabilities shall mail to the victim immediately after the escape or subsequent readmission of the accused notice of such escape or subsequent readmission of the person who is placed by court order in the custody of the department pursuant to the provisions of Part 2 of Article 6 of Chapter 7 of this title."

SECTION 10.

Said title is further amended by revising Code Section 17-17-8, relating to notification by prosecuting attorney of legal procedures and of victim's rights in relation thereto, as follows: "17-17-8.

(a) Upon initial contact with a victim, a prosecuting attorney shall give prompt notification to the victim of the following:

- (1) The procedural steps in processing a criminal case including the right to restitution;
- (2) The rights and procedures of victims under this chapter;
- (3) Suggested procedures if the victim is subjected to threats or intimidation; ~~and~~
- (4) The names and telephone numbers of contact persons at both the office of the custodial authority and in the prosecuting attorney's office; and
- (5) The names and telephone numbers of contact persons at the office of the investigating agency where the victim may make application for the return of any of the victim's property that was taken during the course of the investigation, as provided by Code Section 17-5-50.

(b) If requested in writing by the victim and to the extent possible, the prosecuting attorney shall give prompt advance notification of any scheduled court proceedings and notice of any changes to that schedule. Court proceedings shall include, but not be limited to, pretrial commitment hearings, arraignment, motion hearings, trial, sentencing, restitution hearings, appellate review, and post-conviction relief. The prosecuting attorney shall notify all victims of the requirement to make such request in writing.

(c)(1) In the event the victim seeks restitution, the victim shall provide the prosecuting attorney with his or her legal name, address, phone number, social security number, date of birth, and, if the victim has an e-mail address, his or her e-mail address. The victim shall also provide such information, other than a social security number, to the prosecuting attorney for a secondary contact person in the event the victim cannot be reached after reasonable efforts are made to contact such victim. The prosecuting attorney shall advise the victim of any agency that will receive such information and advise the victim that he or she is responsible for updating such information with the

312 prosecuting attorney while the case involving the victim is pending and that he or she
313 should update the agency with such information after a restitution order has been entered.
314 (2) The prosecuting attorney shall transmit the information collected in paragraph (1) of
315 this subsection to the Department of Corrections, Department of Juvenile Justice, or the
316 State Board of Pardons and Paroles, as applicable, if an order of restitution is entered.
317 (3) The information collected pursuant to paragraph (1) of this subsection shall be treated
318 as confidential and shall not be disclosed to any person outside of the disclosure provided
319 by this subsection; such information shall not be subject to Article 4 of Chapter 18 of
320 Title 50, relating to open records, or subject to subpoena, discovery, or introduction into
321 evidence in any civil or criminal proceeding."

322 **SECTION 11.**

323 Said title is further amended by adding a new Code section to read as follows:

324 "17-17-8.1.

325 (a) A victim shall have the right to refuse to submit to an interview by the accused, the
326 accused's attorney, or an agent of the accused. It shall be the duty of the prosecuting
327 attorney to advise a victim that he or she has the right to agree to such an interview or to
328 refuse such an interview.

329 (b) If a victim agrees to be interviewed, such victim may set conditions for such interview
330 as he or she desires. Conditions may include, but shall not be limited to, the time, date, and
331 location of the interview, what other persons may be present during the interview, any
332 security arrangements for the interview, and whether or not the interview may be recorded.
333 If requested by a victim, the prosecuting attorney or his or her agent may attend the
334 interview. A victim has the right to terminate the interview at any time or to refuse to
335 answer any question during the interview.

336 (c) The accused, the accused's attorney, and any agent of the accused shall not contact a
337 victim in an unreasonable manner; and if a victim has clearly expressed to any such party
338 a desire not to be contacted, no contact shall be made. When making any permissible
339 contact with the victim, the accused's attorney or an agent of the accused shall make a clear
340 statement that he or she is contacting the victim on behalf of the accused.

341 (d) For the purposes of this Code section, a peace officer shall not be considered a victim
342 if the act that would have made the officer a victim occurs while the peace officer is acting
343 within the scope of the officer's official duties.

344 (e) Except as provided in this Code section, the prosecuting attorney shall not take any
345 action to deny an accused's attorney access to a victim for the purpose of interviewing such
346 victim."

SECTION 12.

Said title is further amended by revising Code Section 17-17-9, relating to separate victims' waiting areas, as follows:

"17-17-9.

(a) A victim has the right to be present at all criminal proceedings in which the accused has the right to be present. A victim or member of the immediate family of a victim shall not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify unless it is established that such victim or family member is a material and necessary witness to such hearing, trial, or proceeding and the court finds that there is a substantial probability that such person's presence would impair the conduct of a fair trial. The provisions of this Code section shall not be construed as impairing the authority of a judge to remove a person from a trial or hearing or any portion thereof for the same causes and in same manner as the rules of court or law provides for the exclusion or removal of the accused. A motion to exclude a victim or family members from the courtroom for any reason other than misconduct shall be made and determined prior to jeopardy attaching.

(b) A victim of a criminal offense who has been or may be subpoenaed to testify at such hearing or trial shall be exempt from the provisions of Code Section 24-9-61 requiring sequestration; provided, however, that the court shall require that the victim be scheduled to testify as early as practical in the proceedings.

(c) If the victim is excluded from the courtroom, the ~~The~~ victim shall have the right to wait in an area separate from the accused, from the family and friends of the accused, and from witnesses for the accused during any judicial proceeding involving the accused, provided that such separate area is available and its use in such a manner practical. If such a separate area is not available or practical, the court, upon request of the victim made through the prosecuting attorney, shall attempt to minimize the victim's contact with the accused, the accused's relatives and friends, and witnesses for the accused during any such judicial proceeding."

SECTION 13.

Said title is further amended by adding a new Code section to read as follows:

"17-17-9.1.

Communications between a victim, other than a peace officer, and victim assistance personnel appointed by a prosecuting attorney and any notes, memoranda, or other records made by such victim assistance personnel of such communication shall be considered attorney work product of the prosecuting attorney and not subject to disclosure except

382 where such disclosure is required by law. Such work product shall be subject to other
383 exceptions that apply to attorney work product generally."

384 **SECTION 14.**

385 Said title is further amended by revising subsection (b) of Code Section 17-17-12, relating
386 to notification to victim of accused's motion for new trial or appeal, release on bail or
387 recognizance, appellate proceedings, and outcome of appeal, as follows:

388 "(b) The Attorney General shall notify the prosecuting attorney of the filing of collateral
389 attacks on convictions of this state which are being defended by the Attorney General.

390 (b.1) In ~~Upon the written request of the victim as defined in paragraph (11) of Code~~
391 ~~Section 17-17-3, in~~ cases in which the accused is convicted of a capital offense and
392 receives the death penalty, ~~it shall be the duty of the Attorney General to~~ shall:

393 (1) Notify the prosecuting attorney and upon the written request of the victim notify the
394 victim of the filing and disposition of all collateral attacks on such conviction which are
395 being defended by the Attorney General, including, but not limited to, petitions for a writ
396 of habeas corpus, and the time and place of any such proceedings and any changes in the
397 time or place of those proceedings; and

398 (2) Provide the prosecuting attorney and upon the written request of the victim provide
399 the victim with a report on the status of all pending appeals, collateral attacks, and other
400 litigation concerning such conviction which is being defended by the Attorney General
401 at least every six months until the accused dies or the sentence or conviction is overturned
402 or commuted or otherwise reduced to a sentence other than the death penalty."

403 **SECTION 15.**

404 Said title is further amended by adding a new Code section to read as follows:

405 "17-17-12.1.

406 (a) As used in this Code section, the term 'mail' means any form of written communication,
407 including, but not limited to, letters, cards, postcards, packages, parcels, and e-mail as
408 defined by Code Section 16-9-100, text messaging, and any other form of electronic
409 communication which is knowingly intended to be delivered to or received by a victim, any
410 member of the victim's family, or any member of the victim's household.

411 (b)(1) A victim shall have the right to request not to receive mail from an inmate who
412 was convicted of committing a criminal offense against such victim or was adjudicated
413 by the juvenile court of having committed a delinquent act or designed felony against
414 such victim.

(2) A victim's right to request not to receive mail from such inmate shall extend to any member of such victim's family or any member of such victim's household during the term of the sentence imposed or dispositional order for such offense.

(3) As soon as practical following a conviction or adjudication, a victim shall be provided with the instructions for requesting that inmate mail be blocked as provided in subsection (c) of this Code section. If the conviction is from a state or superior court, it shall be the duty of the prosecuting attorney to provide a victim with such instructions. If the adjudication is from the juvenile court, such instructions shall be provided by the juvenile court.

(c) The Department of Corrections and the Department of Juvenile Justice shall develop and provide to the prosecuting attorneys and juvenile courts, respectively, the procedures a victim shall follow in order to block inmate mail. Such procedures may include secure electronic means provided that an alternate, nonelectronic procedure is available for victims without access to a computer. Such departments shall also develop and implement appropriate administrative sanctions which shall be imposed against an inmate violating the provisions of this Code section.

(d) If a victim submits a request to block inmate mail, the Department of Corrections, in the case of an adult, or the Department of Juvenile Justice, in the case of a juvenile, shall:

(1) Notify any other custodial authority having actual custody of the inmate of the names and addresses of such victim and the family or household members denoted by such victim;

(2) Notify the inmate of the request to have mail blocked and advise the inmate that sending mail directly or through any third party to such victim or the family or household members denoted by such victim is prohibited and will result in appropriate sanctions and review of all outgoing mail; and

(3) Institute such procedures to insure that the inmate cannot send mail directly or through any third party to such victim or the family or household members denoted by such victim.

(e) Any custodial authority having actual custody of an inmate with mail restrictions shall not knowingly forward mail addressed to any person who requests not to receive mail pursuant to this Code section.

(f) The imposition of sanctions by a custodial authority pursuant to this Code section shall not preclude the imposition of any other remedies provided by law, nor shall such sanctions bar prosecution of the inmate for any criminal offense which may have been committed in sending such mail.

(g) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, information concerning the names and addresses of a victim, and the family or household members

452 denoted by such victim, who requests that inmate mail be blocked shall not be open to
453 inspection by or made available to the public and shall not be subject to discovery in any
454 civil or criminal case or administrative proceeding unless the court, after notice and a
455 hearing, makes a finding of fact that such information is material and relevant to the case
456 and that such information is not available from any other source."

457 **SECTION 16.**

458 Article 3 of Chapter 9 of Title 24 of the Official Code of Georgia Annotated, relating to
459 examination of witnesses, is amended by revising Code Section 24-9-61.1, relating to
460 presence in the courtroom of the victim of a criminal offense, as follows:

461 "24-9-61.1.

462 ~~(a) The Subject to the provisions of Code Section 17-17-9, the~~ victim of a criminal offense
463 ~~may shall~~ be entitled to be present in any court exercising jurisdiction over such offense.
464 ~~It shall be within the sole discretion of the judge to implement the provisions of this Code~~
465 ~~section and determine when to allow such victim to be present in such court and, if such~~
466 ~~victim is permitted to be present, to determine the order in which the testimony of such~~
467 ~~victim shall be given.~~

468 ~~(b) The failure of a victim to exercise any right granted by this Code section shall not be~~
469 ~~a cause or ground for an appeal of a conviction by a defendant or for any court to set aside,~~
470 ~~reverse, or remand a criminal conviction."~~

471 **SECTION 17.**

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