

The Senate Special Judiciary Committee offered the following substitute to HB 567:

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; Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated,  
22 relating to conditions of detention, so as to change certain provisions relating to transmittal  
23 of information on convicted persons and place of detention; to change the provision that  
24 allows convicted persons to remain in local jails under certain circumstances; to provide for  
25 related matters; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 SECTION 1.

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

31 "15-11-64.2.

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

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

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

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

45 (c) ~~A victim impact statement shall:~~

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

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

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

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

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

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

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

60 (e)(d) Prior to the imposition of a dispositional order for an allegedly delinquent child, the  
 61 juvenile court shall permit the victim to address the juvenile court and present any

62 information or opinions that concern the victim or the victim's family, including the impact  
 63 of the delinquent act on the victim, the harm caused by the allegedly delinquent child and  
 64 the delinquent act, the need for restitution, or the terms of the disposition order. Such  
 65 statement shall be given in the presence of the allegedly delinquent child and shall be  
 66 subject to cross-examination. The prosecuting attorney and the allegedly delinquent child  
 67 shall be afforded the opportunity to explain, support, or deny the victim's statement. It  
 68 shall be the duty of the juvenile court to advise the victim of the right to address the court  
 69 prior to the entry of a dispositional order for a delinquent child. The victim shall have the  
 70 discretion to exercise the right to be present and be heard at the dispositional hearing. If  
 71 the victim is voluntarily absent from the dispositional hearing, such absence shall constitute  
 72 a waiver of the rights provided by this subsection. The court shall, in the manner  
 73 prescribed by rule of court, provide the child with a copy of the victim impact statement  
 74 within a reasonable time prior to any hearing at which it is to be considered and allow the  
 75 child to have the opportunity to rebut the victim's written statements.

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

## 82 **SECTION 2.**

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

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

## 91 **SECTION 3.**

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

94 "(b) The persons required to be notified of the mental competency disposition hearing and  
 95 witnesses identified by the plan manager shall be given at least ten days' prior notice of the  
 96 disposition hearing and any subsequent hearing to review the child's condition and shall be

97 afforded an opportunity to be heard at any such hearing. The victim, if any, of the child's  
 98 delinquent or unruly act shall also be provided with the same ten days' prior notice  
 99 regarding any such hearing and shall be afforded an opportunity to be heard and to present  
 100 a victim impact ~~statement~~ form to the court at any such hearing. The judge shall make a  
 101 determination regarding sequestration of witnesses in order to protect the privileges and  
 102 confidentiality rights of the child."

103 **SECTION 4.**

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

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

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

121 (3) In all cases other than those in which the death penalty may be imposed, prior to  
 122 fixing of the sentence as provided for in Code Section 17-10-1 or the imposing of life  
 123 imprisonment as mandated by law, and before rendering the appropriate sentence,  
 124 including any order of restitution, the court shall allow ~~evidence from the victim, as such~~  
 125 term is defined in Code Section 17-17-3, the family of the victim, or such other witness  
 126 having personal knowledge of the crime to testify about the impact of the crime on the  
 127 victim, the family of the victim, or the community. Except as provided in paragraph (4)  
 128 of this subsection, such evidence shall be given in the presence of the defendant and shall  
 129 be subject to cross-examination. The admissibility of the ~~evidence described in this~~  
 130 ~~paragraph shall be in the sole discretion of the judge and in any event~~ testimony and  
 131 evidence in support of such testimony shall be in the sole discretion of the judge and in  
 132 any event shall be permitted only in such a manner as to allow for cross-examination by

133 the defendant and to such a degree as not to unduly prejudice the defendant. If the judge  
 134 excludes the testimony or evidence in support of such testimony, the state shall be  
 135 allowed to make a proffer of such testimony or evidence.

136 (4) Upon a finding by the court specific to the case and the witness that the witness  
 137 would not be able to testify in person without showing undue emotion or that testifying  
 138 in person will cause the witness severe physical or emotional distress or trauma, evidence  
 139 presented pursuant to this subsection may be in the form of, but not limited to, a written  
 140 statement or a prerecorded audio or video statement, provided that such witness is subject  
 141 to cross-examination and the evidence itself will not be available to the jury during  
 142 deliberations. Photographs of the victim may be included with any evidence presented  
 143 pursuant to this subsection.

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

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

## 162 SECTION 5.

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

165 "(a) Subject to the provisions of Code Section 17-14-10, notwithstanding the provisions  
 166 contained in Chapter 11 of Title 15, and in addition to any other penalty imposed by law,  
 167 a judge of any court of competent jurisdiction shall, in sentencing an offender, make a

168 finding as to the amount of restitution due any victim, and order an offender to make full  
 169 restitution to any such victim."

170 **SECTION 6.**

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

173 "17-17-1.

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

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

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

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

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

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

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

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

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

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

192 **SECTION 7.**

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

195 "17-17-3.

196 As used in this chapter, the term:

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

199 (1.1) 'Arrest' means an actual custodial restraint of a person or the person's submission  
 200 to custody and includes the taking of a child into custody.

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

- 203 (3) 'Compensation' means awards granted by the Georgia Crime Victims Compensation  
 204 Board pursuant to Chapter 15 of this title.
- 205 (4) 'Crime' means an act committed in this state which constitutes any violation of  
 206 Chapter 5 of Title 16, ~~relating to crimes against persons~~; Chapter 6 of Title 16, ~~relating~~  
 207 ~~to sexual offenses~~; ~~Article 1 or Article 3~~; Article 1, 3, or 4 of Chapter 7 of Title 16  
 208 ~~relating to burglary and arson~~; Article 1 or Article 2 of Chapter 8 of Title 16, ~~relating to~~  
 209 ~~offenses involving theft and armed robbery~~; ~~Code Section 16-12-100, relating to sexual~~  
 210 ~~exploitation of children~~; Chapter 9 of Title 16; Part 3 of Article 3 of Chapter 12 of Title  
 211 16; Code Section 30-5-8; Code Section 40-6-393, relating to homicide by vehicle; Code  
 212 Section 40-6-393.1, relating to feticide by vehicle; or Code Section 40-6-394, relating to  
 213 serious injury by vehicle.
- 214 (4.1) 'Criminal justice agency' means an arresting law enforcement agency, custodial  
 215 authority, investigating law enforcement agency, prosecuting attorney, or the State Board  
 216 of Pardons and Paroles.
- 217 (5) 'Custodial authority' means a warden, sheriff, jailer, deputy sheriff, police officer,  
 218 correctional officer, officer or employee of the Department of Corrections or the  
 219 Department of Juvenile Justice, or any other law enforcement officer having actual  
 220 custody of the accused.
- 221 (6) 'Investigating law enforcement agency' means the law enforcement agency  
 222 responsible for the investigation of the crime.
- 223 (7) 'Notice,' 'notification,' or 'notify' means a written notice when time permits or, failing  
 224 such, a documented effort to reach the victim by telephonic or other means.
- 225 (8) 'Person' means an individual.
- 226 (9) 'Prompt notice,' 'prompt notification,' or 'promptly notify' means notification given  
 227 to the victim as soon as practically possible so as to provide the victim with a meaningful  
 228 opportunity to exercise his or her rights pursuant to this chapter.
- 229 (10) 'Prosecuting attorney' means the district attorney, the solicitor-general of a state  
 230 court or the solicitor of any other court, the Attorney General, a county attorney opposing  
 231 an accused in a habeas corpus proceeding, or the designee of any of these.
- 232 (11) 'Victim' means:
- 233 (A) A person against whom a crime has been perpetrated or has allegedly been  
 234 perpetrated; or
- 235 (B) In the event of the death of the crime victim, the following relations if the relation  
 236 is not either in custody for an offense or the defendant:
- 237 (i) The spouse;
- 238 (ii) An adult child if division (i) does not apply;
- 239 (iii) A parent if divisions (i) and (ii) do not apply;

- 240 (iv) A sibling if divisions (i) through (iii) do not apply; or  
 241 (v) A grandparent if divisions (i) through (iv) do not apply; or  
 242 (C) A parent, guardian, or custodian of a crime victim who is a minor or a legally  
 243 incapacitated person except if such parent, guardian, or custodian is in custody for an  
 244 offense or is the defendant."

245 **SECTION 8.**

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

249 "17-17-5.

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

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

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

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

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

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

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

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

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### 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

310 of birth, and, if the victim has an e-mail address, his or her e-mail address. The victim  
 311 shall also provide such information, other than a social security number, to the  
 312 prosecuting attorney for a secondary contact person in the event the victim cannot be  
 313 reached after reasonable efforts are made to contact such victim. The prosecuting  
 314 attorney shall advise the victim of any agency that will receive such information and  
 315 advise the victim that he or she is responsible for updating such information with the  
 316 prosecuting attorney while the case involving the victim is pending and that he or she  
 317 should update the agency with such information after a restitution order has been entered.  
 318 (2) The prosecuting attorney shall transmit the information collected in paragraph (1) of  
 319 this subsection to the Department of Corrections, Department of Juvenile Justice, or the  
 320 State Board of Pardons and Paroles, as applicable, if an order of restitution is entered.  
 321 (3) The information collected pursuant to paragraph (1) of this subsection shall be treated  
 322 as confidential and shall not be disclosed to any person outside of the disclosure provided  
 323 by this subsection; such information shall not be subject to Article 4 of Chapter 18 of  
 324 Title 50, relating to open records, or subject to subpoena, discovery, or introduction into  
 325 evidence in any civil or criminal proceeding."

326 **SECTION 11.**

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

328 "17-17-8.1.

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

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

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

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

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

351 **SECTION 12.**

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

354 "17-17-9.

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

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

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

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**SECTION 13.**

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

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"17-17-9.1.

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Communications between a victim, other than a peace officer, and victim assistance

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personnel appointed by a prosecuting attorney and any notes, memoranda, or other records

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made by such victim assistance personnel of such communication shall be considered

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attorney work product of the prosecuting attorney and not subject to disclosure except

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where such disclosure is required by law. Such work product shall be subject to other

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exceptions that apply to attorney work product generally."

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**SECTION 14.**

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Said title is further amended by revising subsection (b) of Code Section 17-17-12, relating

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to notification to victim of accused's motion for new trial or appeal, release on bail or

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recognizance, appellate proceedings, and outcome of appeal, as follows:

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"(b) The Attorney General shall notify the prosecuting attorney of the filing of collateral

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attacks on convictions of this state which are being defended by the Attorney General.

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(b.1) In Upon the written request of the victim as defined in paragraph (11) of Code

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Section 17-17-3, in cases in which the accused is convicted of a capital offense and

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receives the death penalty, it shall be the duty of the Attorney General to shall:

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(1) Notify the prosecuting attorney and upon the written request of the victim notify the

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victim of the filing and disposition of all collateral attacks on such conviction which are

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being defended by the Attorney General, including, but not limited to, petitions for a writ

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of habeas corpus, and the time and place of any such proceedings and any changes in the

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time or place of those proceedings; and

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(2) Provide the prosecuting attorney and upon the written request of the victim provide

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the victim with a report on the status of all pending appeals, collateral attacks, and other

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litigation concerning such conviction which is being defended by the Attorney General

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at least every six months until the accused dies or the sentence or conviction is overturned

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or commuted or otherwise reduced to a sentence other than the death penalty."

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**SECTION 15.**

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

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"17-17-12.1.

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(a) As used in this Code section, the term 'mail' means any form of written communication,

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including, but not limited to, letters, cards, postcards, packages, parcels, and e-mail as

412

defined by Code Section 16-9-100, text messaging, and any other form of electronic

413 communication which is knowingly intended to be delivered to or received by a victim, any  
414 member of the victim's family, or any member of the victim's household.

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

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

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

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

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

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

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

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

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

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

454 (g) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, information  
 455 concerning the names and addresses of a victim, and the family or household members  
 456 denoted by such victim, who requests that inmate mail be blocked shall not be open to  
 457 inspection by or made available to the public and shall not be subject to discovery in any  
 458 civil or criminal case or administrative proceeding unless the court, after notice and a  
 459 hearing, makes a finding of fact that such information is material and relevant to the case  
 460 and that such information is not available from any other source."

#### 461 **SECTION 16.**

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

465 "24-9-61.1.

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

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

#### 475 **SECTION 17.**

476 Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to  
 477 conditions of detention, is amended by revising subsections (b) through (e) of Code Section  
 478 42-5-50, relating to transmittal of information on convicted persons and places of detention,  
 479 as follows:

480 ~~"(b) Except as otherwise provided in subsection (c) of this Code section, within Within 15~~  
 481 ~~days after the receipt of the information provided for in subsection (a) of this Code section,~~  
 482 ~~the commissioner shall assign the convicted person to a correctional institution designated~~  
 483 ~~by him the commissioner in accordance with subsection (b) of Code Section 42-5-51. It~~  
 484 ~~shall be the financial responsibility of the correctional institution to provide for the picking~~

485 up and transportation, under guard, of the inmate to his the inmate's assigned place of  
 486 detention. If the inmate is assigned to a county correctional institution or other county  
 487 facility, the county shall assume such duty and responsibility.

488 ~~(c) In the event that the attorney for the convicted person shall file a written request with~~  
 489 ~~the court setting forth that the presence of the convicted person is required within the~~  
 490 ~~county of the conviction, or incarceration, in order to prepare and prosecute properly the~~  
 491 ~~appeal of the conviction, the convicted person shall not be transferred to the correctional~~  
 492 ~~institution as provided in subsection (b) of this Code section. In such event the convicted~~  
 493 ~~person shall remain in the custody of the local jail or lockup until all appeals of the~~  
 494 ~~conviction shall be disposed of or until the attorney of record for the convicted person shall~~  
 495 ~~file with the trial court an affidavit setting forth that the presence of the convicted person~~  
 496 ~~is no longer required within the county in which the conviction occurred, or in which the~~  
 497 ~~convicted person is incarcerated, whichever event shall first occur.~~

498 ~~(d) The department shall not be required to assume the custody of those inmates who have~~  
 499 ~~been convicted and sentenced prior to January 1, 1983, and because their conviction is~~  
 500 ~~under appeal have not been transferred to the custody of the department, until July 1, 1983.~~

501 The state shall pay for each such inmate not transferred to the custody of the department  
 502 from a county facility the per diem rate specified by subsection (c) of Code Section 42-5-51  
 503 for each day the inmate remains in the custody of the county after the department receives  
 504 the notice provided by subsection (a) of this Code section ~~on or after January 1, 1983.~~

505 ~~(e)~~(d) In the event that the convicted person is free on bond pending the appeal of his or  
 506 her conviction, the notice provided for in subsection (a) of this Code section shall not be  
 507 transmitted to the commissioner until all appeals of such conviction have been disposed of  
 508 or until the bond shall be revoked."

509

### SECTION 18.

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