

Senate Bill 342

By: Senators Jackson of the 2nd, Jones of the 10th, James of the 35th, Tate of the 38th and Butler of the 55th

A BILL TO BE ENTITLED
AN ACT

1 To amend the Official Code of Georgia Annotated so as to make legislative findings; to
2 repeal the imposition of the death penalty in this state; to repeal references to procedures
3 related to capital cases; to provide for matters relative to the foregoing; to provide for
4 applicability; to provide effective dates; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 The General Assembly makes the following legislative findings:

- 8 (1) The imposition of the death sentence has become increasingly problematic as more
9 persons convicted of serious crimes are being found innocent by new evidence, often
10 years or decades after their sentence was imposed, and it is impossible to believe that
11 such errors are limited to noncapital offenses;
- 12 (2) As a largely pro-life state, Georgia recognizes the sanctity of human life up to the
13 time of a natural death;
- 14 (3) Even those who might relish the death of a human being convicted of a serious crime
15 must cringe at the possibility of the state executing an innocent person;
- 16 (4) Given the natural and healthy distrust many people have for their governmental
17 institutions, it stretches the imagination that anyone would attribute infallibility to the
18 legal system which, after all, is a very human institution;
- 19 (5) Participation in the executions of persons imposes a heavy emotional burden on those
20 public employees who are required by the duties of their position to assist in the
21 procedure, as well as persons more remote from the act, including judicial officers and
22 jurors;
- 23 (6) The long and inevitable delays in such cases deny the families of crime victims of the
24 closure a swift sentence of life without hope of parole would bring;

25 (7) In addition to the moral issue, the hard economic fact is that this state and its political
 26 subdivisions can no longer bear the heavy financial burden inextricably tied to the
 27 imposition of capital punishment; and

28 (8) For the foregoing reasons, the General Assembly deems it a moral and fiscal
 29 imperative to repeal capital punishment in this state.

30 **SECTION 2.**

31 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
 32 procedure for sentencing and imposition of punishment, is amended by adding a new Code
 33 section to read as follows:

34 "17-10-0.1.

35 Notwithstanding any other provision of law to the contrary, on and after the effective date
 36 of this Code section, the imposition of capital punishment is prohibited in this state. The
 37 sentence of any person under sentence of death on the effective date of this Code section
 38 shall be commuted to a sentence of life without parole."

39 **SECTION 3.**

40 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
 41 by revising Code Section 5-5-40, relating to time of motion for new trial generally,
 42 amendments, extension of time for filing transcript, time of hearing, priority to cases in
 43 which death penalty imposed, appeal not limited to grounds urged, and new trial on court's
 44 own motion, as follows:

45 "5-5-40.

46 (a) All motions for new trial, except in extraordinary cases, shall be made within 30 days
 47 of the entry of the judgment on the verdict or entry of the judgment where the case was
 48 tried without a jury.

49 (b) The motion may be amended any time on or before the ruling thereon.

50 (c) Where the grounds of the motion require consideration of the transcript of evidence or
 51 proceedings, the court may in its discretion grant an extension of time, ~~except in cases~~
 52 ~~where the death penalty is imposed~~, for the preparation and filing of the transcript, which
 53 may be done any time on or before the hearing; or the court may in its discretion hear and
 54 determine the motion before the transcript of evidence and proceedings is prepared and
 55 filed.

56 (d) The grounds of the motion need not be approved by the court.

57 (e) The motion may be heard at any time; but, where it is not heard at the time specified
 58 in the order, it shall stand for hearing at such time as the court by order at any time may
 59 prescribe, unless sooner disposed of.

60 ~~(f) Motions for new trial in cases in which the death penalty is imposed shall be given~~
 61 ~~priority.~~
 62 ~~(g) On appeal, a party shall not be limited to the grounds urged in the motion or any~~
 63 ~~amendment thereof.~~
 64 ~~(h)(g) The court also shall be empowered to grant a new trial on its own motion within 30~~
 65 ~~days from entry of the judgment, except in criminal cases where the defendant was~~
 66 ~~acquitted."~~

67 SECTION 4.

68 Said title is further amended by revising Code Section 5-6-11, relating to issuance of
 69 remittitur in cases involving death penalty, as follows:

70 "5-6-11.

71 ~~In all cases where the Supreme Court of Georgia has affirmed the imposition of the death~~
 72 ~~penalty in a case or has affirmed the denial of a petition for a writ of habeas corpus in any~~
 73 ~~case in which the death penalty has been imposed, the remittitur shall not issue from that~~
 74 ~~court for at least 90 days from the date of the court's decision, or from the date of the~~
 75 ~~court's denial of a motion for a rehearing, if such motion is timely filed, whichever is later;~~
 76 ~~provided, however, that this Code section shall not apply where the defendant has~~
 77 ~~previously applied for a writ of habeas corpus which has been denied and the denial thereof~~
 78 ~~has been affirmed by the Supreme Court of Georgia, or where the writ has been granted but~~
 79 ~~the grant thereof has been reversed by the Supreme Court of Georgia. Reserved."~~

80 SECTION 5.

81 Said title is further amended in Code Section 5-6-34, relating to judgments and rulings
 82 deemed directly appealable, procedure for review of judgments, orders, or decisions not
 83 subject to direct appeal, scope of review, and hearings in criminal cases involving a capital
 84 offense for which death penalty is sought, by revising subsection (c) as follows:

85 ~~"(c) In criminal cases involving a capital offense for which the death penalty is sought, a~~
 86 ~~hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall be~~
 87 ~~a review of pretrial proceedings by the Supreme Court prior to a trial before a jury. Review~~
 88 ~~of pretrial proceedings, if ordered by the trial court, shall be exclusively as provided by~~
 89 ~~Code Section 17-10-35.1 and no certificate of immediate review shall be necessary.~~
 90 ~~Reserved."~~

91 SECTION 6.

92 Said title is further amended by revising Code Section 5-6-38, relating to time of filing
 93 appeal, cross appeal, record and transcript for cross appeal, division of costs where cross

94 appeal filed, and appeals in capital offense cases for which death penalty is sought, as
95 follows:

96 "5-6-38.

97 (a) A notice of appeal shall be filed within 30 days after entry of the appealable decision
98 or judgment complained of; but when a motion for new trial, a motion in arrest of
99 judgment, or a motion for judgment notwithstanding the verdict has been filed, the notice
100 shall be filed within 30 days after the entry of the order granting, overruling, or otherwise
101 finally disposing of the motion. In civil cases, the appellee may institute cross appeal by
102 filing notice thereof within 15 days from service of the notice of appeal by the appellant;
103 and the appellee may present for adjudication on the cross appeal all errors or rulings
104 adversely affecting him or her; and in no case shall the appellee be required to institute an
105 independent appeal on his or her own right, although the appellee may at his or her option
106 file an independent appeal. The notice of cross appeal shall set forth the title and docket
107 number of the case, the name of the appellee, the name and address of his or her attorney,
108 and a designation of any portions of the record or transcript designated for omission by the
109 appellant and which the appellee desires included and shall state that the appellee takes a
110 cross appeal. In all cases where the notice of appeal did not specify that a transcript of
111 evidence and proceedings was to be transmitted as a part of the record on appeal, the notice
112 of cross appeal shall state whether such transcript is to be filed for inclusion in the record
113 on appeal. A copy of the notice of cross appeal shall be served on other parties of record
114 in the manner prescribed by Code Section 5-6-32.

115 (b) Where a cross appeal is filed, only one record and, where specified, only one transcript
116 of evidence and proceedings need be prepared and transmitted to the appellate court; but
117 the cross appellant may, at his or her election, require that such a separate record (and
118 transcript, if required) be transmitted. Where a cross appeal is filed and only one record
119 (and transcript, where required) is sent up, the court shall by order provide for the division
120 of costs therefor between the parties if they are unable to do so by agreement.

121 ~~(c) Notwithstanding subsection (a) of this Code section, where either the state or the~~
122 ~~defendant wishes to appeal any judgment, ruling, or order in the pretrial proceedings of a~~
123 ~~criminal case involving a capital offense for which the death penalty is sought, such appeal~~
124 ~~shall be brought as provided in Code Section 17-10-35.1."~~

125 **SECTION 7.**

126 Said title is further amended in Code Section 5-6-41, relating to reporting, preparation, and
127 disposition of transcript, correction of omissions or misstatements, preparation of transcript
128 from recollections, filing of disallowed papers, filing of stipulations in lieu of transcript, and
129 reporting at party's expense, by revising subsection (e) as follows:

130 "(e) Where a civil or criminal trial is reported by a court reporter and the evidence and
 131 proceedings are transcribed, the reporter shall complete the transcript and file the original
 132 and one copy thereof with the clerk of the trial court, together with the court reporter's
 133 certificate attesting to the correctness thereof. ~~In criminal cases where the accused was~~
 134 ~~convicted of a capital felony, an additional copy shall be filed for the Attorney General, for~~
 135 ~~which the court reporter shall receive compensation from the Department of Law as~~
 136 ~~provided by law.~~ The original transcript shall be transmitted to the appellate court as a part
 137 of the record on appeal; and one copy will be retained in the trial court, both as referred to
 138 in Code Section 5-6-43. Upon filing by the reporter, the transcript shall become a part of
 139 the record in the case and need not be approved by the trial judge."

140

SECTION 8.

141 Said title is further amended in Code Section 5-6-43, relating to preparation and transmittal
 142 of record on appeal by court clerk, retention of copy by clerk, furnishing to Attorney General
 143 in capital cases, and notification where defendant confined to jail, by revising subsection (b)
 144 as follows:

145 "(b) ~~Where the accused in a criminal case was convicted of a capital felony, the clerk shall~~
 146 ~~likewise furnish, at no cost, the Attorney General with an exact copy of the record on~~
 147 ~~appeal.~~ Reserved."

148

SECTION 9.

149 Said title is further amended in Code Section 5-6-45, relating to operation of notice of appeal
 150 as supersedeas in criminal cases, bond, and review, by revising subsection (a) as follows:

151 "(a) In all criminal cases, the notice of appeal filed as provided in Code Sections 5-6-37
 152 and 5-6-38 shall serve as supersedeas in all cases where ~~a sentence of death has been~~
 153 ~~imposed or where~~ the defendant is admitted to bail. If the sentence isailable, the
 154 defendant may give bond in an amount prescribed by the presiding judge, with security
 155 approved by the clerk, conditioned upon the defendant's personal appearance to abide the
 156 final judgment or sentence of the court. If the judgment or sentence is or includes a fine
 157 which is unconditionally required to be paid, and is not required to be paid over a period
 158 of probation, nor as a condition of a suspended or probated sentence, nor as an alternative
 159 sentence, the bond may also be conditioned upon payment of the fine at the time the
 160 defendant appears to abide the final judgment or sentence."

161 **SECTION 10.**

162 Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus,
 163 is amended by revising Code Section 9-14-4, relating to petition for writ, verification, and
 164 to whom presented, as follows:

165 "9-14-4.

166 The petition for the writ of habeas corpus must be verified by the oath of the applicant or
 167 some other person in his or her behalf. It may be presented to the judge of the superior
 168 court of the circuit in which the illegal detention exists who may order the party restrained
 169 of ~~his~~ liberty to be brought before ~~him from the judge of~~ any county in his such circuit, or
 170 it may be presented to the judge of the probate court of the county, ~~except in cases of~~
 171 ~~capital felonies or in which a person is held for extradition under warrant of the Governor."~~

172 **SECTION 11.**

173 Said chapter is further amended in Code Section 9-14-42, relating to grounds for writ and
 174 waiver of objection to jury composition, by revising subsection (c) as follows:

175 "(c) Any action brought pursuant to this article shall be filed within one year in the case
 176 of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four
 177 years in the case of a felony, ~~other than one challenging a conviction for which a death~~
 178 ~~sentence has been imposed or challenging a sentence of death,~~ from:

179 (1) The judgment of conviction becoming final by the conclusion of direct review or the
 180 expiration of the time for seeking such review; provided, however, that any person whose
 181 conviction has become final as of July 1, 2004, regardless of the date of conviction, shall
 182 have until July 1, 2005, in the case of a misdemeanor or until July 1, 2008, in the case of
 183 a felony to bring an action pursuant to this Code section;

184 (2) The date on which an impediment to filing a petition which was created by state
 185 action in violation of the Constitution or laws of the United States or of this state is
 186 removed, if the petitioner was prevented from filing such state action;

187 (3) The date on which the right asserted was initially recognized by the Supreme Court
 188 of the United States or the Supreme Court of Georgia, if that right was newly recognized
 189 by said courts and made retroactively applicable to cases on collateral review; or

190 (4) The date on which the facts supporting the claims presented could have been
 191 discovered through the exercise of due diligence."

192 **SECTION 12.**

193 Said chapter is further amended by revising Code Section 9-14-47, relating to time for
 194 answer and hearing, as follows:

195 "9-14-47.

196 ~~Except as otherwise provided in Code Section 9-14-47.1 with respect to petitions~~
 197 ~~challenging for the first time state court proceedings resulting in a sentence of death, within~~
 198 Within 20 days after the filing and docketing of a petition under this article or within such
 199 further time as the court may set, the respondent shall answer or move to dismiss the
 200 petition. The court shall set the case for a hearing on the issues within a reasonable time
 201 after the filing of defensive pleadings."

202 **SECTION 13.**

203 Said chapter is further amended by repealing Code Section 9-14-47.1, relating to petitions
 204 challenging for the first time state court proceedings resulting in death sentence.

205 **SECTION 14.**

206 Said chapter is further amended in Code Section 9-14-48, relating to hearing, evidence,
 207 depositions, affidavits, determination of compliance with procedural rules, and disposition,
 208 by revising subsection (e) as follows:

209 "(e) A petition, ~~other than one challenging a conviction for which a death sentence has~~
 210 ~~been imposed or challenging a sentence of death,~~ may be dismissed if there is a
 211 particularized showing that the respondent has been prejudiced in its ability to respond to
 212 the petition by delay in its filing unless the petitioner shows by a preponderance of the
 213 evidence that it is based on grounds of which he or she could not have had knowledge by
 214 the exercise of reasonable diligence before the circumstances prejudicial to the respondent
 215 occurred. This subsection shall apply only to convictions had before July 1, 2004."

216 **SECTION 15.**

217 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 218 Code Section 15-1-9.1, relating to requesting judicial assistance from other courts, as
 219 follows:

220 "15-1-9.1.

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

222 (1) 'Administrative judge' means a superior court judge or senior judge of the superior
 223 court elected within an administrative district as provided by Code Section 15-5-4.

224 (2) 'Chief judge' means the judge most senior in time of service or, if applicable, the
 225 judge to whom the administrative duties of a court have been assigned.

226 (3) 'Judge' includes Justices, judges, senior judges, magistrates, and every other such
 227 judicial officer of whatever name existing or created.

228 (4) 'Part-time judge' means a judge who serves on a continuing or periodic basis but who
229 is permitted by law to devote time to some other profession or occupation and whose
230 compensation for that reason is less than that of a full-time judge.

231 (b)(1) If assistance is needed from a judge outside of the county, a superior court judge
232 of this state or the chief judge of a class of courts other than an appellate court may make
233 a request for judicial assistance in the court served by said requesting judge to the
234 administrative judge of the judicial administrative district in which said requesting judge's
235 court is located, if any of the following circumstances arises:

236 (A) A judge of the requesting court is disqualified for any cause from presiding in any
237 matter pending before the court;

238 (B) A judge of the requesting court is unable to preside because of disability, illness,
239 or absence;

240 (C) A judge of the requesting court is unable to preside because such judge is
241 performing ordered military duty as such term is defined in Code Section 38-2-279; or

242 (D) A majority of the judges of the requesting court determines that the business of the
243 court requires the temporary assistance of an additional judge or additional judges.

244 (2) If assistance is needed from a judge from the same county, the chief judge of any
245 court within such county of this state may make a written request for assistance to the
246 chief judge of any other court within such county, a senior judge of the superior court, a
247 retired judge, or a judge emeritus of any court within the county. The request by the chief
248 judge may be made if one of the following circumstances arises:

249 (A) A judge of the requesting court is disqualified for any cause from presiding in any
250 matter pending before the court;

251 (B) A judge of the requesting court is unable to preside because of disability, illness,
252 or absence;

253 (C) A judge of the requesting court is unable to preside because such judge is
254 performing ordered military duty as such term is defined in Code Section 38-2-279;

255 (D) A majority of the judges of the requesting court determines that the business of the
256 court requires the temporary assistance of an additional judge or additional judges; or

257 (E) A majority of the judges of the requesting court determines that the business of the
258 court requires the permanent assistance of an additional judge or additional judges. If
259 the requesting court is a state or superior court, the assisting judge or assisting judges
260 may hear and decide matters otherwise in the exclusive jurisdiction of the state or
261 superior court without regard to time, type of case, or limitations contained in the rules
262 of such state or superior court; provided, however, that a chief magistrate or magistrate
263 may serve as a permanent assisting judge only in counties having a population of

264 180,000 or more according to the United States decennial census of 1990 or any future
265 such census.

266 ~~(3) When a petition for habeas corpus is filed challenging for the first time state court~~
267 ~~proceedings resulting in a death sentence, the clerk of the superior court acting on behalf~~
268 ~~of the chief judge shall make a request for judicial assistance to the president of The~~
269 ~~Council of Superior Court Judges of Georgia. Within 30 days of receipt of a request for~~
270 ~~judicial assistance, the president of The Council of Superior Court Judges of Georgia~~
271 ~~shall, under guidelines promulgated by the executive committee of said council, assign~~
272 ~~the case to a judge of a circuit other than the circuit in which the conviction and sentence~~
273 ~~were imposed.~~

274 ~~(4) In petitions under this article challenging for a second or subsequent time a state~~
275 ~~court proceeding resulting in a death sentence, the chief judge of the court where the~~
276 ~~petition is filed may make a request for judicial assistance to the president of The Council~~
277 ~~of Superior Court Judges of Georgia upon certifying that the business of the court will~~
278 ~~be impaired unless assistance is obtained. Within 30 days of receipt of a request for~~
279 ~~judicial assistance, the president of The Council of Superior Court Judges of Georgia~~
280 ~~shall, under guidelines promulgated by the executive committee of said council, assign~~
281 ~~the case to a judge of a circuit other than the circuit in which the conviction and sentence~~
282 ~~were imposed.~~

283 (c) A chief judge of a requesting court or assisting court shall be presumed to act with the
284 consent of all judges of the court. However, if a judge of a court shall insist, all judges of
285 that court shall vote upon whether to ratify the action taken by the chief judge under this
286 Code section.

287 (d)(1) If the chief judge is unable because of disability, illness, or absence to make a
288 request for assistance, a majority of the judges of the court may make such a request for
289 him or her. If a court is served by only one judge who, himself or herself, is unable to
290 make a request because of disability, illness, or absence, or when the judge or judges of
291 the court fail to procure assistance in the event of the absence, illness, disability, or
292 disqualification of one of the judges, and it is satisfactorily made to appear to the
293 Governor that any regular or special term of any court will not be held or continued in
294 session because of such failure to procure assistance, the Governor shall request the
295 administrative judge of the judicial administrative district within which district the court
296 in need of assistance lies to assign another judge to hold the regular or special term of
297 such court. However, no judge shall be named or assigned to hold court when the time
298 fixed by law for holding the term of court conflicts with the holding of any regular or
299 special term already called by him such judge in his or her own court.

300 (2) If a vacancy shall occur in the judicial office for which the Governor has had to
301 request assistance from the administrative judge of the judicial administrative district in
302 a situation wherein the conditions exist as provided in paragraph (1) of this subsection,
303 the Governor may appoint a judge of a court of record as an interim judge to fill
304 temporarily such vacancy until the vacancy is permanently filled as provided by law.

305 (e) The administrative judge of the district receiving a request for assistance shall
306 designate a judge to preside as requested. The designated judge may consent to preside in
307 the requesting court provided he or she is otherwise qualified to serve as a judge in the
308 requesting court. The qualifications of residency within a particular political or geographic
309 subdivision of the state shall not apply to a designated judge. The designation shall be
310 made in writing and delivered to the judge requesting assistance.

311 (f) The written designation shall identify the court in need of assistance, the county where
312 located, the time period covered, the specific case or cases for which assistance is sought
313 if applicable, and the reason that assistance is needed. The written designation shall be
314 filed and recorded on the minutes of the clerk of the court requesting assistance. Any
315 amendment to the designation shall be written, filed, and recorded as is the original
316 designation.

317 (g) A judge rendering assistance in accordance with this Code section shall discharge all
318 the duties and shall exercise all of the powers and authority of a judge of the court in which
319 he or she is presiding.

320 (h) The governing authority responsible for funding the operation of the requesting court
321 shall bear the expenses of the judge rendering assistance in accordance with this Code
322 section, except that such judges presiding in the appellate or superior courts in accordance
323 with this Code section shall be compensated by state funds appropriated or otherwise
324 available for the operation of these courts.

325 (i) Senior judges of the superior courts, senior judges appointed pursuant to Code Section
326 15-1-9.3, part-time judges, and retired judges or judges emeritus of the state courts shall
327 receive the amount of compensation and payment for expenses as provided by Code
328 Section 15-1-9.2. All other judges rendering assistance in accordance with this Code
329 section shall be entitled to actual travel and lodging expenses but shall not be entitled to
330 any additional compensation for this assistance.

331 (j) The court reporter, support personnel, facilities, equipment, and supplies necessary to
332 perform the duties requested shall be provided to any judge rendering assistance in
333 accordance with this Code section by the requesting court, unless otherwise agreed.

334 (k) In the event that the judge requesting assistance is a superior court judge other than a
335 chief judge, then a copy of the assignment shall also be filed with the chief judge of the
336 court to be assisted.

337 (l) As an alternative to the other provisions of this Code section, any judge other than a
 338 superior court judge may, under the circumstances described in subparagraph (b)(1)(B) or
 339 (b)(1)(C) of this Code section, request judicial assistance from any other judge who is not
 340 a superior court judge and who is otherwise qualified; and the judge so requested may
 341 agree to so serve. When one judge serves in the court of another pursuant to this
 342 subsection, a written designation by the requesting judge shall be filed and recorded on the
 343 minutes in the same general manner as provided for in subsection (f) of this Code section
 344 and the provisions of subsection (h) of this Code section shall apply with respect to the
 345 payment of expenses. The provisions of this subsection are supplementary to the
 346 provisions of the other subsections of this Code section.

347 (m) This Code section shall be supplementary to other laws relating to the authorization
 348 of replacement judges.

349 ~~(n) Notwithstanding the provisions of this Code section, a senior judge shall not be
 350 assigned, designated, or preside in any criminal case involving a capital offense for which
 351 the death penalty may be imposed once the state has filed a notice of its intention to seek
 352 the death penalty; provided, however, that a senior judge may be assigned, designated, or
 353 preside in such a case if the judge had previously been assigned or designated and presided
 354 over such case while serving as an elected superior court judge prior to attaining senior
 355 judge status."~~

356 SECTION 16.

357 Said title is further amended by revising Code Section 15-1-9.2, relating to senior judge
 358 status, request for assistance of senior judge, compensation, and service in capital offense
 359 cases, as follows:

360 "15-1-9.2.

361 (a) The office of senior judge of the superior courts is created, and judges of the superior
 362 courts or former judges of the superior courts may become senior judges as follows:

363 (1) Any judge of the superior courts who retires pursuant to the provisions of Chapter 8
 364 or Chapter 23 of Title 47 and any such judge who receives a disability retirement benefit
 365 under such chapter may become a senior judge beginning on the effective date of the
 366 judge's retirement; and

367 (2) Any judge of the superior courts, whether or not said judge is a member of the
 368 retirement system created by Chapter 23 of Title 47, who ceases holding office as a judge
 369 of the superior courts and who has at least ten years of service as a judge of the superior
 370 courts at the time of ceasing to hold office and who is not eligible for appointment to the
 371 office of senior judge under any other law of this state may become a senior judge.

372 (a.1) Notwithstanding the provisions of subsection (a) of this Code section, any Justice of
373 the Supreme Court of Georgia, Judge of the Court of Appeals, superior court judge, state
374 court judge, magistrate court judge, or juvenile court judge who ceases holding office as
375 a judge and who has a total of ten years of service in any combination of such offices or
376 a total of nine years of service in any combination of such offices plus at least one year of
377 service as chairperson of the State Board of Workers' Compensation may become a senior
378 judge. Said combination must include at least five years' service as a Justice of the
379 Supreme Court, Judge of the Court of Appeals, or judge of the superior court or at least five
380 years as total served in combination as Justice of the Supreme Court, Judge of the Court
381 of Appeals, or judge of the superior court.

382 (a.2) Senior judge status as provided in this Code section shall be acquired by a qualified
383 former judge's applying to the Governor for appointment as senior judge. The Governor
384 shall appoint each qualified applicant as a senior judge.

385 (b) The chief judge of any appellate or superior court of this state may make a written
386 request for assistance to a senior judge. The request by the chief judge may be made if one
387 of the following circumstances arise:

388 (1) A judge of the requesting court is disqualified for any cause from presiding in any
389 matter pending before the court;

390 (2) A judge of the requesting court is unable to preside because of disability, illness, or
391 absence; or

392 (3) A majority of the judges of the requesting court determines that the business of the
393 court requires the temporary assistance of an additional judge or additional judges as
394 provided for in Code Section 15-1-9.1.

395 (c) An active judge may call upon a senior judge to serve in an emergency or when the
396 volume of cases or other unusual circumstances cause such service to be necessary in order
397 to provide for the speedy and efficient disposition of the business of the circuit.

398 (d)(1) Senior judges serving as judges of an appellate or superior court under this Code
399 section or any other provision of law shall receive compensation from state funds for each
400 day of service, in the amount of the annual state salary of a judge of the applicable court,
401 divided by 235. In addition to such compensation, such senior judges shall receive their
402 actual expenses or, at the judge's option, in the event of service outside the county of the
403 judge's residence, the same per diem expense authorized by law for members of the
404 General Assembly and shall receive mileage at the same rate as other state employees for
405 such services. Such compensation, expenses, and mileage shall be paid from state funds
406 appropriated or otherwise available for the operation of the appellate or superior courts,
407 upon a certificate by the senior judge as to the number of days served or the expenses and

408 mileage. Such compensation shall not affect, diminish, or otherwise impair the payment
409 or receipt of any retirement or pension benefits, when applicable, of such judge.

410 (2) Senior judges serving as judges of any court other than an appellate or superior court
411 under this Code section or any other provision of law shall receive compensation for each
412 day of service, in the amount of the annual salary of a judge of the applicable court,
413 divided by 235. In addition to such compensation, such senior judges shall receive their
414 actual expenses or, at the judge's option, in the event of service outside the county of the
415 judge's residence, the same per diem expense authorized by law for members of the
416 General Assembly and shall receive mileage at the same rate as state employees for such
417 services. Such compensation, expenses, and mileage shall be paid from funds
418 appropriated or otherwise available for the operation of the applicable court, upon a
419 certificate by the senior judge as to the number of days served or the expenses and
420 mileage. Such compensation shall not affect, diminish, or otherwise impair the payment
421 or receipt of any retirement or pension benefits, when applicable, of such judge.

422 ~~(e) Notwithstanding the provisions of this Code section, a senior judge shall not be~~
423 ~~assigned, designated, or preside in any criminal case involving a capital offense for which~~
424 ~~the death penalty may be imposed once the state has filed a notice of its intention to seek~~
425 ~~the death penalty, provided, however, that a senior judge may be assigned, designated, or~~
426 ~~preside in such a case if the judge had previously been assigned or designated and presided~~
427 ~~over such case while serving as an elected superior court judge prior to attaining senior~~
428 ~~judge status."~~

429 **SECTION 17.**

430 Said title is further amended by revising Code Section 15-1-9.3, relating to senior judge of
431 state court, probate court, or juvenile court, request for assistance of senior judge,
432 compensation, and service in capital offense cases, as follows:

433 "15-1-9.3.

434 (a)(1) Any state court judge or juvenile court judge who retires pursuant to the provisions
435 of Chapter 23 of Title 47 after having served for ten or more years in any combination
436 of service as a judge of a state court or juvenile court may be appointed a senior judge of
437 the type of court from which the judge retired.

438 (2) Any state court or juvenile court judge, whether or not said judge is a member of the
439 retirement fund created by Chapter 23 of Title 47, who ceases holding office as a judge
440 and who has at least ten years in any combination of service as judge of a state court or
441 juvenile court at the time of ceasing to hold office and who is not eligible for appointment
442 to the office of senior judge under any other law of this state may be appointed as a senior
443 judge as provided in this Code section.

444 (3) No judge of a state court or juvenile court who retires because of disability pursuant
445 to the provisions of Chapter 23 of Title 47 shall be eligible for appointment as a senior
446 judge pursuant to the provisions of this Code section.

447 (4) In this paragraph, 'probate court' has the same meaning as set out in paragraph (2) of
448 Code Section 15-9-120. Any judge of the probate court who ceases holding office as a
449 judge of the probate court after serving as such for at least ten years and who has not been
450 appointed to the office of senior judge under any other law of this state may be appointed
451 as a senior judge as provided in this Code section.

452 (b) Upon becoming eligible for appointment pursuant to the provisions of this Code
453 section, a judge who ceases to hold office may become a senior judge and in that capacity
454 may be called upon to serve as a justice or judge in any court of this state.

455 (c) Senior judge status shall be acquired by a qualified former judge's applying to the
456 Governor for appointment as senior judge. The Governor shall appoint each qualified
457 applicant as a senior judge.

458 (d) The judge of any court of this state may make a written request for assistance to a
459 senior judge. The request by the judge may be made if one of the following circumstances
460 arise:

461 (1) A judge of the requesting court is disqualified for any cause from presiding in any
462 matter pending before the court;

463 (2) A judge of the requesting court is unable to preside because of disability, illness, or
464 absence; or

465 (3) A majority of the judges of the requesting court determines that the business of the
466 court requires the temporary assistance of an additional judge or additional judges as
467 provided for in Code Section 15-1-9.1.

468 (e) An active judge may call upon a senior judge to serve in an emergency or when the
469 volume of cases or other unusual circumstances cause such service to be necessary in order
470 to provide for the timely and efficient disposition of the business of the court.

471 (f) A senior judge shall receive compensation and expenses as provided in subsection (d)
472 of Code Section 15-1-9.2.

473 ~~(g) Notwithstanding the provisions of this Code section, a senior judge shall not be~~
474 ~~assigned, designated, or preside in any criminal case involving a capital offense for which~~
475 ~~the death penalty may be imposed once the state has filed a notice of its intention to seek~~
476 ~~the death penalty; provided, however, that a senior judge may be assigned, designated, or~~
477 ~~preside in such a case if the judge had previously been assigned or designated and presided~~
478 ~~over such case while serving as an elected superior court judge prior to attaining senior~~
479 ~~judge status."~~

480 **SECTION 18.**

481 Said title is further amended by revising Code Section 15-3-3, relating to jurisdiction over
 482 certain crimes, as follows:

483 "15-3-3.

484 Pursuant to Article VI, Section V, Paragraph III of the Constitution of this state, the Court
 485 of Appeals shall have jurisdiction of the trial and correction of errors of law in cases
 486 involving the crimes of armed robbery, rape, and kidnapping ~~wherein the death penalty has~~
 487 ~~not been imposed."~~

488 **SECTION 19.**

489 Said title is further amended in Code Section 15-12-142, relating to separation and
 490 confinement, by revising subsection (a) as follows:

491 "(a) At any time during the trial of a civil or criminal case, ~~except in capital cases,~~ either
 492 before or during jury deliberation, the judge may, in his or her discretion, allow the jury to
 493 be separated and the members thereof to be dispersed under appropriate instructions."

494 **SECTION 20.**

495 Said title is further amended by revising Code Section 15-12-160, relating to required panel
 496 of jurors in felony trial and tales jurors where necessary, as follows:

497 "15-12-160.

498 When any person stands indicted for a felony, the court shall have impaneled 30 jurors
 499 from which the defense and prosecution may strike jurors; ~~provided, however, that in any~~
 500 ~~case in which the state announces its intention to seek the death penalty, the court shall~~
 501 ~~have impaneled 42 jurors from which the defense and state may strike jurors.~~ If, for any
 502 reason, after striking from the panel there remain less than 12 qualified jurors to try the
 503 case, the presiding judge shall summon such numbers of persons who are competent
 504 prospective jurors as may be necessary to provide a full panel or successive panels. In
 505 making up the panel or successive panels, the presiding judge shall draw the tales jurors
 506 from the jury box of the county and shall order the sheriff to summon them. This Code
 507 section shall stand repealed and reserved on July 1, 2012."

508 **SECTION 21.**

509 Said title is further amended by revising Code Section 15-12-160.1, relating to number of
 510 impaneled jurors from which to strike and choosing and summoning prospective jurors if
 511 necessary to fill panel, as follows:

512 "15-12-160.1.
 513 On and after July 1, 2012, when any person stands indicted for a felony, the court shall
 514 have impaneled 30 jurors from which the defense and prosecution may strike jurors;
 515 ~~provided, however, that in any case in which the state announces its intention to seek the~~
 516 ~~death penalty, the court shall have impaneled 42 jurors from which the defense and state~~
 517 ~~may strike jurors.~~ If, for any reason, after striking from the panel there remain fewer than
 518 12 qualified jurors to try the case, the clerk shall choose and cause to be summoned such
 519 numbers of persons who are competent prospective jurors as may be necessary to provide
 520 a full panel or successive panels. In making up the panel or successive panels, the clerk
 521 shall choose the names of prospective trial jurors in the same manner as prospective trial
 522 jurors are chosen and cause such persons to be summoned."

523 **SECTION 22.**

524 Said title is further amended in Code Section 15-12-164, relating to questions on voir dire
 525 and setting aside juror for cause, by revising subsection (a) as follows:

526 "15-12-164.

527 (a) On voir dire examination in a felony trial, the jurors shall be asked the following
 528 questions:

529 (1) 'Have you, for any reason, formed and expressed any opinion in regard to the guilt
 530 or innocence of the accused?' If the juror answers in the negative, the question in
 531 paragraph (2) of this subsection shall be propounded to him or her;

532 (2) 'Have you any prejudice or bias resting on your mind either for or against the
 533 accused?' If the juror answers in the negative, the question in paragraph (3) of this
 534 subsection shall be propounded to him or her; and

535 (3) 'Is your mind perfectly impartial between the state and the accused?' If the juror
 536 answers this question in the affirmative, he or she shall be adjudged and held to be a
 537 competent juror in all cases ~~where the authorized penalty for the offense does not involve~~
 538 ~~the life of the accused; but when it does involve the life of the accused, the question in~~
 539 ~~paragraph (4) of this subsection shall also be put to him;~~

540 (4) ~~'Are you conscientiously opposed to capital punishment?' If the juror answers this~~
 541 ~~question in the negative, he shall be held to be a competent juror."~~

542 **SECTION 23.**

543 Said title is further amended by revising Code Section 15-12-165, relating to number of
 544 peremptory challenges, as follows:

545 "15-12-165.

546 Every person accused of a felony may peremptorily challenge nine of the jurors impaneled
 547 to try him or her. The state shall be allowed the same number of peremptory challenges
 548 allowed to the accused; ~~provided, however, that in any case in which the state announces~~
 549 ~~its intention to seek the death penalty, the accused may peremptorily challenge 15 jurors~~
 550 ~~and the state shall be allowed the same number of peremptory challenges."~~

551 **SECTION 24.**

552 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 553 amended by revising subsection (b) of Code Section 17-3-1, relating to limitation on
 554 prosecutions generally, as follows:

555 "(b) Prosecution for other crimes punishable by ~~death or~~ life imprisonment must be
 556 commenced within seven years after the commission of the crime except as provided by
 557 subsection (c.1) of this Code section; provided, however, that prosecution for the crime of
 558 forcible rape must be commenced within 15 years after the commission of the crime."

559 **SECTION 25.**

560 Said title is further amended by revising subsection (b) of Code Section 17-5-56, relating to
 561 maintenance of physical evidence containing biological material, as follows:

562 "~~(b) In a case in which the death penalty is imposed, the evidence shall be maintained until~~
 563 ~~the sentence in the case has been carried out.~~ Evidence in all felony cases that contains
 564 biological material, including, but not limited to, stains, fluids, or hair samples that relate
 565 to the identity of the perpetrator of the crime shall be maintained for the period of time that
 566 the crime remains unsolved or until the sentence in the case is completed, whichever occurs
 567 last."

568 **SECTION 26.**

569 Said title is further amended by revising subsection (h) of Code Section 17-6-1, relating to
 570 where offenses bailable, procedure, schedule of bails, and appeal bonds, as follows:

571 "(h) Except in cases in which life imprisonment ~~or the death penalty~~ may be imposed, a
 572 judge of the superior court by written order may delegate the authority provided for in this
 573 Code section to any judge of any court of inquiry within such superior court judge's circuit.
 574 However, such authority may not be exercised outside the county in which said judge of
 575 the court of inquiry was appointed or elected. The written order delegating such authority
 576 shall be valid for a period of one year, but may be revoked by the superior court judge
 577 issuing such order at any time prior to the end of that one-year period."

578 **SECTION 27.**

579 Said title is further amended by revising Code Section 17-7-50, relating to right to grand jury
 580 hearing within 90 days where bail refused and right to have bail set absent hearing within 90
 581 day period, as follows:

582 "17-7-50.

583 Any person who is arrested for a crime and who is refused bail shall, within 90 days after
 584 the date of confinement, be entitled to have the charge against him or her heard by a grand
 585 jury having jurisdiction over the accused person; ~~provided, however, that if the person is~~
 586 ~~arrested for a crime for which the death penalty is being sought, the superior court may,~~
 587 ~~upon motion of the district attorney for an extension and after a hearing and good cause~~
 588 ~~shown, grant one extension to the 90 day period not to exceed 90 additional days; and,~~
 589 ~~provided, further, that if such extension is granted by the court, the person shall not be~~
 590 ~~entitled to have the charge against him or her heard by the grand jury until the expiration~~
 591 ~~of such extended period. In the event no grand jury considers the charges against the~~
 592 ~~accused person within the 90 day period of confinement or within the extended period of~~
 593 ~~confinement where such an extension is granted by the court, the accused shall have bail~~
 594 ~~set upon application to the court."~~

595 **SECTION 28.**

596 Said title is further amended by revising Code Section 17-7-50.1, relating to time for
 597 presentment of child's case to a grand jury and exception, as follows:

598 "17-7-50.1.

599 (a) Any child who is charged with a crime that is within the jurisdiction of the superior
 600 court, as provided in Code Section 15-11-28 or 15-11-30.2, who is detained shall within
 601 180 days of the date of detention be entitled to have the charge against him or her presented
 602 to the grand jury. The superior court shall, upon motion for an extension of time and after
 603 a hearing and good cause shown, grant one extension to the original 180 day period, not
 604 to exceed 90 additional days.

605 (b) If the grand jury does not return a true bill against the detained child within the time
 606 limitations set forth in subsection (a) of this Code section, the detained child's case shall
 607 be transferred to the juvenile court and shall proceed thereafter as provided in Chapter 11
 608 of Title 15.

609 ~~(c) The provisions of this Code section shall not apply to any case in which the prosecuting~~
 610 ~~attorney files notice with the court that the detained child is a codefendant to a case in~~
 611 ~~which an adult is charged with committing the same offense and the state has filed a notice~~
 612 ~~of its intention to seek the death penalty."~~

613

SECTION 29.

614 Said title is further amended by revising Code Section 17-7-70, relating to trial upon
 615 accusations in felony cases and trial upon accusations of felony and misdemeanor cases in
 616 which guilty plea entered and indictment waived, as follows:

617 "17-7-70.

618 (a) In all felony cases, ~~other than cases involving capital felonies~~, in which defendants
 619 have been bound over to the superior court, are confined in jail or released on bond pending
 620 a commitment hearing, or are in jail having waived a commitment hearing, the district
 621 attorney shall have authority to prefer accusations, and such defendants shall be tried on
 622 such accusations, provided that defendants going to trial under such accusations shall, in
 623 writing, waive indictment by a grand jury.

624 (b) Judges of the superior court may open their courts at any time without the presence of
 625 either a grand jury or a trial jury to receive and act upon pleas of guilty in misdemeanor
 626 cases and in felony cases, except those punishable by ~~death~~ or life imprisonment, when the
 627 judge and the defendant consent thereto. The judge may try the issues in such cases
 628 without a jury upon an accusation filed by the district attorney where the defendant has
 629 waived indictment and consented thereto in writing and counsel is present in court
 630 representing the defendant either by virtue of his or her employment or by appointment by
 631 the court."

632

SECTION 30.

633 Said title is further amended in Code Section 17-7-95, relating to plea of nolo contendere in
 634 noncapital felony cases, imposition of sentence, use of plea in other proceedings, use of plea
 635 to effect civil disqualifications, and imposition of sentence upon plea deemed jeopardy, by
 636 revising subsection (a) as follows:

637 "(a) The defendant in all criminal cases ~~other than capital felonies~~ in any court of this state,
 638 whether the offense charged is a felony or a misdemeanor, may, with the consent and
 639 approval of the judge of the court, enter a plea of nolo contendere instead of a plea of guilty
 640 or not guilty."

641

SECTION 31.

642 Said title is further amended in Code Section 17-7-131, relating to proceedings upon plea of
 643 insanity or mental incompetency at time of crime, as follows:

644 "17-7-131.

645 (a) For purposes of this Code section, the term:

646 (1) 'Insane at the time of the crime' means meeting the criteria of Code Section 16-3-2
 647 or ~~Code Section~~ 16-3-3. However, the term shall not include a mental state manifested
 648 only by repeated unlawful or antisocial conduct.

649 (2) 'Mentally ill' means having a disorder of thought or mood which significantly impairs
 650 judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary
 651 demands of life. However, the term 'mental illness' shall not include a mental state
 652 manifested only by repeated unlawful or antisocial conduct.

653 (3) 'Mentally retarded' means having significantly subaverage general intellectual
 654 functioning resulting in or associated with impairments in adaptive behavior which
 655 manifested during the developmental period.

656 (b)(1) In all cases in which the defense of insanity is interposed, the jury, or the court if
 657 tried by it, shall find whether the defendant is:

658 (A) Guilty;

659 (B) Not guilty;

660 (C) Not guilty by reason of insanity at the time of the crime;

661 (D) Guilty but mentally ill at the time of the crime, but the finding of guilty but
 662 mentally ill shall be made only in felony cases; or

663 (E) Guilty but mentally retarded, but the finding of mental retardation shall be made
 664 only in felony cases.

665 (2) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but
 666 mentally retarded shall not be accepted until the defendant has undergone examination
 667 by a licensed psychologist or psychiatrist and the court has examined the psychological
 668 or psychiatric reports, held a hearing on the issue of the defendant's mental condition, and
 669 is satisfied that there is a factual basis that the defendant was mentally ill at the time of
 670 the offense or mentally retarded to which the plea is entered.

671 (2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be
 672 accepted and the defendant adjudicated not guilty by reason of insanity by the court
 673 without a jury until the defendant has undergone examination by a licensed psychologist
 674 or psychiatrist and the court has examined the psychological or psychiatric reports, has
 675 held a hearing on the issue of the defendant's mental condition, and the court is satisfied
 676 that the defendant was insane at the time of the crime according to the criteria of Code
 677 Section 16-3-2 or 16-3-3.

678 (3) In all cases in which the defense of insanity is interposed, the trial judge shall charge
 679 the jury, in addition to other appropriate charges, the following:

680 (A) I charge you that should you find the defendant not guilty by reason of insanity at
 681 the time of the crime, the defendant will be committed to a state mental health facility

682 until such time, if ever, that the court is satisfied that he or she should be released
683 pursuant to law.

684 (B) I charge you that should you find the defendant guilty but mentally ill at the time
685 of the crime, the defendant will be placed in the custody of the Department of
686 Corrections which will have responsibility for the evaluation and treatment of the
687 mental health needs of the defendant, which may include, at the discretion of the
688 Department of Corrections, referral for temporary hospitalization at a facility operated
689 by the Department of Behavioral Health and Developmental Disabilities.

690 (C) I charge you that should you find the defendant guilty but mentally retarded, the
691 defendant will be placed in the custody of the Department of Corrections, which will
692 have responsibility for the evaluation and treatment of the mental health needs of the
693 defendant, which may include, at the discretion of the Department of Corrections,
694 referral for temporary hospitalization at a facility operated by the Department of
695 Behavioral Health and Developmental Disabilities.

696 (c) In all criminal trials in any of the courts of this state wherein an accused shall contend
697 that he or she was insane or otherwise mentally incompetent under the law at the time the
698 act or acts charged against him or her were committed, the trial judge shall instruct the jury
699 that they may consider, in addition to verdicts of 'guilty' and 'not guilty,' the additional
700 verdicts of 'not guilty by reason of insanity at the time of the crime,' 'guilty but mentally
701 ill at the time of the crime,' and 'guilty but mentally retarded.'

702 (1) The defendant may be found 'not guilty by reason of insanity at the time of the crime'
703 if he or she meets the criteria of Code Section 16-3-2 or 16-3-3 at the time of the
704 commission of the crime. If the court or jury should make such finding, it shall so
705 specify in its verdict.

706 (2) The defendant may be found 'guilty but mentally ill at the time of the crime' if the
707 jury, or court acting as trier of facts, finds beyond a reasonable doubt that the defendant
708 is guilty of the crime charged and was mentally ill at the time of the commission of the
709 crime. If the court or jury should make such finding, it shall so specify in its verdict.

710 (3) The defendant may be found 'guilty but mentally retarded' if the jury, or court acting
711 as trier of facts, finds beyond a reasonable doubt that the defendant is guilty of the crime
712 charged and is mentally retarded. If the court or jury should make such finding, it shall
713 so specify in its verdict.

714 (d) Whenever a defendant is found not guilty by reason of insanity at the time of the crime,
715 the court shall retain jurisdiction over the person so acquitted and shall order such person
716 to be detained in a state mental health facility, to be selected by the Department of
717 Behavioral Health and Developmental Disabilities, for a period not to exceed 30 days from
718 the date of the acquittal order, for evaluation of the defendant's present mental condition.

719 Upon completion of the evaluation, the proper officials of the mental health facility shall
720 send a report of the defendant's present mental condition to the trial judge, the prosecuting
721 attorney, and the defendant's attorney, if any.

722 (e)(1) After the expiration of the 30 days' evaluation period in the state mental health
723 facility, if the evaluation report from the Department of Behavioral Health and
724 Developmental Disabilities indicates that the defendant does not meet the inpatient
725 commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the trial judge may
726 issue an order discharging the defendant from custody without a hearing.

727 (2) If the defendant is not so discharged, the trial judge shall order a hearing to determine
728 if the defendant meets the inpatient commitment criteria of Chapter 3 of Title 37 or
729 Chapter 4 of Title 37. If such criteria are not met, the defendant must be discharged.

730 (3) The defendant shall be detained in custody until completion of the hearing. The
731 hearing shall be conducted at the earliest opportunity after the expiration of the 30 days'
732 evaluation period but in any event within 30 days after receipt by the prosecuting attorney
733 of the evaluation report from the mental health facility. The court may take judicial
734 notice of evidence introduced during the trial of the defendant and may call for testimony
735 from any person with knowledge concerning whether the defendant is currently a
736 mentally ill person in need of involuntary treatment, as defined by paragraph (12) of
737 Code Section 37-3-1, or a person with a developmental disability, as defined in paragraph
738 (8) of Code Section 37-1-1, who presents a substantial risk of imminent harm to himself
739 or herself or others. The prosecuting attorney may cross-examine the witnesses called
740 by the court and the defendant's witnesses and present relevant evidence concerning the
741 issues presented at the hearing.

742 (4) If the judge determines that the defendant meets the inpatient commitment criteria
743 of Chapter 3 of Title 37 or Chapter 4 of Title 37, the judge shall order the defendant to
744 be committed to the Department of Behavioral Health and Developmental Disabilities to
745 receive involuntary treatment under Chapter 3 of Title 37 or to receive services under
746 Chapter 4 of Title 37. The defendant is entitled to the following rights specified below
747 and shall be notified in writing of these rights at the time of his or her admission for
748 evaluation under subsection (d) of this Code section. Such rights are:

749 (A) A notice that a hearing will be held and the time and place thereof;

750 (B) A notice that the defendant has the right to counsel and that the defendant or his
751 or her representatives may apply immediately to the court to have counsel appointed
752 if the defendant cannot afford counsel and that the court will appoint counsel for the
753 defendant unless he or she indicates in writing that he or she does not desire to be
754 represented by counsel;

755 (C) The right to confront and cross-examine witnesses and to offer evidence;

756 (D) The right to subpoena witnesses and to require testimony before the court in person
757 or by deposition from any person upon whose evaluation the decision of the court may
758 rest;

759 (E) Notice of the right to have established an individualized service plan specifically
760 tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title
761 37 and Chapter 4 of Title 37; and

762 (F) A notice that the defendant has the right to be examined by a physician or a
763 licensed clinical psychologist of his or her own choice at his or her own expense and
764 to have that physician or psychologist submit a suggested service plan for the patient
765 which conforms with the requirements of Chapter 3 of Title 37 or Chapter 4 of Title 37,
766 whichever is applicable.

767 (5)(A) If a defendant appears to meet the criteria for outpatient involuntary treatment
768 as defined in Part 3 of Article 3 of Chapter 3 of Title 37, which shall be the criteria for
769 release on a trial basis in the community in preparation for a full release, the court may
770 order a period of conditional release subject to certain conditions set by the court. The
771 court is authorized to appoint an appropriate community service provider to work in
772 conjunction with the Department of Behavioral Health and Developmental Disabilities
773 to monitor the defendant's compliance with these conditions and to make regular reports
774 to the court.

775 (B) If the defendant successfully completes all requirements during this period of
776 conditional release, the court shall discharge the individual from commitment at the end
777 of that period. Such individuals may be referred for community mental health, mental
778 retardation, or substance abuse services as appropriate. The court may require the
779 individual to participate in outpatient treatment or any other services or programs
780 authorized by Chapter 3, 4, or 7 of Title 37.

781 (C) If the defendant does not successfully complete any or all requirements of the
782 conditional release period, the court may:

783 (i) Revoke the period of conditional release and return the defendant to a state
784 hospital for inpatient services; or

785 (ii) Impose additional or revise existing conditions on the defendant as appropriate
786 and continue the period of conditional release.

787 (D) For any decision rendered under subparagraph (C) of this paragraph, the defendant
788 may request a review by the court of such decision within 20 days of the order of the
789 court.

790 (E) The Department of Behavioral Health and Developmental Disabilities and any
791 community services providers, including the employees and agents of both, providing
792 supervision or treatment during a period of conditional release shall not be held

793 criminally or civilly liable for any acts committed by a defendant placed by the
794 committing court on a period of conditional release.

795 (f) A defendant who has been found not guilty by reason of insanity at the time of the
796 crime and is ordered committed to the Department of Behavioral Health and
797 Developmental Disabilities under subsection (e) of this Code section may only be
798 discharged from that commitment by order of the committing court in accordance with the
799 procedures specified in this subsection:

800 (1) Application for the release of a defendant who has been committed to the Department
801 of Behavioral Health and Developmental Disabilities under subsection (e) of this Code
802 section upon the ground that he or she does not meet the civil commitment criteria under
803 Chapter 3 of Title 37 or Chapter 4 of Title 37 may be made to the committing court,
804 either by such defendant or by the superintendent of the state hospital in which the said
805 defendant is detained;

806 (2) The burden of proof in such release hearing shall be upon the applicant. The
807 defendant shall have the same rights in the release hearing as set forth in subsection (e)
808 of this Code section; and

809 (3) If the finding of the court is adverse to release in such hearing held pursuant to this
810 subsection on the grounds that such defendant does meet the inpatient civil commitment
811 criteria, a further release application by the defendant shall not be heard by the court until
812 12 months have elapsed from the date of the hearing upon the last preceding application.
813 The Department of Behavioral Health and Developmental Disabilities shall have the
814 independent right to request a release hearing once every 12 months.

815 (g)(1) Whenever a defendant is found guilty but mentally ill at the time of a felony or
816 guilty but mentally retarded, or enters a plea to that effect that is accepted by the court,
817 the court shall sentence him or her in the same manner as a defendant found guilty of the
818 offense, ~~except as otherwise provided in subsection (j) of this Code section.~~ A defendant
819 who is found guilty but mentally ill at the time of the felony or guilty but mentally
820 retarded shall be committed to an appropriate penal facility and shall be evaluated then
821 treated, if indicated, within the limits of state funds appropriated therefor, in such manner
822 as is psychiatrically indicated for his or her mental illness or mental retardation.

823 (2) If at any time following the defendant's conviction as a guilty but mentally ill or
824 guilty but mentally retarded offender it is determined that a temporary transfer to the
825 Department of Behavioral Health and Developmental Disabilities is clinically indicated
826 for his or her mental illness or mental retardation, then the defendant shall be transferred
827 to the Department of Behavioral Health and Developmental Disabilities pursuant to
828 procedures set forth in regulations of the Department of Corrections and the Department
829 of Behavioral Health and Developmental Disabilities. In all such cases, the legal custody

830 of the defendant shall be retained by the Department of Corrections. Upon notification
 831 from the Department of Behavioral Health and Developmental Disabilities to the
 832 Department of Corrections that hospitalization at a Department of Behavioral Health and
 833 Developmental Disabilities facility is no longer clinically indicated for his or her mental
 834 illness or mental retardation, the Department of Corrections shall transfer the defendant
 835 back to its physical custody and shall place such individual in an appropriate penal
 836 institution.

837 (h) If a defendant who is found guilty but mentally ill at the time of a felony or guilty but
 838 mentally retarded is placed on probation under the 'State-wide Probation Act,' Article 2 of
 839 Chapter 8 of Title 42, the court may require that the defendant undergo available outpatient
 840 medical or psychiatric treatment or seek similar available voluntary inpatient treatment as
 841 a condition of probation. Persons required to receive such services may be charged fees
 842 by the provider of the services.

843 (i) In any case in which the defense of insanity is interposed or a plea of guilty but
 844 mentally ill at the time of the felony or a plea of guilty but mentally retarded is made and
 845 an examination is made of the defendant pursuant to Code Section 17-7-130.1 or
 846 paragraph (2) of subsection (b) of this Code section, upon the defendant's being found
 847 guilty or guilty but mentally ill at the time of the crime or guilty but mentally retarded,
 848 a copy of any such examination report shall be forwarded to the Department of
 849 Corrections with the official sentencing document. The Department of Behavioral Health
 850 and Developmental Disabilities shall forward, in addition to its examination report, any
 851 records maintained by such department that it deems appropriate pursuant to an
 852 agreement with the Department of Corrections, within ten business days of receipt by the
 853 Department of Behavioral Health and Developmental Disabilities of the official
 854 sentencing document from the Department of Corrections.

855 ~~(j) In the trial of any case in which the death penalty is sought which commences on or~~
 856 ~~after July 1, 1988, should the judge find in accepting a plea of guilty but mentally retarded~~
 857 ~~or the jury or court find in its verdict that the defendant is guilty of the crime charged but~~
 858 ~~mentally retarded, the death penalty shall not be imposed and the court shall sentence the~~
 859 ~~defendant to imprisonment for life."~~

860 **SECTION 32.**

861 Said title is further amended in Code Section 17-7-171, relating to time for speedy trial in
 862 capital cases, discharge and acquittal where no trial held before end of two court terms of
 863 demand, and counting of terms in cases in which death penalty is sought, by revising
 864 subsection (c) as follows:

865 ~~"(c) In cases involving a capital offense for which the death penalty is sought, if a demand~~
 866 ~~for speedy trial is entered, the counting of terms under subsection (b) of this Code section~~
 867 ~~shall not begin until the convening of the first term following the completion of pretrial~~
 868 ~~review proceedings in the Supreme Court under Code Section 17-10-35.1. Reserved."~~

869 **SECTION 33.**

870 Said title is further amended in Code Section 17-8-4, relating to procedure for trial of jointly
 871 indicted defendants, right of defendants to testify for or against one another, order of separate
 872 trials, acquittal or conviction where offense requires joint action or concurrence, and number
 873 of strikes allowed defendants, by revising subsection (a) as follows:

874 ~~"(a) When two or more defendants are jointly indicted for a capital offense, any defendant~~
 875 ~~so electing shall be separately tried unless the state shall waive the death penalty. When~~
 876 ~~indicted for a capital felony when the death penalty is waived, or for a felony less than~~
 877 ~~capital, or for a misdemeanor, such defendants may be tried jointly or separately in the~~
 878 ~~discretion of the trial court. In any event, a jointly indicted defendant may testify for~~
 879 ~~another jointly indicted defendant or on behalf of the state. When separate trials are~~
 880 ~~ordered in any case, the defendants shall be tried in the order requested by the state. If the~~
 881 ~~offense requires joint action and concurrence of two or more persons, acquittal or~~
 882 ~~conviction of one defendant shall not operate as acquittal or conviction of others not tried."~~

883 **SECTION 34.**

884 Said title is further amended in Code Section 17-8-5, relating to recordation of testimony in
 885 felony cases, entering testimony on minutes of court where guilty verdict found, preparation
 886 of transcript where death sentence imposed, and preparation of transcript where mistrial
 887 results in felony case, by revising subsection (a) as follows:

888 ~~"(a) On the trial of all felonies the presiding judge shall have the testimony taken down~~
 889 ~~and, when directed by the judge, the court reporter shall exactly and truly record or take~~
 890 ~~stenographic notes of the testimony and proceedings in the case, except the argument of~~
 891 ~~counsel. In the event of a verdict of guilty, the testimony shall be entered on the minutes~~
 892 ~~of the court or in a book to be kept for that purpose. In the event that a sentence of death~~
 893 ~~is imposed, the transcript of the case shall be prepared within 90 days after the sentence is~~
 894 ~~imposed by the trial court. Upon petition by the court reporter, the Chief Justice of the~~
 895 ~~Supreme Court of Georgia may grant an additional period of time for preparation of the~~
 896 ~~transcript, such period not to exceed 60 days. The requirement that a transcript be prepared~~
 897 ~~within a certain period in cases in which a sentence of death is imposed shall not inure to~~
 898 ~~the benefit of a defendant."~~

899

SECTION 35.

900 Said title is further amended in Code Section 17-8-31, relating to grounds for granting of
 901 continuances, party, leading attorney, or material witness in attendance on active duty as
 902 member of National Guard or component of armed forces of the United States, and setting
 903 bail in certain cases, by revising subsection (d) as follows:

904 "(d) In any case in which the court grants the state a continuance pursuant to subsection
 905 (c) of this Code section, the defendant shall have bail set upon application to the court,
 906 except in those cases punishable by ~~death or imprisonment for life without parole~~. In any
 907 case in which the defendant is accused of committing a serious violent felony, as defined
 908 by subsection (a) of Code Section 17-10-6.1, the court shall consider but shall not be
 909 required to set bail."

910

SECTION 36.

911 Said title is further amended by revising Code Section 17-8-73, relating to time limits on
 912 closing argument in noncapital and capital felony cases, as follows:

913 "17-8-73.

914 In felony cases ~~other than those involving capital felonies~~, counsel shall be limited in their
 915 closing arguments to one hour for each side. ~~In cases involving capital felonies, counsel~~
 916 ~~shall be limited to two hours for each side."~~

917

SECTION 37.

918 Said title is further amended by revising Code Section 17-9-3, relating to recommendations
 919 for mercy in capital cases other than those of homicide, effect of no recommendation for
 920 mercy in capital cases generally, and where defendant under age of 17 at time of commission
 921 of offense, as follows:

922 "17-9-3.

923 ~~In all capital cases, other than those of homicide, when the verdict is 'guilty,' with a~~
 924 ~~recommendation for mercy, it shall be legal and shall mean imprisonment for life. When~~
 925 ~~the verdict is 'guilty,' without a recommendation for mercy, it shall be legal and shall mean~~
 926 ~~that the convicted person shall be sentenced to death. When it is shown that a person~~
 927 ~~convicted of a capital offense without a recommendation for mercy had not reached his~~
 928 ~~seventeenth birthday at the time of the commission of the offense, the punishment of such~~
 929 ~~person shall not be death but shall be imprisonment for life. Reserved."~~

930

SECTION 38.

931 Said title is further amended in Code Section 17-10-1, relating to fixing of sentence,
 932 suspension or probation of sentence, change in sentence, eligibility for parole, prohibited
 933 modifications, and exceptions, by revising paragraph (1) of subsection (a) as follows:

934 "(1) Except in cases in which life imprisonment; or life without parole, ~~or the death~~
 935 ~~penalty~~ may be imposed, upon a verdict or plea of guilty in any case involving a
 936 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
 937 shall prescribe a determinate sentence for a specific number of months or years which
 938 shall be within the minimum and maximum sentences prescribed by law as the
 939 punishment for the crime. The judge imposing the sentence is granted power and
 940 authority to suspend or probate all or any part of the entire sentence under such rules and
 941 regulations as the judge deems proper, including service of a probated sentence in the
 942 sentencing options system, as provided by Article 9 of Chapter 8 of Title 42, and
 943 including the authority to revoke the suspension or probation when the defendant has
 944 violated any of the rules and regulations prescribed by the court, even before the
 945 probationary period has begun, subject to the conditions set out in this subsection;
 946 provided, however, that such action shall be subject to the provisions of Code Sections
 947 17-10-6.1 and 17-10-6.2."

948

SECTION 39.

949 Said title is further amended in Code Section 17-10-1.2, relating to oral victim impact
 950 statement, presentation of evidence, cross-examination and rebuttal by defendant, effect of
 951 noncompliance, and no creation of cause of action or right to appeal, by revising subsection
 952 (a) as follows:

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

960 ~~(2) The admissibility of the evidence described in paragraph (1) of this subsection and~~
 961 ~~the number of witnesses other than immediate family who may testify shall be in the sole~~
 962 ~~discretion of the judge and in any event shall be permitted only in such a manner and to~~
 963 ~~such a degree as not to inflame or unduly prejudice the jury. As used in this paragraph,~~
 964 ~~the term 'immediate family' means the victim's spouse, child, parent, stepparent,~~

965 ~~grandparent, grandchild, sibling, stepbrother, stepsister, mother-in-law, father-in-law,~~
966 ~~sister-in-law, or brother-in-law and the spouses of any such individuals.~~

967 ~~(3)~~(1) In all cases ~~other than those in which the death penalty may be imposed,~~ prior to
968 fixing of the sentence as provided for in Code Section 17-10-1 or the imposing of life
969 imprisonment as mandated by law, and before rendering the appropriate sentence,
970 including any order of restitution, the court shall allow the victim, as such term is defined
971 in Code Section 17-17-3, the family of the victim, or such other witness having personal
972 knowledge of the crime to testify about the impact of the crime on the victim, the family
973 of the victim, or the community. Except as provided in paragraph ~~(4)~~ (2) of this
974 subsection, such evidence shall be given in the presence of the defendant and shall be
975 subject to cross-examination. The admissibility of the testimony and evidence in support
976 of such testimony shall be in the sole discretion of the judge and in any event shall be
977 permitted only in such a manner as to allow for cross-examination by the defendant and
978 to such a degree as not to unduly prejudice the defendant. If the judge excludes the
979 testimony or evidence in support of such testimony, the state shall be allowed to make a
980 proffer of such testimony or evidence.

981 ~~(4)~~(2) Upon a finding by the court specific to the case and the witness that the witness
982 would not be able to testify in person without showing undue emotion or that testifying
983 in person will cause the witness severe physical or emotional distress or trauma, evidence
984 presented pursuant to this subsection may be in the form of, but not limited to, a written
985 statement or a prerecorded audio or video statement, provided that such witness is subject
986 to cross-examination and the evidence itself will not be available to the jury during
987 deliberations. Photographs of the victim may be included with any evidence presented
988 pursuant to this subsection.

989 ~~(5)~~(3) If the accused has been convicted of a serious violent felony as defined in Code
990 Section 17-10-6.1, attempted murder or attempted kidnapping, or any violation of Code
991 Section 16-5-90, 16-5-91, 16-7-82, 16-7-84, or 16-7-86, and the victim or a representative
992 of the victim is not present at the presentence hearing, it shall be the duty of the court to
993 inquire of the prosecuting attorney whether or not the victim has been notified of the
994 presentence hearing as provided in Code Section 17-17-5. If the court finds that the
995 prosecuting attorney has not made a reasonable attempt to notify the victim, the
996 presentence hearing shall be recessed in order to provide the victim the opportunity to
997 attend prior to sentence being imposed; provided, however, that prior to recessing the
998 presentence hearing, the court shall allow the state or the accused to call any witnesses
999 who were subpoenaed and are present at such presentence hearing. Following any such
1000 testimony, the presentence hearing shall be recessed and the victim shall be notified of
1001 the date, time, and location when the presentence hearing shall resume."

SECTION 40.

1002
1003 Said title is further amended by revising Code Section 17-10-2, relating to conduct of
1004 presentence hearings in felony cases and effect of reversal for error in presentence hearing,
1005 as follows:

1006 "17-10-2.

1007 (a)(1) ~~Except in cases in which the death penalty may be imposed, upon~~ Upon the return
1008 of a verdict of 'guilty' by the jury in any felony case, the judge shall dismiss the jury and
1009 shall conduct a presentence hearing at which the only issue shall be the determination of
1010 punishment to be imposed. In the hearing the judge shall hear additional evidence in
1011 extenuation, mitigation, and aggravation of punishment, including the record of any prior
1012 criminal convictions and pleas of guilty or nolo contendere of the accused, or the absence
1013 of any prior conviction and pleas.

1014 (2) The judge shall also hear argument by the accused or the accused's counsel and the
1015 prosecuting attorney, as provided by law, regarding the punishment to be imposed.
1016 ~~Except in cases where the death penalty may be imposed, the~~ The prosecuting attorney
1017 shall open and conclude the argument. ~~In cases where the death penalty may be imposed,~~
1018 ~~the prosecuting attorney shall open and the accused or the accused's counsel shall~~
1019 ~~conclude the argument.~~

1020 (3) Upon the conclusion of the evidence and arguments, the judge shall impose the
1021 sentence or shall recess the trial for the purpose of taking the sentence to be imposed
1022 under advisement. The judge shall fix a sentence within the limits prescribed by law.

1023 (b) ~~In cases in which the death penalty may be imposed, the judge, when sitting without~~
1024 ~~a jury, in addition to the procedure set forth in subsection (a) of this Code section, shall~~
1025 ~~follow the procedures provided for in Code Section 17-10-30.~~

1026 (c) ~~In all cases tried by a jury in which the death penalty may be imposed, upon a return~~
1027 ~~of a verdict of 'guilty' by the jury, the court shall resume the trial and conduct a presentence~~
1028 ~~hearing before the jury. The hearing shall be conducted in the same manner as presentence~~
1029 ~~hearings conducted before the judge as provided for in subsection (a) of this Code section.~~
1030 ~~Upon the conclusion of the evidence and arguments, the judge shall give the jury~~
1031 ~~appropriate instructions, and the jury shall retire to determine whether any mitigating or~~
1032 ~~aggravating circumstances, as defined in Code Section 17-10-30, exist and whether to~~
1033 ~~recommend mercy for the accused. Upon the findings of the jury, the judge shall fix a~~
1034 ~~sentence within the limits prescribed by law.~~

1035 (d) If the trial court is reversed on appeal because of error only in the presentence hearing,
1036 the new trial which may be ordered shall apply only to the issue of punishment."

SECTION 41.

1037

1038 Said title is further amended in Code Section 17-10-6.1, relating to punishment for serious
1039 violent offenders, by revising subsection (c) as follows:

1040 "(c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a
1041 first conviction of a serious violent felony in which the accused has been sentenced to life
1042 imprisonment, that person shall not be eligible for any form of parole or early release
1043 administered by the State Board of Pardons and Paroles until that person has served a
1044 minimum of 30 years in prison. The minimum term of imprisonment shall not be reduced
1045 by any earned time, early release, work release, leave, or other sentence-reducing
1046 measures under programs administered by the Department of Corrections.

1047 ~~(2) For a first conviction of a serious violent felony in which the accused has been~~
1048 ~~sentenced to death but the sentence of death has been commuted to life imprisonment,~~
1049 ~~that person shall not be eligible for any form of parole or early release administered by~~
1050 ~~the State Board of Pardons and Paroles until that person has served a minimum of 30~~
1051 ~~years in prison. The minimum term of imprisonment shall not be reduced by any earned~~
1052 ~~time, early release, work release, leave, or other sentence-reducing measures under~~
1053 ~~programs administered by the Department of Corrections.~~

1054 ~~(3)~~ For a first conviction of a serious violent felony in which the accused has been
1055 sentenced to imprisonment for life without parole, that person shall not be eligible for any
1056 form of parole or early release administered by the State Board of Pardons and Paroles
1057 or for any earned time, early release, work release, leave, or other sentence-reducing
1058 measures under programs administered by the Department of Corrections.

1059 ~~(4)~~(3) Except as otherwise provided in this subsection, any sentence imposed for the first
1060 conviction of any serious violent felony shall be served in its entirety as imposed by the
1061 sentencing court and shall not be reduced by any form of parole or early release
1062 administered by the State Board of Pardons and Paroles or by any earned time, early
1063 release, work release, leave, or other sentence-reducing measures under programs
1064 administered by the Department of Corrections, the effect of which would be to reduce
1065 the period of incarceration ordered by the sentencing court; provided, however, that
1066 during the final year of incarceration an offender so sentenced shall be eligible to be
1067 considered for participation in a department administered transitional center or work
1068 release program."

SECTION 42.

1069

1070 Said title is further amended in Code Section 17-10-7, relating to punishment of repeat
1071 offenders and punishment and eligibility for parole of persons convicted of fourth felony
1072 offense, by revising paragraph (2) of subsection (b) as follows:

1108 ~~Department of Corrections the effect of which would be to reduce the term of actual~~
 1109 ~~imprisonment to which such person was sentenced. Reserved.~~"

1110 **SECTION 45.**

1111 Said title is further amended by repealing Code Section 17-10-16.1, relating to seeking death
 1112 penalty not prerequisite to life without parole sentence.

1113 **SECTION 46.**

1114 Said title is further amended in Chapter 10 by deleting the designation of Article 1 and by
 1115 repealing Article 2, relating to the death penalty generally, and Article 3, relating to mentally
 1116 incompetent to be executed.

1117 **SECTION 47.**

1118 Said title is further amended in Chapter 11 by deleting the designation of Article 1 and by
 1119 repealing Article 2.

1120 **SECTION 48.**

1121 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section
 1122 17-12-5, relating to the director of the Public Defender Standards Council, qualifications,
 1123 selection, salary, and responsibilities, as follows:

1124 "(1) The director shall work with and provide support services and programs for circuit
 1125 public defender offices and other attorneys representing indigent persons in criminal or
 1126 juvenile cases in order to improve the quality and effectiveness of legal representation of
 1127 such persons and otherwise fulfill the purposes of this chapter. Such services and
 1128 programs shall include, but shall not be limited to, technical, research, and administrative
 1129 assistance; educational and training programs for attorneys, investigators, and other staff;
 1130 assistance with the representation of indigent defendants with mental disabilities;
 1131 assistance with the representation of juveniles; ~~assistance with death penalty cases;~~ and
 1132 assistance with appellate advocacy."

1133 **SECTION 49.**

1134 Said title is further amended by revising Code Section 17-12-12, relating to the Georgia
 1135 capital defender division, duties, responsibilities, and management, as follows:

1136 "17-12-12.

1137 ~~(a) The Georgia capital defender division shall represent all indigent persons charged with~~
 1138 ~~a capital felony for which the death penalty is being sought in any court in this state and~~
 1139 ~~shall be the successor to the Office of the Georgia Capital Defender created by Article 6~~

1140 ~~of this chapter as it existed on June 30, 2008. Any assets or resources of the Office of the~~
 1141 ~~Georgia Capital Defender shall be transferred to the council. The Georgia capital defender~~
 1142 ~~division shall serve all counties of this state.~~

1143 ~~(b) Whenever any person accused of a capital felony for which the death penalty is being~~
 1144 ~~sought has been determined to be an indigent person who has requested the assistance of~~
 1145 ~~counsel, the court in which the charges are pending shall notify the Georgia capital~~
 1146 ~~defender division, and the division shall assume the defense of such person except as~~
 1147 ~~provided in Code Section 17-12-12.1.~~

1148 ~~(c) No person shall be assigned the primary responsibility of representing an indigent~~
 1149 ~~person accused of a capital offense for which the death penalty is sought unless such person~~
 1150 ~~is authorized to practice law in this state and is otherwise competent to counsel and defend~~
 1151 ~~a person charged with a capital felony.~~

1152 ~~(d) The Georgia capital defender division or appointed counsel's defense of a defendant~~
 1153 ~~in a case in which the death penalty is sought shall include all proceedings in the trial court~~
 1154 ~~and any appeals to the Supreme Court of Georgia. Neither the Georgia capital defender~~
 1155 ~~division nor appointed counsel shall assist with any petition for a writ of habeas corpus in~~
 1156 ~~federal court.~~

1157 ~~(e) The director shall be responsible for management of the Georgia capital defender~~
 1158 ~~division; provided, however, that the director may delegate day-to-day operations of the~~
 1159 ~~division to the capital defender. Reserved.~~

1160 **SECTION 50.**

1161 Said title is further amended by repealing Code Section 17-12-12.1, relating to payment of
 1162 attorney in event of conflict of interest in capital cases, number of attorneys appointed,
 1163 county governing authority's financial responsibility, and expenses.

1164 **SECTION 51.**

1165 Said title is further amended by revising Code Section 17-13-34, relating to arrest without
 1166 warrant of a person charged with a crime in another state, as follows:

1167 "17-13-34.

1168 The arrest of a person may be lawfully made by any peace officer or private person,
 1169 without a warrant, upon reasonable information that the accused stands charged in the
 1170 courts of a state with a crime punishable by ~~death~~ or imprisonment for a term exceeding
 1171 one year, but when so arrested, the accused must be taken before a judge or magistrate with
 1172 all practicable speed and complaint must be made against him or her under oath, setting
 1173 forth the ground for the arrest, as provided in Code Section 17-13-33; and thereafter the
 1174 answer of the accused shall be heard as if he or she had been arrested on a warrant."

1175 **SECTION 52.**

1176 Said title is further amended by revising Code Section 17-13-36, relating to granting of bail,
1177 as follows:

1178 "17-13-36.

1179 Unless the offense with which the prisoner is charged is shown to be an offense punishable
1180 by ~~death~~ or life imprisonment under the laws of the state in which it was committed, a
1181 judge or magistrate in this state may admit the prisoner to bail by bond, with sufficient
1182 sureties, in such sum as he or she deems proper, conditioned for the prisoner's appearance
1183 before the judge or magistrate at a time specified in such bond and for the prisoner's
1184 surrender to be arrested upon the warrant of the Governor of this state."

1185 **SECTION 53.**

1186 Said title is further amended by revising Code Section 17-16-2, relating to applicability of
1187 article, as follows:

1188 "17-16-2.

1189 (a) This article shall apply to all criminal cases in which at least one felony offense is
1190 charged in the event that at or prior to arraignment, or at such time as the court permits, the
1191 defendant provides written notice to the prosecuting attorney that such defendant elects to
1192 have this article apply to the defendant's case. When one defendant in a multidefendant
1193 case demands discovery under this article, the provisions of this article shall apply to all
1194 defendants in the case, unless a severance is granted.

1195 (b) Except as provided in subsection (c) of this Code section, this article shall not apply
1196 to juvenile court proceedings.

1197 (c) This article shall be deemed to have been automatically invoked, without the written
1198 notice provided for in subsection (a) of this Code section, when a defendant has sought
1199 discovery pursuant to Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' pursuant to
1200 Code Section 15-11-75, or pursuant to the Uniform Rules for the Juvenile Courts of
1201 Georgia where such discovery material is the same as the discovery material that may be
1202 provided under this article when a written notice is filed pursuant to subsection (a) of this
1203 Code section.

1204 (d) Except as provided under Code Section 17-16-8, this article is not intended to authorize
1205 discovery or inspection of attorney work product.

1206 (e) This article shall apply also to all criminal cases in which at least one felony offense
1207 is charged which was docketed, indicted, or in which an accusation was returned prior to
1208 January 1, 1995, if both the prosecuting attorney and the defendant agree in writing that the
1209 provisions of this article shall apply to the case.

1210 ~~(f) Except as provided in paragraph (3) of subsection (b) of Code Section 17-16-4, if a~~
 1211 ~~defendant has elected to have the provisions of this article apply, the provisions of this~~
 1212 ~~article shall also apply to sentencing hearings and the sentencing phase of a death penalty~~
 1213 ~~trial."~~

1214 **SECTION 54.**

1215 Said title is further amended by revising Code Section 17-17-12, relating to notification to
 1216 victim of accused's motion for new trial, as follows:

1217 "17-17-12.

1218 (a) Upon the written request of the victim, the prosecuting attorney shall notify the victim
 1219 of the following:

1220 (1) That the accused has filed a motion for new trial, an appeal of his or her conviction,
 1221 or an extraordinary motion for new trial;

1222 (2) Whether the accused has been released on bail or other recognizance pending the
 1223 disposition of the motion or appeal;

1224 (3) The time and place of any appellate court proceedings relating to the motion or
 1225 appeal and any changes in the time or place of those proceedings; and

1226 (4) The result of the motion or appeal.

1227 (b) The Attorney General shall notify the prosecuting attorney of the filing of collateral
 1228 attacks on convictions of this state which are being defended by the Attorney General.

1229 ~~(b.1) In cases in which the accused is convicted of a capital offense and receives the death~~
 1230 ~~penalty, the Attorney General shall:~~

1231 ~~(1) Notify the prosecuting attorney and upon the written request of the victim notify the~~
 1232 ~~victim of the filing and disposition of all collateral attacks on such conviction which are~~
 1233 ~~being defended by the Attorney General, including, but not limited to, petitions for a writ~~
 1234 ~~of habeas corpus, and the time and place of any such proceedings and any changes in the~~
 1235 ~~time or place of those proceedings; and~~

1236 ~~(2) Provide the prosecuting attorney and upon the written request of the victim provide~~
 1237 ~~the victim with a report on the status of all pending appeals, collateral attacks, and other~~
 1238 ~~litigation concerning such conviction which is being defended by the Attorney General~~
 1239 ~~at least every six months until the accused dies or the sentence or conviction is overturned~~
 1240 ~~or commuted or otherwise reduced to a sentence other than the death penalty.~~

1241 (c) In the event the accused is granted a new trial or the conviction is reversed or remanded
 1242 and the case is returned to the trial court for further proceedings, the victim shall be entitled
 1243 to request the rights and privileges provided by this chapter."

1244 **SECTION 55.**

1245 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
1246 revising Code Section 24-9-84.1, relating to how witnesses are impeached and prior
1247 convictions, as follows:

1248 "24-9-84.1.

1249 (a) **General rule.** For the purpose of attacking the credibility of a witness, or of the
1250 defendant, if the defendant testifies:

1251 (1) Evidence that a witness has been convicted of a crime shall be admitted if the crime
1252 was punishable by ~~death~~ or imprisonment of one year or more under the law under which
1253 the witness was convicted if the court determines that the probative value of admitting
1254 the evidence outweighs its prejudicial effect to the witness;

1255 (2) Evidence that the defendant has been convicted of a crime shall be admitted if the
1256 crime was punishable by ~~death~~ or imprisonment of one year or more under the law under
1257 which the defendant was convicted if the court determines that the probative value of
1258 admitting the evidence substantially outweighs its prejudicial effect to the defendant; and

1259 (3) Evidence that any witness or the defendant has been convicted of a crime shall be
1260 admitted if it involved dishonesty or making a false statement, regardless of the
1261 punishment that could be imposed for such offense.

1262 (b) **Time limit.** Evidence of a conviction under subsection (a) of this Code section is not
1263 admissible if a period of more than ten years has elapsed since the date of the conviction
1264 or of the release of the witness or the defendant from the confinement imposed for that
1265 conviction, whichever is the later date, unless the court determines, in the interest of
1266 justice, that the probative value of the conviction supported by specific facts and
1267 circumstances substantially outweighs its prejudicial effect. However, evidence of a
1268 conviction more than ten years old, as calculated in this subsection, is not admissible unless
1269 the proponent gives to the adverse party sufficient advance written notice of intent to use
1270 such evidence to provide the adverse party with a fair opportunity to contest the use of such
1271 evidence.

1272 (c) **Effect of pardon or annulment.** Evidence of a conviction is not admissible under this
1273 Code section if:

1274 (1) The conviction has been the subject of a pardon or annulment based on a finding of
1275 the rehabilitation of the person convicted and such person has not been convicted of a
1276 subsequent crime that was punishable by ~~death~~ or imprisonment for one year or more; or

1277 (2) The conviction has been the subject of a pardon, annulment, or other equivalent
1278 procedure based on a finding of innocence.

1279 (d) **Juvenile adjudications.** An adjudication of delinquency in juvenile court shall be
1280 inadmissible against a defendant in a criminal case. An adjudication of delinquency in

1281 juvenile court shall be presumed to be inadmissible against a witness in a criminal case;
 1282 however, this presumption may be rebutted only if it is shown that:

1283 (1) The factual basis for the proven allegations of delinquency would have constituted
 1284 a crime under the laws of the state of the juvenile court if committed by an adult at the
 1285 time they were committed by the juvenile:

1286 (2) The probative value of the evidence substantially outweighs the prejudicial effect of
 1287 its admission; and

1288 (3) The court finds that admission of the adjudication into evidence is necessary for a fair
 1289 determination of the issue of guilt or innocence of the defendant.

1290 (e) **Pendency of appeal.** The pendency of an appeal from a conviction does not render
 1291 evidence of a conviction inadmissible. Evidence of the pendency of an appeal shall be
 1292 admissible."

1293 SECTION 56.

1294 Said title is further amended by revising Code Section 24-10-60, relating to order requiring
 1295 prisoner's delivery to serve as witness or criminal defendant generally, expenses, and prisoner
 1296 under death sentence as witness, as follows:

1297 "24-10-60.

1298 (a) When a prisoner confined in any state prison, county correctional institution, or other
 1299 penal institution under the jurisdiction of the Board of Corrections, ~~other than a prisoner~~
 1300 ~~under a death sentence~~, is needed as a witness in any civil or criminal proceeding in any
 1301 court of record in this state or when it is desired that such person stand trial on an
 1302 indictment or accusation charging him or her with commission of a felony or misdemeanor,
 1303 the judge of the court wherein the proceeding is pending is authorized to and shall issue an
 1304 ex parte order, directed to the Board of Corrections, requiring his or her delivery to the
 1305 sheriff of the county where the prisoner is desired as a witness or defendant. The sheriff
 1306 or ~~his~~ sheriff's deputies shall take custody of the prisoner on the date named in the order,
 1307 safely keep him or her pending the proceeding, and shall return ~~him~~ the prisoner to the
 1308 original place of detention after his or her discharge by the trial judge.

1309 (b) If the prisoner was desired as a witness by the state in a criminal proceeding or if the
 1310 prisoner's release to the sheriff was for the purpose of standing trial on criminal charges,
 1311 the county wherein the case was pending shall pay all expenses of transportation and
 1312 keeping, including per diem and mileage of the sheriff, jail fees, and any other proper
 1313 expense approved by the trial judge.

1314 (c) If the prisoner was desired as a witness by the defendant in a criminal proceeding, or
 1315 by either party to a civil proceeding, the costs and expenses referred to in subsection (b)
 1316 of this Code section shall be borne by the person requesting the prisoner as a witness. The

1317 court shall require a deposit of money sufficient to defray same, except where the judge,
 1318 after examining into the matter, determines that the prisoner's presence is required by the
 1319 ends of justice and that the party requesting it is financially unable to make the deposit, in
 1320 which case the expenses shall be taxed as costs of court.

1321 ~~(d) If a prisoner under a death sentence is needed as a witness for either the prosecution~~
 1322 ~~or the defense in any felony case, the requesting party may interview the proposed witness.~~
 1323 ~~Following such interview, the requesting party may move for a writ of habeas corpus ad~~
 1324 ~~testificandum. Such motion shall be accompanied by a proffer of the testimony of the~~
 1325 ~~proposed witness. The requesting party shall make such motion and proffer as soon as~~
 1326 ~~possible but shall not make such motion later than 20 days prior to the date of the trial.~~
 1327 ~~Nothing in this Code section shall limit the right of a party from presenting a material~~
 1328 ~~witness at a hearing or trial and to have compulsory process for that purpose."~~

1329 **SECTION 57.**

1330 Said title is further amended in Code Section 24-10-93, relating to criminal or grand jury
 1331 proceedings in foreign state, certificate of need for prisoner's testimony, hearing, order and
 1332 conditions, entry of order by judge in requesting state, and applicability, by revising
 1333 subsection (d) as follows:

1334 (d) This Code section does not apply to any person in this state confined as insane or
 1335 mentally ill ~~or under sentence of death."~~

1336 **SECTION 58.**

1337 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 1338 by revising Code Section 42-1-3, relating to defendant sentenced to death or life
 1339 imprisonment not to be made trusty during time case on appeal and manner of confinement
 1340 of defendant, as follows:

1341 "42-1-3.

1342 Any defendant who has been convicted of a felony and sentenced to ~~death~~ or life
 1343 imprisonment shall not be made a trusty at any penal institution or facility in this state
 1344 during the time that his or her case is on appeal. The defendant shall be confined in the
 1345 same manner as other prisoners."

1346 **SECTION 59.**

1347 Said title is further amended by revising Code Section 42-5-20, relating to Alcohol or Drug
 1348 Use Risk Reduction Program, as follows:

1349 "42-5-20.

1350 The department shall provide within the correctional system an Alcohol or Drug Use Risk
 1351 Reduction Program. The program shall be made available to every person sentenced to the
 1352 custody of the state whose criminal offense or history indicates alcohol or drug
 1353 involvement; provided, however, that the provisions of this Code section shall not apply
 1354 to a person who has been ~~sentenced to the punishment of death or those~~ deemed mentally
 1355 incompetent."

1356 **SECTION 60.**

1357 Said title is further amended by revising Code Section 42-5-21, relating to Family Violence
 1358 Counseling Program, as follows:

1359 "42-5-21.

1360 The department shall provide within the correctional system a Family Violence Counseling
 1361 Program. The program shall be made available to every person sentenced to the custody
 1362 of the state who committed an offense which has been identified to involve family violence
 1363 as such term is defined in Code Section 19-13-1; provided, however, that the provisions of
 1364 this Code section shall not apply to a person who has been ~~sentenced to the punishment of~~
 1365 ~~death or to those~~ deemed mentally incompetent."

1366 **SECTION 61.**

1367 Said title is further amended in Code Section 42-5-51, relating to jurisdiction over certain
 1368 misdemeanor offenders, designation of place of confinement of inmates, reimbursement of
 1369 county, and transfer of inmates to federal authority, by revising subsection (c) as follows:

1370 "(c) After proper documentation is received from the clerk of the court, the department
 1371 shall have 15 days to transfer an inmate under sentence to the place of confinement. If the
 1372 inmate is not transferred within the 15 days, the department shall reimburse the county, in
 1373 a sum not less than \$7.50 per day per inmate and in such an amount as may be appropriated
 1374 for this purpose by the General Assembly, for the cost of the incarceration, commencing
 1375 15 days after proper documentation is received by the department from the clerk of the
 1376 court; provided, however, that, subject to an appropriation of funds, local governing
 1377 authorities that have entered into memorandums of understanding or agreement or that
 1378 demonstrate continuous attempts to enter into memorandums of understanding or
 1379 agreement with the federal government under Section 287(g) of the federal Immigration
 1380 and Nationality Act shall receive an additional payment in the amount of 10 percent of the
 1381 established rate paid for reimbursement for the confinement of state inmates in local
 1382 confinement facilities. The reimbursement provisions of this Code section shall only apply
 1383 to payment for the incarceration of felony inmates available for transfer to the department;

1384 ~~except inmates under death sentence awaiting transfer after their initial trial,~~ and shall not
 1385 apply to inmates who were incarcerated under the custody of the commissioner at the time
 1386 they were returned to the county jail for trial on additional charges or returned to the county
 1387 jail for any other purposes, including for the purpose of a new trial."

1388 **SECTION 62.**

1389 Said title is further amended in Code Section 42-5-85, relating to leave privileges of inmates
 1390 serving murder sentences, by revising subsection (a) as follows:

1391 "(a) As used in this Code section only, the term 'aggravating circumstance' means that:

1392 (1) ~~The murder was committed by a person with a prior record of conviction for a capital~~
 1393 ~~felony;~~ Reserved;

1394 (2) The murder was committed while the offender was engaged in the commission of
 1395 ~~another capital felony,~~ aggravated battery, burglary, or arson in the first degree;

1396 (3) The offender, by his or her act of murder, knowingly created a great risk of death to
 1397 more than one person in a public place by means of a weapon or device which would
 1398 normally be hazardous to the lives of more than one person;

1399 (4) The offender committed the murder for himself, herself, or another, for the purpose
 1400 of receiving money or any other thing of monetary value;

1401 (5) The murder of a judicial officer, former judicial officer, district attorney or
 1402 solicitor-general, or former district attorney, solicitor, or solicitor-general was committed
 1403 during or because of the exercise of his or her official duties;

1404 (6) The offender caused or directed another to commit murder or committed murder as
 1405 an agent or employee of another person;

1406 (7) The murder was outrageously or wantonly vile, horrible, or inhuman in that it
 1407 involved torture, depravity of mind, or an aggravated battery to the victim;

1408 (8) The murder was committed against any peace officer, corrections employee, or
 1409 firefighter while engaged in the performance of his or her official duties;

1410 (9) The murder was committed by a person in, or who has escaped from, the lawful
 1411 custody of a peace officer or place of lawful confinement; or

1412 (10) The murder was committed for the purpose of avoiding, interfering with, or
 1413 preventing a lawful arrest or custody in a place of lawful confinement of himself, herself,
 1414 or another."

1415 **SECTION 63.**

1416 Said title is further amended by revising Code Section 42-7-2, relating to definitions
 1417 regarding treatment of youthful offenders, as follows:

1418 "42-7-2.

1419 As used in this chapter, the term:

1420 (1) 'Board' means the Board of Corrections.

1421 (2) 'Commissioner' means the commissioner of corrections.

1422 (3) 'Conviction' means a judgment on a verdict or finding of guilty, a plea of guilty, or
 1423 a plea of nolo contendere in a felony case but excludes all judgments upon criminal
 1424 offenses for which the maximum punishment provided by law is ~~death or~~ life
 1425 imprisonment.

1426 (4) 'Court' means any court of competent jurisdiction other than a juvenile court.

1427 (5) 'Department' means the Department of Corrections.

1428 (6) 'Treatment' means corrective and preventative incarceration, guidance, and training
 1429 designed to protect the public by correcting the antisocial tendencies of youthful
 1430 offenders, which may include but is not limited to vocational, educational, and other
 1431 training deemed fit and necessary by the department.

1432 (7) 'Youthful offender' means any male offender who is at least 17 but less than 25 years
 1433 of age at the time of conviction and who in the opinion of the department has the
 1434 potential and desire for rehabilitation."

1435 **SECTION 64.**

1436 Said title is further amended in Code Section 42-8-34, relating to hearings and
 1437 determinations, referral of cases to probation supervisors, probation or suspension of
 1438 sentence, payment of fine or costs, disposition prior to hearing, continuing jurisdiction,
 1439 transferal of probation supervision, and probation fee, by revising subsection (a) as follows:

1440 "(a) Any court of this state which has original jurisdiction of criminal actions, except
 1441 juvenile courts, municipal courts, and probate courts, in which the defendant in a criminal
 1442 case has been found guilty upon verdict or plea or has been sentenced upon a plea of nolo
 1443 contendere, except for an offense punishable by ~~death or~~ life imprisonment, may, at a time
 1444 to be determined by the court, hear and determine the question of the probation of such
 1445 defendant."

1446 **SECTION 65.**

1447 Said title is further amended by revising Code Section 42-9-20, relating to general duties of
 1448 the State Board of Pardons and Paroles, as follows:

1449 "42-9-20.

1450 ~~In all cases in which the chairman of the board or any other member designated by the~~
 1451 ~~board has suspended the execution of a death sentence to enable the full board to consider~~
 1452 ~~and pass on same, it shall be mandatory that the board act within a period not exceeding~~

1453 ~~90 days from the date of the suspension order. In the cases which the board has power to~~
 1454 ~~consider, the board shall be charged with the duty of determining which inmates serving~~
 1455 ~~sentences imposed by a court of this state may be released on pardon or parole and fixing~~
 1456 ~~the time and conditions thereof. The board shall also be charged with the duty of~~
 1457 ~~supervising all persons placed on parole, of determining violations thereof and of taking~~
 1458 ~~action with reference thereto, of making such investigations as may be necessary, and of~~
 1459 ~~aiding parolees or probationers in securing employment. It shall be the duty of the board~~
 1460 ~~personally to study the cases of those inmates whom the board has power to consider so as~~
 1461 ~~to determine their ultimate fitness for such relief as the board has power to grant. The~~
 1462 ~~board by an affirmative vote of a majority of its members shall have the power to commute~~
 1463 ~~a sentence of death to one of life imprisonment. Reserved."~~

1464 **SECTION 66.**

1465 Said title is further amended in Code Section 42-9-42, relating to procedure for granting
 1466 relief from sentence, conditions and prerequisites, and violation of parole, by revising
 1467 subsection (a) as follows:

1468 "(a) No person shall be granted clemency, pardon, parole, or other relief from sentence
 1469 except by a majority vote of the board. ~~A majority of the members of the board may~~
 1470 ~~commute a death sentence to life imprisonment, as provided in Code Section 42-9-20."~~

1471 **SECTION 67.**

1472 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
 1473 revising Code Section 24-6-609, relating to impeachment by evidence of conviction of a
 1474 crime, as follows:

1475 "24-6-609.

1476 (a) **General rule.** For the purpose of attacking the character for truthfulness of a witness:

1477 (1) Evidence that a witness other than an accused has been convicted of a crime shall be
 1478 admitted subject to the provisions of Code Section 24-4-403 if the crime was punishable
 1479 by ~~death or~~ imprisonment in excess of one year under the law under which the witness
 1480 was convicted and evidence that an accused has been convicted of such a crime shall be
 1481 admitted if the court determines that the probative value of admitting the evidence
 1482 outweighs its prejudicial effect to the accused; or

1483 (2) Evidence that any witness has been convicted of a crime shall be admitted regardless
 1484 of the punishment, if it readily can be determined that establishing the elements of such
 1485 crime required proof or admission of an act of dishonesty or making a false statement.

1486 (b) **Time limit.** Evidence of a conviction under this Code section shall not be admissible
 1487 if a period of more than ten years has elapsed since the date of the conviction or of the

1488 release of the witness from the confinement imposed for such conviction, whichever is the
 1489 later date, unless the court determines, in the interests of justice, that the probative value
 1490 of the conviction supported by specific facts and circumstances substantially outweighs its
 1491 prejudicial effect. However, evidence of a conviction more than ten years old, as
 1492 calculated in this subsection, shall not be admissible unless the proponent gives to the
 1493 adverse party sufficient advance written notice of intent to use such evidence to provide the
 1494 adverse party with a fair opportunity to contest the use of such evidence.

1495 **(c) Effect of pardon, annulment, certificate of rehabilitation, or discharge from a first**
 1496 **offender program.** Evidence of a final adjudication of guilt and subsequent discharge
 1497 under any first offender statute shall not be used to impeach any witness and evidence of
 1498 a conviction shall not be admissible under this Code section if:

1499 (1) The conviction has been the subject of a pardon, annulment, certificate of
 1500 rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the
 1501 person convicted, and that person has not been convicted of a subsequent crime which
 1502 was punishable by ~~death~~ or imprisonment in excess of one year; or

1503 (2) The conviction has been the subject of a pardon, annulment, or other equivalent
 1504 procedure based on a finding of innocence.

1505 **(d) Nolo contendere pleas and juvenile adjudications.** A conviction based on a plea of
 1506 nolo contendere shall not be admissible to impeach any witness under this Code section.
 1507 Evidence of juvenile adjudications shall not generally be admissible under this Code
 1508 section. The court may, however, in a criminal proceeding allow evidence of a juvenile
 1509 adjudication of a witness other than the accused if conviction of the offense would be
 1510 admissible to attack the credibility of an adult and the court is satisfied that admission in
 1511 evidence is necessary for a fair determination of the issue of guilt or innocence of the
 1512 accused.

1513 **(e) Pendency of appeal.** The pendency of an appeal shall not render evidence of a
 1514 conviction inadmissible. Evidence of the pendency of an appeal shall be admissible."

1515 **SECTION 68.**

1516 Said title is further amended by revising Code Section 24-13-60, relating to order requiring
 1517 prisoner's delivery to serve as witness or criminal defendant generally, expenses, and prisoner
 1518 under death sentence as witness, as follows:

1519 "24-13-60.

1520 (a) When a prisoner confined in any state prison, county correctional institution, or other
 1521 penal institution under the jurisdiction of the Board of Corrections, ~~other than a prisoner~~
 1522 ~~under a death sentence~~, is needed as a witness in any judicial proceeding in any court of
 1523 record in this state or when it is desired that such person stand trial on an indictment or

1524 accusation charging the prisoner with commission of a felony or misdemeanor, the judge
 1525 of the court wherein the proceeding is pending shall be authorized to and shall issue an ex
 1526 parte order, directed to the commissioner of corrections, requiring the prisoner's delivery
 1527 to the sheriff of the county where the prisoner is desired as a witness or accused. The
 1528 sheriff or his or her deputies shall take custody of the prisoner on the date named in the
 1529 order, safely keep the prisoner pending the proceeding, and return him or her to the original
 1530 place of detention after the prisoner's discharge by the trial judge.

1531 (b) If the prisoner was desired as a witness by this state in a criminal proceeding or if the
 1532 prisoner's release to the sheriff was for the purpose of standing trial on criminal charges,
 1533 the county wherein the proceeding was pending shall pay all expenses of transportation and
 1534 keeping, including per diem and mileage of the sheriff, jail fees, and any other proper
 1535 expense approved by the trial judge.

1536 (c) If the prisoner was desired as a witness by the accused in a criminal proceeding or by
 1537 either party to a civil proceeding, the costs and expenses referred to in subsection (b) of this
 1538 Code section shall be borne by the party requesting the prisoner as a witness. The court
 1539 shall require a deposit of money sufficient to defray same, except where the judge, after
 1540 examining into the matter, determines that the prisoner's presence is required by the
 1541 interests of justice and that the party requesting it is financially unable to make the deposit,
 1542 in which case the expenses shall be taxed as costs of court.

1543 ~~(d) If a prisoner under a death sentence is needed as a witness for either the prosecution
 1544 or the defense in any felony case, the requesting party may interview the proposed witness.
 1545 Following such interview, the requesting party may move for a writ of habeas corpus ad
 1546 testificandum. Such motion shall be accompanied by a proffer of the testimony of the
 1547 proposed witness. The requesting party shall make such motion and proffer as soon as
 1548 possible but shall not make such motion later than 20 days prior to the date of the trial.
 1549 Nothing in this Code section shall limit the right of a party from presenting a material
 1550 witness at a hearing or trial and to have compulsory process for that purpose."~~

1551 **SECTION 69.**

1552 Said title is further amended in Code Section 24-13-93, relating to criminal or grand jury
 1553 proceedings in foreign state, certificate of need for prisoner's testimony, hearing, order,
 1554 conditions, and entry of order by judge in requesting state, and applicability, by revising
 1555 subsection (d) as follows:

1556 "(d) This Code section shall not apply to any person in this state confined as insane or
 1557 mentally ill ~~or under sentence of death."~~

SECTION 70.

1558
 1559 Title 42 of the Official Code of Georgia Annotated is amended by revising Code Section
 1560 42-5-64, relating to educational programming, as follows:

1561 "42-5-64.

1562 (a) The commissioner shall maintain an educational program within the state prison system
 1563 to assist inmates in achieving at least a fifth-grade level on standardized reading tests.
 1564 Inmates who test below the fifth-grade level and who have been sentenced to incarceration
 1565 for a period of one year or longer shall be required by institutional staff to attend
 1566 appropriate classes until they attain this level or until they are released from incarceration,
 1567 whichever event occurs first; provided, however, that inmates who have remained in the
 1568 educational program for 90 school days may voluntarily withdraw thereafter. The
 1569 commissioner or his designee shall have the discretion to exclude certain inmates from the
 1570 provisions of this subsection due to the inability of such inmates to benefit from an
 1571 educational program for reasons which may include: custody status, ~~particularly of those~~
 1572 ~~inmates under a death sentence~~; mental handicap or physical illness; participation in a boot
 1573 camp program; or possession of a general education diploma or high school diploma. The
 1574 State Board of Pardons and Paroles shall incorporate satisfactory participation in such an
 1575 educational program into the parole guidelines adopted pursuant to Code Section 42-9-40.

1576 (b) For the purposes of this Code section, educational programming shall not apply to
 1577 inmates who:

- 1578 (1) ~~Have been sentenced to death;~~
 1579 (2) Have attained 50 years of age; or
 1580 (3)(2) Have serious learning disabilities.

1581 (c) The commissioner shall provide additional educational programs in which inmates can
 1582 voluntarily participate to further their education beyond the fifth-grade level.

1583 (d) The commissioner shall utilize available services and programs within the Department
 1584 of Education, and the Department of Education shall cooperate with the commissioner in
 1585 the establishment of educational programs and the testing of inmates as required in this
 1586 Code section.

1587 (e) The commissioner shall be authorized to promulgate rules and regulations necessary
 1588 to carry out the provisions of this Code section."

SECTION 71.

1589 Sections 67, 68, and 69 of this Act shall become effective on January 1, 2013. Section 70
 1590 of this Act shall become effective only when funds are specifically appropriated for purposes
 1591 of such section in an appropriations Act making specific reference to this Act. The
 1592

1593 remaining sections of this Act shall become effective upon its approval by the Governor or
1594 upon its becoming law without such approval.

1595 **SECTION 72.**

1596 All laws and parts of laws in conflict with this Act are repealed.