

House Bill 1176

By: Representatives Golick of the 34<sup>th</sup>, Neal of the 1<sup>st</sup>, Willard of the 49<sup>th</sup>, Lindsey of the 54<sup>th</sup>,  
Oliver of the 83<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 15 and Title 16 of the Official Code of Georgia Annotated,  
2 relating to general provisions relative to courts and crimes and offenses, respectively, so as  
3 to enact provisions recommended by the 2011 Special Council on Criminal Justice Reform  
4 for Georgians and enact other criminal justice reforms; to change provisions relating to drug  
5 and mental health court divisions; to provide for performance measures and best practices;  
6 to provide for certification; to provide for funding; to provide for oversight by the Judicial  
7 Council of Georgia and the Criminal Justice Coordinating Council; to substantially revise  
8 punishment provisions and the elements of the crimes of burglary, theft, shoplifting,  
9 counterfeit Universal Product Codes, forgery, deposit account fraud, controlled substances,  
10 and marijuana; to provide for and change definitions; to amend Title 17 of the Official Code  
11 of Georgia Annotated, relating to criminal procedure, so as to extend the statute of limitations  
12 for the prosecutions of the offenses of cruelty to children in the first degree, rape, aggravated  
13 sodomy, child molestation, aggravated child molestation, enticing a child for indecent  
14 purposes, and incest; to change provisions relating to recidivist punishment for certain drug  
15 offenses; to amend Code Section 19-7-5 of the Official Code of Georgia Annotated, relating  
16 to reporting of child abuse, so as to expand mandatory reporting requirements; to provide for  
17 exceptions; to amend Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia  
18 Annotated, relating to the Georgia Crime Information Center, so as to change provisions  
19 relating to inspection, purging, modifying, or supplementing of criminal records; to provide  
20 for definitions; to provide for time frames within which certain actions must be taken with  
21 respect to restricting access to records or modifying, correcting, supplementing, or amending  
22 criminal records; to provide for procedure; to provide for individuals who have not been  
23 convicted to have their arrest records restricted; to provide for individuals convicted of  
24 certain misdemeanor offenses to have their arrest records restricted under certain  
25 circumstances; to amend Title 42 of the Official Code of Georgia Annotated, relating to  
26 penal institutions, so as to provide for the use of evidence based practices in supervising  
27 inmates, probationers, and parolees to reduce the risk of recidivism; to provide for  
28 definitions; to change provisions relating to administrative functions of the Department of

29 Corrections; to provide for a pilot program using presentence risk assessment; to change  
 30 provisions relating to the administration of supervision of felony probationers; to provide for  
 31 the use of graduated sanctions in disciplining probationers and parolees who violate the terms  
 32 of their probation or parole; to change provisions relating to terms and conditions of  
 33 probation; to provide for a maximum stay in probation detention centers; to provide for  
 34 earned compliance credits to reward certain behaviors and provide for forfeiture of such  
 35 credits; to clarify provisions relating to administrative probation supervision and provide for  
 36 early termination of a sentence; to change provisions relating to administrative sanctions  
 37 within the "Probation Management Act"; to change provisions relating to supervision of  
 38 parolees; to provide for mandatory supervision of certain inmates in order to provide a  
 39 transition from prison to the community for persons serving straight sentences; to change  
 40 provisions relating to duties of the State Board of Pardons and Paroles and parole officers;  
 41 to provide for enhanced communication between the Department of Corrections and the State  
 42 Board of Pardons and Paroles; to change provisions relating to terms and conditions of  
 43 parole; to change provisions relating to the board's general rule-making powers; to amend  
 44 Titles 5, 15, 16, 17, 31, 36, and 42 of the Official Code of Georgia Annotated, relating to  
 45 appeal and error, courts, crimes and offenses, criminal procedure, health, local government,  
 46 and penal institutions, respectively, so as to conform provisions and correct cross-references;  
 47 to provide for related matters; to provide for effective dates and applicability; to repeal  
 48 conflicting laws; and for other purposes.

49 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

50 **PART I**  
 51 **DRUG AND MENTAL HEALTH COURTS**  
 52 **SECTION 1-1.**

53 Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to general  
 54 provisions relative to courts, is amended by revising subsection (a) of Code Section 15-1-15,  
 55 relating to drug court divisions, as follows:

56 "(a)(1) Any court that has jurisdiction over any criminal case which arises from the use,  
 57 sale, possession, delivery, distribution, purchase, or manufacture of a controlled  
 58 substance, noncontrolled substance, dangerous drug, or other drug may establish a drug  
 59 court division to provide an alternative to the traditional judicial system for disposition  
 60 of such cases.

61 (2) In any case which arises from the use, addiction, dependency, sale, possession,  
 62 delivery, distribution, purchase, or manufacture of a controlled substance, noncontrolled

63 substance, dangerous drug, or other drug or is ancillary to such conduct and the defendant  
 64 meets the eligibility criteria for the drug court division, the court may assign the case to  
 65 the drug court division:

66 (A) Prior to the entry of the sentence, if the prosecuting attorney consents;

67 (B) As part of a sentence in a case; or

68 (C) Upon consideration of a petition to revoke probation.

69 (3) Each drug court division shall establish a planning group to develop a work plan.  
 70 The planning group shall include the judges, prosecuting attorneys, public defenders,  
 71 probation officers, and persons having expertise in the field of substance abuse. The  
 72 work plan shall address the operational, coordination, resource, information management,  
 73 and evaluation needs of the drug court division. The work plan shall include ~~eligibility~~  
 74 ~~criteria for the drug court division~~ all policies and practices related to implementing the  
 75 mandatory policies and practices developed pursuant to paragraph (4) of this subsection.  
 76 The work plan shall ensure a risk and needs assessment is used to identify the likelihood  
 77 of recidivating and identify the needs that, when met, reduce recidivism. The work plan  
 78 shall ensure that drug court division eligibility shall be focused on moderate-risk and  
 79 high-risk offenders as determined by a risk and needs assessment. The drug court  
 80 division shall combine judicial supervision, treatment of drug court division participants,  
 81 and drug testing.

82 (4)(A) ~~On or before January 1, 2013, the~~ The Judicial Council of Georgia shall adopt  
 83 standards for the drug court divisions. ~~Each drug court division shall adopt standards~~  
 84 ~~that are consistent with the standards of the Judicial Council of Georgia. The standards~~  
 85 ~~are to serve as a flexible framework for developing effective drug court divisions and~~  
 86 ~~to provide a structure for conducting research and evaluation for program~~  
 87 ~~accountability. The standards are not intended to be a certification or regulatory~~  
 88 ~~checklist~~ establish mandatory policies and practices for drug court divisions taking into  
 89 consideration guidelines and principles based on current research and findings  
 90 published by the National Drug Court Institute and the Substance Abuse and Mental  
 91 Health Services Administration, relating to practices shown to reduce recidivism of  
 92 offenders with drug abuse problems. Mandatory policies and practices shall include,  
 93 but shall not be limited to, the use of a risk and needs assessment to identify the  
 94 likelihood of recidivating and identify the needs that, when met, reduce recidivism.  
 95 The Judicial Council of Georgia shall update their mandatory policies and practices to  
 96 incorporate research, findings, and developments in the drug court field. Each drug  
 97 court division shall adopt policies and practices that are consistent with those published  
 98 by the Judicial Council of Georgia.

99 (B) On and after January 1, 2013, the Judicial Council of Georgia shall provide  
100 technical assistance to drug court divisions to assist them with the implementation of  
101 mandatory policies and practices, including, but not limited to, guidance on the  
102 implementation of risk and needs assessments in drug court divisions.

103 (C) On or before July 1, 2013, the Judicial Council of Georgia shall create and manage  
104 a certification and review process to ensure drug court divisions are adhering to the  
105 council's mandatory policies and practices. Any drug court division established on and  
106 after July 1, 2013, shall be certified pursuant to this subparagraph in order to receive  
107 state appropriated funds.

108 (D) On and after July 1, 2013, the awarding of any state funds for a drug court division  
109 shall be conditioned upon a drug court division attaining certification by the Judicial  
110 Council of Georgia. Annually, on or before September 1, the Judicial Council of  
111 Georgia shall report a list of certified drug court divisions as well as their  
112 recommendations for funding priorities to the Office of the Governor, the Office of  
113 Planning and Budget, the Criminal Justice Coordinating Council, and the chairpersons  
114 of the House Committee on Appropriations, the Senate Appropriations Committee, the  
115 House Committee on Judiciary Non-Civil, and the Senate Judiciary Committee.

116 (E) The Criminal Justice Coordinating Council shall develop and manage an electronic  
117 information system for performance measurement and require submission of  
118 performance data in a consistent format from all drug court divisions. The Criminal  
119 Justice Coordinating Council shall identify elements necessary for performance  
120 measurement, including, but not be limited to, recidivism, the number of moderate-risk  
121 and high-risk participants in a drug court division, drug testing results, drug testing  
122 failures, participant employment, the number of participants who successfully complete  
123 the program, and the number of participants who fail to complete the program.

124 (F) On or before July 1, 2015, and every three years thereafter, the Criminal Justice  
125 Coordinating Council shall conduct an audit of each drug court division and submit the  
126 results of the audit to the Judicial Council of Georgia for their use in recertification  
127 decisions.

128 (5) The court instituting the drug court division may request the prosecuting attorney for  
129 the jurisdiction to designate one or more prosecuting attorneys to serve in the drug court  
130 division and may request the public defender, if any, to designate one or more assistant  
131 public defenders to serve in the drug court division.

132 (6) The clerk of the court instituting the drug court division or such clerk's designee shall  
133 serve as the clerk of the drug court division.

134 (7) The court instituting the drug court division may request probation officers and other  
 135 employees of the court to perform duties for the drug court division. Such employees  
 136 shall perform duties as directed by the judges of the drug court division.

137 (8) The court instituting the drug court division may enter into agreements with other  
 138 courts and agencies for the assignment of personnel from other courts and agencies to the  
 139 drug court division.

140 (9) Expenses for salaries, equipment, services, and supplies incurred in implementing  
 141 this Code section may be paid from state funds, funds of the county or political  
 142 subdivision implementing such drug court division, federal grant funds, and funds from  
 143 private donations.

144 (10) As used in this subsection, the term 'risk and needs assessment' shall have the same  
 145 meaning as set forth in Code Section 42-1-1."

#### 146 SECTION 1-2.

147 Said chapter is further amended by revising subsection (b) of Code Section 15-1-16, relating  
 148 to mental health court divisions, as follows:

149 "(b)(1) To achieve a reduction in recidivism and symptoms of mental illness among  
 150 mentally ill offenders in criminal cases and to increase their likelihood of successful  
 151 rehabilitation through early, continuous, and intense judicially supervised treatment, any  
 152 court that has jurisdiction over a criminal case in which a defendant has a mental illness  
 153 or developmental disability, or a co-occurring mental illness and substance abuse  
 154 disorder, may establish a mental health court division to provide an alternative to the  
 155 traditional judicial system for disposition of such cases. A mental health court division  
 156 will bring together mental health professionals, local social programs, and intensive  
 157 judicial monitoring.

158 (2) In any criminal case in which a defendant suffers from a mental illness or  
 159 developmental disability, or a co-occurring mental illness and substance abuse disorder,  
 160 and the defendant meets the eligibility criteria for the mental health court division, the  
 161 court may refer the case to the mental health court division:

162 (A) Prior to the entry of the sentence, if the prosecuting attorney consents;

163 (B) As part of a sentence in a case; or

164 (C) Upon consideration of a petition to revoke probation.

165 (3) Each mental health court division shall establish a planning group to develop a  
 166 written work plan. The planning group shall include judges, prosecuting attorneys,  
 167 sheriffs or their designees, public defenders, probation officers, and persons having  
 168 expertise in the field of mental health. The work plan shall address the operational,  
 169 coordination, resource, information management, and evaluation needs of the mental

170 health court division. The work plan shall include ~~written eligibility criteria for the~~  
171 ~~mental health court division~~ all policies and practices related to implementing the  
172 mandatory policies and practices developed pursuant to paragraph (4) of this subsection.  
173 The work plan shall ensure a risk and needs assessment is used to identify the likelihood  
174 of recidivating and identify the needs that, when met, reduce recidivism. The work plan  
175 shall ensure that mental health court division eligibility shall be restricted to  
176 moderate-risk and high-risk offenders as determined by a risk and needs assessment. The  
177 mental health court division shall combine judicial supervision, treatment of mental  
178 health court division participants, and drug and mental health testing. Defendants  
179 charged with murder, armed robbery, rape, aggravated sodomy, aggravated sexual  
180 battery, aggravated child molestation, or child molestation shall not be eligible for entry  
181 into the mental health court division, except in the case of a separate court supervised  
182 reentry program designed to more closely monitor mentally ill offenders returning to the  
183 community after having served a term of incarceration. Any such court supervised  
184 community reentry program for mentally ill offenders shall be subject to the work plan  
185 as provided for in this paragraph.

186 (4)(A) ~~On or before January 1, 2013, the~~ The Judicial Council of Georgia shall adopt  
187 ~~standards for the mental health court divisions. Each mental health court division shall~~  
188 ~~adopt standards that are consistent with the standards of the Judicial Council of~~  
189 ~~Georgia. The standards shall serve as a flexible framework for developing effective~~  
190 ~~mental health court divisions and provide a structure for conducting research and~~  
191 ~~evaluation for division accountability. The standards are not intended to be a~~  
192 ~~certification or regulatory checklist~~ establish mandatory policies and practices for  
193 mental health court divisions taking into consideration guidelines and principles based  
194 on current research and findings published by expert organizations, including, but not  
195 limited to, the Substance Abuse and Mental Health Services Administration, the  
196 Consensus Project, and the National GAINS Center, relating to practices shown to  
197 reduce recidivism of offenders with mental illness or developmental disabilities.  
198 Mandatory policies and practices shall include, but shall not be limited to, the use of a  
199 risk and needs assessment to identify the likelihood of recidivating and identify the  
200 needs that, when met, reduce recidivism. The Judicial Council of Georgia shall update  
201 their mandatory policies and practices to incorporate research, findings, and  
202 developments in the mental health court field. Each mental health court division shall  
203 adopt policies and practices that are consistent with those published by the Judicial  
204 Council of Georgia.

205 (B) On and after January 1, 2013, the Judicial Council of Georgia shall provide  
206 technical assistance to mental health court divisions to assist them with the

207 implementation of mandatory policies and practices, including, but not limited to,  
208 guidance on the implementation of risk and needs assessments in mental health court  
209 divisions.

210 (C) On or before July 1, 2013, the Judicial Council of Georgia shall create and manage  
211 a certification and review process to ensure mental health court divisions are adhering  
212 to the council's mandatory policies and practices. Any mental health court division  
213 established on and after July 1, 2013, shall be certified pursuant to this subparagraph  
214 in order to receive state appropriated funds.

215 (D) On and after July 1, 2013, the awarding of any state funds for a mental health court  
216 division shall be conditioned upon a mental health court division attaining certification  
217 by the Judicial Council of Georgia. Annually, on or before September 1, the Judicial  
218 Council of Georgia shall report a list of certified mental health court divisions as well  
219 as their recommendations for funding priorities to the Office of the Governor, the  
220 Office of Planning and Budget, the Criminal Justice Coordinating Council, and the  
221 chairpersons of the House Committee on Appropriations, the Senate Appropriations  
222 Committee, the House Committee on Judiciary Non-Civil, and the Senate Judiciary  
223 Committee.

224 (E) The Criminal Justice Coordinating Council shall develop and manage an electronic  
225 information system for performance measurement and require submission of  
226 performance data in a consistent format from all mental health court divisions. The  
227 Criminal Justice Coordinating Council shall identify elements necessary for  
228 performance measurement, including, but not be limited to, recidivism, the number of  
229 moderate-risk and high-risk participants in a mental health court division, drug testing  
230 results, drug testing failures, participant employment, the number of participants who  
231 successfully complete the program, and the number of participants who fail to complete  
232 the program.

233 (F) On or before July 1, 2015, and every three years thereafter, the Criminal Justice  
234 Coordinating Council shall conduct an audit of each mental health court division and  
235 submit the results of the audit to the Judicial Council of Georgia for their use in  
236 recertification decisions.

237 (5) The court instituting the mental health court division may request the district attorney  
238 for the judicial circuit or solicitor-general for the state court for the jurisdiction to  
239 designate one or more prosecuting attorneys to serve in the mental health court division  
240 and may request the circuit public defender, if any, to designate one or more assistant  
241 public defenders to serve in the mental health court division.

242 (6) The clerk of the court instituting the mental health court division or such clerk's  
243 designee shall serve as the clerk of the mental health court division.

244 (7) The court instituting the mental health court division may request other employees  
 245 of the court to perform duties for the mental health court division. Such employees shall  
 246 perform duties as directed by the judges of the mental health court division.

247 (8) The court instituting the mental health court division may enter into agreements with  
 248 other courts and agencies for the assignment of personnel from other courts and agencies  
 249 to the mental health court division, including probation supervision.

250 (9) Expenses for salaries, equipment, services, and supplies incurred in implementing  
 251 this Code section may be paid from state funds, funds of the county or political  
 252 subdivision implementing such mental health court division, federal grant funds, and  
 253 funds from private donations.

254 (10) As used in this subsection, the term 'risk and needs assessment' shall have the same  
 255 meaning as set forth in Code Section 42-1-1."

256 **PART II**

257 **TITLE 16**

258 **SECTION 2-1.**

259 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 260 amended by revising Code Section 16-7-1, relating to burglary, as follows:

261 "16-7-1.

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

263 (1) 'Dangerous weapon' means any weapon commonly known as a rocket launcher,  
 264 bazooka, or recoilless rifle which fires explosive or nonexplosive rockets designed to  
 265 injure or kill personnel or destroy heavy armor or similar weapon used for such purpose.  
 266 The term shall also mean a weapon commonly known as a mortar which fires high  
 267 explosive from a metallic cylinder and which is commonly used by the armed forces as  
 268 an antipersonnel weapon or similar weapon used for such purpose. The term shall also  
 269 mean a weapon commonly known as a hand grenade.

270 (2) 'Dwelling' means any building, structure, or portion thereof which is designed or  
 271 intended for occupancy for residential use.

272 (3) 'Explosive' means any chemical compound or other substance or mechanical system  
 273 intended for the purpose of producing an explosion capable of causing injury to persons  
 274 or damage to property or containing oxidizing and combustible units or other ingredients  
 275 in such proportions or quantities that ignition, fire, friction, concussion, percussion, or  
 276 detonation may produce an explosion capable of causing injury to persons or damage to  
 277 property, including, but not limited to, the substances designated in Code Section  
 278 16-7-81; provided, however, that the term explosive shall not include common fireworks



279 as defined by Code Section 25-10-1, model rockets and model rocket engines designed,  
 280 sold, and used for the purpose of propelling recoverable aero models, or toy pistol paper  
 281 caps in which the explosive content does not average more than 0.25 grains of explosive  
 282 mixture per paper cap for toy pistols, toy cannons, toy canes, toy guns, or other devices  
 283 using such paper caps unless such devices are used as a component of a destructive  
 284 device.

285 (4) 'Firearm' means any handgun, rifle, shotgun, or similar device or weapon which will  
 286 or can be converted to expel a projectile by the action of an explosive or electrical charge,  
 287 and includes stun guns and tasers as defined by subsection (a) of Code Section  
 288 16-11-106, and any replica, article, or device having the appearance of a firearm.

289 (5) 'Railroad car' shall also include trailers on flatcars, containers on flatcars, trailers on  
 290 railroad property, or containers on railroad property.

291 (6) 'Weapon' means an object, device, or instrument which when used against a person  
 292 is likely to or actually does result in serious bodily injury or death or any replica, article,  
 293 or device having the appearance of such a weapon, including, but not limited to, a  
 294 firearm, dangerous weapon, or any object defined as a weapon by Code Section  
 295 16-11-127.1.

296 ~~(a)(b)~~ A person commits the offense of burglary in the first degree when, without authority  
 297 and with the intent to commit a felony or theft therein, he or she enters or remains within  
 298 the an occupied, unoccupied, or vacant dwelling house of another or any building, vehicle,  
 299 railroad car, watercraft, aircraft, or other such structure designed for use as the dwelling of  
 300 another or enters or remains within any other building, railroad car, aircraft, or any room  
 301 or any part thereof and the conduct:

302 (1) Occurs after sunset and before sunrise;

303 (2) Occurs while such person is in possession of a weapon or explosive;

304 (3) Causes physical harm to any person other than the accused or any person party to a  
 305 crime; or

306 (4) Is committed by an accused who has been convicted of burglary in any degree on  
 307 three or more prior occasions.

308 (c) A person commits the offense of burglary in the second degree when, without authority  
 309 and with the intent to commit a felony or theft therein, he or she enters or remains within  
 310 an occupied, unoccupied, or vacant dwelling house of another or any building, vehicle,  
 311 railroad car, watercraft, aircraft, or other such structure designed for use as the dwelling of  
 312 another and the conduct does not occur under the circumstances described in paragraphs  
 313 (1) through (4) of subsection (b) of this Code section.

314 (d) A person commits the offense of burglary in the third degree when, without authority  
 315 and with the intent to commit a felony or theft therein, he or she enters or remains within

316 an occupied, unoccupied, or vacant building, structure, vehicle, railroad car, watercraft, or  
 317 aircraft.

318 ~~(e)(1) A person convicted of who commits~~ the offense of burglary, ~~for the first such~~  
 319 ~~offense in the first degree shall be guilty of a felony and, upon conviction thereof,~~ shall  
 320 be punished by imprisonment for not less than ~~one~~ five nor more than ~~20~~ 30 years. For  
 321 the purposes of this Code section, the term 'railroad car' shall also include trailers on  
 322 flatcars, containers on flatcars, trailers on railroad property, or containers on railroad  
 323 property.

324 (2) A person who commits the offense of burglary in the second degree shall be guilty  
 325 of a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
 326 than one nor more than 20 years.

327 (3) A person who commits the offense of burglary in the third degree shall be guilty of  
 328 a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
 329 than one nor more than five years.

330 ~~(b) Upon a second conviction for a crime of burglary occurring after the first conviction,~~  
 331 ~~a person shall be punished by imprisonment for not less than two nor more than 20 years.~~  
 332 ~~Upon a third conviction for the crime of burglary occurring after the first conviction, a~~  
 333 ~~person shall be punished by imprisonment for not less than five nor more than 20 years.~~

334 (f) Upon the second conviction for burglary in any degree, the defendant shall be guilty  
 335 of a felony and shall be punished by imprisonment for not less than five nor more that 20  
 336 years. Upon the third and all subsequent convictions for burglary in any degree, the  
 337 defendant shall be guilty of a felony and shall be punished by imprisonment for not less  
 338 than ten years nor more than 20 years.

339 (g) Adjudication of guilt or imposition of sentence shall not be suspended, probated,  
 340 deferred, or withheld for any offense punishable under this subsection burglary in the first  
 341 or second degree."

342 **SECTION 2-2.**

343 Said title is further amended by revising Code Section 16-8-12, relating to penalties for theft  
 344 in violation of Code Sections 16-8-2 through 16-8-9, as follows:

345 "16-8-12.

346 (a) A person convicted of a violation of Code Sections 16-8-2 through 16-8-9 shall be  
 347 punished as for a misdemeanor of a high and aggravated nature except:

348 (1) If the property which was the subject of the theft exceeded ~~\$500.00~~ \$1,000.00 in  
 349 value, by imprisonment for not less than one nor more than ~~ten~~ five years or, in the  
 350 discretion of the trial judge, as for a misdemeanor;

351 (2) If the property was any amount of anhydrous ammonia, as defined in Code Section  
352 16-11-111, by imprisonment for not less than one nor more than ten years, a fine not to  
353 exceed the amount provided by Code Section 17-10-8, or both;

354 (3) If the property was taken by a fiduciary in breach of a fiduciary obligation or by an  
355 officer or employee of a government or a financial institution in breach of his or her  
356 duties as such officer or employee, by imprisonment for not less than one nor more than  
357 15 years, a fine not to exceed the amount provided by Code Section 17-10-8, or both;

358 (4) If the crime committed was a violation of Code Section 16-8-2 and if the property  
359 which was the subject of the theft was a memorial to the dead or any ornamentation,  
360 flower, tree, or shrub placed on, adjacent to, or within any enclosure of a memorial to the  
361 dead, by imprisonment for not less than one nor more than three years. Nothing in this  
362 paragraph shall be construed as to cause action taken by a cemetery, cemetery owner,  
363 lessee, trustee, church, religious or fraternal organization, corporation, civic organization,  
364 or club legitimately attempting to clean, maintain, care for, upgrade, or beautify a grave,  
365 gravesite, tomb, monument, gravestone, or other structure or thing placed or designed for  
366 a memorial of the dead to be a criminal act;

367 (5)(A) The provisions of paragraph (1) of this subsection notwithstanding, if the  
368 property which was the subject of the theft was a motor vehicle or was a motor vehicle  
369 part or component which exceeded ~~\$100.00~~ \$1,000.00 in value or if the theft or  
370 unlawful activity was committed in violation of subsection (b) of Code Section  
371 10-1-393.5 or in violation of subsection (b) of Code Section 10-1-393.6 or while  
372 engaged in telemarketing conduct in violation of Chapter 5B of Title 10, by  
373 imprisonment for not less than one nor more than ten years or, in the discretion of the  
374 trial judge, as for a misdemeanor; provided, however, that any person who is convicted  
375 of a second or subsequent offense under this paragraph shall be punished by  
376 imprisonment for not less than one year nor more than 20 years.

377 (B) Subsequent offenses committed under this paragraph, including those which may  
378 have been committed after prior felony convictions unrelated to this paragraph, shall  
379 be punished as provided in Code Section 17-10-7;

380 (6)(A) As used in this paragraph, the term:

381 (i) 'Destructive device' means a destructive device as such term is defined by Code  
382 Section 16-7-80.

383 (ii) 'Explosive' means an explosive as such term is defined by Code Section 16-7-80.

384 (iii) 'Firearm' means any rifle, shotgun, pistol, or similar device which propels a  
385 projectile or projectiles through the energy of an explosive.

386 (B) If the property which was the subject of the theft offense was a destructive device,  
387 explosive, or firearm, by imprisonment for not less than one nor more than ten years;

388 (7) If the property which was the subject of the theft is a grave marker, monument, or  
389 memorial to one or more deceased persons who served in the military service of this state,  
390 the United States of America or any of the states thereof, or the Confederate States of  
391 America or any of the states thereof, or a monument, plaque, marker, or memorial which  
392 is dedicated to, honors, or recounts the military service of any past or present military  
393 personnel of this state, the United States of America or any of the states thereof, or the  
394 Confederate States of America or any of the states thereof, and if such grave marker,  
395 monument, memorial, plaque, or marker is privately owned or located on privately owned  
396 land, by imprisonment for not less than one nor more than three years if the value of the  
397 property which was the subject of the theft is ~~\$300.00~~ \$1,000.00 or less, and by  
398 imprisonment for not less than three years and not more than five years if the value of the  
399 property which was the subject of the theft is more than ~~\$300.00~~ \$1,000.00;

400 (8) If the property that was the subject of the theft was a vehicle engaged in commercial  
401 transportation of cargo or any appurtenance thereto, including, without limitation, any  
402 such trailer, semitrailer, container, or other associated equipment, or the cargo being  
403 transported therein or thereon, by imprisonment for not less than three years nor more  
404 than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if  
405 applicable, the revocation of the defendant's commercial driver's license in accordance  
406 with Code Section 40-5-151, or any combination of such penalties. For purposes of this  
407 paragraph, the term 'vehicle' includes, without limitation, any railcar; or

408 (9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of  
409 the theft was ferrous metals or regulated metal property, as such terms are defined in  
410 Code Section 10-1-350, and the sum of the aggregate amount of such property, in its  
411 original and undamaged condition, plus any reasonable costs which are or would be  
412 incurred in the repair or the attempt to recover any property damaged in the theft or  
413 removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less  
414 than one nor more than five years, a fine of not more than \$5,000.00, or both.

415 (b) Except as otherwise provided in paragraph (5) of subsection (a) of this Code section,  
416 any person who commits the offense of theft by deception when the property which was  
417 the subject of the theft exceeded \$500.00 in value and the offense was committed against  
418 a person who is 65 years of age or older shall, upon conviction thereof, be punished by  
419 imprisonment for not less than five nor more than ten years.

420 (c) Where a violation of Code Sections 16-8-2 through 16-8-9 involves the theft of a  
421 growing or otherwise unharvested commercial agricultural product which is being grown  
422 or produced as a crop, such offense shall be punished by a fine of not less than ~~\$500.00~~  
423 \$1,000.00 and not more than the maximum fine otherwise authorized by law. This  
424 minimum fine shall not in any such case be subject to suspension, stay, or probation. This

425 minimum fine shall not be required in any case in which a sentence of confinement is  
 426 imposed and such sentence of confinement is not suspended, stayed, or probated; but this  
 427 subsection shall not prohibit imposition of any otherwise authorized fine in such a case."

428

**SECTION 2-3.**

429 Said title is further amended by revising Code Section 16-8-14, relating to theft by  
 430 shoplifting, as follows:

431 "16-8-14.

432 (a) A person commits the offense of theft by shoplifting when ~~he~~ such person alone or in  
 433 concert with another person, with the intent of appropriating merchandise to his or her own  
 434 use without paying for the same or to deprive the owner of possession thereof or of the  
 435 value thereof, in whole or in part, does any of the following:

436 (1) Conceals or takes possession of the goods or merchandise of any store or retail  
 437 establishment;

438 (2) Alters the price tag or other price marking on goods or merchandise of any store or  
 439 retail establishment;

440 (3) Transfers the goods or merchandise of any store or retail establishment from one  
 441 container to another;

442 (4) Interchanges the label or price tag from one item of merchandise with a label or price  
 443 tag for another item of merchandise; or

444 (5) Wrongfully causes the amount paid to be less than the merchant's stated price for the  
 445 merchandise.

446 (b)(1) A person convicted of the offense of theft by shoplifting, as provided in subsection  
 447 (a) of this Code section, when the property which was the subject of the theft is ~~\$300.00~~  
 448 \$1,000.00 or less in value shall be punished as for a misdemeanor; provided, however,  
 449 that:

450 (A) Upon conviction of a second offense for shoplifting, where the first offense is  
 451 either a felony or a misdemeanor, as defined by this Code section, in addition to or in  
 452 lieu of any imprisonment which might be imposed, the defendant shall be fined not less  
 453 than ~~\$250.00~~ \$500.00, and the fine shall not be suspended or probated;

454 (B) Upon conviction of a third offense for shoplifting, where the first two offenses are  
 455 either felonies or misdemeanors, or a combination of a felony and a misdemeanor, as  
 456 defined by this Code section, in addition to or in lieu of any fine which might be  
 457 imposed, the defendant shall be punished by imprisonment for not less than 30 days or  
 458 confinement in a 'special alternative incarceration-probation boot camp,' probation  
 459 detention center, diversion center, or other community correctional facility of the  
 460 Department of Corrections for a period of 120 days or shall be sentenced to monitored

461 house arrest for a period of 120 days and, in addition to either such types of  
 462 confinement, may be required to undergo psychological evaluation and treatment to be  
 463 paid for by the defendant; and such sentence of imprisonment or confinement shall not  
 464 be suspended, probated, deferred, or withheld; and

465 (C) Upon conviction of a fourth or subsequent offense for shoplifting, where the prior  
 466 convictions are either felonies or misdemeanors, or any combination of felonies and  
 467 misdemeanors, as defined by this Code section, the defendant commits a felony and  
 468 shall be punished by imprisonment for not less than one nor more than ten years; and  
 469 the first year of such sentence shall not be suspended, probated, deferred, or withheld.

470 (2) A person convicted of the offense of theft by shoplifting, as provided in subsection  
 471 (a) of this Code section, when the property which was the subject of the theft exceeds  
 472 ~~\$300.00~~ \$1,000.00 in value commits a felony and shall be punished by imprisonment for  
 473 not less than one nor more than ten years.

474 (3) A person convicted of the offense of theft by shoplifting, as provided in subsection  
 475 (a) of this Code section, when the property which was the subject of the theft is taken  
 476 from three separate stores or retail establishments within one county during a period of  
 477 seven days or less and when the property which was the subject of each theft exceeds  
 478 ~~\$100.00~~ \$333.34 in value, commits a felony and shall be punished by imprisonment for  
 479 not less than one nor more than ten years.

480 (c) In all cases involving theft by shoplifting, the term 'value' means the actual retail price  
 481 of the property at the time and place of the offense. The unaltered price tag or other  
 482 marking on property, or duly identified photographs thereof, shall be prima-facie evidence  
 483 of value and ownership of the property.

484 (d) Subsection (b) of this Code section shall in no way affect the authority of a sentencing  
 485 judge to provide for a sentence to be served on weekends or during the nonworking hours  
 486 of the defendant as provided in Code Section 17-10-3, relative to punishment for  
 487 misdemeanors."

488 **SECTION 2-4.**

489 Said title is further amended by revising Code Section 16-8-17, relating to counterfeit  
 490 Universal Product Codes, as follows:

491 "16-8-17.

492 (a)(1) Except as provided in paragraph (2) of this subsection, a person who, with intent  
 493 to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits,  
 494 or reproduces a retail sales receipt or a Universal Product Code label which results in a  
 495 theft of property which exceeds ~~\$300.00~~ \$1,000.00 in value commits a felony and shall

496 be punished by imprisonment for not less than one nor more than three years or by a fine  
497 or both.

498 (2) A person convicted of a violation of paragraph (1) of this subsection, when the  
499 property which was the subject of the theft resulting from the unlawful use of retail sales  
500 receipts or Universal Product Code labels is taken from three separate stores or retail  
501 establishments within one county during a period of seven days or less and when the  
502 property which was the subject of each theft exceeds ~~\$100.00~~ \$333.34 in value, commits  
503 a felony and shall be punished by imprisonment for not less than one nor more than ten  
504 years.

505 (b) A person who, with intent to cheat or defraud a retailer, possesses 15 or more  
506 fraudulent retail sales receipts or Universal Product Code labels or possesses a device the  
507 purpose of which is to manufacture fraudulent retail sales receipts or Universal Product  
508 Code labels will be guilty of a felony and punished by imprisonment for not less than one  
509 nor more than ten years."

510 **SECTION 2-5.**

511 Said title is further amended by revising Code Sections 16-9-1, 16-9-2, and 16-9-3, relating  
512 to forgery in the first degree, forgery in the second degree, and "writing" defined,  
513 respectively, as follows:

514 "16-9-1.

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

516 (1) 'Bank' means incorporated banks, savings banks, banking companies, trust  
517 companies, credit unions, and other corporations doing a banking business.

518 (2) 'Check' means any instrument for the payment or transmission of money payable on  
519 demand and drawn on a bank.

520 (3) 'Writing' includes, but shall not be limited to, printing or any other method of  
521 recording information, money, coins, tokens, stamps, seals, credit cards, badges,  
522 trademarks, and other symbols of value, right, privilege, or identification.

523 ~~(a)~~(b) A person commits the offense of forgery in the first degree when with the intent to  
524 defraud he or she knowingly makes, alters, or possesses any writing, other than a check,  
525 in a fictitious name or in such manner that the writing as made or altered purports to have  
526 been made by another person, at another time, with different provisions, or by authority of  
527 one who did not give such authority and utters or delivers such writing.

528 ~~(b) A person convicted of the offense of forgery in the first degree shall be punished by~~  
529 ~~imprisonment for not less than one nor more than ten years.~~

530 (c) A person commits the offense of forgery in the second degree when with the intent to  
531 defraud he or she knowingly makes, alters, or possesses any writing, other than a check,

532 in a fictitious name or in such manner that the writing as made or altered purports to have  
533 been made by another person, at another time, with different provisions, or by authority of  
534 one who did not give such authority.

535 (d) A person commits the offense of forgery in the third degree when with the intent to  
536 defraud he or she knowingly makes, alters, or possesses any check written in the amount  
537 of \$1,000.00 or more in a fictitious name or in such manner that the check as made or  
538 altered purports to have been made by another person, at another time, with different  
539 provisions, or by authority of one who did not give such authority and utters or delivers  
540 such check.

541 (e) A person commits the offense of forgery in the fourth degree when with the intent to  
542 defraud he or she knowingly makes, alters, or possesses any check written in the amount  
543 of less than \$1,000.00 in a fictitious name or in such manner that the check as made or  
544 altered purports to have been made by another person, at another time, with different  
545 provisions, or by authority of one who did not give such authority and utters or delivers  
546 such check.

547 16-9-2.

548 ~~(a) A person commits the offense of forgery in the second degree when with the intent to~~  
549 ~~defraud he knowingly makes, alters, or possesses any writing in a fictitious name or in such~~  
550 ~~manner that the writing as made or altered purports to have been made by another person,~~  
551 ~~at another time, with different provisions, or by authority of one who did not give such~~  
552 ~~authority. A person who commits the offense of forgery in the first degree shall be guilty~~  
553 ~~of a felony and, upon conviction thereof, shall be punished by imprisonment for not less~~  
554 ~~than one nor more than 15 years.~~

555 ~~(b) A person ~~convicted of~~ who commits the offense of forgery in the second degree shall~~  
556 ~~be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for~~  
557 ~~not less than one nor more than five years.~~

558 ~~(c) A person who commits the offense of forgery in the third degree shall be guilty of a~~  
559 ~~felony and, upon conviction thereof, shall be punished by imprisonment for not less than~~  
560 ~~one nor more than five years.~~

561 ~~(d) A person who commits the offense of forgery in the fourth degree shall be guilty of a~~  
562 ~~misdemeanor; provided, however, that upon the third and all subsequent convictions for~~  
563 ~~such offense, the defendant shall be guilty of a felony and shall be punished by~~  
564 ~~imprisonment for not less than one nor more than five years.~~



565 16-9-3.  
 566 For purposes of Code Sections ~~16-9-1 and 16-9-2~~, the word 'writing' includes, but is not  
 567 limited to, ~~printing or any other method of recording information, money, coins, tokens,~~  
 568 ~~stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege,~~  
 569 ~~or identification.~~ Reserved."

570 **SECTION 2-6.**

571 Said title is further amended by revising subsections (b) and (c) of Code Section 16-9-20,  
 572 relating to deposit account fraud, as follows:

573 "(b)(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (c)  
 574 of this Code section, a person convicted of the offense of deposit account fraud shall be  
 575 guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows:

576 (A) When the instrument is for less than ~~\$100.00~~ \$500.00, a fine of not more than  
 577 ~~\$500.00 or \$1,000.00~~, imprisonment not to exceed 12 months, or both; or

578 ~~(B) When the instrument is for \$100.00 or more but less than \$300.00, a fine of not~~  
 579 ~~more than \$1,000.00 or imprisonment not to exceed 12 months, or both; or~~

580 ~~(C)~~(B) When more than one instrument is involved and such instruments were drawn  
 581 within 90 days of one another and ~~each is in an amount less than \$100.00~~, the amounts  
 582 of such separate instruments may be added together to arrive at ~~and be punishable under~~  
 583 ~~subparagraph (B) of this paragraph~~ \$500.00 or more, a fine of not more than \$1,000.00,  
 584 imprisonment not to exceed 12 months, or both.

585 (2) Except as provided in paragraph (3) of this subsection and subsection (c) of this Code  
 586 section, a person convicted of the offense of deposit account fraud, when the instrument  
 587 is for an amount of not less than ~~\$300.00~~ \$500.00 nor more than ~~\$499.99~~ \$999.99, shall  
 588 be guilty of a misdemeanor of a high and aggravated nature. When more than one  
 589 instrument is involved and such instruments were given to the same entity within a 15  
 590 day period and the cumulative total of such instruments is not less than ~~\$300.00~~ \$500.00  
 591 nor more than ~~\$499.99~~ \$999.99, the person drawing and giving such instruments shall  
 592 upon conviction be guilty of a misdemeanor of a high and aggravated nature.

593 (3) Except as provided in subsection (c) of this Code section, a person convicted of the  
 594 offense of deposit account fraud, when the instrument is for ~~\$500.00~~ \$1,000.00 or more,  
 595 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not  
 596 less than \$500.00 nor more than ~~\$5,000.00 or by~~ \$10,000.00, imprisonment for not more  
 597 than three years, or both.

598 (4) Upon conviction of a first or any subsequent offense under this subsection or  
 599 subsection (c) of this Code section, in addition to any other punishment provided by this  
 600 Code section, the defendant shall be required to make restitution of the amount of the

601 instrument, together with all costs of bringing a complaint under this Code section. The  
 602 court may require the defendant to pay as interest a monthly payment equal to 1 percent  
 603 of the amount of the instrument. Such amount shall be paid each month in addition to  
 604 any payments on the principal until the entire balance, including the principal and any  
 605 unpaid interest payments, is paid in full. Such amount shall be paid without regard to any  
 606 reduction in the principal balance owed. Costs shall be determined by the court from  
 607 competent evidence of costs provided by the party causing the criminal warrant or  
 608 citation to issue; provided, however, that the minimum costs shall not be less than \$25.00.  
 609 Restitution may be made while the defendant is serving a probated or suspended  
 610 sentence.

611 (c) A person who commits the offense of deposit account fraud by the making, drawing,  
 612 uttering, executing, or delivering of an instrument on a bank of another state shall be guilty  
 613 of a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
 614 than one nor more than five years or by a fine in an amount of up to \$1,000.00, or both."

615 **SECTION 2-7.**

616 Said title is further amended by revising Code Section 16-13-30, relating to purchase,  
 617 possession, manufacture, distribution, or sale of controlled substances or marijuana and  
 618 penalties, as follows:

619 "16-13-30.

620 (a) Except as authorized by this article, it is unlawful for any person to purchase, possess,  
 621 or have under his or her control any controlled substance.

622 (b) Except as authorized by this article, it is unlawful for any person to manufacture,  
 623 deliver, distribute, dispense, administer, sell, or possess with intent to distribute any  
 624 controlled substance.

625 (c) Except as otherwise provided, any person who violates subsection (a) of this Code  
 626 section with respect to a controlled substance in Schedule I or a narcotic drug in  
 627 Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by  
 628 ~~imprisonment for not less than two years nor more than 15 years. Upon conviction of a~~  
 629 ~~second or subsequent offense, he shall be imprisoned for not less than five years nor more~~  
 630 ~~than 30 years~~ as follows:

631 (1) If the aggregate weight, including any adulterant or diluent, is less than one gram of  
 632 a solid substance, less than one milliliter of a liquid substance, or if the substance is  
 633 placed onto a secondary medium with a combined weight of less than one gram, by  
 634 imprisonment for not less than one nor more than five years;

635 (2) If the aggregate weight, including any adulterant or diluent, is at least one gram but  
 636 less than four grams of a solid substance, at least one milliliter but less than four

637 milliliters of a liquid substance, or if the substance is placed onto a secondary medium  
 638 with a combined weight of at least one gram but less than four grams, by imprisonment  
 639 for not less than two nor more than ten years; and

640 (3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate  
 641 weight, including any adulterant or diluent, is at least four grams but less than 28 grams  
 642 of a solid substance, at least four milliliters but less than 28 milliliters of a liquid  
 643 substance, or if the substance is placed onto a secondary medium with a combined  
 644 weight of at least four grams but less than 28 grams, by imprisonment for not less than  
 645 two nor more than 15 years.

646 (B) This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer,  
 647 or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these  
 648 substances.

649 (d) Except as otherwise provided, any person who violates subsection (b) of this Code  
 650 section with respect to a controlled substance in Schedule I or Schedule II shall be guilty  
 651 of a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
 652 than five years nor more than 30 years. Upon conviction of a second or subsequent  
 653 offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or  
 654 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not  
 655 apply to a sentence imposed for a second such offense; provided, however, that the  
 656 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

657 (e) Any person who violates subsection (a) of this Code section with respect to a  
 658 controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony  
 659 and, upon conviction thereof, shall be punished ~~by imprisonment for not less than two~~  
 660 ~~years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall~~  
 661 ~~be punished by imprisonment for not less than five years nor more than 30 years as~~  
 662 follows:

663 (1) If the aggregate weight, including any adulterant or diluent, is less than two grams  
 664 of a solid substance, less than two milliliters of a liquid substance, or if the substance is  
 665 placed onto a secondary medium with a combined weight of less than two grams, by  
 666 imprisonment for not less than one nor more than five years;

667 (2) If the aggregate weight, including any adulterant or diluent, is at least two grams but  
 668 less than four grams of a solid substance, at least two milliliters but less than four  
 669 milliliters of a liquid substance, or if the substance is placed onto a secondary medium  
 670 with a combined weight of at least two grams but less than four grams, by imprisonment  
 671 for not less than two nor more than ten years; and

672 (3) If the aggregate weight, including any adulterant or diluent, is at least four grams but  
 673 less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters

674 of a liquid substance, or if the substance is placed onto a secondary medium with a  
 675 combined weight of at least four grams but less than 28 grams, by imprisonment for not  
 676 less than two nor more than 15 years.

677 (f) Upon a third conviction for a violation of subsection (a) of this Code section with  
 678 respect to a controlled substance in Schedule I or II or subsection (i) of this Code section,  
 679 such person shall be punished by imprisonment for a term not to exceed twice the length  
 680 authorized by law. Reserved.

681 (g) Except as provided in subsection (l) of this Code section, any Any person who violates  
 682 subsection (a) of this Code section with respect to a controlled substance in Schedule III,  
 683 IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by  
 684 imprisonment for not less than one year nor more than ~~five~~ three years. Upon conviction  
 685 of a ~~second~~ third or subsequent offense, he or she shall be imprisoned for not less than one  
 686 year nor more than ~~ten~~ five years.

687 (h) Any person who violates subsection (b) of this Code section with respect to a  
 688 controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon  
 689 conviction thereof, shall be punished by imprisonment for not less than one year nor more  
 690 than ten years.

691 (i)(1) Except as authorized by this article, it is unlawful for any person to possess; or  
 692 have under his or her control, manufacture, deliver, distribute, dispense, administer,  
 693 purchase, sell, or possess with intent to distribute a counterfeit substance. Any person  
 694 who violates this ~~subsection paragraph~~ shall be guilty of a felony and, upon conviction  
 695 thereof, shall be punished by imprisonment for not less than one year nor more than ~~ten~~  
 696 two years.

697 (2) Except as authorized by this article, it is unlawful for any person to manufacture,  
 698 deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute  
 699 a counterfeit substance. Any person who violates this paragraph shall be guilty of a  
 700 felony and, upon conviction thereof, shall be punished by imprisonment for not less than  
 701 one year nor more than ten years.

702 (j)(1) It is ~~shall be~~ unlawful for any person to possess, have under his or her control,  
 703 manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with  
 704 intent to distribute marijuana.

705 (2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code  
 706 Section 16-13-2, any person who violates this subsection shall be guilty of a felony and,  
 707 upon conviction thereof, shall be punished by imprisonment for not less than one year nor  
 708 more than ten years.

709 (k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under  
 710 the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or

711 dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or  
 712 marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by  
 713 law. Any person who violates this subsection shall be guilty of a felony and, upon  
 714 conviction thereof, shall be punished by imprisonment for not less than five years nor more  
 715 than 20 years or by a fine not to exceed \$20,000.00, or both.

716 (l)(1) Any person who violates subsection (a) of this Code section with respect to  
 717 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
 718 conviction thereof, shall be punished ~~by imprisonment for not less than two years nor~~  
 719 ~~more than 15 years. Upon conviction of a second or subsequent offense, such person~~  
 720 ~~shall be punished by imprisonment for not less than five years nor more than 30 years as~~ as  
 721 follows:

722 (A) If the aggregate weight, including any adulterant or diluent, is less than two grams  
 723 of a solid substance of flunitrazepam, less than two milliliters of liquid flunitrazepam,  
 724 or if flunitrazepam is placed onto a secondary medium with a combined weight of less  
 725 than two grams, by imprisonment for not less than one nor more than five years;

726 (B) If the aggregate weight, including any adulterant or diluent, is at least two grams  
 727 but less than four grams of a solid substance of flunitrazepam, at least two milliliters  
 728 but less than four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed  
 729 onto a secondary medium with a combined weight of at least two grams but less than  
 730 four grams, by imprisonment for not less than two nor more than ten years; and

731 (C) If the aggregate weight, including any adulterant or diluent, is at least four grams  
 732 of a solid substance of flunitrazepam, at least four milliliters of liquid flunitrazepam,  
 733 or if the flunitrazepam is placed onto a secondary medium with a combined weight of  
 734 at least four grams, by imprisonment for not less than two nor more than 15 years.

735 (2) Any person who violates subsection (b) of this Code section with respect to  
 736 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
 737 conviction thereof, shall be punished by imprisonment for not less than five years nor  
 738 more than 30 years. Upon conviction of a second or subsequent offense, such person  
 739 shall be punished by imprisonment for not less than ten years nor more than 40 years or  
 740 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not  
 741 apply to a sentence imposed for a second such offense, but that subsection and the  
 742 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

743 (m) As used in this Code section, the term 'solid substance' means tablets, pills, capsules,  
 744 caplets, or any variant of such items."

745 **PART III**  
 746 **TITLE 17**  
 747 **SECTION 3-1.**

748 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
 749 amended by revising Code Section 17-3-1, relating to limitation on prosecutions generally,  
 750 as follows:

751 "17-3-1.

752 (a) A prosecution for murder may be commenced at any time.

753 (b) ~~Except as otherwise provided in Code Section 17-3-2.1, prosecution~~ **Prosecution** for  
 754 other crimes punishable by death or life imprisonment ~~must~~ shall be commenced within  
 755 seven years after the commission of the crime except as provided by subsection ~~(c.1)~~ **(d)**  
 756 of this Code section; ~~provided, however, that prosecution for the crime of forcible rape~~  
 757 ~~must be commenced within 15 years after the commission of the crime.~~

758 (c) ~~Except as otherwise provided in Code Section 17-3-2.1, prosecution~~ **Prosecution** for  
 759 felonies other than those specified in subsections (a), (b), and ~~(c.1)~~ **(d)** of this Code section  
 760 ~~must~~ shall be commenced within four years after the commission of the crime, provided  
 761 that prosecution for felonies committed against victims who are at the time of the  
 762 commission of the offense under the age of 18 years ~~must~~ shall be commenced within  
 763 seven years after the commission of the crime.

764 ~~(c.1)~~**(d)** A prosecution for the following offenses may be commenced at any time when  
 765 deoxyribonucleic acid (DNA) evidence is used to establish the identity of the accused:

- 766 (1) Armed robbery, as defined in Code Section 16-8-41;
- 767 (2) Kidnapping, as defined in Code Section 16-5-40;
- 768 (3) Rape, as defined in Code Section 16-6-1;
- 769 (4) Aggravated child molestation, as defined in Code Section 16-6-4;
- 770 (5) Aggravated sodomy, as defined in Code Section 16-6-2; or
- 771 (6) Aggravated sexual battery, as defined in Code Section 16-6-22.2;

772 provided, however, that a sufficient portion of the physical evidence tested for DNA is  
 773 preserved and available for testing by the accused and provided, further, that, if the DNA  
 774 evidence does not establish the identity of the accused, the limitation on prosecution shall  
 775 be as provided in subsections (b) and (c) of this Code section.

776 ~~(d)~~**(e)** Prosecution for misdemeanors ~~must~~ shall be commenced within two years after the  
 777 commission of the crime."

778 **SECTION 3-2.**

779 Said title is further amended by revising Code Section 17-3-2.1, relating to limitation on  
 780 prosecution of certain offenses involving a victim under 16 years of age, as follows:

781 "17-3-2.1.

782 (a) For crimes committed during the period beginning on July 1, 1992, and ending on June  
 783 30, 2012, if ~~If~~ the victim of a violation of:

784 (1) Cruelty to children, as defined in Code Section 16-5-70, ~~relating to cruelty to~~  
 785 ~~children;~~

786 (2) Rape, as defined in Code Section 16-6-1, ~~relating to rape;~~

787 (3) Sodomy or aggravated sodomy, as defined in Code Section 16-6-2, ~~relating to~~  
 788 ~~sodomy and aggravated sodomy;~~

789 (4) Statutory rape, as defined in Code Section 16-6-3, ~~relating to statutory rape;~~

790 (5) Child molestation or aggravated child molestation, as defined in Code Section  
 791 16-6-4, relating to child molestation and aggravated child molestation;

792 (6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, ~~relating~~  
 793 ~~to enticing a child for indecent purposes; or~~

794 (7) Incest, as defined in Code Section 16-6-22, ~~relating to incest,~~

795 is under 16 years of age on the date of the violation, the applicable period within which a  
 796 prosecution ~~must~~ shall be commenced under Code Section 17-3-1 or other applicable  
 797 statute shall not begin to run until the victim has reached the age of 16 or the violation is  
 798 reported to a law enforcement agency, prosecuting attorney, or other governmental agency,  
 799 whichever occurs earlier. Such law enforcement agency or other governmental agency  
 800 shall promptly report such allegation to the appropriate prosecuting attorney.

801 (b) ~~This Code section shall apply to any offense designated in paragraphs (1) through (7)~~  
 802 ~~of subsection (a) of this Code section occurring on or after July 1, 1992~~ For crimes  
 803 committed on and after July 1, 2012, if the victim of a violation of:

804 (1) Cruelty to children in the first degree, as defined in Code Section 16-5-70;

805 (2) Rape, as defined in Code Section 16-6-1;

806 (3) Aggravated sodomy, as defined in Code Section 16-6-2;

807 (4) Child molestation or aggravated child molestation, as defined in Code Section  
 808 16-6-4;

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

810 (6) Incest, as defined in Code Section 16-6-22,

811 is under 16 years of age on the date of the violation and the violation is not subject to  
 812 punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4,  
 813 paragraph (2) of subsection (d) of Code Section 16-6-4, or subsection (c) of Code Section  
 814 16-6-5, a prosecution may be commenced at any time."

815 **SECTION 3-3.**

816 Said title is further amended by revising subsections (a) and (c) of Code Section 17-10-7,  
 817 relating to punishment of repeat offenders, and by adding a new subsection (b.1) to read as  
 818 follows:

819 "(a) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any  
 820 person who, after having been convicted of a felony offense in this state or having been  
 821 convicted under the laws of any other state or of the United States of a crime which if  
 822 committed within this state would be a felony and sentenced to confinement in a penal  
 823 institution, who shall afterwards commit commits a felony punishable by confinement in  
 824 a penal institution; shall be sentenced to undergo the longest period of time prescribed for  
 825 the punishment of the subsequent offense of which he or she stands convicted, provided  
 826 that, unless otherwise provided by law, the trial judge may, in his or her discretion, probate  
 827 or suspend the maximum sentence prescribed for the offense."

828 "(b.1) This Code section shall not apply to a second or any subsequent conviction for any  
 829 violation of subsection (a), (i), or (j) of Code Section 16-13-30.

830 (c) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any person  
 831 who, after having been convicted under the laws of this state for three felonies or having  
 832 been convicted under the laws of any other state or of the United States of three crimes  
 833 which if committed within this state would be felonies, commits a felony within this state  
 834 shall, upon conviction for such fourth offense or for subsequent offenses, serve the  
 835 maximum time provided in the sentence of the judge based upon such conviction and shall  
 836 not be eligible for parole until the maximum sentence has been served."

837 **PART IV**838 **MANDATORY REPORTING OF CHILD ABUSE**839 **SECTION 4-1.**

840 Code Section 19-7-5 of the Official Code of Georgia Annotated, relating to reporting of child  
 841 abuse, is amended by revising subsection (b) by designating paragraphs (3.1) and (4) as  
 842 paragraphs (7) and (8), respectively, and adding three new paragraphs and by revising  
 843 subsections (c), (d), and (g) to read as follows:

844 "(4) 'Child service organization personnel' means persons employed by or volunteering at  
 845 a business or an organization, whether public, private, for profit, not for profit, or  
 846 voluntary, that provides care, treatment, education, training, supervision, coaching,  
 847 counseling, recreational programs, or shelter to children.

848 "(5) 'Clergy' means ministers, priests, rabbis, imams, or similar functionaries, by whatever  
 849 name called, of a bona fide religious organization.



850 (6) 'School' means any public or private pre-kindergarten, elementary school, secondary  
 851 school, technical school, vocational school, college, university, or institution of  
 852 postsecondary education."

853 "(c)(1) The following persons having reasonable cause to believe that ~~a child has been~~  
 854 ~~abused~~ suspected child abuse has occurred shall report or cause reports of that abuse to  
 855 be made as provided in this Code section:

856 (A) Physicians licensed to practice medicine, interns, or residents;

857 (B) Hospital or medical personnel;

858 (C) Dentists;

859 (D) Licensed psychologists and persons participating in internships to obtain licensing  
 860 pursuant to Chapter 39 of Title 43;

861 (E) Podiatrists;

862 (F) Registered professional nurses or licensed practical nurses licensed pursuant to  
 863 Chapter 24 of Title 43;

864 (G) Professional counselors, social workers, or marriage and family therapists licensed  
 865 pursuant to Chapter 10A of Title 43;

866 (H) School teachers;

867 (I) School administrators;

868 (J) School guidance counselors, visiting teachers, school social workers, or school  
 869 psychologists certified pursuant to Chapter 2 of Title 20;

870 (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section  
 871 49-5-12;

872 (L) Child-counseling personnel;

873 (M) Child service organization personnel; or

874 (N) Law enforcement personnel.

875 (2) If a person is required to report child abuse pursuant to this subsection because that  
 876 person attends to a child pursuant to such person's duties as a member of the staff of a  
 877 hospital, school, social agency, or similar facility, that person shall notify the person in  
 878 charge of the facility, or the designated delegate thereof, and the person so notified shall  
 879 report or cause a report to be made in accordance with this Code section. A staff member  
 880 who makes a report to the person designated pursuant to this paragraph shall be deemed  
 881 to have fully complied with this subsection. Under no circumstances shall any person in  
 882 charge of such hospital, school, agency, or facility, or the designated delegate thereof, to  
 883 whom such notification has been made exercise any control, restraint, modification, or  
 884 make other change to the information provided by the reporter, although each of the  
 885 aforementioned persons may be consulted prior to the making of a report and may  
 886 provide any additional, relevant, and necessary information when making the report.

887 (d) Any other person, other than one specified in subsection (c) of this Code section, who  
 888 has reasonable cause to believe that ~~a child is abused~~ suspected child abuse has occurred  
 889 may report or cause reports to be made as provided in this Code section."

890 "(g) Suspected child abuse which is required to be reported by any person pursuant to this  
 891 Code section shall be reported notwithstanding that the reasonable cause to believe such  
 892 abuse has occurred or is occurring is based in whole or in part upon any communication  
 893 to that person which is otherwise made privileged or confidential by law; provided,  
 894 however, that a member of the clergy shall not be required to report child abuse received  
 895 solely from a perpetrator of the child abuse through confession or other similar  
 896 communication required to be kept confidential under church doctrine or practice. When  
 897 a clergy member receives information about child abuse from any source, the clergy  
 898 member shall comply with the reporting requirements of this Code section, even though  
 899 the clergy member may have also received a report of child abuse from the confession of  
 900 the perpetrator."

901 **PART V**

902 **TITLE 35**

903 **SECTION 5-1.**

904 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the  
 905 Georgia Crime Information Center, is amended by revising Code Section 35-3-37, relating  
 906 to inspection, purging, modifying, or supplementing of criminal records, as follows:

907 "35-3-37.

908 (a) Nothing in this article shall be construed so as to authorize any person, agency,  
 909 corporation, or other legal entity to invade the privacy of any citizen as defined by the  
 910 General Assembly or the courts other than to the extent provided in this article.

911 (b) The center shall make a person's criminal records available for inspection by such  
 912 person or his or her attorney upon written application to the center. Should the person or  
 913 his or her attorney contest the accuracy of any portion of the records, it shall be mandatory  
 914 upon the center to make available to the person or such person's attorney a copy of the  
 915 contested record upon written application identifying the portion of the record contested  
 916 and showing the reason for the contest of accuracy. Forms, procedures, identification, and  
 917 other related aspects pertinent to access to records may be prescribed by the center.

918 (c) If an individual believes his or her criminal records to be inaccurate or incomplete, he  
 919 or she may request the original agency having custody or control of the ~~detail~~ records to  
 920 ~~purge~~ correct, modify, or supplement them and to notify the center of such changes.  
 921 Should the agency decline to act or should the individual believe the agency's decision to

922 be unsatisfactory, the individual or his or her attorney may, within 30 days of such  
 923 decision, enter an appeal to the superior court of the county of his or her residence or to the  
 924 court in the county where the agency exists, with notice to the agency, to acquire an order  
 925 by the court that the subject information be ~~expunged~~ corrected, modified, or supplemented  
 926 by the agency of record. The court shall conduct a de novo hearing and may order such  
 927 relief as it finds to be required by law. Such appeals shall be entered in the same manner  
 928 as appeals are entered from the probate court, except that the appellant shall not be required  
 929 to post bond or pay the costs in advance. If the aggrieved person desires, the appeal may  
 930 be heard by the judge at the first term or in chambers. A notice sent by registered or  
 931 certified mail or statutory overnight delivery shall be sufficient service on the agency  
 932 having custody or control of disputed record that such appeal has been entered. Should the  
 933 record in question be found to be inaccurate, incomplete, or misleading ~~as set forth in~~  
 934 ~~paragraph (3) of subsection (d) of this Code section~~, the court shall order it to be  
 935 appropriately ~~expunged~~ corrected, modified, or supplemented by an explanatory notation.  
 936 Each agency or individual in the state with custody, possession, or control of any such  
 937 record shall promptly cause each and every copy thereof in his or her custody, possession,  
 938 or control to be altered in accordance with the court's order. Notification of each such  
 939 deletion, amendment, and supplementary notation shall be promptly disseminated to any  
 940 individuals or agencies, including the center, to which the records in question have been  
 941 communicated, as well as to the individual whose records have been ordered so altered.

942 ~~(d)(1) An individual who was:~~

943 ~~(A) Arrested for an offense under the laws of this state but subsequent to such arrest~~  
 944 ~~is released by the arresting agency without such offense being referred to the~~  
 945 ~~prosecuting attorney for prosecution; or~~

946 ~~(B) After such offense referred to the proper prosecuting attorney, and the prosecuting~~  
 947 ~~attorney dismisses the charges without seeking an indictment or filing an accusation~~  
 948 ~~may request the original agency in writing to expunge the records of such arrest,~~  
 949 ~~including any fingerprints or photographs of the individual taken in conjunction with such~~  
 950 ~~arrest, from the agency files. Such request shall be in such form as the center shall~~  
 951 ~~prescribe. Reasonable fees shall be charged by the original agency and the center for the~~  
 952 ~~actual costs of the purging of such records, provided that such fees shall not exceed~~  
 953 ~~\$50.00.~~

954 ~~(2) Upon receipt of such written request, the agency shall provide a copy of the request~~  
 955 ~~to the proper prosecuting attorney. Upon receipt of a copy of the request to expunge a~~  
 956 ~~criminal record, the prosecuting attorney shall promptly review the request to determine~~  
 957 ~~if it meets the criteria for expungement set forth in paragraph (3) of this subsection. If~~  
 958 ~~the request meets those criteria, the prosecuting attorney shall review the records of the~~

959 arrest to determine if any of the material contained therein must be preserved in order to  
960 protect the constitutional rights of an accused under *Brady v. Maryland*.

961 ~~(3) An individual has the right to have his or her record of such arrest expunged,  
962 including any fingerprints or photographs of the individual taken in conjunction with such  
963 arrest, if the prosecuting attorney determines that the following criteria have been  
964 satisfied:~~

965 ~~(A) The charge was dismissed under the conditions set forth in paragraph (1) of this  
966 subsection;~~

967 ~~(B) No other criminal charges are pending against the individual, and~~

968 ~~(C) The individual has not been previously convicted of the same or similar offense  
969 under the laws of this state, the United States, or any other state within the last five  
970 years, excluding any period of incarceration.~~

971 ~~(4) The agency shall expunge the record by destroying the fingerprint cards,  
972 photographs, and documents relating exclusively to such person. Any material which  
973 cannot be physically destroyed or which the prosecuting attorney determines must be  
974 preserved under *Brady v. Maryland* shall be restricted by the agency and shall not be  
975 subject to disclosure to any person except by direction of the prosecuting attorney or as  
976 ordered by a court of record of this state.~~

977 ~~(5) It shall be the duty of the agency to notify promptly the center of any records which  
978 are expunged pursuant to this subsection. Upon receipt of notice from an agency that a  
979 record has been expunged, the center shall, within a reasonable time, restrict access to the  
980 criminal history of such person relating to such charge. Records for which access is  
981 restricted pursuant to this subsection shall be made available only to criminal justice  
982 officials upon written application for official judicial law enforcement or criminal  
983 investigative purposes.~~

984 ~~(6) If the agency declines to expunge such arrest record, the individual may file an action  
985 in the superior court where the agency is located as provided in Code Section 50-13-19.  
986 A decision of the agency shall be upheld only if it is determined by clear and convincing  
987 evidence that the individual did not meet the criteria set forth in paragraph (3) of this  
988 subsection or subparagraphs (A) through (G) of paragraph (7) of this subsection. The  
989 court in its discretion may award reasonable court costs including attorney's fees to the  
990 individual if he or she prevails in the appellate process. Any such action shall be served  
991 upon the agency, the center, the prosecuting attorney having jurisdiction over the offense  
992 sought to be expunged, and the Attorney General who may become parties to the action.~~

993 ~~(7) After the filing of an indictment or an accusation, a record shall not be expunged if  
994 the prosecuting attorney shows that the charges were nolle prossed, dead docketed, or  
995 otherwise dismissed because:~~

- 996 ~~(A) Of a plea agreement resulting in a conviction for an offense arising out of the same~~  
 997 ~~underlying transaction or occurrence as the conviction;~~
- 998 ~~(B) The government was barred from introducing material evidence against the~~  
 999 ~~individual on legal grounds including but not limited to the grant of a motion to~~  
 1000 ~~suppress or motion in limine;~~
- 1001 ~~(C) A material witness refused to testify or was unavailable to testify against the~~  
 1002 ~~individual unless such witness refused to testify based on his or her statutory right to~~  
 1003 ~~do so;~~
- 1004 ~~(D) The individual was incarcerated on other criminal charges and the prosecuting~~  
 1005 ~~attorney elected not to prosecute for reasons of judicial economy;~~
- 1006 ~~(E) The individual successfully completed a pretrial diversion program, the terms of~~  
 1007 ~~which did not specifically provide for expungement of the arrest record;~~
- 1008 ~~(F) The conduct which resulted in the arrest of the individual was part of a pattern of~~  
 1009 ~~criminal activity which was prosecuted in another court of this state, the United States,~~  
 1010 ~~another state, or foreign nation; or~~
- 1011 ~~(G) The individual had diplomatic, consular, or similar immunity or inviolability from~~  
 1012 ~~arrest or prosecution.~~
- 1013 ~~(8) If the prosecuting attorney having jurisdiction determines that the records should not~~  
 1014 ~~be expunged because the criteria set forth in paragraph (3) or subparagraphs (A) through~~  
 1015 ~~(G) of paragraph (7) of this subsection were not met, and the agency or center fails to~~  
 1016 ~~follow the prosecuting attorney's recommendation, the prosecuting attorney having~~  
 1017 ~~jurisdiction over the offense sought to be expunged or the Attorney General may appeal~~  
 1018 ~~a decision by the agency or center to expunge a criminal history as provided in Code~~  
 1019 ~~Section 50-13-19.~~
- 1020 ~~(9) An individual who has been indicted or charged by accusation that was subsequently~~  
 1021 ~~dismissed, dead docketed, or nolle prossed may request an expungement as provided by~~  
 1022 ~~paragraphs (1) through (3) of this subsection; provided, however, that if the prosecuting~~  
 1023 ~~attorney objects to the expungement request within 60 days after receiving a copy of said~~  
 1024 ~~request from the agency, the agency shall decline to expunge and the individual shall~~  
 1025 ~~have the right to appeal as provided by paragraph (6) of this subsection.~~
- 1026 ~~(10) Nothing in this subsection shall be construed as requiring the destruction of incident~~  
 1027 ~~reports or other records that a crime was committed or reported to law enforcement.~~  
 1028 ~~Further, nothing in this subsection shall be construed to apply to custodial records~~  
 1029 ~~maintained by county or municipal jail or detention centers. It shall be the duty of the~~  
 1030 ~~agency to take such action as may be reasonable to prevent disclosure of information to~~  
 1031 ~~the public which would identify such person whose records were expunged.~~

1032 (e) Agencies, including the center, at which criminal offender records are sought to be  
 1033 inspected may prescribe reasonable hours and places of inspection and may impose such  
 1034 additional procedures, fees not to exceed \$3.00, or restrictions, including fingerprinting,  
 1035 as are reasonably necessary to assure the records' security, to verify the identities of those  
 1036 who seek to inspect them, and to maintain an orderly and efficient mechanism for  
 1037 inspection of records.

1038 (f)(e) The provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure  
 1039 Act,' shall not apply to proceedings under this Code section.

1040 (g)(f) If the center has notified a firearms dealer that a person is prohibited from  
 1041 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title  
 1042 16 and if the prohibition is the result of such person's being involuntarily hospitalized  
 1043 within the immediately preceding five years, upon such person or his or her attorney  
 1044 making an application to inspect his or her records, the center shall provide the record of  
 1045 involuntary hospitalization and also inform the person or attorney of his or her right to a  
 1046 hearing before the judge of the probate court or superior court relative to such person's  
 1047 eligibility to possess or transport a handgun."

#### 1048 SECTION 5-2.

1049 Said article is further amended by adding two new Code sections to read as follows:

1050 "35-3-37.1.

1051 (a) As used in this Code section, the term:

1052 (1) 'Drug court treatment program' means a treatment program operated by a drug court  
 1053 division in accordance with the provisions of Code Section 15-1-15.

1054 (2) 'Mental health court program' means a treatment program operated by a mental health  
 1055 court division in accordance with the provisions of Code Section 15-1-16.

1056 (3) 'Nonserious traffic offense' means any offense in violation of Title 40 which is not  
 1057 prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the  
 1058 laws of a state which would not be considered a serious traffic offense under the laws of  
 1059 this state if committed in this state.

1060 (4) 'Prosecuting attorney' means the Attorney General, a district attorney, or the  
 1061 solicitor-general who had jurisdiction over an offense. If the offense was a violation of  
 1062 a criminal law of this state which, by general law, may be tried by a municipal,  
 1063 magistrate, probate, or other court that is not a court of record, the term 'prosecuting  
 1064 attorney' shall include the prosecuting officer of such court or, in the absence of such  
 1065 prosecuting attorney, the district attorney of the judicial circuit in which such court is  
 1066 located.

1067 (5) 'Restricted' means that the criminal history of an individual relating to a particular  
 1068 charge shall be available only to judicial and criminal justice officials for law  
 1069 enforcement or criminal investigative purposes in accordance with procedures established  
 1070 by the center and shall not be disclosed or otherwise made available to any private  
 1071 persons and businesses pursuant to Code Section 35-3-34.

1072 (6) 'Serious violent felony' shall have the same meaning as set forth in Code Section  
 1073 17-10-6.1.

1074 (7) 'State' includes any state, the United States or any district, commonwealth, territory,  
 1075 or insular possession of the United States, and the Trust Territory of the Pacific Islands.

1076 (b) The provisions of this Code section shall govern the restriction of access to and  
 1077 disclosure of records pertaining to the criminal history of an individual relating to a  
 1078 particular charge by the center and criminal justice agencies that are required by this article  
 1079 to report data to the center. Except as provided in this Code section or as otherwise  
 1080 provided by this article or federal law, no agency or court shall restrict access to a criminal  
 1081 history of an individual.

1082 (c)(1) The criminal history record information of an individual who was arrested for an  
 1083 offense under the laws of this state shall be restricted if such offense was not referred for  
 1084 further prosecution to the proper prosecuting attorney by the investigating law  
 1085 enforcement agency and:

1086 (A) The offense against such individual is closed by the investigating law enforcement  
 1087 agency; or

1088 (B) The center does not receive notice from the investigating law enforcement agency  
 1089 that the offense has been referred to the prosecuting attorney or transferred to another  
 1090 law enforcement or prosecutorial agency of this state, any other state or a foreign  
 1091 nation, or any political subdivision thereof for prosecution and the following period of  
 1092 time has elapsed from the date of the arrest of such individual:

1093 (i) If the offense is a misdemeanor or a misdemeanor of a high and aggravated nature,  
 1094 two years;

1095 (ii) If the offense is a felony, other than a serious violent felony or a felony sexual  
 1096 offense involving a victim under 16 years of age as provided in Code Section  
 1097 17-3-2.1, four years; or

1098 (iii) If the offense is a serious violent felony or a felony sexual offense involving a  
 1099 victim under 16 years of age as provided in Code Section 17-3-2.1, seven years.

1100 (2) It shall be the duty of the head of the investigating law enforcement agency to notify  
 1101 the center whenever a record is to be restricted as provided in subparagraph (A) of  
 1102 paragraph (1) of this subsection. A copy of the notice shall be sent to the accused and the  
 1103 accused's attorney, if any, by mailing the same by first-class mail.

1104 (3) If the center receives notice of the filing of an indictment subsequent to the restriction  
1105 of a record pursuant to subparagraph (B) of paragraph (1) of this subsection, the center  
1106 shall make such record available in accordance with Code Section 35-3-34.

1107 (4) It shall be the duty of the head of the investigating law enforcement agency to notify  
1108 the center whenever a record is to be restricted as provided in this subsection. A copy of  
1109 the notice shall be sent to the accused and the accused's attorney, if any, by mailing the  
1110 same by first-class mail.

1111 (d)(1) The records of an individual who was arrested for an offense under the laws of this  
1112 state shall be restricted after such offense is referred to the proper prosecuting attorney  
1113 and:

1114 (A) The prosecuting attorney dismisses the charges without seeking an indictment or  
1115 filing an accusation, the prosecuting attorney determines that no other criminal charges  
1116 are pending against the individual at the time of the dismissal, and the individual has  
1117 not been previously convicted of the same or similar offense under the laws of this state  
1118 or any other state within the last five years, excluding any period of incarceration;

1119 (B) The prosecuting attorney accepts the individual into a pretrial intervention and  
1120 diversion program as provided by Article 4 of Chapter 18 of Title 15, and the individual  
1121 successfully completes all the terms and conditions of such program unless the terms  
1122 of the pretrial intervention and diversion program agreement specifically provided that  
1123 the record of the offense would not be restricted;

1124 (C) The individual pleads guilty to or is found guilty of possession of a narcotic drug,  
1125 marijuana, or stimulant, depressant, or hallucinogenic drug and is sentenced in  
1126 accordance with the provisions of Code Section 16-13-2, and such individual  
1127 successfully fulfills the terms and conditions of such probation;

1128 (D) The individual is sentenced as a first offender pursuant to Article 3 of Chapter 8  
1129 of Title 42, and the court discharges such individual without an adjudication of guilt  
1130 except as provided in Code Section 35-3-34.1; or

1131 (E) The individual successfully completes a drug court treatment program or mental  
1132 health court program prior to the entry of judgment, and the prosecuting attorney in  
1133 dismissing the case against the individual specifically authorizes the restricting of the  
1134 record of the offense charged; provided, however, that such record shall not be  
1135 restricted for a period of two years from the date the case is dismissed by the drug court  
1136 treatment program or mental health court program during which period the individual  
1137 must not have been arrested for an offense against the laws of this state or any other  
1138 state other than a nonserious traffic offense during such period of time. If the  
1139 individual is arrested during such two-year period, the record shall not be restricted.



1140 (2) It shall be the duty of the prosecuting attorney to notify the center whenever a record  
 1141 is to be restricted as provided in subparagraph (A) or (B) of paragraph (1) of this  
 1142 subsection. It shall be the duty of the clerk of court to notify the center whenever a  
 1143 record is to be restricted as provided in subparagraph (C), (D), or (E) of paragraph (1) of  
 1144 this subsection. A copy of the notice of restriction shall be sent to the individual whose  
 1145 record is in issue and such individual's attorney, if any, by mailing the same by first-class  
 1146 mail.

1147 (e)(1) The records of an individual against whom indictment or special presentment was  
 1148 returned or an accusation was filed may be restricted if the prosecuting attorney files a  
 1149 motion to nolle prosequi or otherwise dismiss such offense; provided, however, that such  
 1150 record shall not be restricted if the offense was nolle prosequi or dismissed because:

1151 (A) Of a plea agreement resulting in a conviction for an offense arising out of the same  
 1152 underlying transaction or occurrence as the conviction;

1153 (B) Of a plea agreement resulting in a conviction of the individual on other offenses  
 1154 not necessarily related to the same underlying transaction or occurrence as the  
 1155 conviction, and the terms of such plea agreement provided for the dismissal of the  
 1156 charges of such other offenses;

1157 (C) The prosecuting attorney was barred from introducing material evidence against  
 1158 the individual on legal grounds, including, but not limited to, the granting of a motion  
 1159 to suppress or motion in limine;

1160 (D) A material witness refused to testify or was unavailable to testify against the  
 1161 individual unless such witness refused to testify based on his or her statutory right to  
 1162 do so;

1163 (E) The individual was incarcerated on other criminal charges, and the prosecuting  
 1164 attorney elected not to prosecute for reasons of judicial economy;

1165 (F) The individual successfully completed a pretrial diversion or specialty court  
 1166 program the terms of which specifically provided that the record of the offense would  
 1167 not be restricted;

1168 (G) The conduct which resulted in the arrest of the individual was part of a pattern of  
 1169 criminal activity which was prosecuted in another court of this state, another state, or  
 1170 a foreign nation; or

1171 (H) The individual had diplomatic, consular, or similar immunity or inviolability from  
 1172 arrest or prosecution in this state.

1173 (2) The motion filed by the prosecuting attorney requesting the nolle prosequi or  
 1174 otherwise dismissing such offense without restricting access thereto shall identify the  
 1175 applicable subparagraph from paragraph (1) of this subsection that prohibits the  
 1176 restriction.

1177 (3) It shall be the duty of the clerk of the court granting a motion to restrict to notify the  
1178 center whenever a record is to be restricted as provided in this subsection. A copy of the  
1179 order shall be sent by the clerk of court to the individual whose record is in issue and such  
1180 individual's attorney, if any, by mailing the same by first-class mail.

1181 (f) An individual may apply to have a record restricted if the individual shows that the  
1182 offense for which the record is sought to be restricted occurred prior to January 1, 2013,  
1183 and the record of such offense would have been eligible to be restricted under the  
1184 provisions of subsection (c), (d) or (e) of this Code section.

1185 (g)(1) Whenever an individual is authorized to apply to have a record restricted as  
1186 provided in this Code section, such application shall be made in writing on such form as  
1187 the center shall designate.

1188 (2) An application to restrict a record pursuant to subsection (c) of this Code section shall  
1189 be made to the head of the investigating law enforcement agency.

1190 (3) An application to restrict a record pursuant to subsection (d) or (e) of this Code  
1191 section shall be made to the prosecuting attorney having jurisdiction over the offense to  
1192 be restricted.

1193 (h)(1) Any individual whose application to have a record restricted as provided in  
1194 subsection (g) of this Code section whose application is denied or whose record was not  
1195 restricted pursuant to subsection (c), (d), or (e) of this Code section may apply for review  
1196 of such decision. Such request for review shall be made within 60 days of the date of the  
1197 decision to not restrict the record and shall initially be made to the prosecuting attorney  
1198 denying the restriction or the prosecuting attorney for the jurisdiction applicable to  
1199 subsection (c) of this Code section. The prosecuting attorney shall respond in writing  
1200 within 30 days of such request and shall state whether the record will be restricted, or, if  
1201 not, state the reason restriction is prohibited.

1202 (2) If such request for reconsideration is denied by the prosecuting attorney, the  
1203 aggrieved party may apply for judicial review as provided in subsection (i) of this Code  
1204 section.

1205 (i) A proceeding for judicial review shall be instituted by filing a petition for judicial  
1206 review within 30 days of the prosecuting attorney's response pursuant to paragraph (1) of  
1207 subsection (h) of this Code section. Such petition shall be filed in the superior court of the  
1208 county in which application to restrict a record is denied and served upon the official  
1209 denying restriction. The review shall be conducted by the court without a jury and shall  
1210 be confined to the record. The court, upon request, shall hear oral argument and receive  
1211 written briefs. The court shall not substitute its judgment for that of the official on  
1212 questions of fact, and the decision of the agency shall be reversed only if it is determined

1213 by clear and convincing evidence that the individual met the criteria set forth in subsection  
 1214 (c), (d), or (e) of this Code section.

1215 (j) The center shall develop and publish procedures and forms as may be necessary to  
 1216 carry out the provisions of this Code section. In adopting such procedures and forms, the  
 1217 provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall not  
 1218 apply.

1219 35-3-37.2.

1220 (a) As used in this Code section, the term:

1221 (1) 'Prosecuting attorney' shall have the same meaning as set forth in Code Section  
 1222 35-3-37.1.

1223 (2) 'Restricted' shall have the same meaning as set forth in Code Section 35-3-37.1.

1224 (3) 'State' shall have the same meaning as set forth in Code Section 35-3-37.1.

1225 (4) 'Youthful offender' means any offender who was less than 21 years of age at the time  
 1226 of his or her conviction.

1227 (b) Any individual who was convicted in this state of a misdemeanor, or a series of  
 1228 misdemeanors arising from a single incident, and at the time of such conviction was a  
 1229 youthful offender may file an application with the prosecuting attorney's office that  
 1230 prosecuted such misdemeanor or misdemeanors to have the record of such conviction  
 1231 restricted under the following conditions:

1232 (1) Such conviction was for an offense other than:

1233 (A) Child molestation in violation of Code Section 16-6-4;

1234 (B) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

1235 (C) Sexual assault by persons with supervisory or disciplinary authority in violation  
 1236 of Code Section 16-6-5.1;

1237 (D) Keeping a place of prostitution in violation of Code Section 16-6-10;

1238 (E) Pimping in violation of Code Section 16-6-11;

1239 (F) Pandering by compulsion in violation of Code Section 16-6-14;

1240 (G) Masturbation for hire in violation of Code Section 16-6-16;

1241 (H) Giving massages in a place used for lewdness, prostitution, assignation, or  
 1242 masturbation for hire in violation of Code Section 16-6-17;

1243 (I) Sexual battery in violation of Code Section 16-6-22.1;

1244 (J) Any offense related to minors generally in violation of Part 2 of Article 3 of  
 1245 Chapter 12 of Title 16;

1246 (K) Theft in violation of Chapter 8 of Title 16; provided, however, that such  
 1247 prohibition shall not apply to a misdemeanor conviction of shoplifting in violation of  
 1248 Code Section 16-8-14; or

1249 (L) An offense involving the operation of a motor vehicle, including but not limited to  
1250 any violation of Title 40;

1251 (2) The individual has not been convicted of a felony under the laws of this state or any  
1252 other state or of an offense under the laws of any other state which would be a felony if  
1253 committed in this state;

1254 (3) The individual has not been convicted of any other misdemeanor offense, other than  
1255 a violation of Articles 1 through 14 of Chapter 6 of Title 40, under the laws of this state  
1256 or any other state during the five years preceding the filing of an application pursuant to  
1257 this Code section;

1258 (4) At the time such application is reviewed by the prosecuting attorney, the individual  
1259 has not been charged with either a felony or a misdemeanor offense under the laws of this  
1260 state or any other state;

1261 (5) Five years have elapsed from the date the individual completed the sentence or  
1262 sentences imposed for such offense or offenses, and the individual is free from any  
1263 restraint of liberty resulting from the conviction for such offense or offenses; and

1264 (6) In applying to have such offense or offenses restricted, the individual admits  
1265 responsibility for such offense or offenses the records of which are to be restricted.

1266 (c) Upon receipt of an application to have the records of misdemeanor convictions  
1267 restricted as provided in subsection (b) of this Code section, the prosecuting attorney shall  
1268 review the application and determine if the offense or offenses qualify for restriction. If  
1269 the prosecuting attorney determines that the offense or offenses qualify to have the records  
1270 restricted, the prosecuting attorney shall approve the application. The approved application  
1271 shall be filed with the clerk of court in the original case file, and the clerk of court shall  
1272 notify the center that access to such record shall be restricted. A copy of the approved  
1273 application shall be sent to the applicant and the applicant's attorney, if any, by mailing the  
1274 same by first-class mail. The decision of the prosecuting attorney shall be final and shall  
1275 not be subject to review.

1276 (d) If an individual whose record is restricted pursuant to this Code section is, at any time  
1277 subsequent to such record being restricted, charged with an offense under the laws of this  
1278 state or any other state, the restriction on such record may be removed upon application of  
1279 the prosecuting attorney.

1280 (e) Nothing in this Code section shall be construed as affecting the admissibility of  
1281 evidence of an offense the records of which have been restricted, if such evidence is  
1282 admissible pursuant to Code Section 24-4-404, 24-4-413, 24-4-414, 24-4-415, or 24-4-417.

1283 (f) Any application for restriction of records made pursuant to this Code section shall be  
1284 made in writing on a form approved by the center. The center shall be authorized to  
1285 develop and publish such procedures as may be necessary to carry out the provisions of this

1286 Code section. In adopting such procedures and forms, the provisions of Chapter 13 of Title  
 1287 50, the 'Georgia Administrative Procedure Act,' shall not apply."

1288 **PART VI**  
 1289 **TITLE 42**  
 1290 **SECTION 6-1.**

1291 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
 1292 by revising Code Section 42-1-1, relating to giving information to or receiving money from  
 1293 an inmate in a penal institution, as follows:

1294 "42-1-1.

1295 ~~(a) No employee of a penal institution may give advice to an inmate regarding the name~~  
 1296 ~~or the employment of an attorney at law in any case where the inmate is confined in a penal~~  
 1297 ~~institution or receive any sum of money paid as fees or otherwise to attorneys at law in a~~  
 1298 ~~criminal case or cases against any inmate with which they may be connected in any~~  
 1299 ~~capacity.~~

1300 ~~(b) Any person who violates this Code section shall be guilty of a misdemeanor.~~

1301 (a) Except as specifically provided otherwise, as used in this title, the term:

1302 (1) 'Active supervision' means the period of a probated sentence or parole in which a  
 1303 probationer or parolee actively reports to his or her probation or parole supervisor or is  
 1304 otherwise under the direct supervision of a probation or parole supervisor.

1305 (2) 'Administrative supervision' means the period of probation or parole supervision that  
 1306 has reduced supervision and reporting requirements commensurate with and that follows  
 1307 active supervision but that is prior to the termination of a sentence.

1308 (3) 'Approved home plan' means a plan that describes the location and circumstances of  
 1309 housing arrangements to which an inmate will return upon release from a correctional  
 1310 facility.

1311 (4) 'Board' means the Board of Corrections.

1312 (5) 'Case plan' means an individualized accountability and behavior change strategy for  
 1313 a parolee or probationer, as applicable.

1314 (6) 'Commissioner' means the commissioner of corrections.

1315 (7) 'Criminal risk factors' means characteristics and behaviors that affect a person's risk  
 1316 for committing future crimes and include, but are not limited to, antisocial behavior,  
 1317 antisocial personality, criminal thinking, criminal associates, having a dysfunctional  
 1318 family, having low levels of employment or education, poor use of leisure and recreation  
 1319 time, and substance abuse.

1320 (8) 'Department' means the Department of Corrections.

1321 (9) 'Earned compliance credits' means credits a probationer or parolee, as applicable, can  
 1322 earn to reduce his or her period of active supervision by satisfying behavior related active  
 1323 supervision conditions.

1324 (10) 'Evidence based practices' mean supervision policies, procedures, programs, and  
 1325 practices that scientific research demonstrates reduce recidivism among individuals who  
 1326 are under some form of correctional supervision.

1327 (11) 'Graduated sanctions' means:

1328 (A) Verbal and written warnings;

1329 (B) Increased restrictions and reporting requirements;

1330 (C) Community service or work crews;

1331 (D) Referral to substance abuse or mental health treatment or counseling programs in  
 1332 the community;

1333 (E) Increased substance abuse screening and monitoring;

1334 (F) Electronic monitoring, as such term is defined in Code Section 42-8-151;

1335 (G) Day or evening reporting centers;

1336 (H) An intensive supervision program; and

1337 (I) Forfeiture of earned compliance credits.

1338 (12) 'Mandatory supervision' means a period of not more than six months wherein an  
 1339 inmate who is otherwise ineligible for parole, who has been granted parole but has not  
 1340 been transferred to the custody of parole, or who has not been granted parole is  
 1341 transferred by the department for supervision under the direction of and in the legal  
 1342 custody of the State Board of Pardons and Paroles.

1343 (13) 'Presentence risk assessment' means an actuarial tool, validated on a targeted  
 1344 population, scientifically proven to measure a person's risk of flight and risk of future  
 1345 criminal conduct.

1346 (14) 'Recidivism' means returning to prison or jail within three years of being placed on  
 1347 probation or parole or being discharged or released from a department or jail facility.

1348 (15) 'Risk and needs assessment' means an actuarial tool, validated on a targeted  
 1349 population, scientifically proven to determine a person's risk to recidivate and to identify  
 1350 criminal risk factors that, when properly addressed, can reduce that person's likelihood  
 1351 of committing future criminal behavior."

1352 **SECTION 6-2.**

1353 Said title is further amended by adding a new Code section to read as follows:

1354 "42-1-11.2.

1355 (a) No employee of a penal institution shall give advice to an inmate regarding the name  
 1356 or the employment of an attorney at law in any case where the inmate is confined in a penal

1357 institution or receive any sum of money paid as fees or otherwise to attorneys at law in a  
 1358 criminal case or cases against any inmate with which they may be connected in any  
 1359 capacity.

1360 (b) Any person who violates this Code section shall be guilty of a misdemeanor."

1361 **SECTION 6-3.**

1362 Said title is further amended by revising Code Section 42-2-1, relating to definitions, as  
 1363 follows:

1364 "42-2-1.

1365 ~~As used in this chapter, the term:~~

1366 (1) ~~'Board' means the Board of Corrections.~~

1367 (2) ~~'Commissioner' means the commissioner of corrections.~~

1368 (3) ~~'Department' means~~ There is created the Department of Corrections."

1369 **SECTION 6-4.**

1370 Said title is further amended by revising Code Section 42-2-4, relating to the creation of the  
 1371 Department of Corrections, as follows:

1372 "42-2-4.

1373 (a) The department shall adopt rules and regulations governing the management and  
 1374 treatment of inmates and probationers to ensure that evidence based practices guide  
 1375 decisions related to preparing such persons for release into the community. The rules and  
 1376 regulations shall require evidence based practices, including the use of a risk and needs  
 1377 assessment. The results of the risk and needs assessment shall be utilized by the  
 1378 department and probation officers to:

1379 (1) Assist the department in determining the level and type of treatment to which the  
 1380 inmate or probationer will participate;

1381 (2) Develop a case plan for each inmate or probationer. Such case plan shall:

1382 (A) Target and prioritize the specific criminal risk factors of the inmate or probationer  
 1383 based upon his or her risk and needs assessment results;

1384 (B) Match the type and intensity of supervision and treatment conditions to the inmate  
 1385 or probationer's level of risk to recidivate, taking into consideration the inmate or  
 1386 probationer's criminal risk factors and his or her individual characteristics, including  
 1387 gender, culture, motivational stage, developmental stage, and learning style;

1388 (C) Establish a timetable for achieving specific behavioral goals, including a schedule  
 1389 for payment of restitution, child support, fines, and other financial obligations; and

1390 (D) Specify positive and negative actions that will be taken in response to the inmate  
 1391 or probationer's behavior;

- 1392 (3) Refer the inmate or probationer for programming and treatment;  
1393 (4) Allocate resources focused on moderate-risk and high-risk inmates and probationers;  
1394 and  
1395 (5) Collect and analyze data and performance outcomes relevant to the level and type of  
1396 treatment given to an inmate or probationer and the outcome of the treatment on his or  
1397 her recidivism.
- 1398 (b) The department shall keep records on each inmate and probationer and shall ensure the  
1399 collection of all data relevant to the program and treatment outcomes of the inmate or  
1400 probationer.
- 1401 (c) The department shall develop a system to measure the department's employees'  
1402 performance relative to inmate and probationer outcomes.
- 1403 (d) The department shall adopt rules and regulations for the development of a performance  
1404 auditing system to evaluate implementation, performance, and outcomes of the treatment  
1405 and sanction practices used on inmates and probationers. The rules and regulations shall  
1406 ensure that effective practices are being used to reduce the likelihood of recidivism among  
1407 inmates and probationers. The rules and regulations shall require that an external audit of  
1408 treatment programs and practices focused on reducing recidivism be conducted not less  
1409 than every five years.
- 1410 (e) For services, programs, or treatment intended to reduce an inmate or probationer's risk  
1411 of recidivism, contracts and agreements shall require the use of evidence based practices  
1412 in providing services to inmates.
- 1413 (f) The department shall adopt rules and regulations to create and implement a graduated  
1414 sanctions grid and sanctioning process to be used by probation officers to address  
1415 probationer conduct. The rules and regulations shall ensure the collection of data related  
1416 to the imposition of all sanctions and include a review process to ensure consistent and  
1417 appropriate imposition of all sanctions.
- 1418 (g) The department shall adopt rules and regulations to create and conduct a prison  
1419 diversion pilot program as authorized in Code Section 42-5-22.
- 1420 (h) The department shall adopt rules and regulations to create and implement a presentence  
1421 risk assessment. The tool shall be used in the prison diversion pilot program as authorized  
1422 in Code Section 42-5-22.
- 1423 (i) The department shall adopt rules and regulations to identify inmates who are eligible  
1424 for parole or mandatory supervision and, if paroled or transferred to mandatory supervision,  
1425 will concurrently serve a sentence of probation and parole or probation and mandatory  
1426 supervision. The department's rules and regulations shall contemplate sharing information  
1427 with the State Board of Pardons and Paroles so that parole officers shall supervise  
1428 probationers who are concurrently serving a sentence of parole.



1429 (j) The department shall adopt rules and regulations to identify the date upon which an  
 1430 inmate shall be transferred to the custody of the State Board of Pardons and Paroles  
 1431 pursuant to mandatory supervision as set forth in Code Section 42-9-21.1. The department  
 1432 shall ensure that inmates eligible for mandatory supervision are released to the custody of  
 1433 the State Board of Pardons and Paroles when such inmates are within six months of the  
 1434 discharge of their sentences and that the State Board of Pardons and Paroles is notified  
 1435 prior to the transfer of such inmates. ~~There is created the Department of Corrections.~~"

#### 1436 SECTION 6-5.

1437 Said title is further amended by revising Code Section 42-5-20, relating to alcohol or drug  
 1438 use risk reduction programs, as follows:

1439 "42-5-20.

1440 The department shall provide within the correctional system ~~an~~ a DUI Alcohol or Drug Use  
 1441 Risk Reduction Program. The program shall be made available to every person sentenced  
 1442 to the custody of the state whose ~~criminal offense or history indicates alcohol or drug~~  
 1443 involvement case plan indicates that alcohol or drug abuse is a factor in the person's risk  
 1444 to recidivate; provided, however, that the provisions of this Code section shall not apply  
 1445 to a person who has been sentenced to the punishment of death or those been deemed  
 1446 mentally incompetent. In addition to the program certified by the Department of Driver  
 1447 Services, the department shall offer programs that have been scientifically proven to reduce  
 1448 a person's risk of future substance abuse."

#### 1449 SECTION 6-6.

1450 Said title is further amended by adding a new Code section to read as follows:

1451 "42-5-22.

1452 (a) On or before January 1, 2013, the department shall develop a presentence risk  
 1453 assessment to identify the lowest risk, prison bound, nonviolent drug and property  
 1454 defendants.

1455 (b)(1) The department shall work with the Administrative Office of the Courts to develop  
 1456 a pilot program that identifies prison bound, nonviolent drug and property defendants  
 1457 and, using the presentence risk assessment, assesses their risk of recidivism. The quartile  
 1458 of such defendants with the lowest risk of recidivism shall be recommended to the courts  
 1459 implementing the pilot program for diversion to community based supervision.

1460 (2) The pilot program shall be implemented in two judicial circuits as selected by the  
 1461 Administrative Office of the Courts. The selected judicial circuits shall commit to using  
 1462 the presentence risk assessment to identify and divert defendants who would have been  
 1463 sentenced to a period of incarceration to appropriate supervision that ensures such

1464 defendants will be managed using evidence based practices to reduce their risk to  
1465 recidivate.

1466 (3) This Code section shall not be construed to restrict a judge from imposing any  
1467 available sentencing option to ensure public safety, including a sentence of incarceration.

1468 (c)(1) After the pilot program has operated for two years, the department shall evaluate  
1469 the program to determine the participating courts' success in sending fewer nonviolent  
1470 drug and property defendants to prison as compared to the year prior to the  
1471 commencement of the pilot program. If the program results in fewer nonviolent drug and  
1472 property defendants sentenced to prison, the department shall quantify the associated cost  
1473 savings and determine the rate of recidivism of this population compared to recidivism  
1474 rates of similar defendants who were released from incarceration.

1475 (2) On or before January 31, 2016, the department shall submit a copy of its evaluation  
1476 to the Executive Council of the Governor, the Governor's Office of Planning and Budget,  
1477 and the chairpersons of the House Committee on Appropriations, the Senate  
1478 Appropriations Committee, the House Committee on Judiciary Non-Civil, the Senate  
1479 Judiciary Committee, the House Committee on State Institutions and Property, the Senate  
1480 State Institutions and Property Committee, and the Senate Public Safety Committee.

1481 (d)(1) On or before July 1, 2017, the department shall use its evaluation to develop a  
1482 model for using presentence risk assessments on a state-wide basis. The model state-wide  
1483 plan shall be submitted to the persons and entities identified in paragraph (2) of  
1484 subsection (c) of this Code section in order for them to determine whether state-wide  
1485 implementation would be effective at improving public safety and reducing costs  
1486 associated with incarcerating lower risk, nonviolent drug and property defendants.

1487 (2) If the Governor and General Assembly determine that the pilot program should be  
1488 implemented state-wide, they shall notify the department of their desire, and on or before  
1489 July 1, 2018, the department shall work with the Administrative Office of the Courts to  
1490 implement a state-wide presentence risk assessment model that may be utilized in all  
1491 judicial circuits in this state.

1492 (e) Each year, the department shall determine the percentage of defendants who were  
1493 diverted from prison in each judicial circuit using the presentence risk assessment,  
1494 determine the costs averted because this population was managed under community based  
1495 supervision rather than incarcerated, compare these savings to the year prior to  
1496 implementation of the presentence risk assessment program, and calculate any state  
1497 expenditures that were averted by the reduction in admissions to prison from those judicial  
1498 circuits.

1499 (f) It is the intent of the General Assembly that the department and the Administrative  
1500 Office of the Courts consider, recognize, and reward programs and courts successfully

1501 implementing presentence risk assessments and successfully operating community based  
 1502 supervision programs such that some of the savings identified by the findings set forth in  
 1503 subsection (e) of this Code section be appropriated to the successful courts and programs  
 1504 within each agency's appropriation and that a formulaic process be used in the analysis of  
 1505 these programs."

1506 **SECTION 6-7.**

1507 Said title is further amended by revising subsection (a) of Code Section 42-5-50, relating to  
 1508 the transmittal of information on convicted persons, as follows:

1509 "(a) The clerk of the court shall notify the commissioner of a sentence within 30 working  
 1510 days following the receipt of the sentence and send other documents set forth in this Code  
 1511 section. Such notice shall be ~~mailed within such time period by first-class mail and shall~~  
 1512 ~~be accompanied by two complete and certified sentence packages containing~~ submitted  
 1513 electronically and shall contain the following documents:

1514 (1) A certified copy of the sentence;

1515 (2) A complete history of the convicted person, including a certified copy of the  
 1516 indictment, accusation, or both and such other information as the commissioner may  
 1517 require;

1518 (3) An affidavit of the custodian of such person indicating the total number of days the  
 1519 convicted person was incarcerated prior to the imposition of the sentence. It shall be the  
 1520 duty of the custodian of such person to transmit the affidavit provided for in this  
 1521 paragraph to the clerk of the superior court within ten days following the date on which  
 1522 the sentence is imposed;

1523 (4) Order of probation revocation or tolling of probation; and

1524 (5) A copy of the sentencing information report is required in all jurisdictions with an  
 1525 options system day reporting center certified by the ~~Department of Corrections~~  
 1526 department. The failure to provide the sentencing information report shall not cause an  
 1527 increase in the 15 day time period for the department to assign the inmate to a  
 1528 correctional institution as set forth in subsection (b) of this Code Section.

1529 All of the aforementioned documents ~~will~~ shall be submitted on forms provided by the  
 1530 commissioner. The commissioner shall file one copy of each such document with the State  
 1531 Board of Pardons and Paroles within 30 working days of receipt of such documents from  
 1532 the clerk of the court. Except where the clerk is on a salary, the clerk shall receive from  
 1533 funds of the county the fee prescribed in Code Section 15-6-77 for such service."

1534 **SECTION 6-8.**

1535 Said title is further amended by revising Code Section 42-8-21, relating to definitions for the  
1536 state-wide probation system, as follows:

1537 "42-8-21.

1538 ~~As used in this article, the term:~~

1539 (1) ~~'Board' means the Board of Corrections.~~

1540 (2) ~~'Commissioner' means the commissioner of corrections.~~

1541 (3) ~~'Department' means the Department of Corrections~~ Reserved."

1542 **SECTION 6-9.**

1543 Said title is further amended by revising Code Section 42-8-23, relating to the administration  
1544 of supervision of probationers by the Department of Corrections, as follows:

1545 "42-8-23.

1546 (a) The department shall administer the supervision of felony probationers. The  
1547 department shall employ evidence based practices in all decisions related to:

1548 (1) The supervision of probationers;

1549 (2) The type and duration of the treatment in which the probationer will participate;

1550 (3) The response to violations of probation and supervision conditions;

1551 (4) The collection and analysis of data;

1552 (5) The tracking of performance outcomes; and

1553 (6) Contracting for services intended to reduce a probationer's likelihood of recidivism.

1554 (b) The department shall have the authority to impose graduated sanctions in response to  
1555 a probationer's violation of probation supervision conditions unless the court has expressed  
1556 an intention in a written order that such violations be heard by the court. The graduated  
1557 sanctions imposed shall be limited to those within the graduated sanctions grid established  
1558 under Code Section 42-8-23.1. The graduated sanctions imposed shall not include any  
1559 period of incarceration unless authorized under Code Section 42-8-152.

1560 (c) Nothing in this Code section shall alter the relationship between judges and probation  
1561 supervisors prescribed in this article."

1562 **SECTION 6-10.**

1563 Said title is further amended by adding a new Code section to read as follows:

1564 "42-8-23.1.

1565 (a) The department shall establish written policies and procedures governing the  
1566 supervision of probationers designed to enhance public safety and to assist the probationer  
1567 with integrating into society.

1568 (b) The department shall establish a graduated sanctions procedure and a graduated  
1569 sanctions grid, which shall include sanctions under Article 9 of this chapter, the 'Probation  
1570 Management Act,' and which shall be used by probation officers to sanction behavior in  
1571 a swift and certain manner. The department shall require that any graduated sanctions  
1572 imposed be documented and reviewed on a regular basis by the department to ensure  
1573 consistent and appropriate application. All graduated sanctions administered by the  
1574 department shall conform to the graduated sanctions grid.

1575 (c) A probation officer shall:

1576 (1) Investigate all cases referred to him or her by the judge or the department;

1577 (2) Conduct a risk and needs assessment of the probationer which may include an initial  
1578 screening and, if necessary, a comprehensive assessment;

1579 (3) Develop a case plan for each individual who is assessed as a moderate to high risk  
1580 to reoffend based on the risk and needs assessment;

1581 (4) Furnish to each probationer under his or her supervision a written statement of the  
1582 terms and conditions of probation and any modifications of the terms of probation and  
1583 instruct the probationer that he or she must stay in compliance with the terms and  
1584 conditions of probation;

1585 (5) Stay informed of the probationer's conduct and condition through visitation, required  
1586 reporting, or other methods and report to the court upon request;

1587 (6) Make reports in writing or otherwise as the court may require and keep records on  
1588 each probationer under his or her supervision;

1589 (7) Ensure the collection of all data relevant to the supervision, program outcomes, and  
1590 treatment outcomes of each probationer under his or her supervision;

1591 (8) Use practicable and suitable methods that are consistent with evidence based  
1592 practices to aid and encourage a probationer to improve his or her conduct and  
1593 circumstances and to reduce the risk of recidivism; and

1594 (9) Receive annual training on evidence based practices and criminal risk factors, as well  
1595 as instruction on how to target these factors to reduce recidivism.

1596 (d) The department shall:

1597 (1) Allocate resources, including the assignment of probation officers, to focus on  
1598 moderate-risk and high-risk offenders as determined by the results of a probationer's risk  
1599 and needs assessment; and

1600 (2) Require public and private providers that receive state funds for the treatment of  
1601 probationers to use evidence based practices and programs."

**SECTION 6-11.**

1602  
 1603 Said title is further amended by revising Code Section 42-8-24, relating to general duties of  
 1604 the department, rules and regulations, as follows:

1605 "42-8-24.

1606 (a) It shall be the duty of the department to:

1607 (1) ~~Supervise supervise~~ and direct the work of the probation supervisors provided for in  
 1608 Code Section 42-8-25 ~~and to keep~~;

1609 (2) ~~Keep~~ accurate files and records on all probation cases and persons on probation;

1610 (3) ~~Ensure that evidence based practices guide decisions about managing and supervising~~  
 1611 ~~probationers~~;

1612 (4) ~~Collect all data relevant to measuring the impact of supervision and management~~  
 1613 ~~practices on probationer recidivism~~;

1614 (5) ~~Develop a system to measure probation staff performance related to probationer~~  
 1615 ~~outcomes; and~~

1616 (6) ~~Adopt specifications and procedure for earned compliance credits.~~

1617 (b) It shall be the duty of the board to promulgate rules and regulations necessary to  
 1618 effectuate the purposes of this chapter."

**SECTION 6-12.**

1619  
 1620 Said title is further amended by revising Code Section 42-8-27, relating to the duties of  
 1621 probation supervisors, as follows:

1622 "42-8-27.

1623 The probation supervisor shall supervise and ~~counsel~~ manage probationers using evidence  
 1624 based practices in the judicial circuit to which ~~he~~ the supervisor is assigned. Each  
 1625 supervisor shall perform the duties prescribed in this chapter and such duties as are  
 1626 prescribed by the department and shall keep such records and files and make such reports  
 1627 as are required ~~of him~~."

**SECTION 6-13.**

1628  
 1629 Said title is further amended by revising Code Section 42-8-29, relating to conducting  
 1630 presentence investigations and preparation of reports and findings by probation supervisors,  
 1631 as follows:

1632 "42-8-29.

1633 It shall be the duty of the probation supervisor to investigate all cases referred to him or her  
 1634 by the court and to make ~~his~~ findings and report thereon in writing to the court with ~~his~~ a  
 1635 recommendation. The superior court may require, before imposition of sentence, a  
 1636 presentence investigation and written report in each felony case in which the defendant has

1637 entered a plea of guilty or nolo contendere or has been convicted. The probation supervisor  
 1638 shall use the results of a probationer's risk and needs assessment to determine the level of  
 1639 supervision and the treatment to which the probationer will participate. ~~The probation~~  
 1640 ~~supervisor shall cause to be delivered to each person placed on probation under his~~  
 1641 ~~supervision a certified copy of the terms of probation and any change or modification~~  
 1642 ~~thereof and shall cause the person to be instructed regarding the same. He shall keep~~  
 1643 ~~informed concerning the conduct, habits, associates, employment, recreation, and~~  
 1644 ~~whereabouts of the probationer by visits, by requiring reports, or in other ways. He shall~~  
 1645 ~~make such reports in writing or otherwise as the court may require. He shall use all~~  
 1646 ~~practicable and proper methods to aid and encourage persons on probation and to bring~~  
 1647 ~~about improvements in their conduct and condition. He shall keep records on each~~  
 1648 ~~probationer referred to him."~~

#### 1649 **SECTION 6-14.**

1650 Said title is further amended by revising subsection (a) of Code Section 42-8-29.1, relating  
 1651 to disposition of probation supervisor's documents upon committing of convicted person to  
 1652 institution, as follows:

1653 "(a) When a convicted person is committed to an institution under the jurisdiction of the  
 1654 department, any presentence or post-sentence investigation or psychological evaluation  
 1655 compiled by a probation supervisor or other probation official shall be forwarded to any  
 1656 division or office designated by the commissioner. Accompanying this document or  
 1657 evaluation ~~will~~ shall be the case history form, the results of any risk and needs assessment  
 1658 or presentence risk assessment conducted on the probationer, documentation indicating  
 1659 what decisions and referrals were made as a result of such assessments, any outcomes from  
 1660 the probationer's treatment or participation in any service or program, and the criminal  
 1661 history sheets from the Federal Bureau of Investigation or the Georgia Crime Information  
 1662 Center, if available, unless any such information has previously been sent to the department  
 1663 pursuant to Code Section 42-5-50. A copy of these same documents shall be made  
 1664 available for the State Board of Pardons and Paroles. A copy of one or more of these  
 1665 documents, based on need, may be forwarded to another institution to which the defendant  
 1666 may be committed."

#### 1667 **SECTION 6-15.**

1668 Said title is further amended by revising Code Section 42-8-35, relating to terms and  
 1669 conditions of probation, as follows:

1670 "42-8-35.

1671 (a) The court shall determine the terms and conditions of probation and may provide that  
1672 the probationer shall:

1673 (1) Avoid injurious and vicious habits;

1674 (2) Avoid persons or places of disreputable or harmful character;

1675 (3) Report to the probation supervisor as directed;

1676 (4) Permit the supervisor to visit the probationer at the probationer's home or elsewhere;

1677 (5) Work faithfully at suitable employment insofar as may be possible;

1678 (6) Remain within a specified location; provided, however, that the court shall not banish  
1679 a probationer to any area within the state:

1680 (A) That does not consist of at least one entire judicial circuit as described by Code  
1681 Section 15-6-1; or

1682 (B) In which any service or program in which the probationer must participate as a  
1683 condition of probation is not available;

1684 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused  
1685 by the probationer's offense, in an amount to be determined by the court. Unless  
1686 otherwise provided by law, no reparation or restitution to any aggrieved person for the  
1687 damage or loss caused by the probationer's offense shall be made if the amount is in  
1688 dispute unless the same has been adjudicated;

1689 (8) Make reparation or restitution as reimbursement to a municipality or county for the  
1690 payment for medical care furnished the person while incarcerated pursuant to the  
1691 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local  
1692 governmental unit for the provision of medical care shall be made if the amount is in  
1693 dispute unless the same has been adjudicated;

1694 (9) Repay the costs incurred by any municipality or county for wrongful actions by an  
1695 inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section  
1696 42-4-71;

1697 (10) Support the probationer's legal dependents to the best of the probationer's ability;

1698 (11) Violate no local, state, or federal laws and be of general good behavior;

1699 (12) If permitted to move or travel to another state, agree to waive extradition from any  
1700 jurisdiction where the probationer may be found and not contest any effort by any  
1701 jurisdiction to return the probationer to this state; ~~and~~

1702 (13) Submit to evaluations and testing relating to rehabilitation and participate in and  
1703 successfully complete rehabilitative programming as directed by the department;

1704 (14) Wear a device capable of tracking the location of the probationer by means  
1705 including electronic surveillance or global positioning satellite systems. The department



1706 shall assess and collect fees from the probationer for such monitoring at levels set by  
 1707 regulation by the department;

1708 (15) Complete a residential or nonresidential program for substance abuse or mental  
 1709 health treatment as indicated by a risk and needs assessment; and

1710 (16) Agree to the imposition of graduated sanctions from the graduated sanctions grid  
 1711 when, in the discretion of the probation supervisor, the probationer's behavior warrants  
 1712 a graduated sanction.

1713 (b) In determining the terms and conditions of probation for a probationer who has been  
 1714 convicted of a criminal offense against a victim who is a minor or dangerous sexual offense  
 1715 as those terms are defined in Code Section 42-1-12, the court may provide that the  
 1716 probationer shall be:

1717 (1) Prohibited from entering or remaining present at a victim's school, place of  
 1718 employment, place of residence, or other specified place at times when a victim is present  
 1719 or from loitering in areas where minors congregate, child care facilities, churches, or  
 1720 schools as those terms are defined in Code Section 42-1-12;

1721 ~~(2) Required to wear a device capable of tracking the location of the probationer by~~  
 1722 ~~means including electronic surveillance or global positioning systems. The department~~  
 1723 ~~shall assess and collect fees from the probationer for such monitoring at levels set by~~  
 1724 ~~regulation by the department;~~

1725 ~~(3)~~(2) Required, either in person or through remote monitoring, to allow viewing and  
 1726 recording of the probationer's incoming and outgoing e-mail, history of websites visited  
 1727 and content accessed, and other Internet based communication;

1728 ~~(4)~~(3) Required to have periodic unannounced inspections of the contents of the  
 1729 probationer's computer or any other device with Internet access, including the retrieval  
 1730 and copying of all data from the computer or device and any internal or external storage  
 1731 or portable media and the removal of such information, computer, device, or medium;  
 1732 and

1733 ~~(5)~~(4) Prohibited from seeking election to a local board of education.

1734 (c) The supervision provided for under subsection (b) of this Code section shall be  
 1735 conducted by a probation officer, law enforcement officer, or computer information  
 1736 technology specialist working under the supervision of a probation officer or law  
 1737 enforcement agency."

1738 **SECTION 6-16.**

1739 Said title is further amended by revising subsection (a) of Code Section 42-8-35.4, relating  
 1740 to confinement in probation detention centers, as follows:

1741 "(a) In addition to any other terms and conditions of probation provided for in this article,  
 1742 the trial judge may require that a defendant convicted of a felony and sentenced to a period  
 1743 of not less than one year on probation or a defendant who has been previously sentenced  
 1744 to probation for a forcible misdemeanor as defined in paragraph (7) of Code Section 16-1-3  
 1745 or a misdemeanor of a high and aggravated nature and has violated probation or other  
 1746 probation alternatives and is subsequently sentenced to a period of not less than one year  
 1747 on probation shall complete satisfactorily, as a condition of that probation, a program of  
 1748 confinement, not to exceed 180 days, in a probation detention center. Probationers so  
 1749 sentenced ~~will~~ shall be required to serve the period of confinement, not to exceed 180 days,  
 1750 specified in the court order."

### 1751 SECTION 6-17.

1752 Said title is further amended by adding a new Code section to read as follows:

1753 "42-8-35.8.

1754 (a) Earned compliance credits may be earned at a rate of 20 days for every 30 days served  
 1755 under active supervision if a probationer exhibits positive progression toward the goals and  
 1756 treatment of his or her case plan and complies with all general and special conditions of  
 1757 probation.

1758 (b) For probationers serving active supervision, the department shall:

1759 (1) Award earned compliance credits to a probationer who satisfies the requirements  
 1760 specified in his or her case plan and complies with all general and special conditions of  
 1761 probation;

1762 (2) Calculate and reduce the probationer's period of active supervision by the number of  
 1763 days of earned compliance credits; and

1764 (3) Place a probationer on administrative supervision on the date determined by the  
 1765 award of earned compliance credits.

1766 (c) For probationers serving administrative supervision, the department shall on an annual  
 1767 basis submit a petition to the court to request that the sentence of probation imposed by the  
 1768 court be reduced by the number of days of earned compliance credits awarded to the  
 1769 probationer. The court may adjust the sentence of probation on the recommendation of the  
 1770 department for earned compliance credits. When a court is considering a reduction of a  
 1771 probationer's sentence for earned compliance credits or the termination of a probationer's  
 1772 sentence, the department shall undertake the same notification and opportunity for a  
 1773 hearing as set forth in subparagraph (a)(5)(A) of Code Section 17-10-1, and the court shall  
 1774 permit a victim of the probationer's criminal offense to appear at such hearing or submit  
 1775 a written statement for the purpose of making a statement for the record concerning  
 1776 whether such person's sentence of probation or supervision period should be modified.

1777 Prior to ordering that a probationer's probation supervision period or sentence of probation  
 1778 be continued or terminated, the court shall consider the victim's statement.

1779 (d) The department shall adopt rules and regulations for the forfeiture of earned  
 1780 compliance credits for probationers who violate conditions of probation supervision after  
 1781 earned compliance credits have been awarded. Such rules and regulations shall provide  
 1782 that:

1783 (1) Forfeiture shall be part of the department's system of graduated sanctions;

1784 (2) The extent of earned compliance credits forfeited shall be related to the level of  
 1785 severity of the violation;

1786 (3) Forfeiture of earned compliance credits shall be limited to credits already earned and  
 1787 shall not be denied for future earned compliance credits; and

1788 (4) A procedure shall be established for the restoration of forfeited earned compliance  
 1789 credits based on the probationer's compliance with supervision conditions and progress  
 1790 in achieving the goals of the case plan and complying with general and special conditions  
 1791 of probation."

1792 **SECTION 6-18.**

1793 Said title is further amended by revising Code Section 42-8-37, relating to the effect of  
 1794 termination of the period of probation, as follows:

1795 "42-8-37.

1796 (a) Upon the termination of the ~~period of probation~~ probated portion of a sentence, the  
 1797 probationer shall be released from probation and shall not be liable to sentence for the  
 1798 crime for which probation was allowed; provided, however, that the foregoing shall not be  
 1799 construed to prohibit the conviction and sentencing of the probationer for the subsequent  
 1800 commission of the same or a similar offense or for the subsequent continuation of the  
 1801 offense for which he or she was previously sentenced. The court may at any time cause the  
 1802 probationer to appear before it to be admonished or commended and, when satisfied that  
 1803 its action would be for the best interests of justice and the welfare of society, may discharge  
 1804 the probationer from further supervision.

1805 (b) Upon the request of the chief judge of the court from which said person was sentenced,  
 1806 the case of each person receiving a probated sentence of more than two years shall be  
 1807 reviewed by the probation supervisor responsible for that case after service of two years  
 1808 on probation, and a written report of the probationer's progress shall be submitted to the  
 1809 sentencing court along with the supervisor's recommendation as to early termination. Upon  
 1810 the request of the chief judge of the court from which said person was sentenced, each such  
 1811 case shall be reviewed and a written report submitted annually thereafter, or more often if  
 1812 required, until the termination, expiration, or other disposition of the case.

1813 (c) Within 30 days of placing a probationer on administrative supervision, provided that  
 1814 the probationer has satisfied all payments of restitution, fines, and fees, the probation  
 1815 supervisor responsible for that case shall prepare and submit a written report of the  
 1816 probationer's progress to the sentencing court, together with the supervisor's  
 1817 recommendation as to early termination. Notwithstanding the provisions of subsection (f)  
 1818 of Code Section 17-10-1, and in conformity with paragraph (5) of subsection (a) of Code  
 1819 Section 17-10-1, the court may shorten the period of probation on motion of the defendant,  
 1820 or on its own motion, if the court determines that probation is no longer necessary or  
 1821 appropriate for the ends of justice, the protection of society, and the rehabilitation of the  
 1822 defendant."

1823 **SECTION 6-19.**

1824 Said title is further amended by revising subsection (a) of Code Section 42-8-38, relating to  
 1825 the arrest of the probationer for a violation of the terms of probation, as follows:

1826 "(a) Whenever, within the period of probation, a probation supervisor believes that a  
 1827 probationer under his or her supervision has violated his or her probation in a material  
 1828 respect, ~~he~~ the probation supervisor may impose graduated sanctions to address the specific  
 1829 conduct leading to such violation unless the court has expressed an intention in a written  
 1830 order that such violations be heard by the court or, if the circumstances warrant, may arrest  
 1831 the probationer without warrant, wherever found, and return ~~him~~ the probationer to the  
 1832 court granting the probation or, if under supervision in a county or judicial circuit other  
 1833 than that of conviction, to a court of equivalent original criminal jurisdiction within the  
 1834 county wherein the probationer resides for purposes of supervision. Any officer authorized  
 1835 by law to issue warrants may issue a warrant for the arrest of the probationer upon the  
 1836 affidavit of one having knowledge of the alleged violation, returnable forthwith before the  
 1837 court in which revocation proceedings are being brought."

1838 **SECTION 6-20.**

1839 Said title is further amended by revising the introductory text of subsection (b) of Code  
 1840 Section 42-8-72, relating to community service as a condition of probation, as follows:

1841 "(b) The judge may confer with the prosecutor, defense attorney, probation supervisor,  
 1842 community service officer, or other interested persons and require that a risk and needs  
 1843 assessment be conducted on the offender to determine if the community service program  
 1844 is appropriate for an offender. If community service is ordered as a condition of probation,  
 1845 the court shall order:"

**SECTION 6-21.**

1846  
1847 Said title is further amended by revising subsection (c) of Code Section 42-8-153, relating  
1848 to the system of administrative sanctions in the probation management system, as follows:

1849 "(c) The administrative sanctions which may be imposed by the department are as follows,  
1850 from most restrictive to least restrictive:

- 1851 (1) Probation detention center or residential substance abuse treatment facility;  
1852 (2) Probation boot camp;  
1853 (3) Department of Corrections day reporting center;  
1854 (4) Intensive probation; or  
1855 (5) ~~Electronic monitoring;~~ Graduated sanctions  
1856 ~~(6) Community service; or~~  
1857 ~~(7) Probation supervision."~~

**SECTION 6-22.**

1858  
1859 Said title is further amended by revising subsection (b) of Code Section 42-8-155, relating  
1860 to the penalty for a probation violation, as follows:

1861 "(b) Upon issuance of a petition outlining the alleged probation violations, the chief  
1862 probation officer, or his or her designee, may conduct a hearing to determine whether an  
1863 options system probationer has violated a condition of probation. If the chief probation  
1864 officer determines that the probationer has violated a condition of probation, the chief  
1865 probation officer is authorized to impose sanctions consistent with ~~paragraphs (4) through~~  
1866 ~~(7) paragraph (4) or (5)~~ of subsection (c) of Code Section 42-8-153. The failure of an  
1867 options system probationer to comply with a sanction imposed by the chief probation  
1868 officer shall constitute a violation of probation."

**SECTION 6-23.**

1869  
1870 Said title is further amended by revising Code Section 42-9-3, relating to the definition of  
1871 board, as follows:

1872 "42-9-3.

1873 As used in this chapter, the term:

- 1874 (1) 'Agency employee' means an employee or agent of a community service agency,  
1875 whether the individual is a paid or an unpaid employee or agent.  
1876 (2) 'Board' 'board' means the State Board of Pardons and Paroles.  
1877 (3) 'Community service' means uncompensated work by a parolee for a community  
1878 service agency for the benefit of the community pursuant to a directive of the board or  
1879 its designee as a condition of parole or as an alternative to the revocation of parole.

1880 (4) 'Community service agency' means any private or public agency or organization  
 1881 approved by the board to participate in the board's community service program.

1882 (5) 'Community service supervisor' means an individual who places or supervises  
 1883 parolees directed to perform community service, whether the individual is a paid or  
 1884 unpaid supervisor."

#### 1885 **SECTION 6-24.**

1886 Said title is further amended by revising Code Section 42-9-21, relating to supervision of  
 1887 persons placed on parole or other conditional release, as follows:

1888 "42-9-21.

1889 (a) The board shall have the function and responsibility of supervising all persons placed  
 1890 on parole or other conditional release by the board.

1891 (b) The board ~~is~~ shall be authorized to maintain and operate or to enter into memoranda  
 1892 of agreement or other written documents evidencing contracts with other state agencies,  
 1893 persons, or any other entities for transitional or intermediate or other services or for  
 1894 programs deemed by the board to be necessary for parolees or others conditionally released  
 1895 from imprisonment by order of the board and to require as a condition of relief that the  
 1896 offender pay directly to the provider a reasonable fee for said services or programs.  
 1897 Contracts and agreements for services, programs, or treatment intended to reduce a  
 1898 parolee's risk of recidivism, including those programs to address a parolee's criminal risk  
 1899 factors, shall require the use of evidence based practices.

1900 (c) In all cases where restitution is applicable, the board shall collect during the parole  
 1901 period those sums determined to be owed to the victim.

1902 (d) The board shall be authorized to develop a graduated sanctions grid to enable parole  
 1903 officers to impose graduated sanctions from the graduated sanctions grid as an alternative  
 1904 to a parole revocation for parolees who violate some of the terms and conditions of parole."

#### 1905 **SECTION 6-25.**

1906 Said title is further amended by adding a new Code section to read as follows:

1907 "42-9-21.1.

1908 (a) As used in this Code section, the term 'serious violent felony' shall have the same  
 1909 meaning as set forth in Code Section 17-10-6.1.

1910 (b)(1) Persons transferred to mandatory supervision shall be in the legal custody of the  
 1911 board and shall be subject to all of the laws, rules, and regulations governing persons  
 1912 granted parole. Such persons shall be under the supervision of the board in the same  
 1913 manner as persons granted parole, and the provisions of subsection (b) of Code Section  
 1914 42-9-44 shall apply to such persons.

1915 (2) The board shall require any person transferred to mandatory supervision to abide by  
 1916 terms and conditions similar to those set for persons granted parole. If the person violates  
 1917 a term or condition of mandatory supervision, the person shall be treated as if he or she  
 1918 violated a term or condition under a grant of parole.

1919 (3) Any person who violates a term or condition of mandatory supervision and who has  
 1920 been issued a warrant pursuant to Code Section 42-9-48, and the board, pursuant to Code  
 1921 Section 42-9-51, has rescinded the person's mandatory supervision and returned the  
 1922 person to imprisonment, shall not subsequently be eligible for mandatory supervision for  
 1923 the remainder of his or her sentence; provided, however, that at the discretion of the  
 1924 board, he or she may be granted parole prior to the completion of his or her sentence.

1925 (c) Notwithstanding any provision of the law to the contrary, and except as provided in  
 1926 subsection (d) of this Code section, the board shall transfer every person serving a sentence  
 1927 of imprisonment of at least two years to mandatory supervision not more than six months  
 1928 prior to the termination of the sentence being served.

1929 (d) This Code section shall not apply to any person:

1930 (1) Sentenced to death;

1931 (2) Sentenced to imprisonment for life without parole; and

1932 (3) Sentenced prior to January 1, 2013; provided, however, that if the person:

1933 (A) Is not serving a sentence of imprisonment for a serious violent felony;

1934 (B) Is serving a sentence that is eligible for parole;

1935 (C) Has an approved home plan which has been verified by the department;

1936 (D) Does not have a pending criminal charge for which a warrant is being sought; and

1937 (E) Has not previously been paroled during the sentence that the person is currently  
 1938 serving.

1939 such person shall be transferred to mandatory supervision.

1940 (e) This Code section shall become effective on January 1, 2013."

1941 **SECTION 6-26.**

1942 Said title is further amended by revising subsection (a) of Code Section 42-9-41, relating to  
 1943 the duty of the board to obtain and place in records information respecting persons subject  
 1944 to relief or placed on probation, as follows:

1945 "(a) It shall be the duty of the board to obtain and place in its permanent records  
 1946 information as complete as may be practicable on every person who may become subject  
 1947 to any relief which may be within the power of the board to grant. The information shall  
 1948 be obtained as soon as possible after imposition of the sentence and shall include:

1949 (1) A complete statement of the crime for which the person is sentenced, the  
 1950 circumstances of the crime, and the nature of the person's sentence;

- 1951 (2) The court in which the person was sentenced;
- 1952 (3) The term of ~~his~~ the person's sentence;
- 1953 (4) The name of the presiding judge, the prosecuting officers, the investigating officers,
- 1954 and the attorney for the person convicted;
- 1955 (5) A copy of presentence investigation and any previous court record;
- 1956 (6) A fingerprint record;
- 1957 (7) A copy of all probation reports which may have been made; ~~and~~
- 1958 (8) Any social, physical, mental, or criminal record of the person;
- 1959 (9) Copies of the results of the person's risk and needs assessment; and
- 1960 (10) Copies of any documents or information related to decisions regarding the person's
- 1961 prior supervision, violations of supervision, and treatment programs."

1962 **SECTION 6-27.**

1963 Said title is further amended by revising subsections (a) and (d) of Code Section 42-9-42,

1964 relating to the procedure for granting relief from sentence and conditions of parole, as

1965 follows:

1966 "(a) No person shall be granted clemency, pardon, parole, or other relief from sentence

1967 except as provided in Code Section 42-9-21.1 or by a majority vote of the board. A

1968 majority of the members of the board may commute a death sentence to life imprisonment,

1969 as provided in Code Section 42-9-20."

1970 "(d)(1) Any person who is paroled shall be released on such terms and conditions as the

1971 board shall prescribe. The board shall employ evidence based practices:

1972 (A) In all decisions related to supervision of parolees;

1973 (B) In determining the conditions of supervision under which a parolee is managed;

1974 (C) In responding to violations of terms or conditions of parole and mandatory

1975 supervision conditions;

1976 (D) In the collection and analysis of data;

1977 (E) In the tracking of performance outcomes; and

1978 (F) In contracting for services intended to reduce a parolee's likelihood of recidivating.

1979 (2) The board shall diligently see that no peonage is allowed in the guise of parole

1980 relationship or supervision.

1981 (3) The parolee shall remain in the legal custody of the board until the expiration of the

1982 maximum term specified in his or her sentence or until he or she is pardoned by the

1983 board.

1984 ~~(2)~~(4) The board may require the payment of a parole supervision fee of at least \$10.00

1985 per month as a condition of parole or other conditional release. The monthly amount

1986 shall be set by rule of the board and shall be uniform state wide. The board may require



1987 or the parolee or person under conditional release may request that up to 24 months of the  
 1988 supervision fee be paid in advance of the time to be spent on parole or conditional  
 1989 release. In such cases, any advance payments ~~are~~ shall be nonreimbursable in the event  
 1990 of parole or conditional release revocation or if parole or conditional release is otherwise  
 1991 terminated prior to the expiration of the sentence being served on parole or conditional  
 1992 release. Such fees shall be collected by the board to be paid into the general fund of the  
 1993 state treasury."

1994 **SECTION 6-28.**

1995 Said title is further amended by revising subsection (a) of Code Section 42-9-43, relating to  
 1996 information to be considered by the board generally, as follows:

1997 "(a) The board, in considering any case within its power, shall cause to be brought before  
 1998 it all pertinent information on the person in question. Included therein shall be:

1999 (1) A report by the superintendent, warden, or jailer of the jail or state or county  
 2000 correctional institution in which the person has been confined upon the conduct of record  
 2001 of the person while in such jail or state or county correctional institution;

2002 (2) The results of such physical and mental examinations as may have been made of the  
 2003 person;

2004 (3) The extent to which the person appears to have responded to the efforts made to  
 2005 improve his or her social attitude;

2006 (4) The industrial record of the person while confined, the nature of his or her  
 2007 occupations while so confined, and a recommendation as to the kind of work he or she  
 2008 is best fitted to perform and at which he or she is most likely to succeed when and if he  
 2009 or she is released;

2010 (5) The educational programs in which the person has participated and the level of  
 2011 education which the person has attained based on standardized reading tests; ~~and~~

2012 (6) The written, oral, audiotaped, or videotaped testimony of the victim, the victim's  
 2013 family, or a witness having personal knowledge of the victim's personal characteristics;

2014 (7) Copies of the results of the person's risk and needs assessment; and

2015 (8) Copies of any documents or information related to decisions regarding the person's  
 2016 prior supervision, violations of supervision, and treatment programs."

2017 **SECTION 6-29.**

2018 Said title is further amended by revising Code Section 42-9-44, relating to specification of  
 2019 terms and conditions of parole, as follows:

2020 "42-9-44.

2021 (a) The board shall determine the terms and conditions of parole and may provide that the  
 2022 parolee shall:

2023 (1) Perform community service;

2024 (2) Complete a residential or nonresidential program for substance abuse or mental  
 2025 health treatment as indicated by a validated risk and needs assessment;

2026 (3) Wear a device capable of tracking the location of the parolee by means including  
 2027 electronic surveillance or global positioning satellite systems. The board shall assess and  
 2028 collect fees from the parolee for such monitoring at levels set by regulation by the board;  
 2029 and

2030 (4) Obtain a high school diploma or a general educational development equivalency  
 2031 diploma (GED) or pursue a trade at a vocational or technical school. Any parolee who  
 2032 demonstrates to the satisfaction of the board an existing ability or skill which does in fact  
 2033 actually furnish the parolee with a reliable, regular, and sufficient income shall not be  
 2034 subject to this provision. Any parolee who is determined by the department or the board  
 2035 to be incapable of completing such requirements shall only be required to attempt to  
 2036 improve their basic educational skills. The board shall establish regulations regarding  
 2037 reasonable progress as required by this subsection.

2038 ~~(a)~~(b) The board, upon placing a person on parole, shall specify in writing the terms and  
 2039 conditions thereof. A certified copy of the conditions shall be given to the parolee.  
 2040 Thereafter, a copy shall be sent to the clerk of the court in which the person was convicted.  
 2041 The board shall adopt general rules concerning the terms and conditions of parole and  
 2042 concerning what shall constitute a violation thereof and shall make special rules to govern  
 2043 particular cases. The rules, both general and special, may include, among other things, a  
 2044 requirement that the parolee shall not leave this state or any definite area in this state  
 2045 without the consent of the board; that the parolee shall contribute to the support of his or  
 2046 her dependents to the best of the parolee's ability; that the parolee shall make reparation or  
 2047 restitution for his or her crime; that the parolee shall abandon evil associates and ways; and  
 2048 that the parolee shall carry out the instructions of his or her parole supervisor, and, in  
 2049 general, so comport himself or herself as the parolee's supervisor shall determine. A  
 2050 violation of the terms of parole may render the parolee liable to arrest and a return to a  
 2051 penal institution to serve out the term for which the parolee was sentenced.

2052 ~~(b) Each parolee who does not have a high school diploma or a general educational~~  
 2053 ~~development equivalency diploma (GED) shall be required as a condition of parole to~~  
 2054 ~~obtain a high school diploma or general educational development equivalency diploma~~  
 2055 ~~(GED) or to pursue a trade at a vocational or technical school. Any such parolee who~~  
 2056 ~~demonstrates to the satisfaction of the board an existing ability or skill which does in fact~~

2057 ~~actually furnish the parolee a reliable, regular, and sufficient income shall not be subject~~  
 2058 ~~to this provision. Any parolee who is determined by the Department of Corrections or the~~  
 2059 ~~board to be incapable of completing such requirements shall only be required to attempt~~  
 2060 ~~to improve their basic educational skills. Failure of any parolee subject to this requirement~~  
 2061 ~~to attend the necessary schools or courses or to make reasonable progress toward~~  
 2062 ~~fulfillment of such requirement shall be grounds for revocation of parole. The board shall~~  
 2063 ~~establish regulations regarding reasonable progress as required by this subsection. This~~  
 2064 ~~subsection shall apply to paroles granted on or after July 1, 1995."~~

### 2065 **SECTION 6-30.**

2066 Said title is further amended by revising Code Section 42-9-44.3, relating to required  
 2067 community service, as follows:

2068 "42-9-44.3.

2069 ~~(a) As used in this Code section, the term:~~

2070 (1) ~~'Agency employee' means an employee or agent of a community service agency,~~  
 2071 ~~whether the individual is a paid or unpaid employee or agent.~~

2072 (2) ~~'Community service' means uncompensated work by an offender with a community~~  
 2073 ~~service agency for the benefit of the community pursuant to a directive of the State Board~~  
 2074 ~~of Pardons and Paroles or its designee as a condition of parole or as an alternative to the~~  
 2075 ~~revocation of parole.~~

2076 (3) ~~'Community service agency' means any private or public agency or organization~~  
 2077 ~~approved by the State Board of Pardons and Paroles to participate in a community service~~  
 2078 ~~program.~~

2079 (4) ~~'Community service supervisor' means an individual who places or supervises~~  
 2080 ~~offenders directed to perform community service, whether the individual is a paid or~~  
 2081 ~~unpaid supervisor.~~

2082 (5) ~~'Offender' means a person who has been convicted of a crime, who is under the~~  
 2083 ~~jurisdiction of the State Board of Pardons and Paroles, and who has been granted~~  
 2084 ~~conditional executive clemency.~~

2085 ~~(b)(a)~~ The State Board of Pardons and Paroles board or its designee may direct an offender  
 2086 to perform community service as a condition of parole or as an alternative to the revocation  
 2087 of parole.

2088 ~~(c)(b)~~ Neither the community service agency nor the community service supervisor or  
 2089 agency employees shall be liable to any offender performing community service for any  
 2090 acts or omissions related to participation in a community service program. This limitation  
 2091 of liability ~~does~~ shall not apply to any act or omission by any community service agency,

2092 community service supervisor, or agency employee that constitutes gross negligence or  
2093 willful misconduct.

2094 ~~(d)~~(c) It shall be unlawful to use or to allow an offender to be used for any purpose  
2095 resulting in private gain to an individual, but this subsection shall not apply to work on  
2096 private property made necessary due to a natural disaster if the work is approved by the  
2097 ~~State Board of Pardons and Paroles~~ board."

### 2098 SECTION 6-31.

2099 Said title is further amended by adding a new Code section to read as follows:

2100 "42-9-44.4.

2101 (a) The board shall establish written policies and procedures governing the supervision of  
2102 parolees designed to enhance public safety and to assist the parolee with integrating into  
2103 society.

2104 (b) The board shall establish a graduated sanctions procedure and a graduated sanctions  
2105 grid which shall be used by parole officers to sanction behavior in a swift and certain  
2106 manner. The board shall require that any graduated sanctions imposed be documented and  
2107 reviewed on a regular basis by the board to ensure consistent and appropriate application.  
2108 A parole officer shall not impose graduated sanctions if the board or the sentencing court  
2109 has expressed in writing that parole violations be heard by the board or the court, as  
2110 applicable. All graduated sanctions administered by a parole officer shall conform to the  
2111 graduated sanctions grid.

2112 (c) A parole officer shall:

2113 (1) Investigate all cases referred to him or her by the board;

2114 (2) Conduct a risk and needs assessment of the parolee which may include an initial  
2115 screening and, if necessary, a comprehensive assessment;

2116 (3) Develop a case plan, as set forth in subsection (c) of Code Section 42-9-45, for each  
2117 individual who is assessed as a moderate to high risk to reoffend based on the risk and  
2118 needs assessment;

2119 (4) Furnish to each parolee under his or her supervision a written statement of the terms  
2120 and conditions of parole and any modifications of the terms of parole and instruct the  
2121 parolee that he or she must stay in compliance with the terms and conditions of parole;

2122 (5) Stay informed of the parolee's conduct and condition through visitation, required  
2123 reporting, or other methods and report to the board upon request;

2124 (6) Make reports in writing or otherwise as the board may require and keep records on  
2125 each parolee under his or her supervision;

2126 (7) Ensure the collection of all data relevant to the supervision, program outcomes, and  
2127 treatment outcomes of each parolee under his or her supervision;

2128 (8) Use practicable and suitable methods that are consistent with evidence based  
 2129 practices to aid and encourage a parolee to improve his or her conduct and circumstances  
 2130 and to reduce the risk of recidivism; and

2131 (9) Receive annual training on evidence based practices and criminal risk factors, as well  
 2132 as instruction on how to target these factors to reduce recidivism.

2133 (d) The board shall:

2134 (1) Allocate resources, including the assignment of parole officers, to focus on  
 2135 moderate-risk and high-risk offenders as determined by the results of a parolee's risk and  
 2136 needs assessment; and

2137 (2) Require public and private providers that receive state funds for the treatment of  
 2138 parolees to use evidence based practices and programs."

### 2139 **SECTION 6-32.**

2140 Said title is further amended by revising Code Section 42-9-45, relating to the board's general  
 2141 rule-making power, as follows:

2142 "42-9-45.

2143 (a) The board may adopt and promulgate rules and regulations, not inconsistent with this  
 2144 chapter, touching all matters dealt with in this chapter, including, among others, the  
 2145 practice and procedure in matters pertaining to paroles, pardons, and remission of fines and  
 2146 forfeitures. The rules and regulations shall contain an eligibility requirement for parole  
 2147 which shall set forth the time when the automatic initial consideration for parole of inmates  
 2148 under the jurisdiction of the ~~Department of Corrections~~ department shall take place and  
 2149 also the times at which periodic reconsideration thereafter shall take place. Such  
 2150 consideration shall be automatic, and no written or formal application shall be required.

2151 (b) An inmate serving a misdemeanor sentence or misdemeanor sentences shall only be  
 2152 eligible for consideration for parole after the expiration of six months of his or her sentence  
 2153 or sentences or one-third of the time of his or her sentence or sentences, whichever is  
 2154 greater. Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7, an inmate  
 2155 serving a felony sentence or felony sentences shall only be eligible for consideration for  
 2156 parole after the expiration of nine months of his or her sentence or one-third of the time of  
 2157 the sentences, whichever is greater. Except as otherwise provided in Code Sections  
 2158 17-10-6.1 and 17-10-7, inmates serving sentences aggregating 21 years or more shall  
 2159 become eligible for consideration for parole upon completion of the service of seven years.

2160 (c) The board shall adopt rules and regulations governing the supervision and management  
 2161 of parolees. The rules and regulations shall require evidence based practices, including the  
 2162 use of a risk and needs assessment. The results of the risk and needs assessment shall be  
 2163 utilized by the board and parole officers to:

- 2164 (1) Assist the board in determining the level and type of treatment to which the parolee  
 2165 will participate;
- 2166 (2) Develop a case plan for each parolee. Such case plan shall:
- 2167 (A) Target and prioritize the specific criminal risk factors of the parolee based upon  
 2168 his or her risk and needs assessment results;
- 2169 (B) Match the type and intensity of supervision and treatment conditions to the  
 2170 parolee's level of risk to recidivate, taking into consideration the parolee's criminal risk  
 2171 factors and his or her individual characteristics, including gender, culture, motivational  
 2172 stage, developmental stage, and learning style;
- 2173 (C) Establish a timetable for achieving specific behavioral goals, including a schedule  
 2174 for payment of restitution, child support, fines, and other financial obligations; and
- 2175 (D) Specify positive and negative actions that will be taken in response to the parolee's  
 2176 behavior;
- 2177 (3) Refer the parolee for programming and treatment;
- 2178 (4) Allocate resources focused on moderate-risk and high-risk parolees; and
- 2179 (5) Collect and analyze data and performance outcomes relevant to the level and type of  
 2180 treatment given to a parolee and the outcome of the treatment on his or her recidivism.
- 2181 (d) The board shall adopt rules and regulations for the development of a performance  
 2182 auditing system to evaluate implementation, performance, and outcomes of the supervision  
 2183 and management practices used on parolees by the board. The rules and regulations shall  
 2184 ensure that effective practices are being used to reduce the likelihood of recidivism among  
 2185 parolees. The rules and regulations shall ensure agency cooperation with any external  
 2186 review of its programs and activities.
- 2187 (e) The board shall adopt rules and regulations to ensure that all public and private  
 2188 treatment and service providers that receive state funds for working with parolees use  
 2189 evidence based practices.
- 2190 ~~(e)~~(f) The board shall adopt rules and regulations governing the granting of other forms  
 2191 of clemency, which shall include pardons, reprieves, commutation of penalties, removal  
 2192 of disabilities imposed by law, and the remission of any part of a sentence, and shall  
 2193 prescribe the procedure to be followed in applying for them. Applications for the granting  
 2194 of such other forms of clemency and for exceptions to parole eligibility rules established  
 2195 by statute or promulgated by the board shall be made in such manner as the board shall  
 2196 direct by rules and regulations.
- 2197 (g) The board shall adopt rules and regulations governing the transfer of inmates eligible  
 2198 for mandatory supervision pursuant to Code Section 42-9-21.1. The rules and regulations  
 2199 shall ensure that the possibility of mandatory supervision shall not impact the board's

2200 determination as to whether an inmate is appropriate for a grant of parole pursuant to Code  
 2201 Section 42-9-42.

2202 (h) The board shall establish rules and regulations for graduated sanctions as an alternative  
 2203 to revocations for parolees who violate the terms and conditions of parole.

2204 (i) The board shall establish rules and regulations to supervise parolees who are  
 2205 concurrently serving a period of probation supervision while under the legal custody of the  
 2206 board. The rules and regulations shall ensure that all information regarding the parolee's  
 2207 supervision is collected by the parole officer and shared with the applicable probation  
 2208 office and that the parole officer is aware of all conditions of probation. The rules and  
 2209 regulations shall ensure that parolees who are concurrently serving a term of probation are  
 2210 under the supervisory authority of the board, provided that the court that sentenced the  
 2211 parolee to probation is fully informed, through the probation officer, of the circumstances  
 2212 of active supervision, and provided, further, that the court retains jurisdiction over the  
 2213 probationary portion of the parolee's sentence.

2214 ~~(d)~~(j) All rules and regulations adopted pursuant to this Code section shall be adopted,  
 2215 established, promulgated, amended, repealed, filed, and published in accordance with the  
 2216 applicable provisions and procedure as set forth in Chapter 13 of Title 50, the 'Georgia  
 2217 Administrative Procedure Act.' The courts shall take judicial notice of the rules and  
 2218 regulations.

2219 ~~(e)~~(k) For the purposes of this Code section, the ~~words term~~ 'rules and regulations' shall  
 2220 have the same meaning as the ~~word term~~ 'rule,' as defined in Code Section 50-13-2, except  
 2221 that the ~~words term~~ 'rules and regulations' shall not be construed to include the terms and  
 2222 conditions prescribed by the board to which a person paroled by the board may be  
 2223 subjected.

2224 ~~(f)~~(l) Except to correct a patent miscarriage of justice and not otherwise, no inmate serving  
 2225 a sentence imposed for any of the crimes listed in this subsection shall be granted release  
 2226 on parole until and unless said inmate has served on good behavior seven years of  
 2227 imprisonment or one-third of the prison term imposed by the sentencing court for the  
 2228 violent crime, whichever first occurs. No inmate serving a sentence for any crime listed  
 2229 in this subsection shall be released on parole for the purpose of regulating jail or prison  
 2230 populations. This subsection shall govern parole actions in sentences imposed for any of  
 2231 the following crimes: voluntary manslaughter, statutory rape, incest, cruelty to children,  
 2232 arson in the first degree, homicide by vehicle while under the influence of alcohol or as a  
 2233 habitual traffic violator, aggravated battery, aggravated assault, trafficking in drugs, and  
 2234 violations of Chapter 14 of Title 16, the 'Georgia RICO (Racketeer Influenced and Corrupt  
 2235 Organizations) Act.'

2236 ~~(g)~~(m) No inmate serving a sentence for murder, armed robbery, kidnapping, rape,  
 2237 aggravated child molestation, aggravated sodomy, or aggravated sexual battery shall be  
 2238 released on parole for the purpose of regulating jail or prison populations.

2239 ~~(h)~~(n) An inmate whose criminal offense or history indicates alcohol or drug involvement  
 2240 shall not be considered for parole until such inmate has successfully completed ~~an~~ a DUI  
 2241 Alcohol or Drug Use Risk Reduction Program offered by the ~~Department of Corrections~~  
 2242 department.

2243 ~~(i)~~(o) An inmate who has committed an offense which has been identified to involve  
 2244 family violence as such term is defined in Code Section 19-13-1 shall not be released on  
 2245 parole until such inmate has successfully completed a Family Violence Counseling  
 2246 Program offered by the ~~Department of Corrections~~ department."

2247 **SECTION 6-33.**

2248 Said title is further amended by revising Code Section 42-9-48, relating to arrest of parolee  
 2249 or conditional release violator, as follows:

2250 "42-9-48.

2251 (a) If any member of the board shall have reasonable ground to believe that any parolee,  
 2252 person on mandatory supervision, or conditional releasee has lapsed into criminal ways or  
 2253 has violated the terms and conditions of his or her parole, mandatory supervision, or  
 2254 conditional release in a material respect, the member may issue a warrant for the arrest of  
 2255 the parolee, person on mandatory supervision, or conditional releasee.

2256 (b) The warrant, if issued by a member or the board, shall be returned before the board and  
 2257 shall command that the alleged violator of parole, mandatory supervision, or conditional  
 2258 release be brought before the board for a final hearing on revocation of parole, mandatory  
 2259 supervision, or conditional release within a reasonable time after the preliminary hearing  
 2260 provided for in Code Section 42-9-50.

2261 (c) All officers authorized to serve criminal process, all peace officers of this state, and all  
 2262 employees of the board whom the board specifically designates in writing shall be  
 2263 authorized to execute the warrant.

2264 (d) Any parole supervisor, when he or she has reasonable ground to believe that a parolee,  
 2265 person on mandatory supervision, or conditional releasee has violated the terms or  
 2266 conditions of his or her parole, mandatory supervision, or conditional release in a material  
 2267 respect, shall notify the board or some member thereof; and proceedings shall thereupon  
 2268 be had as provided in this Code section."



**SECTION 6-34.**

2269

2270 Said title is further amended by revising subsections (a), (b), (h), and (i) of Code Section  
2271 42-9-50, relating to preliminary hearings for parolees, as follows:

2272 "(a) Whenever a parolee, person on mandatory supervision, or conditional releasee is  
2273 arrested on a warrant issued by a member of the board for an alleged violation of parole,  
2274 mandatory supervision, or conditional release, an informal preliminary hearing in the  
2275 nature of a court of inquiry shall be held at or near the place of the alleged violation.  
2276 However, a preliminary hearing ~~is~~ shall not ~~be~~ required if the parolee, person on mandatory  
2277 supervision, or conditional releasee is not under arrest on a warrant issued by the board, has  
2278 absconded from supervision, has signed a waiver of a preliminary hearing, has admitted  
2279 any alleged violation to any representative of the board in the presence of a third party who  
2280 is not a representative of the board, or has been convicted of any crime in a federal court  
2281 or in a court of this state or of another state.

2282 (b) The proceeding shall commence within a reasonable time after the arrest of the parolee,  
2283 person on mandatory supervision, or conditional releasee. Its purpose shall be to determine  
2284 whether there is probable cause or reasonable grounds to believe that the arrested parolee,  
2285 person on mandatory supervision, or conditional releasee has committed acts which would  
2286 constitute a violation of his or her parole, mandatory supervision, or conditional release."

2287 "(h) Should the hearing officer determine that probable cause for revocation exists, ~~he~~ the  
2288 officer shall then determine whether the alleged violator should be incarcerated pending  
2289 his or her final revocation hearing or whether ~~he~~ the alleged violator should be set free on  
2290 his personal recognizance pending that hearing. If an alleged violator who is set free on  
2291 his personal recognizance subsequently fails to appear at his or her final hearing, the board  
2292 may summarily revoke his or her parole, mandatory supervision, or conditional release.

2293 (i) The decision of the hearing officer as to probable cause for revocation shall not be  
2294 binding on the board but may be either ratified or overruled by majority vote of the board.  
2295 In the event that the board overrules a determination of the hearing officer that probable  
2296 cause did not exist, the board shall then determine whether the alleged violator should be  
2297 incarcerated pending ~~his~~ a final hearing or whether he or she should be set free on his  
2298 personal recognizance pending that hearing. If an alleged violator who is set free on  
2299 personal recognizance subsequently fails to appear at ~~his~~ a final hearing, the board may  
2300 summarily revoke his or her parole, mandatory supervision, or conditional release. ~~Where~~  
2301 When a hearing officer has determined, after finding probable cause, that the alleged  
2302 violator should be set free on his personal recognizance, the board may overrule that  
2303 decision and order the alleged violator to be incarcerated pending ~~his~~ a final hearing."

**SECTION 6-35.**

2304  
 2305 Said title is further amended by revising Code Section 42-9-51, relating to the final hearing  
 2306 for parole or conditional release violations, as follows:

2307 "42-9-51.

2308 (a) A parolee, person on mandatory supervision, or conditional releasee who has allegedly  
 2309 violated the terms of his parole, mandatory supervision, or conditional release shall, except  
 2310 as otherwise provided in this subsection, have a right to a final hearing before the board,  
 2311 to be held within a reasonable time after the occurrence of one of the events listed in this  
 2312 subsection. No final hearing shall be required or permitted if the parolee, person on  
 2313 mandatory supervision, or conditional releasee has been convicted of or entered any form  
 2314 of guilty plea or plea of nolo contendere in any federal or state court of record to any felony  
 2315 crime, or any misdemeanor involving physical injury, committed by the parolee, person on  
 2316 mandatory supervision, or conditional releasee during a term of parole, mandatory  
 2317 supervision, or conditional release, and which new conviction results in imposition by the  
 2318 convicting court of a term of imprisonment, and, in such cases, the board shall revoke the  
 2319 entire unexpired term of parole, mandatory supervision, or conditional release. In no case  
 2320 shall a final hearing be required if the parolee, person on mandatory supervision, or  
 2321 conditional releasee has signed a waiver of final hearing. The final hearing, if any, shall  
 2322 be held within a reasonable time:

2323 (1) After an arrest warrant has been issued by a member of the board and probable cause  
 2324 for revocation has been found by the preliminary hearing officer;

2325 (2) After a majority of the board overrules a determination by the preliminary hearing  
 2326 officer that probable cause does not exist;

2327 (3) After the board or two of its members are informed of an alleged violation and decide  
 2328 to consider the matter of revocation without issuing a warrant for the alleged violator's  
 2329 arrest; or

2330 (4) After a determination has been made that no preliminary hearing is required under  
 2331 subsection (a) of Code Section 42-9-50.

2332 (b) The purpose of the hearing shall be to determine whether the alleged violator has in  
 2333 fact committed any acts which would constitute a violation of the terms and conditions of  
 2334 his parole, mandatory supervision, or conditional release and whether those acts are of such  
 2335 a nature as to warrant revocation of parole, mandatory supervision, or conditional release.

2336 (c) When a parolee, person on mandatory supervision, or conditional releasee has been  
 2337 convicted of any crime, whether a felony or a misdemeanor, or has entered a plea of guilty  
 2338 or nolo contendere thereto in a court of record, his or her parole, mandatory supervision,  
 2339 or conditional release may be revoked without a hearing before the board. Moreover,  
 2340 whenever it shall appear to the board that a parolee, person on mandatory supervision, or

2341 conditional releasee either has absconded or has been convicted of another crime in a  
 2342 federal court or in a court of record of another state, the board may issue an order of  
 2343 temporary revocation of parole, mandatory supervision, or conditional release, together  
 2344 with its warrant for such violator, which shall suspend the running of the parolee's, person  
 2345 on mandatory supervision's, or conditional releasee's time from the date of the temporary  
 2346 revocation of parole, mandatory supervision, or conditional release to the date of the  
 2347 determination by the board as to whether the temporary revocation shall be made  
 2348 permanent. If the board determines that there has been no violation of the conditions of the  
 2349 parole, mandatory supervision, or conditional release, then the parolee, person on  
 2350 mandatory supervision, or the releasee shall be reinstated upon his or her original parole,  
 2351 mandatory supervision, or conditional release without any loss of time, and the order of  
 2352 temporary revocation of parole, mandatory supervision, or conditional release and the  
 2353 warrant shall be withdrawn.

2354 (d) In all cases in which there is a hearing before the board, the alleged violator shall be  
 2355 given written notice of the time and place of the hearing and of the claimed violations of  
 2356 parole, mandatory supervision, or conditional release. In addition, this notice shall advise  
 2357 him or her of the following rights:

- 2358 (1) ~~His right to~~ To disclosure of evidence introduced against him or her; provided,  
 2359 however, that this right shall not be construed to require the board to disclose to an  
 2360 alleged violator confidential information contained in its files which has no direct bearing  
 2361 on the matter of parole revocation;
- 2362 (2) ~~His right to~~ To be heard in person and to present witnesses and documentary  
 2363 evidence;
- 2364 (3) ~~His right to~~ To confront and cross-examine adverse witnesses, unless a majority of  
 2365 the board determines that disclosure of a particular informant's identity would cause that  
 2366 informant or a member of his or her family to suffer a risk of harm; and
- 2367 (4) ~~His right to~~ To subpoena witnesses and documents through the board as provided in  
 2368 subsections (e) and (f) of this Code section.

2369 The notice shall be served by delivering it to the alleged violator in person, by delivering  
 2370 it to a person 18 years of age or older at his the alleged violator's last known place of  
 2371 residence, or by depositing it in the mail properly addressed to his the alleged violator's last  
 2372 known place of residence.

2373 (e) The board shall have the power to issue subpoenas to compel the attendance of  
 2374 witnesses at the hearing provided for by this Code section. The subpoenas shall be issued  
 2375 without discrimination between public and private parties. When a subpoena is disobeyed,  
 2376 any party may apply to the superior court of the county in which the hearing provided for  
 2377 by this Code section is held for an order requiring obedience. Failure to comply with the

2378 order shall be cause for punishment as for contempt of court. The manner of service of  
 2379 subpoenas and costs of securing the attendance of witnesses, including fees and mileage,  
 2380 shall be determined, computed, and assessed in the same manner as prescribed by law for  
 2381 cases in the superior court.

2382 (f) The board shall have the power to issue subpoenas for the production of documents or  
 2383 other written evidence at the hearing provided for by this Code section, but upon written  
 2384 request made promptly and before the hearing, the board may quash or modify the  
 2385 subpoena if it is unreasonable or oppressive or may condition denial of the request upon  
 2386 the advancement by the person in whose behalf the subpoena is issued of the reasonable  
 2387 cost of producing the documents or other written evidence. Enforcement of such  
 2388 subpoenas may be sought in the same manner as is provided in subsection (e) of this Code  
 2389 section for subpoenas to compel attendance of witnesses.

2390 (g) Within a reasonable time after the hearing provided for by this Code section, the board  
 2391 shall enter an order (1) rescinding parole, mandatory supervision, or conditional release and  
 2392 returning the parolee, person on mandatory supervision, or conditional releasee to serve the  
 2393 sentence theretofore imposed upon him or her, with benefit of computing the time so  
 2394 served on parole, mandatory supervision, or conditional release as a part of his or her  
 2395 sentence; or (2) reinstating the parole, mandatory supervision, or conditional release or  
 2396 shall enter such other order as it may deem proper. The board shall issue a written  
 2397 statement which shall indicate its reasons for revoking or not reinstating parole, mandatory  
 2398 supervision, or conditional release or for taking such other action as it deems appropriate  
 2399 and shall also indicate the evidence relied upon in determining the facts which form the  
 2400 basis for these reasons. The parolee, person on mandatory supervision, or conditional  
 2401 releasee who is the subject of the board's decision shall be furnished with a copy of this  
 2402 written statement."

#### 2403 **SECTION 6-36.**

2404 Said title is further amended by revising Code Section 42-9-52, relating to discharge from  
 2405 parole and earned-time allowances, as follows:

2406 "42-9-52.

2407 (a) No person who has been placed on parole shall be discharged therefrom by the board  
 2408 prior to the expiration of the term for which he or she was sentenced or until ~~he shall have~~  
 2409 the person has been duly pardoned or otherwise released as provided in this Code section  
 2410 or as otherwise provided by law. The board may adopt rules and regulations, policies, and  
 2411 procedures for the granting of earned time to persons while serving their sentences on  
 2412 parole or other conditional release to the same extent and in the same amount as if such  
 2413 person were serving the sentence in custody. The board shall also be authorized to

2414 withhold or to forfeit, in whole or in part, any such earned-time allowance. The board may  
 2415 relieve a person on parole or other conditional release from making further reports and may  
 2416 permit the person to leave the state or county if satisfied that this is for the parolee's or  
 2417 conditional releasee's best interest and for the best interest of society. When a parolee or  
 2418 other conditional releasee has, in the opinion of the board, so conducted himself or herself  
 2419 as to deserve a pardon or a commutation of sentence or the remission in whole or in part  
 2420 of any fine, forfeiture, or penalty, the board may grant such relief in cases within its power.

2421 (b)(1) A parolee may be awarded earned compliance credits at a rate of 20 days for every  
 2422 30 days served under active supervision if a parolee exhibits positive progression toward  
 2423 the goals and treatment of his or her case plan and complies with all conditions of parole.  
 2424 The parolee's parole officer shall calculate and place the parolee on administrative  
 2425 supervision by the award of the number of days of earned compliance credits.

2426 (2) The board shall adopt rules and regulations for the forfeiture of earned compliance  
 2427 credits for parolees who violate conditions of parole supervision after earned compliance  
 2428 credits have been awarded. Such rules and regulations shall provide that:

2429 (A) Forfeiture shall be part of the board's system of graduated sanctions;

2430 (B) The extent of earned compliance credits forfeited shall be related to the level of  
 2431 severity of the violation;

2432 (C) Forfeiture of earned compliance credits shall be limited to credits already earned  
 2433 and shall not be denied for future earned compliance credits; and

2434 (D) A procedure shall be established for the restoration of forfeited earned compliance  
 2435 credits based on the parolee's compliance with supervision conditions and progress in  
 2436 achieving the goals of the case plan and complying with conditions of parole."

## 2437 **PART VII**

### 2438 **CROSS-REFERENCES**

#### 2439 **SECTION 7-1.**

2440 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended  
 2441 in subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed directly  
 2442 appealable, by deleting "and" at the end of paragraph (10), by replacing the period with ";  
 2443 and" at the end of paragraph (11), and by adding a new paragraph to read as follows:

2444 "(12) All judgments or orders entered pursuant to Code Section 35-3-37.1 or 35-3-37.2."

#### 2445 **SECTION 7-2.**

2446 Said title is further amended by revising subsection (a) of Code Section 5-7-1, relating to  
 2447 orders, decisions, or judgments appealable by the state, by deleting "or" at the end of

2448 paragraph (8), by replacing the period with "; or" at the end of paragraph (9), and by adding  
2449 a new paragraph (10) to read as follows:

2450 "(10) From an order, decision, or judgment issued pursuant to paragraph (3) of  
2451 subsection (g) of Code Section 16-13-31 or subsection (b) of Code Section 16-13-31.1."

2452 **SECTION 7-3.**

2453 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
2454 Code Section 15-10-260, relating to jurisdiction for magistrate courts, as follows:

2455 "15-10-260.

2456 (a) This article governs trials of misdemeanor violations of Code Sections 16-13-30 and  
2457 16-13-2, relating to possession of less than one ounce of marijuana; Code Section 16-8-14,  
2458 relating to misdemeanor theft by shoplifting of ~~\$300.00 or less~~; Code Section 3-3-23,  
2459 relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic  
2460 beverages by, a person under 21 years of age; and Code Section 16-7-21, relating to  
2461 criminal trespass.

2462 (b) Magistrate courts are authorized to conduct trials and impose sentences for violations  
2463 of misdemeanors specified in subsection (a) of this Code section; provided, however, that  
2464 the violation must have occurred in the unincorporated area of the county.

2465 (c) A person convicted of violation of a misdemeanor specified in subsection (a) of this  
2466 Code section shall be punished as provided in paragraphs (1) through (4) of this subsection  
2467 as follows:

2468 (1) For possession of less than one ounce of marijuana, as provided in subsection (b) of  
2469 Code Section 16-13-2;

2470 (2) For misdemeanor theft by shoplifting, as provided in paragraph (1) of subsection (b)  
2471 of Code Section 16-8-14;

2472 (3) For furnishing alcoholic beverages to, and purchase and possession of alcoholic  
2473 beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and

2474 (4) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.

2475 (d) The jurisdiction of magistrate courts to try and dispose of the misdemeanor violations  
2476 enumerated in subsection (a) of this Code section shall be concurrent with the jurisdiction  
2477 of any other courts having jurisdiction to try and dispose of such cases."

2478 **SECTION 7-4.**

2479 Said title is further amended by revising subsection (a) of Code Section 15-11-30.3, relating  
2480 to commission of designated felony act of burglary by a child 15 years of age or older, as  
2481 follows:

2482 "(a) After a petition has been filed alleging that a child 15 years of age or older has  
 2483 committed a designated felony act, the court shall follow the procedure specified in this  
 2484 Code section if the designated felony act alleged to have been committed would have  
 2485 constituted the crime of burglary in any degree if done by an adult and the child has been  
 2486 found at separate court appearances to have committed acts which would have constituted  
 2487 the crime of burglary in any degree if done by an adult on three or more previous  
 2488 occasions."

#### 2489 SECTION 7-5.

2490 Said title is further amended by revising subsection (e) of Code Section 15-11-83, relating  
 2491 to when a child may be fingerprinted or photographed and confidentiality of information, as  
 2492 follows:

2493 "(e) Upon application of the child, fingerprints and photographs of a child shall be  
 2494 removed from the file and destroyed if a petition alleging delinquency is not filed or the  
 2495 proceedings are dismissed after either a petition is filed or the case is transferred to the  
 2496 juvenile court as provided in Code Section 15-11-30.4 or the child is adjudicated not to be  
 2497 a delinquent child. The court shall notify the deputy director of the Georgia Crime  
 2498 Information Center when fingerprints and photographs are destroyed pursuant to this  
 2499 subsection, and the Georgia Bureau of Investigation shall treat such records in the same  
 2500 manner as ~~expunged records~~ criminal history record information restricted pursuant to  
 2501 ~~subsection (c) of Code Section 35-3-37~~ 35-3-37.1 or 35-3-37.2."

#### 2502 SECTION 7-6.

2503 Said title is further amended by revising subsection (a) of Code Section 15-21-100, relating  
 2504 to the imposition of additional penalties for offenses prohibited by Code Sections 16-13-30,  
 2505 16-13-30.1, and 16-13-31, as follows:

2506 "(a) In every case in which any court shall impose a fine, which shall be construed to  
 2507 include costs, for any offense prohibited by subsection (k) of Code Section 16-13-30; or  
 2508 Code Section 16-13-30.1; or 16-13-31, which offenses relate to certain activities regarding  
 2509 marijuana, controlled substances, and noncontrolled substances, there shall be imposed as  
 2510 an additional penalty a sum equal to 50 percent of the original fine."

#### 2511 SECTION 7-7.

2512 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 2513 amended by revising subsection (e) of Code Section 16-11-131, relating to possession of  
 2514 firearms by convicted felons and first offender probationers, as follows:

2515 "(e) As used in this Code section, the term 'forcible felony' means any felony which  
 2516 involves the use or threat of physical force or violence against any person and further  
 2517 includes, without limitation, murder; felony murder; burglary in any degree; robbery;  
 2518 armed robbery; kidnapping; hijacking of an aircraft or motor vehicle; aggravated stalking;  
 2519 rape; aggravated child molestation; aggravated sexual battery; arson in the first degree; the  
 2520 manufacturing, transporting, distribution, or possession of explosives with intent to kill,  
 2521 injure, or intimidate individuals or destroy a public building; terroristic threats; or acts of  
 2522 treason or insurrection."

#### 2523 SECTION 7-8.

2524 Said title is further amended by revising Code Section 16-16-1, relating to definitions  
 2525 regarding forfeiture of property used in burglary or armed robbery, as follows:

2526 "16-16-1.

2527 As used in this chapter, the term:

2528 (1) 'Armed robbery' means the offense defined in subsection (a) of Code Section  
 2529 16-8-41.

2530 (2) 'Burglary' means the offense defined in ~~subsection (a)~~ of Code Section 16-7-1 in any  
 2531 degree."

#### 2532 SECTION 7-9.

2533 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
 2534 amended by revising paragraph (11) of subsection (a) of Code Section 17-6-1, relating to  
 2535 where offenses bailable, procedure, schedule of bails, and appeal bonds, as follows:

2536 "(11) Kidnapping, arson, aggravated assault, or burglary in any degree if the person, at  
 2537 the time of the alleged kidnapping, arson, aggravated assault, or burglary in any degree,  
 2538 had previously been convicted of, was on probation or parole with respect to, or was on  
 2539 bail for kidnapping, arson, aggravated assault, burglary in any degree, or one or more of  
 2540 the offenses listed in paragraphs (1) through (10) of this subsection;"

#### 2541 SECTION 7-10.

2542 Said title is further amended by revising paragraph (1) of subsection (a) of Code Section  
 2543 17-7-70.1, relating to trial upon accusations in certain felony and misdemeanor cases, as  
 2544 follows:

2545 "(1) In felony cases involving violations of the following:

2546 (A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, ~~16-9-2~~, 16-9-20, 16-9-31,  
 2547 16-9-33, 16-9-37, 16-10-52, and 40-5-58;

2548 (B) Article 1 of Chapter 8 of Title 16, relating to theft;



2549 (C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;  
 2550 (D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to  
 2551 confinement; or  
 2552 (E) Code Section 16-11-131, relating to possession of a firearm by a convicted felon  
 2553 or first offender probationer,  
 2554 in which defendants have either been bound over to the superior court based on a finding  
 2555 of probable cause pursuant to a commitment hearing under Article 2 of this chapter or  
 2556 have expressly or by operation of law waived a commitment hearing, the district attorney  
 2557 shall have authority to prefer accusations, and the defendants shall be tried on such  
 2558 accusations according to the same rules of substantive and procedural laws relating to  
 2559 defendants who have been indicted by a grand jury."

2560 **SECTION 7-11.**

2561 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section  
 2562 17-10-9.1, relating to voluntary surrender to county jail or correctional institution, as follows:  
 2563 "(10) Kidnapping, arson, or burglary in any degree if the person, at the time such person  
 2564 was charged, has previously been convicted of, was on probation or parole with respect  
 2565 to, or was on bail for kidnapping, arson, aggravated assault, burglary in any degree, or  
 2566 one or more of the offenses listed in paragraphs (1) through (9) of this subsection;"

2567 **SECTION 7-12.**

2568 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section  
 2569 17-10-30, relating to procedure for imposition of the death penalty generally, as follows:  
 2570 "(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the  
 2571 offender was engaged in the commission of another capital felony or aggravated battery,  
 2572 or the offense of murder was committed while the offender was engaged in the  
 2573 commission of burglary in any degree or arson in the first degree;"

2574 **SECTION 7-13.**

2575 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
 2576 subparagraph (G) of paragraph (2) of Code Section 31-7-250, relating to definitions for  
 2577 personal care home licensing and employee record checks, as follows:  
 2578 "(G) A felony violation of Code Section 16-9-1 ~~or 16-9-2, relating to forgery in the first~~  
 2579 ~~and second degree, respectively;~~"

**SECTION 7-14.**

2580

2581 Said title is further amended by revising subparagraph (K) of paragraph (2) of Code Section  
2582 31-7-350, relating to definitions for nursing home employee record checks, as follows:

2583       "~~(K) A felony violation of Code Section 16-9-1, relating to forgery in the first degree;~~  
2584       ~~a violation of Code Section 16-9-2, relating to forgery in the second degree;~~"

**SECTION 7-15.**

2585

2586 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
2587 by revising Code Section 36-32-9, relating to the jurisdiction of shoplifting of \$300.00 in  
2588 municipal courts, as follows:

2589       "36-32-9.

2590       (a) The municipal court is granted jurisdiction to try and dispose of cases in which a  
2591 person is charged with a ~~first, second, or third offense of~~ misdemeanor theft by shoplifting  
2592 ~~when the property which was the subject of the theft was valued at \$300.00 or less~~; if the  
2593 offense occurred within the corporate limits of the municipality. The jurisdiction of such  
2594 court shall be concurrent with the jurisdiction of any other courts within the county having  
2595 jurisdiction to try and dispose of such cases.

2596       (b) Any ~~defendant person~~ charged in a municipal court with a ~~first, second, or third offense~~  
2597 ~~of~~ misdemeanor theft by shoplifting ~~property valued at \$300.00 or less~~ shall be entitled  
2598 upon request to have the case against him or her transferred to the court having general  
2599 misdemeanor jurisdiction in the county in which the alleged offense occurred.

2600       (c) A person convicted in a municipal court of a ~~first, second, or third offense of~~  
2601 misdemeanor theft by shoplifting ~~property valued at \$300.00 or less~~ shall be punished as  
2602 provided in paragraph (1) of subsection (b) of Code Section 16-8-14, provided that nothing  
2603 in this Code section or Code Section 16-8-14 shall be construed to give any municipality  
2604 the right to impose a fine or punishment by imprisonment in excess of the limits as set forth  
2605 in the municipality's charter.

2606       (d) Any fines and forfeitures arising from the prosecution of such cases in such municipal  
2607 court shall be retained by the municipality and shall be paid into the treasury of such  
2608 municipality.

2609       (e) It shall be the duty of the appropriate agencies of the municipality in which an offense  
2610 under subsection (a) of this Code section is charged to make any reports to the Georgia  
2611 Crime Information Center required under Article 2 of Chapter 3 of Title 35."

**SECTION 7-16.**

2612  
2613 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
2614 by revising paragraph (2) of subsection (a) of Code Section 42-5-85, relating to delegation  
2615 of authority to issue limited leave privileges, as follows:

2616 "(2) The murder was committed while the offender was engaged in the commission of  
2617 another capital felony, aggravated battery, burglary in any degree, or arson in the first  
2618 degree;"

**PART VIII****EFFECTIVE DATE, APPLICABILITY, AND REPEALER****SECTION 8-1.**

2622 (a) Except as provided in subsection (b) of this section, this Act shall become effective on  
2623 July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense  
2624 occurring before July 1, 2012, shall be governed by the statute in effect at the time of such  
2625 offense.

2626 (b) Part V and Sections 7-1 and 7-5 of this Act shall become effective on January 1, 2013.

**SECTION 8-2.**

2627  
2628 All laws and parts of laws in conflict with this Act are repealed.