

The Special Joint Committee on Georgia Criminal Justice Reform offers the following substitute to HB 1176:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 5-7-2 of the Official Code of Georgia Annotated, relating to
2 certification required for immediate review of nonfinal orders, decisions, or judgments and
3 exceptions, so that the state does not have to seek a certificate of immediate review for orders
4 setting aside or dismissing any indictment, accusation, or petition alleging that a child has
5 committed a delinquent act; to amend Titles 15, 16, 17, 35, and 42 of the Official Code of
6 Georgia Annotated, relating to courts, crimes and offenses, criminal procedure, law
7 enforcement officers and agencies, and penal institutions, respectively, so as to enact
8 provisions recommended by the 2011 Special Council on Criminal Justice Reform for
9 Georgians and enact other criminal justice reforms; to change provisions relating to drug and
10 mental health court divisions; to provide for performance measures and best practices; to
11 provide for certification; to provide for funding; to provide for oversight by the Judicial
12 Council of Georgia; to increase the fees for pretrial intervention and diversion programs; to
13 revise provisions relating to additional criminal penalties for purposes of drug abuse
14 treatment and education programs; to expand the list of offenses with respect to which such
15 additional penalties shall be imposed; to provide that funds from such penalties may be used
16 for drug court division purposes; to substantially revise punishment provisions and the
17 elements of the crimes of burglary, theft, shoplifting, counterfeit Universal Product Codes,
18 forgery, deposit account fraud, controlled substances, and marijuana; to provide for and
19 change definitions; to extend the statute of limitations for the prosecutions of the offenses of
20 cruelty to children in the first degree, rape, aggravated sodomy, child molestation, aggravated
21 child molestation, enticing a child for indecent purposes, and incest; to change provisions
22 relating to recidivist punishment; to amend Code Section 19-7-5 of the Official Code of
23 Georgia Annotated, relating to reporting of child abuse, so as to expand mandatory reporting
24 requirements and provide for exceptions; to change provisions relating to inspection,
25 purging, modifying, or supplementing of criminal records; to provide for definitions; to
26 provide for time frames within which certain actions must be taken with respect to restricting
27 access to records or modifying, correcting, supplementing, or amending criminal records; to
28 provide for procedure; to provide for individuals who have not been convicted to have their

arrest records restricted; to provide for having the arrest records of individuals convicted of certain misdemeanor offenses restricted under certain circumstances; to provide that the Board of Corrections adopt certain rules and regulations; to change provisions relating to the administration of supervision of felony probationers; to provide for the use of graduated sanctions in disciplining probationers who violate the terms of their probation; to change provisions relating to terms and conditions of probation; to provide for a maximum stay in probation detention centers; to clarify provisions relating to probation supervision and provide for early termination of a sentence; to amend Titles 5, 15, 16, 17, 31, 36, and 42 of the Official Code of Georgia Annotated, relating to appeal and error, courts, crimes and offenses, criminal procedure, health, local government, and penal institutions, respectively, so as to conform provisions and correct cross-references; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

APPEAL BY THE STATE

SECTION 1-1.

Code Section 5-7-2 of the Official Code of Georgia Annotated, relating to certification required for immediate review of nonfinal orders, decisions, or judgments and exceptions, is amended by revising subsection (b) as follows:

"(b) A certificate of immediate review shall not be required from an:

(1) Order, decision, or judgment suppressing or excluding illegally seized evidence; or

(2) Order, decision, or judgment described in paragraph (1) or (7) of subsection (a) of

Code Section 5-7-1."

PART II

DRUG AND MENTAL HEALTH COURT DIVISIONS,

DIVERSION PROGRAMS, AND THE COUNTY DRUG

ABUSE TREATMENT AND EDUCATION FUND

SECTION 2-1.

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

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

65 (2) In any case which arises from the use, addiction, dependency, sale, possession,
66 delivery, distribution, purchase, or manufacture of a controlled substance, noncontrolled
67 substance, dangerous drug, or other drug or is ancillary to such conduct and the defendant
68 meets the eligibility criteria for the drug court division, the court may assign the case to
69 the drug court division:

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

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

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

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

86 ~~(4)(A) On or before January 1, 2013, the~~ The Judicial Council of Georgia shall adopt
87 ~~standards for the drug court divisions. Each drug court division shall adopt standards~~
88 ~~that are consistent with the standards of the Judicial Council of Georgia. The standards~~
89 ~~are to serve as a flexible framework for developing effective drug court divisions and~~
90 ~~to provide a structure for conducting research and evaluation for program~~
91 ~~accountability. The standards are not intended to be a certification or regulatory~~
92 ~~checklist~~ establish standards and practices for drug court divisions taking into
93 consideration guidelines and principles based on current research and findings
94 published by the National Drug Court Institute and the Substance Abuse and Mental
95 Health Services Administration, relating to practices shown to reduce recidivism of
96 offenders with drug abuse problems. Standards and practices shall include, but shall

not be limited to, the use of a risk and needs assessment to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The Judicial Council of Georgia shall update its standards and practices to incorporate research, findings, and developments in the drug court field. Each drug court division shall adopt policies and practices that are consistent with the standards and practices published by the Judicial Council of Georgia.

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

(C) On or before July 1, 2013, the Judicial Council of Georgia shall create and manage a certification and peer review process to ensure drug court divisions are adhering to the Judicial Council of Georgia's standards and practices and shall create a waiver process for drug court divisions to seek an exception to the Judicial Council of Georgia's standards and practices. In order to receive state appropriated funds, any drug court division established on and after July 1, 2013, shall be certified pursuant to this subparagraph or, for good cause shown to the Judicial Council of Georgia, shall receive a waiver from the Judicial Council of Georgia.

(D) On and after July 1, 2013, the award of any state funds for a drug court division shall be conditioned upon a drug court division attaining certification or a waiver by the Judicial Council of Georgia. On or before September 1, the Judicial Council of Georgia shall publish an annual report listing certified drug court divisions.

(E) Pursuant to Code Section 15-5-24, the Administrative Office of the Courts shall develop and manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all drug court divisions. The Judicial Council of Georgia shall identify elements necessary for performance measurement, including, but not limited to, recidivism, the number of moderate-risk and high-risk participants in a drug court division, drug testing results, drug testing failures, participant employment, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2015, and every three years thereafter, the Judicial Council of Georgia shall conduct a performance peer review of the drug court divisions for the purpose of improving drug court division policies and practices and the certification and recertification process.

(5) The court instituting the drug court division may request the prosecuting attorney for the jurisdiction to designate one or more prosecuting attorneys to serve in the drug court

division and may request the public defender, if any, to designate one or more assistant public defenders to serve in the drug court division.

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

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

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

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

(10) As used in this Code section, the term 'risk and needs assessment' means an actuarial tool, approved by the Judicial Council of Georgia and validated on a targeted population, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior."

SECTION 2-2.

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

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

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

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

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

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

(3) Each mental health court division shall establish a planning group to develop a written work plan. The planning group shall include judges, prosecuting attorneys, sheriffs or their designees, public defenders, probation officers, and persons having expertise in the field of mental health. The work plan shall address the operational, coordination, resource, information management, and evaluation needs of the mental health court division. The work plan shall include ~~written eligibility criteria for the mental health court division~~ policies and practices related to implementing the standards and practices developed pursuant to paragraph (4) of this subsection. The work plan shall ensure a risk and needs assessment is used to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The work plan shall ensure that mental health court division eligibility shall be focused on moderate-risk and high-risk offenders as determined by a risk and needs assessment. The mental health court division shall combine judicial supervision, treatment of mental health court division participants, and drug and mental health testing. Defendants charged with murder, armed robbery, rape, aggravated sodomy, aggravated sexual battery, aggravated child molestation, or child molestation shall not be eligible for entry into the mental health court division, except in the case of a separate court supervised reentry program designed to more closely monitor mentally ill offenders returning to the community after having served a term of incarceration. Any such court supervised community reentry program for mentally ill offenders shall be subject to the work plan as provided for in this paragraph.

~~(4)(A) On or before January 1, 2013, the The Judicial Council of Georgia shall adopt standards for the mental health court divisions. Each mental health court division shall adopt standards that are consistent with the standards of the Judicial Council of Georgia. The standards shall serve as a flexible framework for developing effective mental health court divisions and provide a structure for conducting research and evaluation for division accountability. The standards are not intended to be a certification or regulatory checklist~~ establish standards and practices for mental health court divisions taking into consideration guidelines and principles based on current research and findings published by expert organizations, including, but not limited to, the United States Substance Abuse and Mental Health Services Administration, the Council of State Governments Consensus Project, and the National GAINS Center, relating to practices shown to reduce recidivism of offenders with mental illness or developmental disabilities. Standards and practices shall include, but shall not be limited to, the use of a risk and needs assessment to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The Judicial

Council of Georgia shall update its standards and practices to incorporate research, findings, and developments in the mental health court field. Each mental health court division shall adopt policies and practices that are consistent with the standards and practices published by the Judicial Council of Georgia.

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

(C) On or before July 1, 2013, the Judicial Council of Georgia shall create and manage a certification and peer review process to ensure mental health court divisions are adhering to the Judicial Council of Georgia's standards and practices and shall create a waiver process for mental health court divisions to seek an exception to the Judicial Council of Georgia's standards and practices. In order to receive state appropriated funds, any mental health court division established on and after July 1, 2013, shall be certified pursuant to this subparagraph or, for good cause shown to the Judicial Council of Georgia, shall receive a waiver from the Judicial Council of Georgia.

(D) On and after July 1, 2013, the award of any state funds for a mental health court division shall be conditioned upon a mental health court division attaining certification or a waiver by the Judicial Council of Georgia. On or before September 1, the Judicial Council of Georgia shall publish an annual report listing of certified mental health court divisions.

(E) Pursuant to Code Section 15-5-24, the Administrative Office of the Courts shall develop and manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all mental health court divisions. The Judicial Council of Georgia shall identify elements necessary for performance measurement, including, but not limited to, recidivism, the number of moderate-risk and high-risk participants in a mental health court division, drug testing results, drug testing failures, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2015, and every three years thereafter, the Judicial Council of Georgia shall conduct a performance peer review of the mental health court divisions for the purpose of improving mental health court division policy and practices and the certification and recertification process.

(5) The court instituting the mental health court division may request the district attorney for the judicial circuit or solicitor-general for the state court for the jurisdiction to designate one or more prosecuting attorneys to serve in the mental health court division

and may request the circuit public defender, if any, to designate one or more assistant public defenders to serve in the mental health court division.

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

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

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

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

(10) As used in this Code section, the term 'risk and needs assessment' means an actuarial tool, approved by the Judicial Council of Georgia and validated on a targeted population, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior."

SECTION 2-3.

Said title is further amended by revising subsection (f) of Code Section 15-18-80, relating to policy and procedure for pretrial intervention and diversion programs, as follows:

"(f) The prosecuting attorney shall be authorized to assess and collect from each offender who enters the program a fee not to exceed ~~\$300.00~~ \$1,000.00 for the administration of the program. Such fee may be waived in part or in whole or made payable in monthly increments upon a showing of good cause to the prosecuting attorney. Any fee collected under this subsection shall be made payable to the general fund of the political subdivision in which the case is being prosecuted."

SECTION 2-4.

Said title is further amended by revising Article 6 of Chapter 21, relating to the County Drug Abuse Treatment and Education Fund, as follows:

"ARTICLE 6

15-21-100.

(a) In every case in which any court shall impose a fine, which shall be construed to include costs, for any offense prohibited by Code Section 16-13-30, 16-13-30.1, ~~or 16-13-30.2, 16-13-30.3, 16-13-30.5, 16-13-31, which offenses relate to certain activities regarding marijuana, controlled substances, and noncontrolled substances~~ 16-13-31.1, 16-13-32, 16-13-32.1, 16-13-32.2, 16-13-32.3, 16-13-32.4, 16-13-32.5, or 16-13-32.6, there shall be imposed as an additional penalty a sum equal to 50 percent of the original fine. The additional 50 percent penalty shall also be imposed in every case in which a fine is imposed for violation of:

(1) Code Section 3-3-23.1;

(2) Code Section 40-6-391; or

(3) Code Section 40-6-393 or 40-6-394 if the offender was also charged with a violation of Code Section 40-6-391.

If no fine is provided for in the applicable Code section, and the judge places the defendant on probation, the fine authorized by Code Section 17-10-8 shall be applicable.

(b) The sums required by subsection (a) of this Code section shall be in addition to the amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia.

15-21-101.

(a) The sums provided for in Code Section 15-21-100 shall be collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and forfeited bonds and shall be paid over to the governing authority of the county in which the court is located upon receipt of the fine and assessment if paid in full at the time of sentencing or upon receipt of the final payment if the fine is paid in installments. Those sums paid over to the governing authority shall be deposited thereby into a special account to be known as the 'County Drug Abuse Treatment and Education Fund.'

(b) Moneys collected pursuant to this article and placed in the 'County Drug Abuse Treatment and Education Fund' shall be expended by the governing authority of the county for which the fund is established solely and exclusively:

(1) For drug abuse treatment and education programs relating to controlled substances, alcohol, and marijuana; and

(2) If a drug court division has been established in the county under Code Section 15-1-15, for purposes of the drug court division.

309 This article shall not preclude the appropriation or expenditure of other funds by the
310 governing authority of any county or by the General Assembly for the purpose of drug
311 abuse treatment or education programs or drug court divisions."

312 **PART III**
313 **CRIMES AND OFFENSES**
314 **SECTION 3-1.**

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

317 "16-7-1.

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

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

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

328 (3) 'Explosive' means any chemical compound or other substance or mechanical system
329 intended for the purpose of producing an explosion capable of causing injury to persons
330 or damage to property or containing oxidizing and combustible units or other ingredients
331 in such proportions or quantities that ignition, fire, friction, concussion, percussion, or
332 detonation may produce an explosion capable of causing injury to persons or damage to
333 property, including, but not limited to, the substances designated in Code Section
334 16-7-81; provided, however, that the term explosive shall not include common fireworks
335 as defined by Code Section 25-10-1, model rockets and model rocket engines designed,
336 sold, and used for the purpose of propelling recoverable aero models, or toy pistol paper
337 caps in which the explosive content does not average more than 0.25 grains of explosive
338 mixture per paper cap for toy pistols, toy cannons, toy canes, toy guns, or other devices
339 using such paper caps unless such devices are used as a component of a destructive
340 device.

341 (4) 'Firearm' means any handgun, rifle, shotgun, or similar device or weapon which will
342 or can be converted to expel a projectile by the action of an explosive or electrical charge

and includes stun guns and tasers as defined by subsection (a) of Code Section 16-11-106.

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

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

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

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

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

(3) Is committed by an accused who has been convicted of burglary in any degree on two or more prior occasions.

(c) A person commits the offense of burglary in the second degree when, without authority and with the intent to commit a felony or theft therein, he or she enters or remains within an occupied, unoccupied, or vacant dwelling house of another or any building, vehicle, railroad car, watercraft, aircraft, or other such structure designed for use as the dwelling of another and the conduct does not occur under the circumstances described in paragraphs (1) through (3) of subsection (b) of this Code section.

(d) A person commits the offense of burglary in the third degree when, without authority and with the intent to commit a felony or theft therein, he or she enters or remains within an occupied, unoccupied, or vacant building, structure, vehicle, railroad car, watercraft, or aircraft.

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

(2) A person who commits the offense of burglary in the second degree shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years. Upon the second conviction for burglary in the second degree, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than two nor more than 20 years. Upon the third and all subsequent convictions for burglary in the second degree, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than five years nor more than 20 years.

(3) A person who commits the offense of burglary in the third degree shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. Upon the second and all subsequent convictions for burglary in the third degree, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than eight years.

~~(b) Upon a second conviction for a crime of burglary occurring after the first conviction, a person shall be punished by imprisonment for not less than two nor more than 20 years. Upon a third conviction for the crime of burglary occurring after the first conviction, a person shall be punished by imprisonment for not less than five nor more than 20 years.~~
 (f) Adjudication of guilt or imposition of sentence shall not be suspended, probated, deferred, or withheld for any offense punishable under this subsection burglary in the first degree."

SECTION 3-2.

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

"16-8-12.

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

(1)(A) If the property which was the subject of the theft exceeded ~~\$500.00~~ \$24,999.99 in value, by imprisonment for not less than ~~one~~ two nor more than ~~ten~~ 20 years ~~or, in the discretion of the trial judge, as for a misdemeanor;~~

(B) If the property which was the subject of the theft was at least \$5,000.00 in value but was less than \$25,000.00 in value, by imprisonment for not less than one nor more than ten years and, in the discretion of the trial judge, as for a misdemeanor;

(C) If the property which was the subject of the theft was at least \$1,500.01 in value but was less than \$5,000.00 in value, by imprisonment for not less than one nor more than five years and, in the discretion of the trial judge, as for a misdemeanor; and

(D) If the defendant has two prior misdemeanor convictions for a violation of Code Sections 16-8-2 through 16-8-9, upon a third conviction or subsequent conviction, such defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years and, in the discretion of the trial judge, as for a misdemeanor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Where a violation of Code Sections 16-8-2 through 16-8-9 involves the theft of a growing or otherwise unharvested commercial agricultural product which is being grown or produced as a crop, such offense shall be punished by a fine of not less than ~~\$500.00~~ \$1,000.00 and not more than the maximum fine otherwise authorized by law. This minimum fine shall not in any such case be subject to suspension, stay, or probation. This minimum fine shall not be required in any case in which a sentence of confinement is imposed and such sentence of confinement is not suspended, stayed, or probated; but this subsection shall not prohibit imposition of any otherwise authorized fine in such a case."

SECTION 3-3.

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

"16-8-14.

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

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

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

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

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

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

(b)(1) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft is ~~\$300.00~~ \$500.00 or less in value shall be punished as for a misdemeanor; provided, however, that:

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

(B) Upon conviction of a third offense for shoplifting, where the first two offenses are either felonies or misdemeanors, or a combination of a felony and a misdemeanor, as defined by this Code section, in addition to or in lieu of any fine which might be

imposed, the defendant shall be punished by imprisonment for not less than 30 days or confinement in a 'special alternative incarceration-probation boot camp,' probation detention center, diversion center, or other community correctional facility of the Department of Corrections for a period of 120 days or shall be sentenced to monitored house arrest for a period of 120 days and, in addition to either such types of confinement, may be required to undergo psychological evaluation and treatment to be paid for by the defendant; and such sentence of imprisonment or confinement shall not be suspended, probated, deferred, or withheld; and

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

(2) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft exceeds ~~\$300.00~~ \$500.00 in value commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

(3) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft is taken from three separate stores or retail establishments within one county during a period of seven days or less and when the aggregate value of the property which was the subject of each theft exceeds \$100.00 \$500.00 in value, commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

(4) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft is taken during a period of 180 days and when the aggregate value of the property which was the subject of each theft exceeds \$500.00 in value, commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

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

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

SECTION 3-4.

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

"16-8-17.

(a)(1) Except as provided in paragraph (2) of this subsection, a person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits, or reproduces a retail sales receipt or a Universal Product Code label which results in a theft of property which exceeds ~~\$300.00~~ \$500.00 in value commits a felony and shall be punished by imprisonment for not less than one nor more than three years or by a fine or both.

(2) A person convicted of a violation of paragraph (1) of this subsection, when the property which was the subject of the theft resulting from the unlawful use of retail sales receipts or Universal Product Code labels is taken from three separate stores or retail establishments within one county during a period of seven days or less and when the aggregate value of the property which was the subject of each theft exceeds ~~\$100.00~~ \$500.00 in value, commits a felony and shall be punished by imprisonment for not less than one nor more than ten years.

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

SECTION 3-5.

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

"16-9-1.

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

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

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

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

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

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

(c) A person commits the offense of forgery in the second degree when with the intent to defraud he or she knowingly makes, alters, or possesses any writing, including a check, in a fictitious name or in such manner that the writing as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority.

(d) A person commits the offense of forgery in the third degree when with the intent to defraud he or she knowingly makes, alters, or possesses any check written in the amount of \$1,500.00 or more in a fictitious name or in such manner that the check as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such check.

(e) A person commits the offense of forgery in the fourth degree when with the intent to defraud he or she knowingly makes, alters, or possesses any check written in the amount of less than \$1,500.00 in a fictitious name or in such manner that the check as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such check.

16-9-2.

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

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

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

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

16-9-3.

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

SECTION 3-6.

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

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

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

(B) When the instrument is for ~~\$100.00~~ \$500.00 or more but less than ~~\$300.00~~ \$1,000.00, a fine of not more than \$1,000.00 or imprisonment not to exceed 12 months, or both; or

(C) When more than one instrument is involved and such instruments were drawn within 90 days of one another and each is in an amount less than ~~\$100.00~~ \$500.00, the amounts of such separate instruments may be added together to arrive at and be punishable under subparagraph (B) of this paragraph.

(2) Except as provided in paragraph (3) of this subsection and subsection (c) of this Code section, a person convicted of the offense of deposit account fraud, when the instrument is for an amount of not less than ~~\$300.00~~ \$1,000.00 nor more than ~~\$499.99~~ \$1,499.99, shall be guilty of a misdemeanor of a high and aggravated nature. When more than one instrument is involved and such instruments were given to the same entity within a 15 day period and the cumulative total of such instruments is not less than ~~\$300.00~~ \$1,000.00 nor more than ~~\$499.99~~ \$1,499.00, the person drawing and giving such

instruments shall upon conviction be guilty of a misdemeanor of a high and aggravated nature.

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

(4) Upon conviction of a first or any subsequent offense under this subsection or subsection (c) of this Code section, in addition to any other punishment provided by this Code section, the defendant shall be required to make restitution of the amount of the instrument, together with all costs of bringing a complaint under this Code section. The court may require the defendant to pay as interest a monthly payment equal to 1 percent of the amount of the instrument. Such amount shall be paid each month in addition to any payments on the principal until the entire balance, including the principal and any unpaid interest payments, is paid in full. Such amount shall be paid without regard to any reduction in the principal balance owed. Costs shall be determined by the court from competent evidence of costs provided by the party causing the criminal warrant or citation to issue; provided, however, that the minimum costs shall not be less than \$25.00. Restitution may be made while the defendant is serving a probated or suspended sentence."

SECTION 3-7A.

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

"16-13-30.

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

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

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

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

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

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime. Reserved.

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

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

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

(2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of a

felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

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

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

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed \$20,000.00, or both.

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

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

SECTION 3-7B.

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

"16-13-30.

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

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

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

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

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least one gram but less than four grams, by imprisonment for not less than one nor more than eight years; and

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

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

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not

apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

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

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

(2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime. Reserved.

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

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

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

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

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

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

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed \$20,000.00, or both.

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

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not

879 apply to a sentence imposed for a second such offense, but that subsection and the
880 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.
881 (m) As used in this Code section, the term 'solid substance' means tablets, pills, capsules,
882 caplets, or any variant of such items."

883 SECTION 3-7C.

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

887 "16-13-30.

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

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

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

899 (1) If the aggregate weight, including any mixture, is less than one gram of a solid
900 substance, less than one milliliter of a liquid substance, or if the substance is placed onto
901 a secondary medium with a combined weight of less than one gram, by imprisonment for
902 not less than one nor more than three years;

903 (2) If the aggregate weight, including any mixture, is at least one gram but less than four
904 grams of a solid substance, at least one milliliter but less than four milliliters of a liquid
905 substance, or if the substance is placed onto a secondary medium with a combined weight
906 of at least one gram but less than four grams, by imprisonment for not less than one nor
907 more than eight years; and

908 (3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate
909 weight, including any mixture, is at least four grams but less than 28 grams of a solid
910 substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if
911 the substance is placed onto a secondary medium with a combined weight of at least
912 four grams but less than 28 grams, by imprisonment for not less than one nor more than
913 15 years.

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

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

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

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

(2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime. Reserved.

(g) Except as provided in subsection (l) of this Code section, any ~~Any~~ person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III,

IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ~~five~~ three years. Upon conviction of a ~~second~~ third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than ~~ten~~ five years.

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

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

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

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

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

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed \$20,000.00, or both.

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

shall be punished by imprisonment for not less than five years nor more than 30 years as follows:

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

(B) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance of flunitrazepam, at least two milliliters but less than four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

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

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

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

SECTION 3-8.

Said title is further amended by revising subsection (h) of Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine and penalties, as follows:

"(h) Any person who violates any provision of this Code section ~~in regard to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine~~ shall be punished by ~~imprisonment for not less than five years nor~~ as provided for in the applicable mandatory minimum punishment and for not more than 30 years of imprisonment and by a fine not to exceed \$1 million."

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PART IV
CRIMINAL PROCEDURE
SECTION 4-1.

1025 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
1026 amended by revising Code Section 17-3-1, relating to limitation on prosecutions generally,
1027 as follows:

1028 "17-3-1.

1029 (a) A prosecution for murder may be commenced at any time.

1030 (b) Except as otherwise provided in Code Section 17-3-2.1, prosecution ~~Prosecution~~ for
1031 other crimes punishable by death or life imprisonment ~~must~~ shall be commenced within
1032 seven years after the commission of the crime except as provided by subsection ~~(c.1)~~ (d)
1033 of this Code section; provided, however, that prosecution for the crime of forcible rape
1034 ~~must~~ shall be commenced within 15 years after the commission of the crime.

1035 (c) Except as otherwise provided in Code Section 17-3-2.1, prosecution ~~Prosecution~~ for
1036 felonies other than those specified in subsections (a), (b), and ~~(c.1)~~ (d) of this Code section
1037 ~~must~~ shall be commenced within four years after the commission of the crime, provided
1038 that prosecution for felonies committed against victims who are at the time of the
1039 commission of the offense under the age of 18 years ~~must~~ shall be commenced within
1040 seven years after the commission of the crime.

1041 ~~(c.1)~~(d) A prosecution for the following offenses may be commenced at any time when
1042 deoxyribonucleic acid (DNA) evidence is used to establish the identity of the accused:

- 1043 (1) Armed robbery, as defined in Code Section 16-8-41;
1044 (2) Kidnapping, as defined in Code Section 16-5-40;
1045 (3) Rape, as defined in Code Section 16-6-1;
1046 (4) Aggravated child molestation, as defined in Code Section 16-6-4;
1047 (5) Aggravated sodomy, as defined in Code Section 16-6-2; or
1048 (6) Aggravated sexual battery, as defined in Code Section 16-6-22.2;

1049 provided, however, that a sufficient portion of the physical evidence tested for DNA is
1050 preserved and available for testing by the accused and provided, further, that, if the DNA
1051 evidence does not establish the identity of the accused, the limitation on prosecution shall
1052 be as provided in subsections (b) and (c) of this Code section.

1053 ~~(d)~~(e) Prosecution for misdemeanors ~~must~~ shall be commenced within two years after the
1054 commission of the crime."

SECTION 4-2.

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

"17-3-2.1.

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

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

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

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

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

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

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

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

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

(b) For crimes committed on and after July 1, 2012, if the victim of a violation of:

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

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

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

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

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

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

is under 16 years of age on the date of the violation and the violation is not subject to punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4, paragraph (2) of subsection (d) of Code Section 16-6-4, or subsection (c) of Code Section 16-6-5, a prosecution may be commenced at any time. This Code section shall apply to any offense designated in paragraphs (1) through (7) of subsection (a) of this Code section occurring on or after July 1, 1992."

SECTION 4-3.

Said title is further amended by revising paragraphs (2) and (5) of subsection (a) of Code Section 17-10-1, relating to fixing of sentence, as follows:

"(2) Active probation ~~Probation~~ supervision shall terminate in all cases no later than two years from the commencement of active probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, that in those cases involving the collection of fines, restitution, or other funds, the period of active probation supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs, and for those cases involving a conviction under the 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation supervision shall remain in effect until the termination of the sentence, but shall not exceed five years unless as otherwise provided in this paragraph. Active probation ~~Probation~~ supervision shall not be required for defendants sentenced to probation while the defendant is in the legal custody of the Department of Corrections or the State Board of Pardons and Paroles. As used in this paragraph, the term 'active probation supervision' shall have the same meaning as the term 'active supervision' as set forth in Code Section 42-1-1."

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

(B) The Department of Corrections shall establish a form document which shall include the elements set forth in this Code section concerning notification of victims and shall make copies of such form available to prosecuting attorneys in ~~the~~ this state. When requested by the victim, the form document shall be provided to the victim by the prosecuting attorney. The form shall include the address of the probation office having jurisdiction over the case and contain a statement that the victim must maintain a copy of his or her address with the probation office and must notify the office of any

change of address in order to maintain eligibility for notification by the Department of Corrections as required in this Code section.

(C) As used in this paragraph, the terms 'active probation supervision' and 'administrative probation supervision' shall have the same meanings as the terms 'active supervision' and 'administrative supervision,' respectively, as set forth in Code Section 42-1-1."

SECTION 4-4.

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

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

"(b.1) Subsections (a) and (c) of this Code section shall not apply to a second or any subsequent conviction for any violation of subsection (a), paragraph (1) of subsection (i), or subsection (j) of Code Section 16-13-30.

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

PART V

MANDATORY REPORTING OF CHILD ABUSE

SECTION 5-1.

Code Section 19-7-5 of the Official Code of Georgia Annotated, relating to reporting of child abuse, is amended by revising subsections (b), (c), and (g) as follows:

1162 "(b) As used in this Code section, the term:

1163 (1) 'Abortion' shall have the same meaning as set forth in Code Section 15-11-111.

1164 ~~(1)~~(2) 'Abused' means subjected to child abuse.

1165 ~~(2)~~(3) 'Child' means any person under 18 years of age.

1166 ~~(3)~~(4) 'Child abuse' means:

1167 (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by
1168 other than accidental means; provided, however, that physical forms of discipline may
1169 be used as long as there is no physical injury to the child;

1170 (B) Neglect or exploitation of a child by a parent or caretaker thereof;

1171 (C) Sexual abuse of a child; or

1172 (D) Sexual exploitation of a child.

1173 However, no child who in good faith is being treated solely by spiritual means through
1174 prayer in accordance with the tenets and practices of a recognized church or religious
1175 denomination by a duly accredited practitioner thereof shall, for that reason alone, be
1176 considered to be an 'abused' child.

1177 (5) 'Child service organization personnel' means persons employed by or volunteering
1178 at a business or an organization, whether public, private, for profit, not for profit, or
1179 voluntary, that provides care, treatment, education, training, supervision, coaching,
1180 counseling, recreational programs, or shelter to children.

1181 (6) 'Clergy' means ministers, priests, rabbis, imams, or similar functionaries, by whatever
1182 name called, of a bona fide religious organization.

1183 (7) 'Pregnancy resource center' means an organization or facility that:

1184 (A) Provides pregnancy counseling or information as its primary purpose, either for a
1185 fee or as a free service;

1186 (B) Does not provide or refer for abortions;

1187 (C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

1188 (D) Is not licensed or certified by the state or federal government to provide medical
1189 or health care services and is not otherwise bound to follow federal Health Insurance
1190 Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws
1191 relating to patient confidentiality.

1192 (8) 'Reproductive health care facility' means any office, clinic, or any other physical
1193 location that provides abortions, abortion counseling, abortion referrals, or gynecological
1194 care and services.

1195 (9) 'School' means any public or private pre-kindergarten, elementary school, secondary
1196 school, technical school, vocational school, college, university, or institution of
1197 postsecondary education.

1198 ~~(3.1)~~(10) 'Sexual abuse' means a person's employing, using, persuading, inducing,
 1199 enticing, or coercing any minor who is not that person's spouse to engage in any act
 1200 which involves:

- 1201 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
 1202 whether between persons of the same or opposite sex;
- 1203 (B) Bestiality;
- 1204 (C) Masturbation;
- 1205 (D) Lewd exhibition of the genitals or pubic area of any person;
- 1206 (E) Flagellation or torture by or upon a person who is nude;
- 1207 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
 1208 of a person who is nude;
- 1209 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
 1210 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed
 1211 or unclothed breasts;
- 1212 (H) Defecation or urination for the purpose of sexual stimulation; or
- 1213 (I) Penetration of the vagina or rectum by any object except when done as part of a
 1214 recognized medical procedure.

1215 'Sexual abuse' shall not include consensual sex acts involving persons of the opposite sex
 1216 when the sex acts are between minors or between a minor and an adult who is not more
 1217 than five years older than the minor. This provision shall not be deemed or construed to
 1218 repeal any law concerning the age or capacity to consent.

1219 ~~(4)~~(11) 'Sexual exploitation' means conduct by any person who allows, permits,
 1220 encourages, or requires that child to engage in:

- 1221 (A) Prostitution, as defined in Code Section 16-6-9; or
- 1222 (B) Sexually explicit conduct for the purpose of producing any visual or print medium
 1223 depicting such conduct, as defined in Code Section 16-12-100.

1224 (c)(1) The following persons having reasonable cause to believe that a child has been
 1225 abused shall report or cause reports of that abuse to be made as provided in this Code
 1226 section:

- 1227 (A) Physicians licensed to practice medicine, interns, or residents;
- 1228 (B) Hospital or medical personnel;
- 1229 (C) Dentists;
- 1230 (D) Licensed psychologists and persons participating in internships to obtain licensing
 1231 pursuant to Chapter 39 of Title 43;
- 1232 (E) Podiatrists;
- 1233 (F) Registered professional nurses or licensed practical nurses licensed pursuant to
 1234 Chapter 24 of Title 43 or nurse's aides;

1235 (G) Professional counselors, social workers, or marriage and family therapists licensed
 1236 pursuant to Chapter 10A of Title 43;
 1237 (H) School teachers;
 1238 (I) School administrators;
 1239 (J) School guidance counselors, visiting teachers, school social workers, or school
 1240 psychologists certified pursuant to Chapter 2 of Title 20;
 1241 (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section
 1242 49-5-12;
 1243 (L) Child-counseling personnel;
 1244 (M) Child service organization personnel; ~~or~~
 1245 (N) Law enforcement personnel; or
 1246 (O) Reproductive health care facility or pregnancy resource center personnel and
 1247 volunteers.
 1248 (2) If a person is required to report child abuse pursuant to this subsection because that
 1249 person attends to a child pursuant to such person's duties as a member of the staff of a
 1250 hospital, school, social agency, or similar facility, that person shall notify the person in
 1251 charge of the facility, or the designated delegate thereof, and the person so notified shall
 1252 report or cause a report to be made in accordance with this Code section. A staff member
 1253 who makes a report to the person designated pursuant to this paragraph shall be deemed
 1254 to have fully complied with this subsection. Under no circumstances shall any person in
 1255 charge of such hospital, school, agency, or facility, or the designated delegate thereof, to
 1256 whom such notification has been made exercise any control, restraint, modification, or
 1257 make other change to the information provided by the reporter, although each of the
 1258 aforementioned persons may be consulted prior to the making of a report and may
 1259 provide any additional, relevant, and necessary information when making the report."
 1260 "(g) Suspected child abuse which is required to be reported by any person pursuant to this
 1261 Code section shall be reported notwithstanding that the reasonable cause to believe such
 1262 abuse has occurred or is occurring is based in whole or in part upon any communication to
 1263 that person which is otherwise made privileged or confidential by law; provided, however,
 1264 that a member of the clergy shall not be required to report child abuse reported solely
 1265 within the context of confession or other similar communication required to be kept
 1266 confidential under church doctrine or practice. When a clergy member receives
 1267 information about child abuse from any other source, the clergy member shall comply with
 1268 the reporting requirements of this Code section, even though the clergy member may have
 1269 also received a report of child abuse from the confession of the perpetrator."

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PART VI
RESTRICTING RECORDS
SECTION 6-1.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by revising paragraph (1) of subsection (a) of Code Section 35-3-34, relating to disclosure and dissemination of criminal records to private persons and businesses, by deleting "and" at the end of subparagraph (B), by replacing "or" with "and" at the end of subparagraph (C), and by adding a new subparagraph to read as follows:

"(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 35-3-37; or"

SECTION 6-2.

Said title is further amended by repealing Code Section 35-3-37, relating to inspection, purging, modifying, or supplementing of criminal records, and enacting a new Code Section 35-3-37 to read as follows:

"35-3-37.

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

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

(2) 'Entity' means the arresting law enforcement agency, including county and municipal jails and detention centers.

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

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

(5) 'Prosecuting attorney' means the Attorney General, a district attorney, or the solicitor-general who had jurisdiction where the criminal history record information is sought to be modified, corrected, supplemented, amended, or restricted. If the offense was a violation of a criminal law of this state which, by general law, may be tried by a municipal, magistrate, probate, or other court that is not a court of record, the term 'prosecuting attorney' shall include the prosecuting officer of such court or, in the absence of such prosecuting attorney, the district attorney of the judicial circuit in which such court is located.

(6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record information of an individual relating to a particular charge shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment in accordance with procedures established by the center and shall not be disclosed or otherwise made available to any private persons or businesses pursuant to Code Section 35-3-34.

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

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

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

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

(c) The center shall make an individual's criminal history record information available for review by such individual or his or her designee upon written application to the center.

(d) If an individual believes his or her criminal history record information to be inaccurate, incomplete, or misleading, he or she may request a criminal history record information inspection at the center. The center at which criminal history record information is sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures or restrictions, including fingerprinting, as are reasonably necessary to assure the security of the criminal history record information, to verify the identities of those who seek to inspect such information, and to maintain an orderly and efficient mechanism for inspection of criminal history record information. The fee for inspection of criminal history record information shall not exceed \$15.00, which shall not include the cost of the fingerprinting.

(e) If the criminal history record information is believed to be inaccurate, incomplete, or misleading, the individual may request that the entity having custody or control of the challenged information modify, correct, supplement, or amend the information and notify the center of such changes within 60 days of such request. In the case of county and municipal jails and detention centers, such notice to the center shall not be required. If the entity declines to act within 60 days of such request or if the individual believes the entity's decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the

right to appeal to the court with original jurisdiction of the criminal charges in the county where the entity is located.

(f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order from the court with original jurisdiction of the criminal charges that the subject information be modified, corrected, supplemented, or amended by the entity with custody of such information. Notice of the appeal shall be provided to the entity and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient service on the entity having custody or control of the disputed criminal history record information. The court shall conduct a de novo review and, if requested by a party, the proceedings shall be recorded.

(g)(1) Should the court find by a preponderance of the evidence that the criminal history record information in question is inaccurate, incomplete, or misleading, the court shall order such information to be appropriately modified, corrected, supplemented, or amended as the court deems appropriate. Any entity with custody, possession, or control of any such criminal history record information shall cause each and every copy thereof in its custody, possession, or control to be altered in accordance with the court's order within 60 days of the entry of the order.

(2) To the extent that it is known by the requesting individual that an entity has previously disseminated inaccurate, incomplete, or misleading criminal history record information, he or she shall, by written request, provide to the entity the name of the individual, agency, or company to which such information was disseminated. Within 60 days of the written request, the entity shall disseminate the modification, correction, supplement, or amendment to the individual's criminal history record information to such individual, agency, or company to which the information in question has been previously communicated, as well as to the individual whose information has been ordered so altered.

(h) Access to an individual's criminal history record information, including any fingerprints or photographs of the individual taken in conjunction with the arrest, shall be restricted by the center for the following types of dispositions:

(1) Prior to indictment, accusation, or other charging instrument:

(A) The case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and:

(i) The offense against such individual is closed by the arresting law enforcement agency. It shall be the duty of the head of the arresting law enforcement agency to notify the center whenever a record is to be restricted pursuant to this division. A copy of the notice shall be sent to the accused and the accused's attorney, if any, by mailing the same by first-class mail; or

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

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

(II) If the offense is a felony, other than a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, four years; or

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

If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this division, the center shall make such record available in accordance with Code Section 35-3-34.

(B) The case was referred to the prosecuting attorney but was later dismissed; or

(C) The grand jury returned two no bills; and

(2) After indictment or accusation:

(A) Except as provided in subsection (i) of this Code section, all charges were dismissed or nolle prossed;

(B) The individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of Code Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation;

(C) The individual successfully completed a drug court treatment program or mental health treatment program, the individual's case has been dismissed or nolle prossed, and he or she has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense; or

(D) The individual was acquitted of all of the charges by a judge or jury unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial court through clear and convincing evidence that the harm otherwise resulting to the individual is clearly outweighed by the public interest in the criminal history record information being publicly available because either:

(i) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine; or

1413 (ii) The individual has been formally charged with the same or similar offense within
1414 the previous five years.

1415 (i) After the filing of an indictment or accusation, an individual's criminal history record
1416 information shall not be restricted if:

1417 (1) The charges were nolle prossed or otherwise dismissed because:

1418 (A) Of a plea agreement resulting in a conviction of the individual for an offense
1419 arising out of the same underlying transaction or occurrence as the conviction;

1420 (B) The prosecuting attorney was barred from introducing material evidence against
1421 the individual on legal grounds, including, without limitation, the granting of a motion
1422 to suppress or motion in limine;

1423 (C) The conduct which resulted in the arrest of the individual was part of a pattern of
1424 criminal activity which was prosecuted in another court of the state or a foreign nation;
1425 or

1426 (D) The individual had diplomatic, consular, or similar immunity or inviolability from
1427 arrest or prosecution;

1428 (2) The charges were tried and some but not all of the charges resulted in an acquittal;
1429 or

1430 (3) The individual was acquitted of all charges but it is later determined that the acquittal
1431 was the result of jury tampering or judicial misconduct.

1432 (j)(1) When an individual had felony charges dismissed or nolle prossed or was found
1433 not guilty of felony charges but was convicted of a misdemeanor offense or offenses
1434 arising out of the same underlying transaction or occurrence, such individual may petition
1435 the superior court in the county where the arrest occurred to restrict access to criminal
1436 history record information for such felony charges within four years of the arrest. Such
1437 court shall maintain jurisdiction over the case for this limited purpose and duration. Such
1438 petition shall be served on the arresting law enforcement agency and the prosecuting
1439 attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing
1440 of the petition. The court shall hear evidence and shall grant an order restricting such
1441 criminal history record information if the court determines the charges in question did not
1442 arise out of the same underlying transaction or occurrence.

1443 (2) When an individual was convicted of an offense and was sentenced to punishment
1444 other than the death penalty, but such conviction was vacated by the trial court or
1445 reversed by an appellate court or other post-conviction court, the decision of which has
1446 become final by the completion of the appellate process, and the prosecuting attorney has
1447 not retried the case within two years of the date the order vacating or reversing the
1448 conviction became final, such individual may petition the superior court in the county
1449 where the conviction occurred to restrict access to criminal history record information for

such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case, and the public's interest in the criminal history record information being publicly available.

(3) When an individual's case has remained on the dead docket for more than 12 months, such individual may petition the superior court in the county where the case is pending to restrict access to criminal history record information for such offense. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the case was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, and at the time of such conviction such individual was a youthful offender, provided that such individual successfully completed the terms of his or her sentence and, since completing the terms of his or her sentence, has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense, and provided, further, that he or she was not convicted in this state of a misdemeanor violation or under any other state's law with similar provisions of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she may petition the superior court in the county where the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the individual's conduct and the public's interest in the criminal history record information being publicly available.

(B) Record restriction shall not be appropriate if the individual was convicted of:

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

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

1486 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation
1487 of Code Section 16-6-5.1;
1488 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;
1489 (v) Pimping in violation of Code Section 16-6-11;
1490 (vi) Pandering by compulsion in violation of Code Section 16-6-14;
1491 (vii) Masturbation for hire in violation of Code Section 16-6-16;
1492 (viii) Giving massages in a place used for lewdness, prostitution, assignation, or
1493 masturbation for hire in violation of Code Section 16-6-17;
1494 (ix) Sexual battery in violation of Code Section 16-6-22.1;
1495 (x) Any offense related to minors generally in violation of Part 2 of Article 3 of
1496 Chapter 12 of Title 16;
1497 (xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such
1498 prohibition shall not apply to a misdemeanor conviction of shoplifting in violation of
1499 Code Section 16-8-14; or
1500 (xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.
1501 (5) Any party may file an appeal of an order entered pursuant to this subsection as
1502 provided in Code Section 5-6-34.
1503 (k)(1) The center shall notify the arresting law enforcement agency of any criminal
1504 history record information, access to which has been restricted pursuant to this Code
1505 section, within 30 days of the date access to such information is restricted. Upon receipt
1506 of notice from the center that access to criminal history record information has been
1507 restricted, the arresting law enforcement agency or other law enforcement agency shall,
1508 within 30 days, restrict access to all such information maintained by such arresting law
1509 enforcement agency or other law enforcement agency for such individual's charge.
1510 (2) An individual who has had criminal history record information restricted pursuant to
1511 this Code section may submit a written request to the appropriate county or municipal jail
1512 or detention center to have all records for such individual's charge maintained by the
1513 appropriate county or municipal jail or detention center restricted. Within 30 days of such
1514 request, the appropriate county or municipal jail or detention center shall restrict access
1515 to all such criminal history record information maintained by such appropriate county or
1516 municipal jail or detention center for such individual's charge.
1517 (3) The center shall be authorized to unrestrict criminal history record information based
1518 on the receipt of a disposition report showing that the individual was convicted of an
1519 offense arising out of an arrest of which the information was restricted pursuant to this
1520 Code section.
1521 (l) If criminal history record information is restricted pursuant to this Code section and if
1522 the entity declines to restrict access to such information, the individual may file a civil

action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the entity shall be upheld only if it is determined by clear and convincing evidence that the individual did not meet the criteria set forth in subsection (h) or (j) of this Code section.

(m)(1) For criminal history record information maintained by the clerk of court, an individual who has a record restricted pursuant to this Code section may petition the court with original jurisdiction over the charges in the county where the clerk of court is located for an order to seal all criminal history record information maintained by the clerk of court for such individual's charge. Notice of such petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient notice.

(2) The court shall order all criminal history record information in the custody of the clerk of court, including within any index, to be restricted and unavailable to the public if the court finds by a preponderance of the evidence that:

(A) The criminal history record information has been restricted pursuant to this Code section; and

(B) The harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(3) Within 60 days of the court's order, the clerk of court shall cause every document, physical or electronic, in its custody, possession, or control to be restricted.

(4) The person who is the subject of such sealed criminal history record information may petition the court for inspection of the criminal history record information included in the court order. Such information shall always be available for inspection, copying, and use by criminal justice agencies and the Judicial Qualifications Commission.

(n)(1) As to arrests occurring before July 1, 2013, an individual may, in writing, request the arresting law enforcement agency to restrict the criminal history record information of an arrest, including any fingerprints or photographs taken in conjunction with such arrest. Reasonable fees shall be charged by the arresting law enforcement agency and the center for the actual costs of restricting such records, provided that such fee shall not exceed \$50.00.

(2) Within 30 days of receipt of such written request, the arresting law enforcement agency shall provide a copy of the request to the prosecuting attorney. Within 90 days of receiving the request, the prosecuting attorney shall review the request to determine if he or she agrees to record restriction, and the prosecuting attorney shall notify the arresting law enforcement agency of his or her decision within such 90 day period. The arresting law enforcement agency shall inform the individual of the prosecuting attorney's

1560 decision, and, if record restriction is approved by the prosecuting attorney, the arresting
1561 law enforcement agency shall restrict the criminal history record information within 30
1562 days of receipt of the prosecuting attorney's decision.

1563 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal
1564 history record information, such individual may file a civil action in the superior court
1565 where the entity is located. A copy of the civil action shall be served on the entity and
1566 prosecuting attorney for the jurisdiction where the civil action is filed, and they may
1567 become parties to the action. A decision of the prosecuting attorney shall not be upheld
1568 if it is determined by clear and convincing evidence that the harm otherwise resulting to
1569 the privacy of the individual clearly outweighs the public interest in the criminal history
1570 record information being publicly available.

1571 (4) To restrict criminal history record information at the center, an individual shall
1572 submit a prosecuting attorney's approved record restriction request or a court order issued
1573 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access
1574 to such criminal history record information within 30 days from receiving such
1575 information.

1576 (o) Nothing in this Code section shall give rise to any right which may be asserted as a
1577 defense to a criminal prosecution or serve as the basis for any motion that may be filed in
1578 any criminal proceeding. The modification, correction, supplementation, amendment, or
1579 restriction of criminal history record information shall not abate or serve as the basis for
1580 the reversal of any criminal conviction.

1581 (p) Any application to the center for access to or restriction of criminal history record
1582 information made pursuant to this Code section shall be made in writing on a form
1583 approved by the center. The center shall be authorized to develop and publish such
1584 procedures as may be necessary to carry out the provisions of this Code section. In
1585 adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the 'Georgia
1586 Administrative Procedure Act,' shall not apply.

1587 (q) It shall be the duty of the entity to take such action as may be reasonable to prevent
1588 disclosure of information to the public which would identify any individual whose criminal
1589 history record information is restricted pursuant to this Code section.

1590 (r) If the center has notified a firearms dealer that an individual is prohibited from
1591 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title
1592 16 and if the prohibition is the result of such individual being involuntarily hospitalized
1593 within the immediately preceding five years, upon such individual or his or her attorney
1594 making an application to inspect his or her records, the center shall provide the record of
1595 involuntary hospitalization and also inform the individual or attorney of his or her right to

1596 a hearing before the judge of the probate court or superior court relative to such individual's
1597 eligibility to possess or transport a handgun."

1598 **PART VII**

1599 **PENAL INSTITUTIONS**

1600 **SECTION 7-1.**

1601 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
1602 by revising Code Section 42-1-1, relating to giving information to or receiving money from
1603 an inmate in a penal institution, as follows:

1604 "42-1-1.

1605 Except as specifically provided otherwise, as used in this title, the term:

1606 (1) 'Active supervision' means the period of a probated sentence in which a probationer
1607 actively reports to his or her probation supervisor or is otherwise under the direct
1608 supervision of a probation supervisor.

1609 (2) 'Administrative supervision' means the period of probation supervision that has
1610 reduced supervision and reporting requirements commensurate with and that follows
1611 active supervision but that is prior to the termination of a sentence.

1612 (3) 'Board' means the Board of Corrections.

1613 (4) 'Case plan' means an individualized accountability and behavior change strategy for
1614 a probationer, as applicable.

1615 (5) 'Commissioner' means the commissioner of corrections.

1616 (6) 'Criminal risk factors' means characteristics and behaviors that affect a person's risk
1617 for committing future crimes and include, but are not limited to, antisocial behavior,
1618 antisocial personality, criminal thinking, criminal associates, having a dysfunctional
1619 family, having low levels of employment or education, poor use of leisure and recreation
1620 time, and substance abuse.

1621 (7) 'Department' means the Department of Corrections.

1622 (8) 'Graduated sanctions' means:

1623 (A) Verbal and written warnings;

1624 (B) Increased restrictions and reporting requirements;

1625 (C) Community service or work crews;

1626 (D) Referral to substance abuse or mental health treatment or counseling programs in
1627 the community;

1628 (E) Increased substance abuse screening and monitoring;

1629 (F) Electronic monitoring, as such term is defined in Code Section 42-8-151; and

1630 (G) An intensive supervision program.

1631 (9) 'Risk and needs assessment' means an actuarial tool, approved by the board and
1632 validated on a targeted population, scientifically proven to determine a person's risk to
1633 recidivate and to identify criminal risk factors that, when properly addressed, can reduce
1634 that person's likelihood of committing future criminal behavior.

1635 ~~(a) No employee of a penal institution may give advice to an inmate regarding the name~~
1636 ~~or the employment of an attorney at law in any case where the inmate is confined in a penal~~
1637 ~~institution or receive any sum of money paid as fees or otherwise to attorneys at law in a~~
1638 ~~criminal case or cases against any inmate with which they may be connected in any~~
1639 ~~capacity.~~

1640 ~~(b) Any person who violates this Code section shall be guilty of a misdemeanor."~~

1641 **SECTION 7-2.**

1642 Said title is further amended by adding a new Code section to read as follows:

1643 "42-1-11.2.

1644 (a) No employee of a penal institution shall give advice to an inmate regarding the name
1645 or the employment of an attorney at law in any case where the inmate is confined in a penal
1646 institution or receive any sum of money paid as fees or otherwise to attorneys at law in a
1647 criminal case or cases against any inmate with which they may be connected in any
1648 capacity.

1649 (b) Any person who violates this Code section shall be guilty of a misdemeanor."

1650 **SECTION 7-3.**

1651 Said title is further amended by revising Code Section 42-2-1, relating to definitions, as
1652 follows:

1653 "42-2-1.

1654 ~~As used in this chapter, the term:~~

1655 ~~(1) 'Board' means the Board of Corrections.~~

1656 ~~(2) 'Commissioner' means the commissioner of corrections.~~

1657 ~~(3) 'Department' means~~ There is created the Department of Corrections."

1658 **SECTION 7-4.**

1659 Said title is further amended by revising subsection (c) of Code Section 42-2-11, relating to
1660 the powers and duties of the Board of Corrections, as follows:

1661 "(c)(1) The board shall adopt rules governing the assignment, housing, working, feeding,
1662 clothing, treatment, discipline, rehabilitation, training, and hospitalization of all inmates
1663 coming under its custody.

1664 (2)(A) As used in this paragraph, the term:

1665 (i) 'Evidence based practices' means supervision policies, procedures, programs, and
 1666 practices that scientific research demonstrates reduce recidivism among individuals
 1667 who are under some form of correctional supervision.
 1668 (ii) 'Recidivism' means returning to prison or jail within three years of being placed
 1669 on probation or being discharged or released from a department or jail facility.
 1670 (B) The board shall adopt rules and regulations governing the management and
 1671 treatment of inmates and probationers to ensure that evidence based practices, including
 1672 the use of a risk and needs assessment and any other method the board deems
 1673 appropriate, guide decisions related to preparing inmates for release into the community
 1674 and managing probationers in the community. The board shall require the department
 1675 to collect and analyze data and performance outcomes relevant to the level and type of
 1676 treatment given to an inmate or probationer and the outcome of the treatment on his or
 1677 her recidivism and prepare an annual report regarding such information which shall be
 1678 submitted to the Governor, the Lieutenant Governor, the Speaker of the House of
 1679 Representatives, and the chairpersons of the House Committee on State Institutions and
 1680 Property and the Senate State Institutions and Property Committee."

1681 **SECTION 7-5.**

1682 Said title is further amended by revising subsection (a) of Code Section 42-5-50, relating to
 1683 the transmittal of information on convicted persons, as follows:

1684 "(a) The clerk of the court shall notify the commissioner of a sentence within 30 working
 1685 days following the receipt of the sentence and send other documents set forth in this Code
 1686 section. Such notice shall be ~~mailed within such time period by first-class mail and shall~~
 1687 ~~be accompanied by two complete and certified sentence packages containing~~ submitted
 1688 electronically and shall contain the following documents:

- 1689 (1) A certified copy of the sentence;
- 1690 (2) A complete history of the convicted person, including a certified copy of the
 1691 indictment, accusation, or both and such other information as the commissioner may
 1692 require;
- 1693 (3) An affidavit of the custodian of such person indicating the total number of days the
 1694 convicted person was incarcerated prior to the imposition of the sentence. It shall be the
 1695 duty of the custodian of such person to transmit the affidavit provided for in this
 1696 paragraph to the clerk of the superior court within ten days following the date on which
 1697 the sentence is imposed;
- 1698 (4) Order of probation revocation or tolling of probation; and
- 1699 (5) A copy of the sentencing information report is required in all jurisdictions with an
 1700 options system day reporting center certified by the ~~Department of Corrections~~

1701 department. The failure to provide the sentencing information report shall not cause an
1702 increase in the 15 day time period for the department to assign the inmate to a
1703 correctional institution as set forth in subsection (b) of this Code Section.
1704 All of the aforementioned documents ~~will~~ shall be submitted on forms provided by the
1705 commissioner. The commissioner shall file one copy of each such document with the State
1706 Board of Pardons and Paroles within 30 working days of receipt of such documents from
1707 the clerk of the court. Except where the clerk is on a salary, the clerk shall receive from
1708 funds of the county the fee prescribed in Code Section 15-6-77 for such service."

1709 **SECTION 7-6.**

1710 Said title is further amended by revising Code Section 42-8-21, relating to definitions for the
1711 state-wide probation system, as follows:

1712 "42-8-21.

1713 ~~As used in this article, the term:~~

1714 (1) ~~'Board' means the Board of Corrections.~~

1715 (2) ~~'Commissioner' means the commissioner of corrections.~~

1716 (3) ~~'Department' means the Department of Corrections~~ Reserved."

1717 **SECTION 7-7.**

1718 Said title is further amended by revising Code Section 42-8-23, relating to the administration
1719 of supervision of probationers by the Department of Corrections, as follows:

1720 "42-8-23.

1721 (a) As used in this Code section, the term 'chief probation officer' means the highest
1722 ranking field probation officer in each judicial circuit who does not have direct supervision
1723 of the probationer who is the subject of the hearing.

1724 (b) The department shall administer the supervision of felony probationers.

1725 (c) If graduated sanctions have been made a condition of probation by the court and if a
1726 probationer violates the conditions of his or her probation, other than for the commission
1727 of a new offense, the department may impose graduated sanctions as an alternative to
1728 judicial modification or revocation of probation, provided that such graduated sanctions are
1729 approved by a chief probation officer.

1730 (d) The failure of a probationer to comply with the graduated sanction or sanctions
1731 imposed by the department shall constitute a violation of probation.

1732 (e) A probationer may at any time voluntarily accept the graduated sanctions proposed by
1733 the department.

1734 (f)(1) The department's decision shall be final unless the probationer files an appeal in
1735 the sentencing court. Such appeal shall be filed within 30 days of the issuance of the
1736 decision by the department.

1737 (2) Such appeal shall first be reviewed by the judge upon the record. At the judge's
1738 discretion, a de novo hearing may be held on the decision. The filing of the appeal shall
1739 not stay the department's decision.

1740 (3) When the sentencing judge does not act on the appeal within 30 days of the date of
1741 the filing of the appeal, the department's decision shall be affirmed by operation of law.

1742 (g) Nothing contained in this Code section shall alter the relationship between judges and
1743 probation supervisors prescribed in this article nor be construed as repealing any power
1744 given to any court of this state to place offenders on probation or to supervise offenders."

1745 **SECTION 7-8.**

1746 Said title is further amended by revising Code Section 42-8-35, relating to terms and
1747 conditions of probation, as follows:

1748 "42-8-35.

1749 (a) The court shall determine the terms and conditions of probation and may provide that
1750 the probationer shall:

1751 (1) Avoid injurious and vicious habits;

1752 (2) Avoid persons or places of disreputable or harmful character;

1753 (3) Report to the probation supervisor as directed;

1754 (4) Permit the supervisor to visit the probationer at the probationer's home or elsewhere;

1755 (5) Work faithfully at suitable employment insofar as may be possible;

1756 (6) Remain within a specified location; provided, however, that the court shall not banish
1757 a probationer to any area within the state:

1758 (A) That does not consist of at least one entire judicial circuit as described by Code
1759 Section 15-6-1; or

1760 (B) In which any service or program in which the probationer must participate as a
1761 condition of probation is not available;

1762 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
1763 by the probationer's offense, in an amount to be determined by the court. Unless
1764 otherwise provided by law, no reparation or restitution to any aggrieved person for the
1765 damage or loss caused by the probationer's offense shall be made if the amount is in
1766 dispute unless the same has been adjudicated;

1767 (8) Make reparation or restitution as reimbursement to a municipality or county for the
1768 payment for medical care furnished the person while incarcerated pursuant to the
1769 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local

1770 governmental unit for the provision of medical care shall be made if the amount is in
1771 dispute unless the same has been adjudicated;

1772 (9) Repay the costs incurred by any municipality or county for wrongful actions by an
1773 inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section
1774 42-4-71;

1775 (10) Support the probationer's legal dependents to the best of the probationer's ability;

1776 (11) Violate no local, state, or federal laws and be of general good behavior;

1777 (12) If permitted to move or travel to another state, agree to waive extradition from any
1778 jurisdiction where the probationer may be found and not contest any effort by any
1779 jurisdiction to return the probationer to this state; ~~and~~

1780 (13) Submit to evaluations and testing relating to rehabilitation and participate in and
1781 successfully complete rehabilitative programming as directed by the department;

1782 (14) Wear a device capable of tracking the location of the probationer by means
1783 including electronic surveillance or global positioning satellite systems. The department
1784 shall assess and collect fees from the probationer for such monitoring at levels set by
1785 regulation by the department;

1786 (15) Complete a residential or nonresidential program for substance abuse or mental
1787 health treatment as indicated by a risk and needs assessment; and

1788 (16) Agree to the imposition of graduated sanctions when, in the discretion of the
1789 probation supervisor, the probationer's behavior warrants a graduated sanction.

1790 (b) In determining the terms and conditions of probation for a probationer who has been
1791 convicted of a criminal offense against a victim who is a minor or dangerous sexual offense
1792 as those terms are defined in Code Section 42-1-12, the court may provide that the
1793 probationer shall be:

1794 (1) Prohibited from entering or remaining present at a victim's school, place of
1795 employment, place of residence, or other specified place at times when a victim is present
1796 or from loitering in areas where minors congregate, child care facilities, churches, or
1797 schools as those terms are defined in Code Section 42-1-12;

1798 ~~(2) Required to wear a device capable of tracking the location of the probationer by~~
1799 ~~means including electronic surveillance or global positioning systems. The department~~
1800 ~~shall assess and collect fees from the probationer for such monitoring at levels set by~~
1801 ~~regulation by the department;~~

1802 ~~(3)~~(2) Required, either in person or through remote monitoring, to allow viewing and
1803 recording of the probationer's incoming and outgoing e-mail, history of websites visited
1804 and content accessed, and other Internet based communication;

1805 ~~(4)~~(3) Required to have periodic unannounced inspections of the contents of the
1806 probationer's computer or any other device with Internet access, including the retrieval

1807 and copying of all data from the computer or device and any internal or external storage
1808 or portable media and the removal of such information, computer, device, or medium; and
1809 ~~(5)~~(4) Prohibited from seeking election to a local board of education.
1810 (c) The supervision provided for under subsection (b) of this Code section shall be
1811 conducted by a probation officer, law enforcement officer, or computer information
1812 technology specialist working under the supervision of a probation officer or law
1813 enforcement agency."

1814 SECTION 7-9.

1815 Said title is further amended by revising subsection (a) of Code Section 42-8-35.4, relating
1816 to confinement in probation detention centers, as follows:
1817 "(a) In addition to any other terms and conditions of probation provided for in this article,
1818 the trial judge may require that a defendant convicted of a felony and sentenced to a period
1819 of not less than one year on probation or a defendant who has been previously sentenced
1820 to probation for a forcible misdemeanor as defined in paragraph (7) of Code Section 16-1-3
1821 or a misdemeanor of a high and aggravated nature and has violated probation or other
1822 probation alternatives and is subsequently sentenced to a period of not less than one year
1823 on probation shall complete satisfactorily, as a condition of that probation, a program of
1824 confinement, not to exceed 180 days, in a probation detention center. Probationers so
1825 sentenced ~~will~~ shall be required to serve the period of confinement, not to exceed 180 days,
1826 specified in the court order."

1827 SECTION 7-10.

1828 Said title is further amended by revising Code Section 42-8-37, relating to the effect of
1829 termination of the period of probation, as follows:
1830 "42-8-37.
1831 (a) Upon the termination of the ~~period of probation~~ probated portion of a sentence, the
1832 probationer shall be released from probation and shall not be liable to sentence for the
1833 crime for which probation was allowed; provided, however, that the foregoing shall not be
1834 construed to prohibit the conviction and sentencing of the probationer for the subsequent
1835 commission of the same or a similar offense or for the subsequent continuation of the
1836 offense for which he or she was previously sentenced.
1837 (b) The court may at any time cause the probationer to appear before it to be admonished
1838 or commended and, when satisfied that its action would be for the best interests of justice
1839 and the welfare of society, may discharge the probationer from further supervision.
1840 ~~(b)(c) The Upon the request of the chief judge of the court from which said person was~~
1841 ~~sentenced, the~~ case of each person receiving a probated sentence of more than two years

1842 shall be reviewed by the probation supervisor responsible for that case after service of two
 1843 years on probation, and a written report of the probationer's progress shall be submitted to
 1844 the sentencing court along with the supervisor's recommendation as to early termination.
 1845 ~~Upon the request of the chief judge of the court from which said person was sentenced,~~
 1846 ~~each~~ Each such case shall be reviewed and a written report submitted annually thereafter;
 1847 ~~or more often if required;~~ until the termination, expiration, or other disposition of the case."

1848 **SECTION 7-11.**

1849 Said title is further amended by revising subsection (a) of Code Section 42-8-38, relating to
 1850 the arrest of the probationer for a violation of the terms of probation, as follows:

1851 "(a) Whenever, within the period of probation, a probation supervisor believes that a
 1852 probationer under his or her supervision has violated his or her probation in a material
 1853 respect, ~~he if graduated sanctions have been made a condition of probation by the court, the~~
 1854 probation supervisor may impose graduated sanctions as set forth in Code Section 42-8-23
 1855 to address the specific conduct leading to such violation or, if the circumstances warrant,
 1856 may arrest the probationer without warrant, wherever found, and return ~~him~~ the probationer
 1857 to the court granting the probation or, if under supervision in a county or judicial circuit
 1858 other than that of conviction, to a court of equivalent original criminal jurisdiction within
 1859 the county wherein the probationer resides for purposes of supervision. Any officer
 1860 authorized by law to issue warrants may issue a warrant for the arrest of the probationer
 1861 upon the affidavit of one having knowledge of the alleged violation, returnable forthwith
 1862 before the court in which revocation proceedings are being brought."

1863 **PART VIII**

1864 **CROSS-REFERENCES**

1865 **SECTION 8-1.**

1866 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
 1867 in subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed directly
 1868 appealable, by deleting "and" at the end of paragraph (10), by replacing the period with ";
 1869 and" at the end of paragraph (11), and by adding a new paragraph to read as follows:

1870 "(12) All judgments or orders entered pursuant to Code Section 35-3-37."

1871 **SECTION 8-2.**

1872 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 1873 Code Section 15-10-260, relating to jurisdiction for magistrate courts, as follows:

1874 "15-10-260.

1875 (a) This article governs trials of misdemeanor violations of Code Sections 16-13-30 and
1876 16-13-2, relating to possession of less than one ounce of marijuana; Code Section 16-8-14,
1877 relating to misdemeanor theft by shoplifting of ~~\$300.00 or less~~; Code Section 3-3-23,
1878 relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic
1879 beverages by, a person under 21 years of age; and Code Section 16-7-21, relating to
1880 criminal trespass.

1881 (b) Magistrate courts are authorized to conduct trials and impose sentences for violations
1882 of misdemeanors specified in subsection (a) of this Code section; provided, however, that
1883 the violation must have occurred in the unincorporated area of the county.

1884 (c) A person convicted of violation of a misdemeanor specified in subsection (a) of this
1885 Code section shall be punished as provided in paragraphs (1) through (4) of this subsection
1886 as follows:

1887 (1) For possession of less than one ounce of marijuana, as provided in subsection (b) of
1888 Code Section 16-13-2;

1889 (2) For misdemeanor theft by shoplifting, as provided in paragraph (1) of subsection (b)
1890 of Code Section 16-8-14;

1891 (3) For furnishing alcoholic beverages to, and purchase and possession of alcoholic
1892 beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and

1893 (4) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.

1894 (d) The jurisdiction of magistrate courts to try and dispose of the misdemeanor violations
1895 enumerated in subsection (a) of this Code section shall be concurrent with the jurisdiction
1896 of any other courts having jurisdiction to try and dispose of such cases."

1897 **SECTION 8-3.**

1898 Said title is further amended by revising subsection (a) of Code Section 15-11-30.3, relating
1899 to commission of designated felony act of burglary by a child 15 years of age or older, as
1900 follows:

1901 "(a) After a petition has been filed alleging that a child 15 years of age or older has
1902 committed a designated felony act, the court shall follow the procedure specified in this
1903 Code section if the designated felony act alleged to have been committed would have
1904 constituted the crime of burglary in any degree if done by an adult and the child has been
1905 found at separate court appearances to have committed acts which would have constituted
1906 the crime of burglary in any degree if done by an adult on three or more previous
1907 occasions."

SECTION 8-4.

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

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

SECTION 8-5

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

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

SECTION 8-6.

Said title is further amended by revising division (9)(A)(viii) of Code Section 16-14-3, relating to definitions for the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," as follows:

"(viii) Code Section 16-9-1, relating to forgery in ~~the first~~ any degree;"

SECTION 8-7.

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

1941 "16-16-1.

1942 As used in this chapter, the term:

1943 (1) 'Armed robbery' means the offense defined in subsection (a) of Code Section 16-8-41.

1944 (2) 'Burglary' means the offense defined in ~~subsection (a) of Code Section 16-7-1~~ in any
1945 degree."

1946 **SECTION 8-8.**

1947 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
1948 amended by revising paragraph (11) of subsection (a) of Code Section 17-6-1, relating to
1949 where offenses bailable, procedure, schedule of bails, and appeal bonds, as follows:

1950 "(11) Kidnapping, arson, aggravated assault, or burglary in any degree if the person, at
1951 the time of the alleged kidnapping, arson, aggravated assault, or burglary in any degree,
1952 had previously been convicted of, was on probation or parole with respect to, or was on
1953 bail for kidnapping, arson, aggravated assault, burglary in any degree, or one or more of
1954 the offenses listed in paragraphs (1) through (10) of this subsection;"

1955 **SECTION 8-9.**

1956 Said title is further amended by revising paragraph (1) of subsection (a) of Code Section
1957 17-7-70.1, relating to trial upon accusations in certain felony and misdemeanor cases, as
1958 follows:

1959 "(1) In felony cases involving violations of the following:

1960 (A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, ~~16-9-2~~, 16-9-20, 16-9-31,
1961 16-9-33, 16-9-37, 16-10-52, and 40-5-58;

1962 (B) Article 1 of Chapter 8 of Title 16, relating to theft;

1963 (C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;

1964 (D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to
1965 confinement; or

1966 (E) Code Section 16-11-131, relating to possession of a firearm by a convicted felon
1967 or first offender probationer,

1968 in which defendants have either been bound over to the superior court based on a finding
1969 of probable cause pursuant to a commitment hearing under Article 2 of this chapter or
1970 have expressly or by operation of law waived a commitment hearing, the district attorney
1971 shall have authority to prefer accusations, and the defendants shall be tried on such
1972 accusations according to the same rules of substantive and procedural laws relating to
1973 defendants who have been indicted by a grand jury."

SECTION 8-10.

1974

1975 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section
1976 17-10-9.1, relating to voluntary surrender to county jail or correctional institution, as follows:

1977 "(10) Kidnapping, arson, or burglary in any degree if the person, at the time such person
1978 was charged, has previously been convicted of, was on probation or parole with respect
1979 to, or was on bail for kidnapping, arson, aggravated assault, burglary in any degree, or
1980 one or more of the offenses listed in paragraphs (1) through (9) of this subsection;"

SECTION 8-11.

1981

1982 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section
1983 17-10-30, relating to procedure for imposition of the death penalty generally, as follows:

1984 "(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the
1985 offender was engaged in the commission of another capital felony or aggravated battery,
1986 or the offense of murder was committed while the offender was engaged in the
1987 commission of burglary in any degree or arson in the first degree;"

SECTION 8-12.

1988

1989 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
1990 subparagraph (G) of paragraph (2) of Code Section 31-7-250, relating to definitions for
1991 personal care home licensing and employee record checks, as follows:

1992 "(G) A felony violation of Code Section 16-9-1 ~~or 16-9-2, relating to forgery in the first~~
1993 ~~and second degree, respectively;~~"

SECTION 8-13.

1994

1995 Said title is further amended by revising subparagraph (K) of paragraph (2) of Code Section
1996 31-7-350, relating to definitions for nursing home employee record checks, as follows:

1997 "(K) A felony violation of Code Section 16-9-1, ~~relating to forgery in the first degree;~~
1998 ~~a violation of Code Section 16-9-2, relating to forgery in the second degree;~~"

SECTION 8-14.

1999

2000 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
2001 by revising Code Section 36-32-9, relating to the jurisdiction of shoplifting of \$300.00 in
2002 municipal courts, as follows:

2003 "36-32-9.

2004 (a) The municipal court is granted jurisdiction to try and dispose of cases in which a person
2005 is charged with a ~~first, second, or third offense of~~ misdemeanor theft by shoplifting ~~when~~
2006 ~~the property which was the subject of the theft was valued at \$300.00 or less, if the offense~~

2007 occurred within the corporate limits of the municipality. The jurisdiction of such court
2008 shall be concurrent with the jurisdiction of any other courts within the county having
2009 jurisdiction to try and dispose of such cases.

2010 (b) Any ~~defendant person~~ charged in a municipal court with a ~~first, second, or third offense~~
2011 ~~of misdemeanor~~ theft by shoplifting ~~property valued at \$300.00 or less~~ shall be entitled
2012 upon request to have the case against him or her transferred to the court having general
2013 misdemeanor jurisdiction in the county in which the alleged offense occurred.

2014 (c) A person convicted in a municipal court of a ~~first, second, or third offense of~~
2015 ~~misdemeanor~~ theft by shoplifting ~~property valued at \$300.00 or less~~ shall be punished as
2016 provided in paragraph (1) of subsection (b) of Code Section 16-8-14, provided that nothing
2017 in this Code section or Code Section 16-8-14 shall be construed to give any municipality
2018 the right to impose a fine or punishment by imprisonment in excess of the limits as set forth
2019 in the municipality's charter.

2020 (d) Any fines and forfeitures arising from the prosecution of such cases in such municipal
2021 court shall be retained by the municipality and shall be paid into the treasury of such
2022 municipality.

2023 (e) It shall be the duty of the appropriate agencies of the municipality in which an offense
2024 under subsection (a) of this Code section is charged to make any reports to the Georgia
2025 Crime Information Center required under Article 2 of Chapter 3 of Title 35."

2026 **SECTION 8-15.**

2027 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
2028 by revising paragraph (2) of subsection (a) of Code Section 42-5-85, relating to delegation
2029 of authority to issue limited leave privileges, as follows:

2030 "(2) The murder was committed while the offender was engaged in the commission of
2031 another capital felony, aggravated battery, burglary in any degree, or arson in the first
2032 degree;"

2033 **PART IX**

2034 **EFFECTIVE DATE, APPLICABILITY, AND REPEALER**

2035 **SECTION 9-1.**

2036 (a) Except as provided in subsections (b) and (c) of this section, this Act shall become
2037 effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any
2038 offense occurring before July 1, 2012, shall be governed by the statute in effect at the time
2039 of such offense and shall be considered a prior conviction for the purpose of imposing a

2040 sentence that provides for a different penalty for a subsequent conviction for the same type
2041 of offense, of whatever degree or level, pursuant to this Act.

2042 (b)(1) Section 3-7B of this Act shall become effective on July 1, 2013, at which time,
2043 Section 3-7A of this Act shall be superceded and repealed in its entirety, and Section
2044 3-7B of this Act shall apply to offenses which occur on or after July 1, 2013. Any offense
2045 occurring before July 1, 2013, shall be governed by the statute in effect at the time of such
2046 offense and shall be considered a prior conviction for the purpose of imposing a sentence
2047 that provides for a different penalty for a subsequent conviction for the same type of
2048 offense, of whatever degree or level, pursuant to this Act.

2049 (2) Section 3-7C of this Act shall become effective on July 1, 2014, at which time,
2050 Section 3-7B of this Act shall be superceded and repealed in its entirety, and Section 3-7C
2051 of this Act shall apply to offenses which occur on or after July 1, 2014. Any offense
2052 occurring before July 1, 2014, shall be governed by the statute in effect at the time of such
2053 offense and shall be considered a prior conviction for the purpose of imposing a sentence
2054 that provides for a different penalty for a subsequent conviction for the same type of
2055 offense, of whatever degree or level, pursuant to this Act.

2056 (c) Part VI and Sections 8-1 and 8-4 of this Act shall become fully effective on July 1, 2013;
2057 provided, however, that for the purpose of preparing for implementation of Part VI of this
2058 Act, said part shall become effective on July 1, 2012.

2059 **SECTION 9-2.**

2060 All laws and parts of laws in conflict with this Act are repealed.