

House Bill 96

By: Representatives Brooks of the 55<sup>th</sup> and Dawkins-Haigler of the 91<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

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

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 The General Assembly makes the following legislative findings:

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

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

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

30 **SECTION 2.**

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

34 "17-10-0.1.

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

39 **SECTION 3.**

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

45 "5-5-40.

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

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

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

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

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

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

#### 67 SECTION 4.

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

70 "5-6-11.

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

#### 80 SECTION 5.

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

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

#### 91 SECTION 6.

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

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

96 "5-6-38.

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

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

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

125 **SECTION 7.**

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

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

140

**SECTION 8.**

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

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

148

**SECTION 9.**

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

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

161 **SECTION 10.**

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

165 "9-14-4.

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

172 **SECTION 11.**

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

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

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

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

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

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

192 **SECTION 12.**

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

195 "9-14-47.

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

202 **SECTION 13.**

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

205 **SECTION 14.**

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

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

216 **SECTION 15.**

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

220 "15-1-9.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 356 SECTION 16.

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

360 "15-1-9.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

429 **SECTION 17.**

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

433 "15-1-9.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

480 **SECTION 18.**

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

483 "15-3-3.

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

488 **SECTION 19.**

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

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

494 **SECTION 20.**

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

498 "15-12-160.1.

499 On and after July 1, 2012, when any person stands indicted for a felony, the court shall  
500 have impaneled 30 jurors from which the defense and prosecution may strike jurors;  
501 ~~provided, however, that in any case in which the state announces its intention to seek the~~  
502 ~~death penalty, the court shall have impaneled 42 jurors from which the defense and state~~  
503 ~~may strike jurors.~~ If, for any reason, after striking from the panel there remain fewer than  
504 12 qualified jurors to try the case, the clerk shall choose and cause to be summoned such  
505 numbers of persons who are competent prospective jurors as may be necessary to provide  
506 a full panel or successive panels. In making up the panel or successive panels, the clerk  
507 shall choose the names of prospective trial jurors in the same manner as prospective trial  
508 jurors are chosen and cause such persons to be summoned."

509 **SECTION 21.**

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

512 "15-12-164.

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

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

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

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

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

528 **SECTION 22.**

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

531 "15-12-165.

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

537 **SECTION 23.**

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

541 "(b) Except as otherwise provided in Code Section 17-3-2.1, prosecution for other crimes  
542 punishable by ~~death or~~ life imprisonment shall be commenced within seven years after the  
543 commission of the crime except as provided by subsection (d) of this Code section;  
544 provided, however, that prosecution for the crime of forcible rape shall be commenced  
545 within 15 years after the commission of the crime."

546

**SECTION 24.**

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

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

555

**SECTION 25.**

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

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

565

**SECTION 26.**

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

569 "17-7-50.

570 Any person who is arrested for a crime and who is refused bail shall, within 90 days after  
571 the date of confinement, be entitled to have the charge against him or her heard by a grand  
572 jury having jurisdiction over the accused person; ~~provided, however, that if the person is~~  
573 ~~arrested for a crime for which the death penalty is being sought, the superior court may,~~  
574 ~~upon motion of the district attorney for an extension and after a hearing and good cause~~  
575 ~~shown, grant one extension to the 90 day period not to exceed 90 additional days; and,~~  
576 ~~provided, further, that if such extension is granted by the court, the person shall not be~~  
577 ~~entitled to have the charge against him or her heard by the grand jury until the expiration~~  
578 ~~of such extended period. In the event no grand jury considers the charges against the~~  
579 ~~accused person within the 90 day period of confinement or within the extended period of~~

580 ~~confinement where such an extension is granted by the court, the accused shall have bail~~  
 581 ~~set upon application to the court."~~

582 **SECTION 27.**

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

585 "17-7-50.1.

586 (a) Any child who is charged with a crime that is within the jurisdiction of the superior  
 587 court, as provided in Code Section 15-11-28 or 15-11-30.2, who is detained shall within  
 588 180 days of the date of detention be entitled to have the charge against him or her presented  
 589 to the grand jury. The superior court shall, upon motion for an extension of time and after  
 590 a hearing and good cause shown, grant one extension to the original 180 day period, not  
 591 to exceed 90 additional days.

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

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

600 **SECTION 28.**

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

604 "17-7-70.

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

611 (b) Judges of the superior court may open their courts at any time without the presence of  
 612 either a grand jury or a trial jury to receive and act upon pleas of guilty in misdemeanor  
 613 cases and in felony cases, except those punishable by ~~death or~~ life imprisonment, when the  
 614 judge and the defendant consent thereto. The judge may try the issues in such cases

615 without a jury upon an accusation filed by the district attorney where the defendant has  
 616 waived indictment and consented thereto in writing and counsel is present in court  
 617 representing the defendant either by virtue of his or her employment or by appointment by  
 618 the court."

619 **SECTION 29.**

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

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

628 **SECTION 30.**

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

631 "17-7-131.

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

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

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

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

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

645 (A) Guilty;

646 (B) Not guilty;

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

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

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

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

658 (2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be  
659 accepted and the defendant adjudicated not guilty by reason of insanity by the court  
660 without a jury until the defendant has undergone examination by a licensed psychologist  
661 or psychiatrist and the court has examined the psychological or psychiatric reports, has  
662 held a hearing on the issue of the defendant's mental condition, and the court is satisfied  
663 that the defendant was insane at the time of the crime according to the criteria of Code  
664 Section 16-3-2 or 16-3-3.

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

667 (A) I charge you that should you find the defendant not guilty by reason of insanity at  
668 the time of the crime, the defendant will be committed to a state mental health facility  
669 until such time, if ever, that the court is satisfied that he or she should be released  
670 pursuant to law.

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

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

683 (c) In all criminal trials in any of the courts of this state wherein an accused shall contend  
684 that he or she was insane or otherwise mentally incompetent under the law at the time the  
685 act or acts charged against him or her were committed, the trial judge shall instruct the jury  
686 that they may consider, in addition to verdicts of 'guilty' and 'not guilty,' the additional

687 verdicts of 'not guilty by reason of insanity at the time of the crime,' 'guilty but mentally  
688 ill at the time of the crime,' and 'guilty but mentally retarded.'

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

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

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

701 (d) Whenever a defendant is found not guilty by reason of insanity at the time of the crime,  
702 the court shall retain jurisdiction over the person so acquitted and shall order such person  
703 to be detained in a state mental health facility, to be selected by the Department of  
704 Behavioral Health and Developmental Disabilities, for a period not to exceed 30 days from  
705 the date of the acquittal order, for evaluation of the defendant's present mental condition.  
706 Upon completion of the evaluation, the proper officials of the mental health facility shall  
707 send a report of the defendant's present mental condition to the trial judge, the prosecuting  
708 attorney, and the defendant's attorney, if any.

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

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

717 (3) The defendant shall be detained in custody until completion of the hearing. The  
718 hearing shall be conducted at the earliest opportunity after the expiration of the 30 days'  
719 evaluation period but in any event within 30 days after receipt by the prosecuting attorney  
720 of the evaluation report from the mental health facility. The court may take judicial  
721 notice of evidence introduced during the trial of the defendant and may call for testimony  
722 from any person with knowledge concerning whether the defendant is currently a  
723 mentally ill person in need of involuntary treatment, as defined by paragraph (12) of

724 Code Section 37-3-1, or a person with a developmental disability, as defined in paragraph  
 725 (8) of Code Section 37-1-1, who presents a substantial risk of imminent harm to himself  
 726 or herself or others. The prosecuting attorney may cross-examine the witnesses called  
 727 by the court and the defendant's witnesses and present relevant evidence concerning the  
 728 issues presented at the hearing.

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

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

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

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

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

746 (E) Notice of the right to have established an individualized service plan specifically  
 747 tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title  
 748 37 and Chapter 4 of Title 37; and

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

754 (5)(A) If a defendant appears to meet the criteria for outpatient involuntary treatment  
 755 as defined in Part 3 of Article 3 of Chapter 3 of Title 37, which shall be the criteria for  
 756 release on a trial basis in the community in preparation for a full release, the court may  
 757 order a period of conditional release subject to certain conditions set by the court. The  
 758 court is authorized to appoint an appropriate community service provider to work in  
 759 conjunction with the Department of Behavioral Health and Developmental Disabilities

760 to monitor the defendant's compliance with these conditions and to make regular reports  
761 to the court.

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

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

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

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

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

777 (E) The Department of Behavioral Health and Developmental Disabilities and any  
778 community services providers, including the employees and agents of both, providing  
779 supervision or treatment during a period of conditional release shall not be held  
780 criminally or civilly liable for any acts committed by a defendant placed by the  
781 committing court on a period of conditional release.

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

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

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

796 (3) If the finding of the court is adverse to release in such hearing held pursuant to this  
797 subsection on the grounds that such defendant does meet the inpatient civil commitment  
798 criteria, a further release application by the defendant shall not be heard by the court until  
799 12 months have elapsed from the date of the hearing upon the last preceding application.  
800 The Department of Behavioral Health and Developmental Disabilities shall have the  
801 independent right to request a release hearing once every 12 months.

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

810 (2) If at any time following the defendant's conviction as a guilty but mentally ill or  
811 guilty but mentally retarded offender it is determined that a temporary transfer to the  
812 Department of Behavioral Health and Developmental Disabilities is clinically indicated  
813 for his or her mental illness or mental retardation, then the defendant shall be transferred  
814 to the Department of Behavioral Health and Developmental Disabilities pursuant to  
815 procedures set forth in regulations of the Department of Corrections and the Department  
816 of Behavioral Health and Developmental Disabilities. In all such cases, the legal custody  
817 of the defendant shall be retained by the Department of Corrections. Upon notification  
818 from the Department of Behavioral Health and Developmental Disabilities to the  
819 Department of Corrections that hospitalization at a Department of Behavioral Health and  
820 Developmental Disabilities facility is no longer clinically indicated for his or her mental  
821 illness or mental retardation, the Department of Corrections shall transfer the defendant  
822 back to its physical custody and shall place such individual in an appropriate penal  
823 institution.

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

830 (i) In any case in which the defense of insanity is interposed or a plea of guilty but  
831 mentally ill at the time of the felony or a plea of guilty but mentally retarded is made and  
832 an examination is made of the defendant pursuant to Code Section 17-7-130.1 or

833 paragraph (2) of subsection (b) of this Code section, upon the defendant's being found  
 834 guilty or guilty but mentally ill at the time of the crime or guilty but mentally retarded,  
 835 a copy of any such examination report shall be forwarded to the Department of  
 836 Corrections with the official sentencing document. The Department of Behavioral Health  
 837 and Developmental Disabilities shall forward, in addition to its examination report, any  
 838 records maintained by such department that it deems appropriate pursuant to an  
 839 agreement with the Department of Corrections, within ten business days of receipt by the  
 840 Department of Behavioral Health and Developmental Disabilities of the official  
 841 sentencing document from the Department of Corrections.

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

#### 847 **SECTION 31.**

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

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

#### 856 **SECTION 32.**

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

861 ~~"(a) When two or more defendants are jointly indicted for a capital offense, any defendant~~  
 862 ~~so electing shall be separately tried unless the state shall waive the death penalty. When~~  
 863 ~~indicted for a capital felony when the death penalty is waived, or for a felony less than~~  
 864 ~~capital, or for a misdemeanor, such defendants may be tried jointly or separately in the~~  
 865 ~~discretion of the trial court. In any event, a jointly indicted defendant may testify for~~  
 866 ~~another jointly indicted defendant or on behalf of the state. When separate trials are~~  
 867 ~~ordered in any case, the defendants shall be tried in the order requested by the state. If the~~

868 offense requires joint action and concurrence of two or more persons, acquittal or  
869 conviction of one defendant shall not operate as acquittal or conviction of others not tried."

870 **SECTION 33.**

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

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

886 **SECTION 34.**

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

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

897 **SECTION 35.**

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

900 "17-8-73.

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

904 **SECTION 36.**

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

909 "17-9-3.

910 ~~In all capital cases, other than those of homicide, when the verdict is 'guilty,' with a~~  
 911 ~~recommendation for mercy, it shall be legal and shall mean imprisonment for life. When~~  
 912 ~~the verdict is 'guilty,' without a recommendation for mercy, it shall be legal and shall mean~~  
 913 ~~that the convicted person shall be sentenced to death. When it is shown that a person~~  
 914 ~~convicted of a capital offense without a recommendation for mercy had not reached his~~  
 915 ~~seventeenth birthday at the time of the commission of the offense, the punishment of such~~  
 916 ~~person shall not be death but shall be imprisonment for life. Reserved."~~

917 **SECTION 37.**

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

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

935

**SECTION 38.**

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

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

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

954 ~~(3)~~(1) In all cases ~~other than those in which the death penalty may be imposed,~~ prior to  
 955 fixing of the sentence as provided for in Code Section 17-10-1 or the imposing of life  
 956 imprisonment as mandated by law, and before rendering the appropriate sentence,  
 957 including any order of restitution, the court shall allow the victim, as such term is defined  
 958 in Code Section 17-17-3, the family of the victim, or such other witness having personal  
 959 knowledge of the crime to testify about the impact of the crime on the victim, the family  
 960 of the victim, or the community. Except as provided in paragraph ~~(4)~~ (2) of this  
 961 subsection, such evidence shall be given in the presence of the defendant and shall be  
 962 subject to cross-examination. The admissibility of the testimony and evidence in support  
 963 of such testimony shall be in the sole discretion of the judge and in any event shall be  
 964 permitted only in such a manner as to allow for cross-examination by the defendant and  
 965 to such a degree as not to unduly prejudice the defendant. If the judge excludes the  
 966 testimony or evidence in support of such testimony, the state shall be allowed to make a  
 967 proffer of such testimony or evidence.

968 ~~(4)~~(2) Upon a finding by the court specific to the case and the witness that the witness  
 969 would not be able to testify in person without showing undue emotion or that testifying  
 970 in person will cause the witness severe physical or emotional distress or trauma, evidence  
 971 presented pursuant to this subsection may be in the form of, but not limited to, a written

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

976 ~~(5)~~(3) If the accused has been convicted of a serious violent felony as defined in Code  
 977 Section 17-10-6.1, attempted murder or attempted kidnapping, or any violation of Code  
 978 Section 16-5-90, 16-5-91, 16-7-82, 16-7-84, or 16-7-86, and the victim or a representative  
 979 of the victim is not present at the presentence hearing, it shall be the duty of the court to  
 980 inquire of the prosecuting attorney whether or not the victim has been notified of the  
 981 presentence hearing as provided in Code Section 17-17-5. If the court finds that the  
 982 prosecuting attorney has not made a reasonable attempt to notify the victim, the  
 983 presentence hearing shall be recessed in order to provide the victim the opportunity to  
 984 attend prior to sentence being imposed; provided, however, that prior to recessing the  
 985 presentence hearing, the court shall allow the state or the accused to call any witnesses  
 986 who were subpoenaed and are present at such presentence hearing. Following any such  
 987 testimony, the presentence hearing shall be recessed and the victim shall be notified of  
 988 the date, time, and location when the presentence hearing shall resume."

#### 989 SECTION 39.

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

993 "17-10-2.

994 (a)(1) ~~Except in cases in which the death penalty may be imposed, upon~~ Upon the return  
 995 of a verdict of 'guilty' by the jury in any felony case, the judge shall dismiss the jury and  
 996 shall conduct a presentence hearing at which the only issue shall be the determination of  
 997 punishment to be imposed. In the hearing the judge shall hear additional evidence in  
 998 extenuation, mitigation, and aggravation of punishment, including the record of any prior  
 999 criminal convictions and pleas of guilty or nolo contendere of the accused, or the absence  
 1000 of any prior conviction and pleas.

1001 (2) The judge shall also hear argument by the accused or the accused's counsel and the  
 1002 prosecuting attorney, as provided by law, regarding the punishment to be imposed.  
 1003 ~~Except in cases where the death penalty may be imposed, the~~ The prosecuting attorney  
 1004 shall open and conclude the argument. ~~In cases where the death penalty may be imposed,~~  
 1005 ~~the prosecuting attorney shall open and the accused or the accused's counsel shall~~  
 1006 ~~conclude the argument.~~

1007 (3) Upon the conclusion of the evidence and arguments, the judge shall impose the  
 1008 sentence or shall recess the trial for the purpose of taking the sentence to be imposed  
 1009 under advisement. The judge shall fix a sentence within the limits prescribed by law.

1010 ~~(b) In cases in which the death penalty may be imposed, the judge, when sitting without~~  
 1011 ~~a jury, in addition to the procedure set forth in subsection (a) of this Code section, shall~~  
 1012 ~~follow the procedures provided for in Code Section 17-10-30.~~

1013 ~~(c) In all cases tried by a jury in which the death penalty may be imposed, upon a return~~  
 1014 ~~of a verdict of 'guilty' by the jury, the court shall resume the trial and conduct a presentence~~  
 1015 ~~hearing before the jury. The hearing shall be conducted in the same manner as presentence~~  
 1016 ~~hearings conducted before the judge as provided for in subsection (a) of this Code section.~~  
 1017 ~~Upon the conclusion of the evidence and arguments, the judge shall give the jury~~  
 1018 ~~appropriate instructions, and the jury shall retire to determine whether any mitigating or~~  
 1019 ~~aggravating circumstances, as defined in Code Section 17-10-30, exist and whether to~~  
 1020 ~~recommend mercy for the accused. Upon the findings of the jury, the judge shall fix a~~  
 1021 ~~sentence within the limits prescribed by law.~~

1022 ~~(d) If the trial court is reversed on appeal because of error only in the presentence hearing,~~  
 1023 ~~the new trial which may be ordered shall apply only to the issue of punishment."~~

1024

**SECTION 40.**

1025 Said title is further amended in Code Section 17-10-6.1, relating to punishment for serious  
 1026 violent offenders, by revising subsection (c) as follows:

1027 "(c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a  
 1028 first conviction of a serious violent felony in which the accused has been sentenced to life  
 1029 imprisonment, that person shall not be eligible for any form of parole or early release  
 1030 administered by the State Board of Pardons and Paroles until that person has served a  
 1031 minimum of 30 years in prison. The minimum term of imprisonment shall not be reduced  
 1032 by any earned time, early release, work release, leave, or other sentence-reducing  
 1033 measures under programs administered by the Department of Corrections.

1034 ~~(2) For a first conviction of a serious violent felony in which the accused has been~~  
 1035 ~~sentenced to death but the sentence of death has been commuted to life imprisonment,~~  
 1036 ~~that person shall not be eligible for any form of parole or early release administered by~~  
 1037 ~~the State Board of Pardons and Paroles until that person has served a minimum of 30~~  
 1038 ~~years in prison. The minimum term of imprisonment shall not be reduced by any earned~~  
 1039 ~~time, early release, work release, leave, or other sentence-reducing measures under~~  
 1040 ~~programs administered by the Department of Corrections.~~

1041 ~~(3) For a first conviction of a serious violent felony in which the accused has been~~  
 1042 ~~sentenced to imprisonment for life without parole, that person shall not be eligible for any~~

1043 form of parole or early release administered by the State Board of Pardons and Paroles  
 1044 or for any earned time, early release, work release, leave, or other sentence-reducing  
 1045 measures under programs administered by the Department of Corrections.

1046 ~~(4)~~(3) Except as otherwise provided in this subsection, any sentence imposed for the first  
 1047 conviction of any serious violent felony shall be served in its entirety as imposed by the  
 1048 sentencing court and shall not be reduced by any form of parole or early release  
 1049 administered by the State Board of Pardons and Paroles or by any earned time, early  
 1050 release, work release, leave, or other sentence-reducing measures under programs  
 1051 administered by the Department of Corrections, the effect of which would be to reduce  
 1052 the period of incarceration ordered by the sentencing court; provided, however, that  
 1053 during the final year of incarceration an offender so sentenced shall be eligible to be  
 1054 considered for participation in a department administered transitional center or work  
 1055 release program."

1056

#### SECTION 41.

1057 Said title is further amended in Code Section 17-10-7, relating to punishment of repeat  
 1058 offenders and punishment and eligibility for parole of persons convicted of fourth felony  
 1059 offense, by revising paragraph (2) of subsection (b) as follows:

1060 "(2) Any person who has been convicted of a serious violent felony in this state or who  
 1061 has been convicted under the laws of any other state or of the United States of a crime  
 1062 which if committed in this state would be a serious violent felony and who after such first  
 1063 conviction subsequently commits and is convicted of a serious violent felony ~~for which~~  
 1064 ~~such person is not sentenced to death~~ shall be sentenced to imprisonment for life without  
 1065 parole. Any such sentence of life without parole shall not be suspended, stayed, probated,  
 1066 deferred, or withheld, and any such person sentenced pursuant to this paragraph shall not  
 1067 be eligible for any form of pardon, parole, or early release administered by the State  
 1068 Board of Pardons and Paroles or for any earned time, early release, work release, leave,  
 1069 or any other sentence-reducing measures under programs administered by the Department  
 1070 of Corrections, the effect of which would be to reduce the sentence of life imprisonment  
 1071 without possibility of parole, except as may be authorized by any existing or future  
 1072 provisions of the Constitution."

1073

#### SECTION 42.

1074 Said title is further amended in Code Section 17-10-9.1, relating to voluntary surrender to  
 1075 county jail or correctional institution and release of defendant, by revising subsection (e) as  
 1076 follows:

1077 ~~"(e) The provisions of this Code section shall not apply to any defendant convicted of a~~  
 1078 ~~capital felony. Reserved."~~

1079 **SECTION 43.**

1080 Said title is further amended by revising Code Section 17-10-16, relating to sentence to  
 1081 imprisonment for life without parole authorized and ineligibility for parole or leave  
 1082 programs, as follows:

1083 "17-10-16.

1084 ~~(a) Notwithstanding any other provision of law, a person who is convicted of an offense~~  
 1085 ~~committed after May 1, 1993, for which the death penalty may be imposed under the laws~~  
 1086 ~~of this state may be sentenced to death, imprisonment for life without parole, or life~~  
 1087 ~~imprisonment as provided in Article 2 of this chapter.~~

1088 ~~(b) Notwithstanding any other provision of law, any person who is convicted of an offense~~  
 1089 ~~for which the death penalty may be imposed and who is sentenced to imprisonment for life~~  
 1090 ~~without parole shall not be eligible for any form of parole during such person's natural life~~  
 1091 ~~unless the State Board of Pardons and Paroles or a court of this state shall, after notice and~~  
 1092 ~~public hearing, determine that such person was innocent of the offense for which the~~  
 1093 ~~sentence of imprisonment for life without parole was imposed. Such person shall not be~~  
 1094 ~~eligible for any work release program, leave, or any other program administered by the~~  
 1095 ~~Department of Corrections the effect of which would be to reduce the term of actual~~  
 1096 ~~imprisonment to which such person was sentenced. Reserved."~~

1097 **SECTION 44.**

1098 Said title is further amended by repealing Code Section 17-10-16.1, relating to seeking death  
 1099 penalty not prerequisite to life without parole sentence.

1100 **SECTION 45.**

1101 Said title is further amended in Chapter 10 by deleting the designation of Article 1 and by  
 1102 repealing Article 2, relating to the death penalty generally, and Article 3, relating to mentally  
 1103 incompetent to be executed.

1104 **SECTION 46.**

1105 Said title is further amended in Chapter 11 by deleting the designation of Article 1 and by  
 1106 repealing Article 2.

1107 **SECTION 47.**

1108 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section  
1109 17-12-5, relating to the director of the Public Defender Standards Council, qualifications,  
1110 selection, salary, and responsibilities, as follows:

1111 "(1) The director shall work with and provide support services and programs for circuit  
1112 public defender offices and other attorneys representing indigent persons in criminal or  
1113 juvenile cases in order to improve the quality and effectiveness of legal representation of  
1114 such persons and otherwise fulfill the purposes of this chapter. Such services and  
1115 programs shall include, but shall not be limited to, technical, research, and administrative  
1116 assistance; educational and training programs for attorneys, investigators, and other staff;  
1117 assistance with the representation of indigent defendants with mental disabilities;  
1118 assistance with the representation of juveniles; ~~assistance with death penalty cases;~~ and  
1119 assistance with appellate advocacy."

1120 **SECTION 48.**

1121 Said title is further amended by revising Code Section 17-12-12, relating to the Georgia  
1122 capital defender division, duties, responsibilities, and management, as follows:

1123 "17-12-12.

1124 ~~(a) The Georgia capital defender division shall represent all indigent persons charged with~~  
1125 ~~a capital felony for which the death penalty is being sought in any court in this state and~~  
1126 ~~shall be the successor to the Office of the Georgia Capital Defender created by Article 6~~  
1127 ~~of this chapter as it existed on June 30, 2008. Any assets or resources of the Office of the~~  
1128 ~~Georgia Capital Defender shall be transferred to the council. The Georgia capital defender~~  
1129 ~~division shall serve all counties of this state.~~

1130 ~~(b) Whenever any person accused of a capital felony for which the death penalty is being~~  
1131 ~~sought has been determined to be an indigent person who has requested the assistance of~~  
1132 ~~counsel, the court in which the charges are pending shall notify the Georgia capital~~  
1133 ~~defender division, and the division shall assume the defense of such person except as~~  
1134 ~~provided in Code Section 17-12-12.1.~~

1135 ~~(c) No person shall be assigned the primary responsibility of representing an indigent~~  
1136 ~~person accused of a capital offense for which the death penalty is sought unless such person~~  
1137 ~~is authorized to practice law in this state and is otherwise competent to counsel and defend~~  
1138 ~~a person charged with a capital felony.~~

1139 ~~(d) The Georgia capital defender division or appointed counsel's defense of a defendant~~  
1140 ~~in a case in which the death penalty is sought shall include all proceedings in the trial court~~  
1141 ~~and any appeals to the Supreme Court of Georgia. Neither the Georgia capital defender~~

1142 ~~division nor appointed counsel shall assist with any petition for a writ of habeas corpus in~~  
 1143 ~~federal court.~~  
 1144 ~~(e) The director shall be responsible for management of the Georgia capital defender~~  
 1145 ~~division; provided, however, that the director may delegate day-to-day operations of the~~  
 1146 ~~division to the capital defender. Reserved.~~"

1147 **SECTION 49.**

1148 Said title is further amended by repealing Code Section 17-12-12.1, relating to payment of  
 1149 attorney in event of conflict of interest in capital cases, number of attorneys appointed,  
 1150 county governing authority's financial responsibility, and expenses.

1151 **SECTION 50.**

1152 Said title is further amended by revising Code Section 17-13-34, relating to arrest without  
 1153 warrant of a person charged with a crime in another state, as follows:

1154 "17-13-34.

1155 The arrest of a person may be lawfully made by any peace officer or private person,  
 1156 without a warrant, upon reasonable information that the accused stands charged in the  
 1157 courts of a state with a crime punishable by ~~death~~ or imprisonment for a term exceeding  
 1158 one year, but when so arrested, the accused must be taken before a judge or magistrate with  
 1159 all practicable speed and complaint must be made against him or her under oath, setting  
 1160 forth the ground for the arrest, as provided in Code Section 17-13-33; and thereafter the  
 1161 answer of the accused shall be heard as if he or she had been arrested on a warrant."

1162 **SECTION 51.**

1163 Said title is further amended by revising Code Section 17-13-36, relating to granting of bail,  
 1164 as follows:

1165 "17-13-36.

1166 Unless the offense with which the prisoner is charged is shown to be an offense punishable  
 1167 by ~~death~~ or life imprisonment under the laws of the state in which it was committed, a  
 1168 judge or magistrate in this state may admit the prisoner to bail by bond, with sufficient  
 1169 sureties, in such sum as he or she deems proper, conditioned for the prisoner's appearance  
 1170 before the judge or magistrate at a time specified in such bond and for the prisoner's  
 1171 surrender to be arrested upon the warrant of the Governor of this state."

1172 **SECTION 52.**

1173 Said title is further amended by revising Code Section 17-16-2, relating to applicability of  
 1174 article, as follows:

1175 "17-16-2.

1176 (a) This article shall apply to all criminal cases in which at least one felony offense is  
 1177 charged in the event that at or prior to arraignment, or at such time as the court permits, the  
 1178 defendant provides written notice to the prosecuting attorney that such defendant elects to  
 1179 have this article apply to the defendant's case. When one defendant in a multidefendant  
 1180 case demands discovery under this article, the provisions of this article shall apply to all  
 1181 defendants in the case, unless a severance is granted.

1182 (b) Except as provided in subsection (c) of this Code section, this article shall not apply  
 1183 to juvenile court proceedings.

1184 (c) This article shall be deemed to have been automatically invoked, without the written  
 1185 notice provided for in subsection (a) of this Code section, when a defendant has sought  
 1186 discovery pursuant to Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' pursuant to  
 1187 Code Section 15-11-75, or pursuant to the Uniform Rules for the Juvenile Courts of  
 1188 Georgia where such discovery material is the same as the discovery material that may be  
 1189 provided under this article when a written notice is filed pursuant to subsection (a) of this  
 1190 Code section.

1191 (d) Except as provided under Code Section 17-16-8, this article is not intended to authorize  
 1192 discovery or inspection of attorney work product.

1193 (e) This article shall apply also to all criminal cases in which at least one felony offense  
 1194 is charged which was docketed, indicted, or in which an accusation was returned prior to  
 1195 January 1, 1995, if both the prosecuting attorney and the defendant agree in writing that the  
 1196 provisions of this article shall apply to the case.

1197 ~~(f) Except as provided in paragraph (3) of subsection (b) of Code Section 17-16-4, if a~~  
 1198 ~~defendant has elected to have the provisions of this article apply, the provisions of this~~  
 1199 ~~article shall also apply to sentencing hearings and the sentencing phase of a death penalty~~  
 1200 ~~trial."~~

1201 **SECTION 53.**

1202 Said title is further amended by revising Code Section 17-17-12, relating to notification to  
 1203 victim of accused's motion for new trial, as follows:

1204 "17-17-12.

1205 (a) Upon the written request of the victim, the prosecuting attorney shall notify the victim  
 1206 of the following:

1207 (1) That the accused has filed a motion for new trial, an appeal of his or her conviction,  
 1208 or an extraordinary motion for new trial;

1209 (2) Whether the accused has been released on bail or other recognizance pending the  
 1210 disposition of the motion or appeal;

1211 (3) The time and place of any appellate court proceedings relating to the motion or  
 1212 appeal and any changes in the time or place of those proceedings; and

1213 (4) The result of the motion or appeal.

1214 (b) The Attorney General shall notify the prosecuting attorney of the filing of collateral  
 1215 attacks on convictions of this state which are being defended by the Attorney General.

1216 ~~(b.1) In cases in which the accused is convicted of a capital offense and receives the death  
 1217 penalty, the Attorney General shall:~~

1218 ~~(1) Notify the prosecuting attorney and upon the written request of the victim notify the  
 1219 victim of the filing and disposition of all collateral attacks on such conviction which are  
 1220 being defended by the Attorney General, including, but not limited to, petitions for a writ  
 1221 of habeas corpus, and the time and place of any such proceedings and any changes in the  
 1222 time or place of those proceedings; and~~

1223 ~~(2) Provide the prosecuting attorney and upon the written request of the victim provide  
 1224 the victim with a report on the status of all pending appeals, collateral attacks, and other  
 1225 litigation concerning such conviction which is being defended by the Attorney General  
 1226 at least every six months until the accused dies or the sentence or conviction is overturned  
 1227 or commuted or otherwise reduced to a sentence other than the death penalty.~~

1228 (c) In the event the accused is granted a new trial or the conviction is reversed or remanded  
 1229 and the case is returned to the trial court for further proceedings, the victim shall be entitled  
 1230 to request the rights and privileges provided by this chapter."

1231 **SECTION 54.**

1232 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
 1233 by revising Code Section 42-1-3, relating to defendant sentenced to death or life  
 1234 imprisonment not to be made trusty during time case on appeal and manner of confinement  
 1235 of defendant, as follows:

1236 "42-1-3.

1237 Any defendant who has been convicted of a felony and sentenced to ~~death~~ or life  
 1238 imprisonment shall not be made a trusty at any penal institution or facility in this state  
 1239 during the time that his or her case is on appeal. The defendant shall be confined in the  
 1240 same manner as other prisoners."

1241 **SECTION 55.**

1242 Said title is further amended by revising Code Section 42-5-20, relating to Alcohol or Drug  
 1243 Use Risk Reduction Program, as follows:

1244 "42-5-20.

1245 The department shall provide within the correctional system an Alcohol or Drug Use Risk  
 1246 Reduction Program. The program shall be made available to every person sentenced to the  
 1247 custody of the state whose criminal offense or history indicates alcohol or drug  
 1248 involvement; provided, however, that the provisions of this Code section shall not apply  
 1249 to a person who has been ~~sentenced to the punishment of death or those~~ deemed mentally  
 1250 incompetent."

1251 **SECTION 56.**

1252 Said title is further amended by revising Code Section 42-5-21, relating to Family Violence  
 1253 Counseling Program, as follows:

1254 "42-5-21.

1255 The department shall provide within the correctional system a Family Violence Counseling  
 1256 Program. The program shall be made available to every person sentenced to the custody  
 1257 of the state who committed an offense which has been identified to involve family violence  
 1258 as such term is defined in Code Section 19-13-1; provided, however, that the provisions of  
 1259 this Code section shall not apply to a person who has been ~~sentenced to the punishment of~~  
 1260 ~~death or to those~~ deemed mentally incompetent."

1261 **SECTION 57.**

1262 Said title is further amended in Code Section 42-5-51, relating to jurisdiction over certain  
 1263 misdemeanor offenders, designation of place of confinement of inmates, reimbursement of  
 1264 county, and transfer of inmates to federal authority, by revising subsection (c) as follows:

1265 "(c) After proper documentation is received from the clerk of the court, the department  
 1266 shall have 15 days to transfer an inmate under sentence to the place of confinement. If the  
 1267 inmate is not transferred within the 15 days, the department shall reimburse the county, in  
 1268 a sum not less than \$7.50 per day per inmate and in such an amount as may be appropriated  
 1269 for this purpose by the General Assembly, for the cost of the incarceration, commencing  
 1270 15 days after proper documentation is received by the department from the clerk of the  
 1271 court; provided, however, that, subject to an appropriation of funds, local governing  
 1272 authorities that have entered into memorandums of understanding or agreement or that  
 1273 demonstrate continuous attempts to enter into memorandums of understanding or  
 1274 agreement with the federal government under Section 287(g) of the federal Immigration  
 1275 and Nationality Act shall receive an additional payment in the amount of 10 percent of the  
 1276 established rate paid for reimbursement for the confinement of state inmates in local  
 1277 confinement facilities. The reimbursement provisions of this Code section shall only apply  
 1278 to payment for the incarceration of felony inmates available for transfer to the department;

1279 ~~except inmates under death sentence awaiting transfer after their initial trial,~~ and shall not  
 1280 apply to inmates who were incarcerated under the custody of the commissioner at the time  
 1281 they were returned to the county jail for trial on additional charges or returned to the county  
 1282 jail for any other purposes, including for the purpose of a new trial."

1283 **SECTION 58.**

1284 Said title is further amended in Code Section 42-5-85, relating to leave privileges of inmates  
 1285 serving murder sentences, by revising subsection (a) as follows:

1286 "(a) As used in this Code section only, the term 'aggravating circumstance' means that:

1287 (1) ~~The murder was committed by a person with a prior record of conviction for a capital~~  
 1288 ~~felony~~ Reserved;

1289 (2) The murder was committed while the offender was engaged in the commission of  
 1290 ~~another capital felony~~, aggravated battery, burglary in any degree, or arson in the first  
 1291 degree;

1292 (3) The offender, by his or her act of murder, knowingly created a great risk of death to  
 1293 more than one person in a public place by means of a weapon or device which would  
 1294 normally be hazardous to the lives of more than one person;

1295 (4) The offender committed the murder for himself or herself or another, for the purpose  
 1296 of receiving money or any other thing of monetary value;

1297 (5) The murder of a judicial officer, former judicial officer, district attorney or  
 1298 solicitor-general, or former district attorney, solicitor, or solicitor-general was committed  
 1299 during or because of the exercise of his or her official duties;

1300 (6) The offender caused or directed another to commit murder or committed murder as  
 1301 an agent or employee of another person;

1302 (7) The murder was outrageously or wantonly vile, horrible, or inhuman in that it  
 1303 involved torture, depravity of mind, or an aggravated battery to the victim;

1304 (8) The murder was committed against any peace officer, corrections employee, or  
 1305 firefighter while engaged in the performance of his or her official duties;

1306 (9) The murder was committed by a person in, or who has escaped from, the lawful  
 1307 custody of a peace officer or place of lawful confinement; or

1308 (10) The murder was committed for the purpose of avoiding, interfering with, or  
 1309 preventing a lawful arrest or custody in a place of lawful confinement of himself or  
 1310 another."

1311 **SECTION 59.**

1312 Said title is further amended by revising Code Section 42-7-2, relating to definitions  
 1313 regarding treatment of youthful offenders, as follows:

1314 "42-7-2.

1315 As used in this chapter, the term:

1316 (1) 'Board' means the Board of Corrections.

1317 (2) 'Commissioner' means the commissioner of corrections.

1318 (3) 'Conviction' means a judgment on a verdict or finding of guilty, a plea of guilty, or  
 1319 a plea of nolo contendere in a felony case but excludes all judgments upon criminal  
 1320 offenses for which the maximum punishment provided by law is ~~death or~~ life  
 1321 imprisonment.

1322 (4) 'Court' means any court of competent jurisdiction other than a juvenile court.

1323 (5) 'Department' means the Department of Corrections.

1324 (6) 'Treatment' means corrective and preventative incarceration, guidance, and training  
 1325 designed to protect the public by correcting the antisocial tendencies of youthful  
 1326 offenders, which may include but is not limited to vocational, educational, and other  
 1327 training deemed fit and necessary by the department.

1328 (7) 'Youthful offender' means any male offender who is at least 17 but less than 25 years  
 1329 of age at the time of conviction and who in the opinion of the department has the  
 1330 potential and desire for rehabilitation."

1331 **SECTION 60.**

1332 Said title is further amended in Code Section 42-8-34, relating to hearings and  
 1333 determinations, referral of cases to probation supervisors, probation or suspension of  
 1334 sentence, payment of fine or costs, disposition prior to hearing, continuing jurisdiction,  
 1335 transferal of probation supervision, and probation fee, by revising subsection (a) as follows:

1336 "(a) Any court of this state which has original jurisdiction of criminal actions, except  
 1337 juvenile courts, municipal courts, and probate courts, in which the defendant in a criminal  
 1338 case has been found guilty upon verdict or plea or has been sentenced upon a plea of nolo  
 1339 contendere, except for an offense punishable by ~~death or~~ life imprisonment, may, at a time  
 1340 to be determined by the court, hear and determine the question of the probation of such  
 1341 defendant."

1342 **SECTION 61.**

1343 Said title is further amended by revising Code Section 42-9-20, relating to general duties of  
 1344 the State Board of Pardons and Paroles, as follows:

1345 "42-9-20.

1346 ~~In all cases in which the chairman of the board or any other member designated by the~~  
 1347 ~~board has suspended the execution of a death sentence to enable the full board to consider~~  
 1348 ~~and pass on same, it shall be mandatory that the board act within a period not exceeding~~

1349 ~~90 days from the date of the suspension order. In the cases which the board has power to~~  
 1350 ~~consider, the board shall be charged with the duty of determining which inmates serving~~  
 1351 ~~sentences imposed by a court of this state may be released on pardon or parole and fixing~~  
 1352 ~~the time and conditions thereof. The board shall also be charged with the duty of~~  
 1353 ~~supervising all persons placed on parole, of determining violations thereof and of taking~~  
 1354 ~~action with reference thereto, of making such investigations as may be necessary, and of~~  
 1355 ~~aiding parolees or probationers in securing employment. It shall be the duty of the board~~  
 1356 ~~personally to study the cases of those inmates whom the board has power to consider so as~~  
 1357 ~~to determine their ultimate fitness for such relief as the board has power to grant. The~~  
 1358 ~~board by an affirmative vote of a majority of its members shall have the power to commute~~  
 1359 ~~a sentence of death to one of life imprisonment. Reserved."~~

1360

### SECTION 62.

1361 Said title is further amended in Code Section 42-9-42, relating to procedure for granting  
 1362 relief from sentence, conditions and prerequisites, and violation of parole, by revising  
 1363 subsection (a) as follows:

1364 "(a) No person shall be granted clemency, pardon, parole, or other relief from sentence  
 1365 except by a majority vote of the board. ~~A majority of the members of the board may~~  
 1366 ~~commute a death sentence to life imprisonment, as provided in Code Section 42-9-20."~~

1367

### SECTION 63.

1368 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by  
 1369 revising Code Section 24-6-609, relating to impeachment by evidence of conviction of a  
 1370 crime, as follows:

1371 "24-6-609.

1372 (a) **General rule.** For the purpose of attacking the character for truthfulness of a witness:

1373 (1) Evidence that a witness other than an accused has been convicted of a crime shall be  
 1374 admitted subject to the provisions of Code Section 24-4-403 if the crime was punishable  
 1375 by ~~death or~~ imprisonment in excess of one year under the law under which the witness  
 1376 was convicted and evidence that an accused has been convicted of such a crime shall be  
 1377 admitted if the court determines that the probative value of admitting the evidence  
 1378 outweighs its prejudicial effect to the accused; or

1379 (2) Evidence that any witness has been convicted of a crime shall be admitted regardless  
 1380 of the punishment, if it readily can be determined that establishing the elements of such  
 1381 crime required proof or admission of an act of dishonesty or making a false statement.

1382 (b) **Time limit.** Evidence of a conviction under this Code section shall not be admissible  
 1383 if a period of more than ten years has elapsed since the date of the conviction or of the

1384 release of the witness from the confinement imposed for such conviction, whichever is the  
 1385 later date, unless the court determines, in the interests of justice, that the probative value  
 1386 of the conviction supported by specific facts and circumstances substantially outweighs its  
 1387 prejudicial effect. However, evidence of a conviction more than ten years old, as  
 1388 calculated in this subsection, shall not be admissible unless the proponent gives to the  
 1389 adverse party sufficient advance written notice of intent to use such evidence to provide the  
 1390 adverse party with a fair opportunity to contest the use of such evidence.

1391 **(c) Effect of pardon, annulment, certificate of rehabilitation, or discharge from a first**  
 1392 **offender program.** Evidence of a final adjudication of guilt and subsequent discharge  
 1393 under any first offender statute shall not be used to impeach any witness and evidence of  
 1394 a conviction shall not be admissible under this Code section if:

1395 (1) The conviction has been the subject of a pardon, annulment, certificate of  
 1396 rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the  
 1397 person convicted, and that person has not been convicted of a subsequent crime which  
 1398 was punishable by ~~death~~ or imprisonment in excess of one year; or

1399 (2) The conviction has been the subject of a pardon, annulment, or other equivalent  
 1400 procedure based on a finding of innocence.

1401 **(d) Nolo contendere pleas and juvenile adjudications.** A conviction based on a plea of  
 1402 nolo contendere shall not be admissible to impeach any witness under this Code section.  
 1403 Evidence of juvenile adjudications shall not generally be admissible under this Code  
 1404 section. The court may, however, in a criminal proceeding allow evidence of a juvenile  
 1405 adjudication of a witness other than the accused if conviction of the offense would be  
 1406 admissible to attack the credibility of an adult and the court is satisfied that admission in  
 1407 evidence is necessary for a fair determination of the issue of guilt or innocence of the  
 1408 accused.

1409 **(e) Pendency of appeal.** The pendency of an appeal shall not render evidence of a  
 1410 conviction inadmissible. Evidence of the pendency of an appeal shall be admissible."

#### 1411 **SECTION 64.**

1412 Said title is further amended by revising Code Section 24-13-60, relating to order requiring  
 1413 prisoner's delivery to serve as witness or criminal defendant generally, expenses, and prisoner  
 1414 under death sentence as witness, as follows:

1415 "24-13-60.

1416 (a) When a prisoner confined in any state prison, county correctional institution, or other  
 1417 penal institution under the jurisdiction of the Board of Corrections, ~~other than a prisoner~~  
 1418 ~~under a death sentence~~, is needed as a witness in any judicial proceeding in any court of  
 1419 record in this state or when it is desired that such person stand trial on an indictment or

1420 accusation charging the prisoner with commission of a felony or misdemeanor, the judge  
 1421 of the court wherein the proceeding is pending shall be authorized to and shall issue an ex  
 1422 parte order, directed to the commissioner of corrections, requiring the prisoner's delivery  
 1423 to the sheriff of the county where the prisoner is desired as a witness or accused. The  
 1424 sheriff or his or her deputies shall take custody of the prisoner on the date named in the  
 1425 order, safely keep the prisoner pending the proceeding, and return him or her to the original  
 1426 place of detention after the prisoner's discharge by the trial judge.

1427 (b) If the prisoner was desired as a witness by this state in a criminal proceeding or if the  
 1428 prisoner's release to the sheriff was for the purpose of standing trial on criminal charges,  
 1429 the county wherein the proceeding was pending shall pay all expenses of transportation and  
 1430 keeping, including per diem and mileage of the sheriff, jail fees, and any other proper  
 1431 expense approved by the trial judge.

1432 (c) If the prisoner was desired as a witness by the accused in a criminal proceeding or by  
 1433 either party to a civil proceeding, the costs and expenses referred to in subsection (b) of this  
 1434 Code section shall be borne by the party requesting the prisoner as a witness. The court  
 1435 shall require a deposit of money sufficient to defray same, except where the judge, after  
 1436 examining into the matter, determines that the prisoner's presence is required by the  
 1437 interests of justice and that the party requesting it is financially unable to make the deposit,  
 1438 in which case the expenses shall be taxed as costs of court.

1439 ~~(d) If a prisoner under a death sentence is needed as a witness for either the prosecution  
 1440 or the defense in any felony case, the requesting party may interview the proposed witness.  
 1441 Following such interview, the requesting party may move for a writ of habeas corpus ad  
 1442 testificandum. Such motion shall be accompanied by a proffer of the testimony of the  
 1443 proposed witness. The requesting party shall make such motion and proffer as soon as  
 1444 possible but shall not make such motion later than 20 days prior to the date of the trial.  
 1445 Nothing in this Code section shall limit the right of a party from presenting a material  
 1446 witness at a hearing or trial and to have compulsory process for that purpose."~~

1447 **SECTION 65.**

1448 Said title is further amended in Code Section 24-13-93, relating to criminal or grand jury  
 1449 proceedings in foreign state, certificate of need for prisoner's testimony, hearing, order,  
 1450 conditions, and entry of order by judge in requesting state, and applicability, by revising  
 1451 subsection (d) as follows:

1452 "(d) This Code section shall not apply to any person in this state confined as insane or  
 1453 mentally ill ~~or under sentence of death.~~"

**SECTION 66.**

1454  
 1455 Title 42 of the Official Code of Georgia Annotated is amended by revising Code Section  
 1456 42-5-64, relating to educational programming, as follows:

1457 "42-5-64.

1458 (a) The commissioner shall maintain an educational program within the state prison system  
 1459 to assist inmates in achieving at least a fifth-grade level on standardized reading tests.  
 1460 Inmates who test below the fifth-grade level and who have been sentenced to incarceration  
 1461 for a period of one year or longer shall be required by institutional staff to attend  
 1462 appropriate classes until they attain this level or until they are released from incarceration,  
 1463 whichever event occurs first; provided, however, that inmates who have remained in the  
 1464 educational program for 90 school days may voluntarily withdraw thereafter. The  
 1465 commissioner or his or her designee shall have the discretion to exclude certain inmates  
 1466 from the provisions of this subsection due to the inability of such inmates to benefit from  
 1467 an educational program for reasons which may include: custody status; ~~particularly of those~~  
 1468 ~~inmates under a death sentence~~; mental handicap or physical illness; participation in a boot  
 1469 camp program; or possession of a general education diploma or high school diploma. The  
 1470 State Board of Pardons and Paroles shall incorporate satisfactory participation in such an  
 1471 educational program into the parole guidelines adopted pursuant to Code Section 42-9-40.

1472 (b) For the purposes of this Code section, educational programming shall not apply to  
 1473 inmates who:

- 1474 (1) ~~Have been sentenced to death;~~  
 1475 (2) Have attained 50 years of age; or  
 1476 (3)(2) Have serious learning disabilities.

1477 (c) The commissioner shall provide additional educational programs in which inmates can  
 1478 voluntarily participate to further their education beyond the fifth-grade level.

1479 (d) The commissioner shall utilize available services and programs within the Department  
 1480 of Education, and the Department of Education shall cooperate with the commissioner in  
 1481 the establishment of educational programs and the testing of inmates as required in this  
 1482 Code section.

1483 (e) The commissioner shall be authorized to promulgate rules and regulations necessary  
 1484 to carry out the provisions of this Code section."

**SECTION 67.**

1485  
 1486 Sections 63, 64, and 65 of this Act shall become effective on January 1, 2013. Section 66  
 1487 of this Act shall become effective only when funds are specifically appropriated for purposes  
 1488 of such section in an appropriations Act making specific reference to this Act. The

1489 remaining sections of this Act shall become effective upon its approval by the Governor or  
1490 upon its becoming law without such approval.

1491

**SECTION 68.**

1492 All laws and parts of laws in conflict with this Act are repealed.