

House Bill 349

By: Representatives Golick of the 40th, Hatchett of the 150th, Coomer of the 14th, Pak of the 108th, Oliver of the 82nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal
2 or certiorari by the state in criminal cases, so as to provide the state with more direct appeal
3 rights; to provide the state with cross appeal rights; to provide for cross-references; to
4 provide for liberal construction of the chapter; to amend Part 1 of Article 2 of Chapter 13 of
5 Title 16, Title 17, Article 3A of Chapter 5 of Title 40, and Title 42 of the Official Code of
6 Georgia Annotated, relating to schedules, offenses, and penalties for controlled substances,
7 criminal procedure, suspension of driver's license for certain drug offenses, and penal
8 institutions, respectively, so as to enact provisions recommended by the Governor's Special
9 Council on Criminal Justice Reform in Georgia; to change provisions relating to sentencing
10 for trafficking in certain drugs; to provide for definitions; to change provisions relating to
11 sentencing serious violent offenders, certain sexual offenders, and repeat offenders; to create
12 the Georgia Council on Criminal Justice Reform and provide for its members, chairperson,
13 other officers, committees, staff, and funding; to allow a drug court or mental health court
14 division judge to order the Department of Driver's Services to change a defendant's driving
15 privileges for participants in their court programs under certain circumstances; to delete
16 definitions; to change terms of a probated sentence; to amend Article 2 of Chapter 8 of Title
17 24 of the Official Code of Georgia Annotated, relating to admissions and confessions, so as
18 to expand the admissibility of hearsay relative to testimony as to a child's description of
19 sexual contact or physical abuse; to provide for related matters; to provide for an effective
20 date and applicability; to repeal conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal or
24 certiorari by the state in criminal cases, is amended by revising Code Section 5-7-1, relating
25 to orders, decisions, or judgments appealable and defendant's right to cross appeal, as
26 follows:

27 "5-7-1.

28 (a) An appeal may be taken by and on behalf of the State of Georgia from the superior
 29 courts, state courts, ~~City Court of Atlanta~~, and juvenile courts and such other courts from
 30 which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme
 31 Court of Georgia in criminal cases and adjudication of delinquency cases in the following
 32 instances:

33 (1) From an order, decision, or judgment setting aside or dismissing any indictment,
 34 accusation, or a petition alleging that a child has committed a delinquent act, or any count
 35 thereof;

36 (2) From an order, decision, or judgment arresting judgment of conviction or
 37 adjudication of delinquency upon legal grounds;

38 (3) From an order, decision, or judgment sustaining a plea or motion in bar, when the
 39 defendant has not been put in jeopardy;

40 (4) From an order, decision, or judgment suppressing or excluding evidence illegally
 41 seized or excluding the results of any test for alcohol or drugs in the case of motions
 42 made and ruled upon prior to the impaneling of a jury or the defendant being put in
 43 jeopardy, whichever occurs first;

44 (5) From an order, decision, or judgment excluding evidence in the case of motions made
 45 and ruled on prior to the impaneling of a jury or the defendant being put in jeopardy,
 46 whichever occurs first, if the prosecuting attorney certifies to the trial court that the
 47 appeal is not taken for purpose of delay and that the evidence is a substantial proof of a
 48 material fact in the proceeding;

49 ~~(5)(6)~~ From an order, decision, or judgment of a court where the court does not have
 50 jurisdiction or the order is otherwise void under the Constitution or laws of this state;

51 ~~(6)(7)~~ From an order, decision, or judgment of a superior court transferring a case to the
 52 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28 or subsection
 53 (b) of Code Section 17-7-50.1;

54 ~~(7)(8)~~ From an order, decision, or judgment of a court granting a motion for new trial or
 55 an extraordinary motion for new trial;

56 ~~(8)(9)~~ From an order, decision, or judgment denying a motion by the state to recuse or
 57 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or

58 ~~(9)(10)~~ From an order, decision, or judgment issued pursuant to subsection (c) of Code
 59 Section 17-10-6.2.

60 (b) In any instance in which any appeal is taken by and on behalf of the State of Georgia
 61 in a criminal case, the defendant shall have the right to cross appeal. Such cross appeal
 62 shall be subject to the same rules of practice and procedure as provided for in civil cases
 63 under Code Section 5-6-38.

64 (c) In any instance in which the defendant in a criminal cases applies for and is granted an
 65 interlocutory appeal as provided Code Section 5-6-34 or an appeal is taken pursuant to
 66 Code Section 17-10-35.1, the state shall have the right to cross appeal on any matter ruled
 67 on prior to the impaneling of a jury or the defendant being put in jeopardy. Such cross
 68 appeal shall be subject to the same rules of practice and procedure as provided for in civil
 69 cases under Code Section 5-6-38. The state shall not be required to obtain a certificate of
 70 immediate review for such cross appeal."

71 **SECTION 2.**

72 Said chapter is further amended by revising subsection (b) of Code Section 5-7-2, relating
 73 to certification required for immediate review of nonfinal orders, decisions, or judgments,
 74 as follows:

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

- 76 (1) Order, decision, or judgment suppressing or excluding ~~illegally seized~~ evidence as
 77 set forth in paragraph (4) or (5) of subsection (a) of Code Section 5-7-1; or
 78 (2) Order, decision, or judgment described in paragraph (1) or (7) of subsection (a) of
 79 Code Section 5-7-1."

80 **SECTION 3.**

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

82 "5-7-6.

83 This chapter shall be liberally construed to effectuate the purposes stated in this chapter."

84 **SECTION 4.**

85 Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
 86 relating to schedules, offenses, and penalties for controlled substances, is amended by
 87 revising Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana,
 88 or methamphetamine and penalties, as follows:

89 "16-13-31.

90 (a)(1) Any person who ~~knowingly~~ sells, manufactures, delivers, or brings into this state
 91 or who is ~~knowingly~~ in possession of 28 grams or more of cocaine or of any mixture with
 92 a purity of 10 percent or more of cocaine, as described in Schedule II, in violation of this
 93 article commits the felony offense of trafficking in cocaine and, upon conviction thereof,
 94 shall be punished as follows:

95 (A) If the quantity of the cocaine or the mixture involved is 28 grams or more, but less
 96 than 200 grams, the person shall be sentenced to a mandatory minimum term of
 97 imprisonment of ten years and shall pay a fine of \$200,000.00;

98 (B) If the quantity of the cocaine or the mixture involved is 200 grams or more, but less
 99 than 400 grams, the person shall be sentenced to a mandatory minimum term of
 100 imprisonment of 15 years and shall pay a fine of \$300,000.00; and

101 (C) If the quantity of the cocaine or the mixture involved is 400 grams or more, the
 102 person shall be sentenced to a mandatory minimum term of imprisonment of 25 years
 103 and shall pay a fine of \$1 million.

104 (2) Any person who ~~knowingly~~ sells, manufactures, delivers, or brings into this state or
 105 who is ~~knowingly~~ in possession of any mixture with a purity of less than 10 percent of
 106 cocaine, as described in Schedule II, in violation of this article commits the felony
 107 offense of trafficking in cocaine if the total weight of the mixture multiplied by the
 108 percentage of cocaine contained in the mixture exceeds any of the quantities of cocaine
 109 specified in paragraph (1) of this subsection. Upon conviction thereof, such person shall
 110 be punished as provided in paragraph (1) of this subsection depending upon the quantity
 111 of cocaine such person is charged with ~~knowingly~~ selling, manufacturing, delivering, or
 112 bringing into this state or ~~knowingly~~ possessing.

113 (b) Any person who ~~knowingly~~ sells, manufactures, delivers, brings into this state, or has
 114 possession of ~~4~~ four grams or more of any morphine or opium or any salt, isomer, or salt
 115 of an isomer thereof, including heroin, as described in Schedules I and II, or ~~4~~ four grams
 116 or more of any mixture containing any such substance in violation of this article commits
 117 the felony offense of trafficking in illegal drugs and, upon conviction thereof, shall be
 118 punished as follows:

119 (1) If the quantity of such substances involved is ~~4~~ four grams or more, but less than 14
 120 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
 121 five years and shall pay a fine of \$50,000.00;

122 (2) If the quantity of such substances involved is 14 grams or more, but less than 28
 123 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
 124 ten years and shall pay a fine of \$100,000.00; and

125 (3) If the quantity of such substances involved is 28 grams or more, the person shall be
 126 sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine
 127 of \$500,000.00.

128 (c) Any person who ~~knowingly~~ sells, manufactures, grows, delivers, brings into this state,
 129 or has possession of a quantity of marijuana exceeding ~~10~~ ten pounds commits the offense
 130 of trafficking in marijuana and, upon conviction thereof, shall be punished as follows:

131 (1) If the quantity of marijuana involved is in excess of ~~10~~ ten pounds, but less than
 132 2,000 pounds, the person shall be sentenced to a mandatory minimum term of
 133 imprisonment of five years and shall pay a fine of \$100,000.00;

134 (2) If the quantity of marijuana involved is 2,000 pounds or more, but less than 10,000
135 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of
136 seven years and shall pay a fine of \$250,000.00; and

137 (3) If the quantity of marijuana involved is 10,000 pounds or more, the person shall be
138 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
139 of \$1 million.

140 (d) Any person who knowingly sells, manufactures, delivers, or brings into this state 200
141 grams or more of methaqualone or of any mixture containing methaqualone, as described
142 in paragraph (6) of Code Section 16-13-25, in violation of this article commits the felony
143 offense of trafficking in methaqualone and, upon conviction thereof, shall be punished as
144 follows:

145 (1) If the quantity of the methaqualone or the mixture involved is 200 grams or more, but
146 less than 400 grams, the person shall be sentenced to a mandatory minimum term of
147 imprisonment of five years and shall pay a fine of \$50,000.00; and

148 (2) If the quantity of the methaqualone or the mixture involved is 400 grams or more, the
149 person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and
150 shall pay a fine of \$250,000.00.

151 (e) Any person who knowingly sells, delivers, or brings into this state or has possession
152 of 28 grams or more of methamphetamine, amphetamine, or any mixture containing either
153 methamphetamine or amphetamine, as described in Schedule II, in violation of this article
154 commits the felony offense of trafficking in methamphetamine or amphetamine and, upon
155 conviction thereof, shall be punished as follows:

156 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
157 substance involved is 28 grams or more, but less than 200 grams, the person shall be
158 sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a
159 fine of \$200,000.00;

160 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
161 substance involved is 200 grams or more, but less than 400 grams, the person shall be
162 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
163 of \$300,000.00; and

164 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
165 substance involved is 400 grams or more, the person shall be sentenced to a mandatory
166 minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

167 (f) Any person who knowingly manufactures methamphetamine, amphetamine, or any
168 mixture containing either methamphetamine or amphetamine, as described in Schedule II,
169 in violation of this article commits the felony offense of trafficking methamphetamine or
170 amphetamine and, upon conviction thereof, shall be punished as follows:

171 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 172 substance involved is less than 200 grams, the person shall be sentenced to a mandatory
 173 minimum term of imprisonment of ten years and shall pay a fine of \$200,000.00;

174 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 175 substance involved is 200 grams or more, but less than 400 grams, the person shall be
 176 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
 177 of \$300,000.00; and

178 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 179 substance involved is 400 grams or more, the person shall be sentenced to a mandatory
 180 minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

181 (g)(1) Except as provided in paragraph (2) or (3) of this subsection and notwithstanding
 182 Code Section 16-13-2, with respect to any person who is found to have violated this Code
 183 section, adjudication of guilt or imposition of sentence shall not be suspended, probated,
 184 deferred, or withheld prior to serving the mandatory minimum term of imprisonment
 185 prescribed by this Code section.

186 (2) The district attorney may move the sentencing court to impose a reduced or
 187 suspended sentence upon any person who is convicted of a violation of this Code section
 188 and who provides substantial assistance in the identification, arrest, or conviction of any
 189 of his or her accomplices, accessories, coconspirators, or principals. Upon good cause
 190 shown, the motion may be filed and heard in camera. The judge hearing the motion may
 191 impose a reduced or suspended sentence if he or she finds that the defendant has rendered
 192 such substantial assistance.

193 (3)(A) In the court's discretion, the judge may depart from the mandatory minimum
 194 sentence specified for a person who is convicted of a violation of this Code section as
 195 set forth in subparagraph (B) of this paragraph if the judge concludes that:

196 (i) The defendant was not a leader of the criminal conduct;

197 (ii) The defendant did not use a weapon during the crime;

198 (iii) The criminal conduct did not result in a death or serious bodily injury to a person
 199 other than to a person who is a party to the crime;

200 (iv) The defendant has no prior felony conviction; and

201 (v) The interests of justice will not be served by the imposition of the prescribed
 202 mandatory minimum sentence.

203 (B) The sentencing departure ranges pursuant to subparagraph (A) of this paragraph
 204 shall be as follows:

205 (i) Any person convicted of violating paragraph (1) of subsection (b) or (d) of this
 206 Code section, two years and six months to five years imprisonment and a fine of not
 207 less than \$25,000.00 nor more than \$50,000.00;

208 (ii) Any person convicted of violating paragraph (1) of subsection (c) of this Code
209 section, two years and six months to five years imprisonment and a fine of not less
210 than \$50,000.00 nor more than \$100,000.00;

211 (iii) Any person convicted of violating paragraph (2) of subsection (c) of this Code
212 section, three years and six months to seven years imprisonment and a fine of not less
213 than \$125,000.00 nor more than \$250,000.00;

214 (iv) Any person convicted of violating subparagraph (a)(1)(A), paragraph (2) of
215 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(A)
216 of this Code section, or paragraph (1) of subsection (e) or (f) of this Code section, five
217 to ten years imprisonment and a fine of not less than \$100,000.00 nor more than
218 \$200,000.00;

219 (v) Any person convicted of violating paragraph (2) of subsection (b) of this Code
220 section, five to ten years imprisonment and a fine of not less than \$50,000.00 nor
221 more than \$100,000.00;

222 (vi) Any person convicted of violating subparagraph (a)(1)(B), paragraph (2) of
223 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(B)
224 of this Code section, or paragraph (2) of subsection (e) or (f) of this Code section,
225 seven years and six months to 15 years imprisonment and a fine of not less than
226 \$150,000.00 nor more than \$300,000.00;

227 (vii) Any person convicted of violating paragraph (3) of subsection (c) of this Code
228 section, seven years and six months to 15 years imprisonment and a fine of not less
229 than \$500,000.00 nor more than \$1 million;

230 (viii) Any person convicted of violating paragraph (2) of subsection (d) of this Code
231 section, seven years and six months to 15 years imprisonment and a fine of not less
232 than \$125,000.00 nor more than \$250,000.00;

233 (ix) Any person convicted of violating paragraph (3) of subsection (b) of this Code
234 section, 12 years and six months to 25 years imprisonment and a fine of not less than
235 \$250,000.00 nor more than \$500,000.00; and

236 (x) Any person convicted of violating subparagraph (a)(1)(C), paragraph (2) of
237 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(C)
238 of this Code section, or paragraph (3) of subsection (e) or (f) of this Code section,
239 12 years and six months to 25 years imprisonment and a fine of not less than
240 \$500,000.00 nor more than \$1 million.

241 (C) If a judge reduces the mandatory minimum sentence pursuant to this paragraph, the
242 judge shall specify on the record the circumstances for the reduction and the interests
243 served by such departure. Any such order shall be appealable by the State of Georgia
244 pursuant to Code Section 5-7-1.

245 (D) As used in this paragraph, the term:

246 (i) 'Leader' means a person who planned and organized others and acted as a guiding
 247 force in order to achieve a common goal.

248 (ii) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1.

249 (h) Any person who violates any provision of this Code section shall be punished as
 250 provided for in the applicable mandatory minimum punishment and for not more than 30
 251 years of imprisonment and by a fine not to exceed \$1 million."

252 **SECTION 5.**

253 Said part is further amended by revising Code Section 16-13-31.1, relating to trafficking in
 254 ecstasy and penalties, as follows:

255 "16-13-31.1.

256 (a) Any person who knowingly sells, manufactures, delivers, brings into this state, or has
 257 possession of 28 grams or more of 3, 4-methylenedioxyamphetamine or 3,
 258 4-methylenedioxymethamphetamine, or any mixture containing 3,
 259 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine as described in
 260 Schedule I, in violation of this article commits the felony offense of trafficking in 3,
 261 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine and, upon
 262 conviction thereof, shall be punished as follows:

263 (1) If the quantity of such substance involved is 28 grams or more, but less than 200
 264 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
 265 three years but not more than 30 years and shall pay a fine of not less than \$25,000.00 nor
 266 more than \$250,000.00;

267 (2) If the quantity of such substance involved is 200 grams or more, but less than 400
 268 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
 269 five years but not more than 30 years and shall pay a fine of not less than \$50,000.00 nor
 270 more than \$250,000.00; and

271 (3) If the quantity of such substance involved is 400 grams or more, the person shall be
 272 sentenced to a mandatory minimum term of imprisonment of ten years but not more than
 273 30 years and shall pay a fine of not less than \$100,000.00 nor more than \$250,000.00.

274 (b)(1) In the court's discretion, the judge may depart from the mandatory minimum
 275 sentence specified for a person who is convicted of a violation of this Code section as set
 276 forth in paragraph (2) of this subsection if the judge concludes that:

277 (A) The defendant was not a leader of the criminal conduct;

278 (B) The defendant did not use a weapon during the crime;

279 (C) The criminal conduct did not result in a death or serious bodily injury to a person
 280 other than to a person who is a party to the crime;

- 281 (D) The defendant has no prior felony conviction; and
 282 (E) The interests of justice will not be served by the imposition of the prescribed
 283 mandatory minimum sentence.
- 284 (2) The sentencing departure ranges pursuant to paragraph (1) of this subsection shall be
 285 as follows:
- 286 (A) Any person convicted of violating paragraph (1) of subsection (a) of this Code
 287 section, one year and six months to 30 years imprisonment and a fine of not less than
 288 \$12,500.00 nor more than \$250,000.00;
- 289 (B) Any person convicted of violating paragraph (2) of subsection (a) of this Code
 290 section, two years and six months to 30 years imprisonment and a fine of not less than
 291 \$25,000.00 nor more than \$250,000.00; and
- 292 (C) Any person convicted of violating paragraph (3) of subsection (a) of this Code
 293 section, five to 30 years imprisonment and a fine of not less than \$50,000.00 nor more
 294 than \$250,000.00;
- 295 (3) If a judge reduces the mandatory minimum sentence pursuant to this subsection, the
 296 judge shall specify on the record the circumstances for the reduction and the interests
 297 served by such departure. Any such order shall be appealable by the State of Georgia
 298 pursuant to Code Section 5-7-1.
- 299 (4) As used in this subsection, the term:
- 300 (A) 'Leader' means a person who planned and organized others and acted as a guiding
 301 force in order to achieve a common goal.
- 302 (B) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1."

303 **SECTION 6.**

304 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 305 amended by revising paragraph (2) of subsection (a), subparagraphs (a)(5)(A) and (a)(5)(C),
 306 and adding a new paragraph to subsection (a) of Code Section 17-10-1, relating to fixing of
 307 sentence, to read as follows:

308 "(2) Active probation supervision shall terminate in all cases no later than two years from
 309 the commencement of active probation supervision unless specially extended or
 310 reinstated by the sentencing court upon notice and hearing and for good cause shown;
 311 provided, however, that in those cases involving the collection of fines, restitution, or
 312 other funds, the period of active probation supervision shall remain in effect for so long
 313 as any such obligation is outstanding, or until termination of the sentence, whichever first
 314 occurs, and for those cases involving a conviction under Chapter 15 of Title 16, the
 315 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation
 316 supervision shall remain in effect until the termination of the sentence, but shall not

317 exceed five years unless as otherwise provided in this paragraph. Active probation
 318 supervision shall not be required for defendants sentenced to probation while the
 319 defendant is in the legal custody of the Department of Corrections or the State Board of
 320 Pardons and Paroles. ~~As used in this paragraph, the term: 'active probation supervision'~~
 321 ~~shall have the same meaning as the term 'active supervision' as set forth in Code Section~~
 322 ~~42-1-1."~~

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

335 ~~"(C) As used in this paragraph, the terms 'active probation supervision' and~~
 336 ~~'administrative probation supervision' shall have the same meanings as the terms 'active~~
 337 ~~supervision' and 'administrative supervision,' respectively, as set forth in Code Section~~
 338 ~~42-1-1."~~

339 "(7) As used in this subsection, the term:

340 (A) 'Active probation supervision' means the period of a probated sentence in which
 341 a probationer actively reports to his or her probation supervisor or is otherwise under
 342 the direct supervision of a probation supervisor.

343 (B) 'Unsupervised probation' means the period of a probated sentence that follows
 344 active probation supervision in which:

345 (i) All of the conditions and limitations imposed by the court remain intact;

346 (ii) A probationer may have reduced reporting requirements; and

347 (iii) A probation supervisor shall not actively supervise such probationer."

348 SECTION 7.

349 Said title is further amended by revising subsection (b) and adding two new subsections to
 350 Code Section 17-10-6.1, relating to punishment for serious violent offenders, to read as
 351 follows:

352 ~~“(b)(1) Notwithstanding any other provisions of law to the contrary~~ Except as provided
 353 in subsection (e) of this Code section, any person convicted of the serious violent felony
 354 of kidnapping involving a victim who is 14 years of age or older or armed robbery shall
 355 be sentenced to a mandatory minimum term of imprisonment of ten years, and no portion
 356 of the mandatory minimum sentence imposed shall be suspended, stayed, probated,
 357 deferred, or withheld by the sentencing court ~~and shall not be reduced by any form of~~
 358 ~~pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles.~~

359 (2) ~~Notwithstanding any other provisions of law to the contrary~~ Except as provided in
 360 subsection (e) of this Code section, the sentence of any person convicted of the serious
 361 violent felony of:

362 (A) Kidnapping involving a victim who is less than 14 years of age;

363 (B) Rape;

364 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
 365 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
 366 16-6-4;

367 (D) Aggravated sodomy, as defined in Code Section 16-6-2; or

368 (E) Aggravated sexual battery, as defined in Code Section 16-6-22.2

369 shall, unless sentenced to life imprisonment, be a split sentence which shall include a
 370 mandatory minimum term of imprisonment of 25 years, followed by probation for life:
 371 ~~No, and no~~ and no portion of the mandatory minimum sentence imposed shall be suspended,
 372 stayed, probated, deferred, or withheld by the sentencing court ~~or reduced by any form~~
 373 ~~of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles.~~

374 (3) No person convicted of a serious violent felony shall be sentenced as a first offender
 375 pursuant to Article 3 of Chapter 8 of Title 42, relating to probation for first offenders, or
 376 any other provision of Georgia law relating to the sentencing of first offenders. The State
 377 of Georgia shall have the right to appeal any sentence which is imposed by the superior
 378 court which does not conform to the provisions of this subsection in the same manner as
 379 is provided for other appeals by the state in accordance with Chapter 7 of Title 5, relating
 380 to appeals or certiorari by the state.”

381 “(e) In the court's discretion, the judge may depart from the mandatory minimum sentence
 382 specified in this Code section for a person who is convicted of a serious violent felony
 383 when the prosecuting attorney and the defendant have agreed to a sentence that is below
 384 such mandatory minimum.

385 (f) Any sentence imposed pursuant to this Code section shall not be reduced by any earned
 386 time, early release, work release, leave, or other sentence-reducing measures under
 387 programs administered by the Department of Corrections, the effect of which would be to
 388 reduce the period of incarceration ordered by the sentencing court or any form of pardon,

389 parole, or commutation of sentence by the State Board of Pardons and Paroles; provided,
 390 however, that during the final year of incarceration, a defendant so sentenced shall be
 391 eligible to be considered for participation in a Department of Corrections administered
 392 transitional center or work release program."

393 **SECTION 8.**

394 Said title is further amended by revising subsection (c) of Code Section 17-10-6.2, relating
 395 to punishment for sexual offenders, as follows:

396 "(c)(1) In the court's discretion, the court may deviate from the mandatory minimum
 397 sentence as set forth in subsection (b) of this Code section, or any portion thereof, when
 398 the prosecuting attorney and the defendant have agreed to a sentence that is below such
 399 mandatory minimum or provided that:

400 (A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of
 401 Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any
 402 offense under federal law or the laws of another state or territory of the United States
 403 which consists of the same or similar elements of offenses prohibited by Chapter 6 of
 404 Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;

405 (B) The defendant did not use a deadly weapon or any object, device, or instrument
 406 which when used offensively against a person would be likely to or actually did result
 407 in serious bodily injury during the commission of the offense;

408 (C) The court has not found evidence of a relevant similar transaction;

409 (D) The victim did not suffer any intentional physical harm during the commission of
 410 the offense;

411 (E) The offense did not involve the transportation of the victim; and

412 (F) The victim was not physically restrained during the commission of the offense.

413 (2) If the court deviates in sentencing pursuant to this subsection, the judge shall issue
 414 a written order setting forth the judge's reasons. Any such order shall be appealable by
 415 the defendant pursuant to Code Section 5-6-34, or by the State of Georgia pursuant to
 416 Code Section 5-7-1, unless the sentence imposed was pursuant to an agreement by the
 417 prosecuting attorney and the defendant."

418 **SECTION 9.**

419 Said title is further amended by revising subsection (b) of Code Section 17-10-7, relating to
 420 punishment for repeat offenders, as follows:

421 "(b)(1) As used in this subsection, the term 'serious violent felony' means a serious
 422 violent felony as defined in subsection (a) of Code Section 17-10-6.1.

423 (2) ~~Any~~ Except as provided in subsection (e) of Code Section 17-10-6.1, any person who
 424 has been convicted of a serious violent felony in this state or who has been convicted
 425 under the laws of any other state or of the United States of a crime which if committed
 426 in this state would be a serious violent felony and who after such first conviction
 427 subsequently commits and is convicted of a serious violent felony for which such person
 428 is not sentenced to death shall be sentenced to imprisonment for life without parole. Any
 429 such sentence of life without parole shall not be suspended, stayed, probated, deferred,
 430 or withheld, and any such person sentenced pursuant to this paragraph shall not be
 431 eligible for any form of pardon, parole, or early release administered by the State Board
 432 of Pardons and Paroles or for any earned time, early release, work release, leave, or any
 433 other sentence-reducing measures under programs administered by the Department of
 434 Corrections, the effect of which would be to reduce the sentence of life imprisonment
 435 without possibility of parole, except as may be authorized by any existing or future
 436 provisions of the Constitution."

437 **SECTION 10.**

438 Said title is further amended by adding a new chapter to read as follows:

439 "CHAPTER 19

440 17-19-1.

441 (a) There is created the Georgia Council on Criminal Justice Reform for the purpose of
 442 conducting periodic comprehensive reviews of criminal laws, criminal procedure,
 443 sentencing of criminal defendants, correctional issues, enhancement of probation and
 444 parole supervision, better management of the prison population, and other issues related
 445 to criminal and accountability courts. The Georgia Council on Criminal Justice Reform
 446 shall be responsible for studying and collecting information and data relating to the efficacy
 447 of criminal and correctional laws, current best practices in the field of criminal law,
 448 reducing recidivism, lowering state expenses, and all matters relevant to maintaining an
 449 effective and efficient Code that will promote public safety and serve the best interests of
 450 Georgia's citizens.

451 (b) As used in this chapter, the term 'council' means the Georgia Council on Criminal
 452 Justice Reform.

453 17-19-2.

454 (a) The council shall be composed of 15 members, as follows:

455 (1) The Governor shall appoint five members, as follows:

- 456 (A) Two members who shall be judges of the superior court;
 457 (B) One member who shall be a judge of the juvenile court;
 458 (C) One member who shall be a Justice of the Supreme Court or a Judge of the Court
 459 of Appeals or the Justice's or Judge's designee; and
 460 (D) One member who shall be a sheriff;
- 461 (2) The Lieutenant Governor shall appoint one member who shall be a member of the
 462 Senate;
- 463 (3) The Speaker of the House of Representatives shall appoint one member who shall be
 464 a member of the House of Representatives;
- 465 (4) The commissioner of corrections or his or her designee;
 466 (5) The commissioner of juvenile justice or his or her designee;
 467 (6) The commissioner of behavioral health and developmental disabilities or his or her
 468 designee;
- 469 (7) The director of the State Board of Pardons and Paroles or his or her designee;
 470 (8) The director of the Governor's Office for Children and Families or his or her
 471 designee;
- 472 (9) The director of the Administrative Office of the Courts or his or her designee;
 473 (10) The director of the Georgia Public Defender Standards Council shall appoint one
 474 member who shall be a criminal defense attorney who routinely defends juvenile
 475 offenders; and
- 476 (11) The chairperson of the Prosecuting Attorneys' Council of the State of Georgia shall
 477 appoint a prosecuting attorney who routinely prosecutes juvenile offenders.
- 478 (b) Each member of the council shall be appointed to serve for a term of four years or until
 479 his or her successor is duly appointed, except the members of the General Assembly, who
 480 shall serve until completion of their current terms of office. A member may be appointed
 481 to succeed himself or herself on the council. If a member of the council is an elected or
 482 appointed official, the member, or his or her designee, shall be removed from the council
 483 if the member no longer serves as such elected or appointed official.
- 484 (c) The Governor shall designate the chairperson of the council. The council may elect
 485 other officers as it deems necessary. The chairperson of the council may designate and
 486 appoint committees from among the membership of the council as well as appoint other
 487 persons to perform such functions as he or she may determine to be necessary as relevant
 488 to and consistent with this chapter. The chairperson shall only vote to break a tie.
- 489 (d) The council shall be attached for administrative purposes only to the Governor's Office
 490 for Children and Families. The Governor's Office for Children and Families shall provide
 491 staff support for the council. The Governor's Office for Children and Families shall use
 492 any funds specifically appropriated to it to support the work of the council.

493 17-19-3.

494 (a) The council may conduct meetings at such places and times as it deems necessary or
495 convenient to enable it to exercise fully and effectively its powers, perform its duties, and
496 accomplish the objectives and purposes of this chapter. The council shall hold meetings
497 at the call of the chairperson. The council shall meet not less than once every year.

498 (b) A quorum for transacting business shall be a majority of the members of the council.

499 (c) Any legislative members of the council shall receive the allowances provided for in
500 Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the
501 amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or
502 transportation allowance authorized for state employees. Members of the council who are
503 state officials, other than legislative members, or state employees shall receive no
504 compensation for their services on the council, but they shall be reimbursed for expenses
505 incurred by them in the performance of their duties as members of the council in the same
506 manner as they are reimbursed for expenses in their capacities as state officials or state
507 employees. The funds necessary for the reimbursement of the expenses of state officials,
508 other than legislative members, and state employees shall come from funds appropriated
509 to or otherwise available to their respective departments. All other funds necessary to carry
510 out the provisions of this chapter shall come from funds appropriated to the Senate and the
511 House of Representatives.

512 17-19-4.

513 (a) The council shall have the following duties:

514 (1) To periodically, and at least every two years, review the conditions, needs, issues,
515 and problems related to criminal justice; issue a report on the same to the executive
516 counsel of the Governor, the Office of Planning and Budget, and the chairpersons of the
517 House Committee on Appropriations, the Senate Appropriations Committee, the House
518 Committee on Judiciary, and the Senate Judiciary Committee; and recommend any action
519 or proposed legislation which the council deems necessary or appropriate. Nothing
520 contained in the council's report shall be considered to authorize or require a change in
521 any law without action by the General Assembly;

522 (2) To evaluate and consider the best practices, experiences, and results of legislation in
523 other states with regard to children, adults, and families involved in the juvenile or
524 superior court or equivalent systems; and

525 (3) To identify and recommend whether and when any state law should be modified to
526 conform, whenever desirable, to federal legislation.

527 (b) The council shall have the following powers:

- 528 (1) To evaluate how the laws and programs affecting the criminal justice system in this
 529 state are working;
 530 (2) To request and receive data from and review the records of appropriate agencies to
 531 the greatest extent allowed by state and federal law;
 532 (3) To accept public or private grants, devises, and bequests;
 533 (4) To authorize entering into contracts or agreements through the council's chairperson
 534 necessary or incidental to the performance of its duties;
 535 (5) To establish rules and procedures for conducting the business of the council; and
 536 (6) To conduct studies, hold public meetings, collect data, or take any other action the
 537 council deems necessary to fulfill its responsibilities.
 538 (c) The council shall be authorized to retain the services of attorneys, consultants, subject
 539 matter experts, economists, budget analysts, data analysts, statisticians, and other
 540 individuals or firms as determined appropriate by the council.

541 17-19-5.

542 This chapter shall be repealed effective June 30, 2023, unless continued in effect by the
 543 General Assembly prior to that date."

544 **SECTION 11.**

545 Article 2 of Chapter 8 of Title 24 of the Official Code of Georgia Annotated, relating to
 546 admissions and confessions, is amended by revising Code Section 24-8-820, relating to
 547 testimony as to child's description of sexual contact or physical abuse, as follows:

548 "24-8-820.

549 (a) A statement made by a child under the age of ~~14~~ 16 years describing any act of sexual
 550 contact or physical abuse performed with or on the child by another ~~shall be~~ or with or on
 551 another in the presence of the child shall be admissible in evidence by the testimony of the
 552 person or persons to whom made if the child is available to testify in the proceedings and
 553 the court finds that the circumstances of the statement provide sufficient indicia of
 554 reliability the following requirements are met:

555 (1)(A) The prosecuting attorney provides notice to the accused prior to trial of the
 556 state's intent to use such out-of-court statement and such child testifies at the trial,
 557 unless the accused forfeits or waives such testimony as provided in this title, and, at the
 558 time of such testimony, is subject to cross-examination about the out-of-court
 559 statements; or

560 (B) Such child is found by the court to be unavailable to testify because:

561 (i) Such child is deceased;

562 (ii) There are reasonable grounds to believe that the accused or someone acting on
 563 behalf of the accused has intentionally removed such child from the jurisdiction of the
 564 court;

565 (iii) Such child has had a total failure of memory;

566 (iv) Such child has a physical or mental disability;

567 (v) Such child is incompetent, including his or her inability to communicate about the
 568 offense because of fear or a similar reason; or

569 (vi) There is substantial likelihood that such child would suffer severe emotional
 570 trauma from testifying at the proceeding or by means of a two-way closed circuit
 571 television; and

572 (2) Such child's out-of-court statement is shown to the reasonable satisfaction of the
 573 court to possess particularized guarantees of trustworthiness.

574 (b) If such child testifies by means of a two-way closed circuit television as provided in
 575 Code Section 17-8-55 or testifies by deposition as provided in Article 6 of Chapter 13 of
 576 this title, he or she shall be considered to have testified at trial."

577 **SECTION 12.**

578 Article 3A of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to
 579 suspension of driver's license for certain drug offenses, is amended by revising subsections
 580 (a), (b), and (e) of Code Section 40-5-75, relating to suspension of license by operation of
 581 law, as follows:

582 "(a) ~~The~~ Except as provided in Code Section 40-5-76, the driver's license of any person
 583 convicted of any violation of Article 2 of Chapter 13 of Title 16, the 'Georgia Controlled
 584 Substances Act,' including, but not limited to, possession, distribution, manufacture,
 585 cultivation, sale, transfer of, trafficking in, the attempt or conspiracy to possess, distribute,
 586 manufacture, cultivate, sell, transfer or traffic in a controlled substance or marijuana, or the
 587 law of any other jurisdiction, shall by operation of law be suspended, and such suspension
 588 shall be subject to the following terms and conditions:

589 (1) Upon the first conviction of any such offense, with no arrest and conviction of and
 590 no plea of nolo contendere accepted to such offense within the previous five years, as
 591 measured from the dates of previous arrests for which convictions were obtained to the
 592 date of the current arrest for which a conviction is obtained, the period of suspension shall
 593 be for not less than 180 days. At the end of 180 days, the person may apply to the
 594 department for reinstatement of his or her driver's license. Such license shall be
 595 reinstated only if the person submits proof of completion of a DUI Alcohol or Drug Use
 596 Risk Reduction Program and pays to the ~~Department of Driver Services~~ department a
 597 restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail. For

598 purposes of this paragraph, a plea of nolo contendere by a person to a charge of any drug
599 related offense listed in this subsection shall, except as provided in subsection (c) of this
600 Code section, constitute a conviction;

601 (2) Upon the second conviction of any such offense within five years, as measured from
602 the dates of previous arrests for which convictions were obtained to the date of the
603 current arrest for which a conviction is obtained, the period of suspension shall be for
604 three years, provided that after one year from the date of the conviction, the person may
605 apply to the department for reinstatement of his or her driver's license by submitting proof
606 of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the
607 ~~Department of Driver Services~~ department a restoration fee of \$310.00 or \$300.00 when
608 such reinstatement is processed by mail. For purposes of this paragraph, a plea of nolo
609 contendere and all previous pleas of nolo contendere within such five-year period of time
610 shall constitute a conviction; and

611 (3) Upon the third or subsequent conviction of any such offense within five years, as
612 measured from the dates of previous arrests for which convictions were obtained to the date
613 of the current arrest for which a conviction is obtained, such person's license shall be
614 suspended for a period of five years. At the end of two years, the person may apply to the
615 department for a three-year driving permit upon compliance with the following conditions:

616 (A) Such person has not been convicted or pleaded nolo contendere to any drug related
617 offense, including driving under the influence, for a period of two years immediately
618 preceding the application for such permit;

619 (B) Such person submits proof of completion of a licensed drug treatment program.
620 Such proof shall be submitted within two years of the license suspension and prior to
621 the issuance of the permit. Such licensed drug treatment program shall be paid for by
622 the offender. The offender shall pay a permit fee of \$25.00 to the department;

623 (C) Such person submits proof of financial responsibility as provided in Chapter 9 of
624 this title; and

625 (D) Refusal to issue such permit would cause extreme hardship to the applicant. For
626 the purposes of this subparagraph, the term 'extreme hardship' means that the applicant
627 cannot reasonably obtain other transportation, and, therefore, the applicant would be
628 prohibited from:

629 (i) Going to his or her place of employment or performing the normal duties of his
630 or her occupation;

631 (ii) Receiving scheduled medical care or obtaining prescription drugs;

632 (iii) Attending a college or school at which he or she is regularly enrolled as a
633 student; or

634 (iv) Attending regularly scheduled sessions or meetings of support organizations for
 635 persons who have addiction or abuse problems related to alcohol or other drugs,
 636 which organizations are recognized by the commissioner.

637 At the end of five years from the date on which the license was suspended, the person
 638 may apply to the department for reinstatement of his or her driver's license by submitting
 639 proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying
 640 to the ~~Department of Driver Services~~ department a restoration fee of \$410.00 or \$400.00
 641 when such reinstatement is processed by mail. For purposes of this paragraph, a plea of
 642 nolo contendere and all previous pleas of nolo contendere within such five-year period
 643 of time shall constitute a conviction."

644 "(b) ~~Whenever~~ Except as provided in Code Section 40-5-76, whenever a person is
 645 convicted of possession, distribution, manufacture, cultivation, sale, transfer of, the attempt
 646 or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer a controlled
 647 substance or marijuana, or driving or being in actual physical control of any moving
 648 vehicle while under the influence of such substance in violation of subsection (b) of Code
 649 Section 16-13-2, subsection (a), (b), or (j) of Code Section 16-13-30, or Code Section
 650 16-13-33; paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391; or the law
 651 of any other jurisdiction, the court in which such conviction is had shall require the
 652 surrender to it of any driver's license then held by the person so convicted, and the court
 653 shall thereupon forward such license and a copy of its order to the department within ten
 654 days after the conviction. The periods of suspension provided for in this Code section shall
 655 begin on the date of surrender of the driver's license or on the date that the department
 656 processes the conviction or citation, whichever shall first occur."

657 "(e) Notwithstanding any other provision of this Code section or any other provision of this
 658 chapter, any person whose license is suspended pursuant to this Code section shall not be
 659 eligible for early reinstatement of his or her license and shall not be eligible for a limited
 660 driving permit, but such person's license shall be reinstated only as provided in this Code
 661 section or Code Section 40-5-76."

662 **SECTION 13.**

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

664 "40-5-76.

665 A judge presiding in a drug court division or mental health court division may order the
 666 department to restore a defendant's driver's license that has been or should be suspended
 667 pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited
 668 driving permit in accordance with the provisions set forth in subsections (c) and (d) of
 669 Code Section 40-5-64 or with whatever conditions the court determines to be appropriate

670 under the circumstances as a reward or sanction to the defendant's behavior in such court
671 division. The court shall determine what fees, if any, shall be paid to the department for
672 such reward or sanction, provided that such fee shall not be greater than the fee normally
673 imposed for such services."

674 **SECTION 14.**

675 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
676 in Code Section 42-1-1, relating to definitions, by deleting paragraphs (1) and (2) and
677 renumbering paragraphs (3) through (9) as paragraphs (1) through (7), respectively.

678 **SECTION 15.**

679 Said title is further amended in subsection (a) of Code Section 42-8-35, relating to terms and
680 conditions of probation, by deleting "and" at the end of paragraph (15), by replacing the
681 period with "; and" at the end of paragraph (16), and by adding a new paragraph (17) to read
682 as follows:

683 "(17) Pay for the cost of drug screening. The Department of Corrections shall assess and
684 collect fees from the probationer for such screening at levels set by regulation of the
685 Department of Corrections."

686 **SECTION 16.**

687 This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on
688 or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute
689 in effect at the time of such offense.

690 **SECTION 17.**

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