

The House Committee on Judiciary Non-civil offers the following substitute to HB 349:

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:

H. B. 349 (SUB)

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 any motion
 45 filed at least 30 days prior to trial and ruled on prior to the impaneling of a jury or the
 46 defendant being put in jeopardy, whichever occurs first, if:

47 (A) Notwithstanding the provisions of Code Section 5-6-38, the notice of appeal filed
 48 pursuant to this paragraph is filed within 48 hours of such order, decision, or judgment;
 49 and

50 (B) In the case of an appeal by the prosecuting attorney, the prosecuting attorney
 51 certifies to the trial court that such appeal is not taken for purpose of delay and that the
 52 evidence is a substantial proof of a material fact in the proceeding;

53 ~~(5)~~(6) From an order, decision, or judgment of a court where the court does not have
 54 jurisdiction or the order is otherwise void under the Constitution or laws of this state;

55 ~~(6)~~(7) From an order, decision, or judgment of a superior court transferring a case to the
 56 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28 or subsection
 57 (b) of Code Section 17-7-50.1;

58 ~~(7)~~(8) From an order, decision, or judgment of a court granting a motion for new trial or
 59 an extraordinary motion for new trial;

60 ~~(8)~~(9) From an order, decision, or judgment denying a motion by the state to recuse or
 61 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or

62 ~~(9)~~(10) From an order, decision, or judgment issued pursuant to subsection (c) of Code
 63 Section 17-10-6.2.

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

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

75 **SECTION 2.**

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

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

80 (1) Order, decision, or judgment suppressing or excluding ~~illegally seized~~ evidence as
 81 set forth in paragraph (4) or (5) of subsection (a) of Code Section 5-7-1; or

82 (2) Order, decision, or judgment described in paragraph (1) or (7) of subsection (a) of
 83 Code Section 5-7-1."

84 **SECTION 3.**

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

86 "5-7-6.

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

88 **SECTION 4.**

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

93 "16-13-31.

94 (a)(1) Any person who ~~knowingly~~ sells, manufactures, delivers, or brings into this state
 95 or who is ~~knowingly~~ in possession of 28 grams or more of cocaine or of any mixture with
 96 a purity of 10 percent or more of cocaine, as described in Schedule II, in violation of this

97 article commits the felony offense of trafficking in cocaine and, upon conviction thereof,
98 shall be punished as follows:

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

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

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

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

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

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

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

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

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

135 (1) If the quantity of marijuana involved is in excess of ~~10~~ ten pounds, but less than
136 2,000 pounds, the person shall be sentenced to a mandatory minimum term of
137 imprisonment of five years and shall pay a fine of \$100,000.00;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

218 (iv) Any person convicted of violating subparagraph (a)(1)(A), paragraph (2) of
219 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(A)
220 of this Code section, or paragraph (1) of subsection (e) or (f) of this Code section, five
221 to ten years imprisonment and a fine of not less than \$100,000.00 nor more than
222 \$200,000.00;

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

226 (vi) Any person convicted of violating subparagraph (a)(1)(B), paragraph (2) of
227 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(B)
228 of this Code section, or paragraph (2) of subsection (e) or (f) of this Code section,
229 seven years and six months to 15 years imprisonment and a fine of not less than
230 \$150,000.00 nor more than \$300,000.00;

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

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

237 (ix) Any person convicted of violating paragraph (3) of subsection (b) of this Code
238 section, 12 years and six months to 25 years imprisonment and a fine of not less than
239 \$250,000.00 nor more than \$500,000.00; and

240 (x) Any person convicted of violating subparagraph (a)(1)(C), paragraph (2) of
241 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(C)

242 of this Code section, or paragraph (3) of subsection (e) or (f) of this Code section,
 243 12 years and six months to 25 years imprisonment and a fine of not less than
 244 \$500,000.00 nor more than \$1 million.

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

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

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

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

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

256 (i) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to this Code
 257 section shall not be reduced by any earned time, early release, work release, leave, or other
 258 sentence-reducing measures under programs administered by the Department of
 259 Corrections, the effect of which would be to reduce the period of incarceration ordered by
 260 the sentencing court or any form of pardon, parole, or commutation of sentence by the State
 261 Board of Pardons and Paroles; provided, however, that during the final year of
 262 incarceration, a defendant so sentenced shall be eligible to be considered for participation
 263 in a Department of Corrections administered transitional center or work release program."

264 **SECTION 5.**

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

267 "16-13-31.1.

268 (a) Any person who knowingly sells, manufactures, delivers, brings into this state, or has
 269 possession of 28 grams or more of 3, 4-methylenedioxyamphetamine or 3,
 270 4-methylenedioxymethamphetamine, or any mixture containing 3,
 271 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine as described in
 272 Schedule I, in violation of this article commits the felony offense of trafficking in 3,
 273 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine and, upon
 274 conviction thereof, shall be punished as follows:

275 (1) If the quantity of such substance involved is 28 grams or more, but less than 200
 276 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of

277 three years but not more than 30 years and shall pay a fine of not less than \$25,000.00 nor
278 more than \$250,000.00;

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

283 (3) If the quantity of such substance involved is 400 grams or more, the person shall be
284 sentenced to a mandatory minimum term of imprisonment of ten years but not more than
285 30 years and shall pay a fine of not less than \$100,000.00 nor more than \$250,000.00.

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

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

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

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

293 (D) The defendant has no prior felony conviction; and

294 (E) The interests of justice will not be served by the imposition of the prescribed
295 mandatory minimum sentence.

296 (2) The sentencing departure ranges pursuant to paragraph (1) of this subsection shall be
297 as follows:

298 (A) Any person convicted of violating paragraph (1) of subsection (a) of this Code
299 section, one year and six months to 30 years imprisonment and a fine of not less than
300 \$12,500.00 nor more than \$250,000.00;

301 (B) Any person convicted of violating paragraph (2) of subsection (a) of this Code
302 section, two years and six months to 30 years imprisonment and a fine of not less than
303 \$25,000.00 nor more than \$250,000.00; and

304 (C) Any person convicted of violating paragraph (3) of subsection (a) of this Code
305 section, five to 30 years imprisonment and a fine of not less than \$50,000.00 nor more
306 than \$250,000.00;

307 (3) If a judge reduces the mandatory minimum sentence pursuant to this subsection, the
308 judge shall specify on the record the circumstances for the reduction and the interests
309 served by such departure. Any such order shall be appealable by the State of Georgia
310 pursuant to Code Section 5-7-1.

311 (4) As used in this subsection, the term:

312 (A) 'Leader' means a person who planned and organized others and acted as a guiding
313 force in order to achieve a common goal.

314 (B) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1.
 315 (c) The district attorney may move the sentencing court to impose a reduced or suspended
 316 sentence upon any person who is convicted of a violation of this Code section who
 317 provides substantial assistance in the identification, arrest, or conviction of any of his or
 318 her accomplices, accessories, coconspirators, or principals. Upon good cause shown, the
 319 motion may be filed and heard in camera. The judge hearing the motion may impose a
 320 reduced or suspended sentence if he or she finds that the defendant has rendered such
 321 substantial assistance.
 322 (d) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to this Code
 323 section shall not be reduced by any earned time, early release, work release, leave, or other
 324 sentence-reducing measures under programs administered by the Department of
 325 Corrections, the effect of which would be to reduce the period of incarceration ordered by
 326 the sentencing court or any form of pardon, parole, or commutation of sentence by the State
 327 Board of Pardons and Paroles; provided, however, that during the final year of
 328 incarceration, a defendant so sentenced shall be eligible to be considered for participation
 329 in a Department of Corrections administered transitional center or work release program."

330

SECTION 6.

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

335 "(2) Active probation supervision shall terminate in all cases no later than two years from
 336 the commencement of active probation supervision unless specially extended or
 337 reinstated by the sentencing court upon notice and hearing and for good cause shown;
 338 provided, however, that in those cases involving the collection of fines, restitution, or
 339 other funds, the period of active probation supervision shall remain in effect for so long
 340 as any such obligation is outstanding, or until termination of the sentence, whichever first
 341 occurs, and for those cases involving a conviction under Chapter 15 of Title 16, the
 342 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation
 343 supervision shall remain in effect until the termination of the sentence, but shall not
 344 exceed five years unless as otherwise provided in this paragraph. Active probation
 345 supervision shall not be required for defendants sentenced to probation while the
 346 defendant is in the legal custody of the Department of Corrections or the State Board of
 347 Pardons and Paroles. ~~As used in this paragraph, the term: 'active probation supervision'~~
 348 ~~shall have the same meaning as the term 'active supervision' as set forth in Code Section~~
 349 ~~42-1-1."~~

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

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

390 (B) Rape;

391 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
 392 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
 393 16-6-4;

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

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

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

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

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

412 (f) Any sentence imposed pursuant to this Code section shall not be reduced by any earned
 413 time, early release, work release, leave, or other sentence-reducing measures under
 414 programs administered by the Department of Corrections, the effect of which would be to
 415 reduce the period of incarceration ordered by the sentencing court or any form of pardon,
 416 parole, or commutation of sentence by the State Board of Pardons and Paroles; provided,
 417 however, that during the final year of incarceration, a defendant so sentenced shall be
 418 eligible to be considered for participation in a Department of Corrections administered
 419 transitional center or work release program."

420

SECTION 8.

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

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

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

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

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

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

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

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

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

445

SECTION 9.

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

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

450 (2) ~~Any~~ Except as provided in subsection (e) of Code Section 17-10-6.1, any person who
451 has been convicted of a serious violent felony in this state or who has been convicted
452 under the laws of any other state or of the United States of a crime which if committed
453 in this state would be a serious violent felony and who after such first conviction
454 subsequently commits and is convicted of a serious violent felony for which such person
455 is not sentenced to death shall be sentenced to imprisonment for life without parole. Any

456 such sentence of life without parole shall not be suspended, stayed, probated, deferred,
 457 or withheld, and any such person sentenced pursuant to this paragraph shall not be
 458 eligible for any form of pardon, parole, or early release administered by the State Board
 459 of Pardons and Paroles or for any earned time, early release, work release, leave, or any
 460 other sentence-reducing measures under programs administered by the Department of
 461 Corrections, the effect of which would be to reduce the sentence of life imprisonment
 462 without possibility of parole, except as may be authorized by any existing or future
 463 provisions of the Constitution."

464 **SECTION 10.**

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

466 "CHAPTER 19

467 17-19-1.

468 (a) There is created the Georgia Council on Criminal Justice Reform for the purpose of
 469 conducting periodic comprehensive reviews of criminal laws, criminal procedure,
 470 sentencing laws, adult correctional issues, juvenile justice issues, enhancement of probation
 471 and parole supervision, better management of the prison population and of the population
 472 in the custody of the Department of Juvenile Justice, and other issues related to criminal
 473 and accountability courts. The Georgia Council on Criminal Justice Reform shall be
 474 responsible for establishing performance measures that track the implementation of
 475 criminal justice and juvenile justice reforms through the analysis of data collected under
 476 law and shall propose additional reforms to further the reduction of recidivism, the
 477 lowering of state expenses, and the maintenance of an effective and efficient Code that will
 478 promote public safety.

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

481 17-19-2.

482 (a) The Governor shall appoint all 15 members of the council which shall be composed of
 483 one member of the Senate, one member of the House of Representatives, one member who
 484 shall be either a Justice of the Supreme Court or a Judge of the Court of Appeals, one
 485 superior court judge, one juvenile court judge, one district attorney, one criminal defense
 486 attorney, one sheriff, the executive counsel to the Governor or his or her designee, the
 487 director of the Governor's Office for Children and Families or his or her designee, and five
 488 other members as determined by the Governor.

489 (b) Each member of the council shall be appointed to serve for a term of four years or until
490 his or her successor is duly appointed, except the members of the General Assembly, who
491 shall serve until completion of their current terms of office. A member may be appointed
492 to succeed himself or herself on the council. If a member of the council is an elected or
493 appointed official, the member, or his or her designee, shall be removed from the council
494 if the member no longer serves as such elected or appointed official.

495 (c) The Governor shall designate the chairperson of the council. The council may elect
496 other officers as it deems necessary. The chairperson of the council may designate and
497 appoint committees from among the membership of the council as well as appoint other
498 persons to perform such functions as he or she may determine to be necessary as relevant
499 to and consistent with this chapter. The chairperson shall only vote to break a tie.

500 (d) The council shall be attached for administrative purposes only to the Governor's Office
501 for Children and Families. The Governor's Office for Children and Families and the
502 Criminal Justice Coordinating Council shall provide staff support for the council. The
503 Governor's Office for Children and Families and the Criminal Justice Coordinating Council
504 shall use any funds specifically appropriated to it to support the work of the council.

505 17-19-3.

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

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

511 (c) Any legislative members of the council shall receive the allowances provided for in
512 Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the
513 amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or
514 transportation allowance authorized for state employees. Members of the council who are
515 state officials, other than legislative members, or state employees shall receive no
516 compensation for their services on the council, but they shall be reimbursed for expenses
517 incurred by them in the performance of their duties as members of the council in the same
518 manner as they are reimbursed for expenses in their capacities as state officials or state
519 employees. The funds necessary for the reimbursement of the expenses of state officials,
520 other than legislative members, and state employees shall come from funds appropriated
521 to or otherwise available to their respective departments. All other funds necessary to carry
522 out the provisions of this chapter shall come from funds appropriated to the Senate and the
523 House of Representatives.

524 17-19-4.

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

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

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

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

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

540 (1) To evaluate how the laws and programs affecting the criminal justice system in this
541 state are working;

542 (2) To request and receive data from and review the records of appropriate state agencies
543 and courts to the greatest extent allowed by state and federal law;

544 (3) To accept public or private grants, devises, and bequests;

545 (4) To authorize entering into contracts or agreements through the council's chairperson
546 necessary or incidental to the performance of its duties;

547 (5) To establish rules and procedures for conducting the business of the council; and

548 (6) To conduct studies, hold public meetings, collect data, or take any other action the
549 council deems necessary to fulfill its responsibilities.

550 (c) The council shall be authorized to retain the services of attorneys, consultants, subject
551 matter experts, economists, budget analysts, data analysts, statisticians, and other
552 individuals or organizations as determined appropriate by the council.

553 17-19-5.

554 This chapter shall be repealed effective June 30, 2018, unless continued in effect by the
555 General Assembly prior to that date."

556

SECTION 11.

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

560 "24-8-820.

561 A statement made by a child under the age of ~~14~~ 16 years describing any act of sexual
 562 contact or physical abuse performed with or on the child by another ~~shall be or with or on~~
 563 another in the presence of the child shall be admissible in evidence by the testimony of the
 564 person or persons to whom made if ~~the child is available to testify in the proceedings and~~
 565 ~~the court finds that the circumstances of the statement provide sufficient indicia of~~
 566 reliability the prosecuting attorney provides notice to the accused prior to trial of the state's
 567 intention to use such out-of-court statement and such child testifies at the trial, unless the
 568 accused forfeits or waives the child's testimony as provided in this title, and, at the time of
 569 the testimony regarding the out-of-court statements, the witness is subject to
 570 cross-examination regarding the out-of-court statements."

571

SECTION 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

656 **SECTION 13.**

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

658 "40-5-76.

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

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

668 **SECTION 14.**

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

672 **SECTION 15.**

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

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

680 **SECTION 16.**

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

684 **SECTION 17.**

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