

House Bill 349 (COMMITTEE SUBSTITUTE) (AM)

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 clarify provisions relating to the
 11 weight or quantity of controlled substances and marijuana; to change provisions relating to
 12 sentencing serious violent offenders, certain sexual offenders, and repeat offenders; to create
 13 the Georgia Council on Criminal Justice Reform and provide for its members, chairperson,
 14 other officers, committees, staff, and funding; to allow a drug court or mental health court
 15 division judge to order the Department of Driver's Services to change a defendant's driving
 16 privileges for participants in their court programs under certain circumstances; to delete
 17 definitions; to change terms of a probated sentence; to amend Code Section 42-9-43 of the
 18 Official Code of Georgia Annotated, relating to information to be considered by the State
 19 Board of Pardons and Paroles generally, so as to define terms applicable to issuing medical
 20 reprieves to entirely incapacitated persons suffering a progressively debilitating terminal
 21 illness; to provide for related matters; to provide for an effective date and applicability; to
 22 repeal conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24

SECTION 1.

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

29 "5-7-1.

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

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

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

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

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

46 (5) From an order, decision, or judgment excluding any other evidence to be used by the
 47 state at trial on any motion filed by the state or defendant at least 30 days prior to trial and
 48 ruled on prior to the impaneling of a jury or the defendant being put in jeopardy,
 49 whichever occurs first, if:

50 (A) Notwithstanding the provisions of Code Section 5-6-38, the notice of appeal filed
 51 pursuant to this paragraph is filed within two days of such order, decision, or judgment;
 52 and

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

56 ~~(5)(6)~~ From an order, decision, or judgment of a court where the court does not have
 57 jurisdiction or the order is otherwise void under the Constitution or laws of this state;

58 ~~(6)(7)~~ From an order, decision, or judgment of a superior court transferring a case to the
 59 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28 or subsection
 60 (b) of Code Section 17-7-50.1;

61 ~~(7)~~(8) From an order, decision, or judgment of a court granting a motion for new trial or
 62 an extraordinary motion for new trial;

63 ~~(8)~~(9) From an order, decision, or judgment denying a motion by the state to recuse or
 64 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or

65 ~~(9)~~(10) From an order, decision, or judgment issued pursuant to subsection (c) of Code
 66 Section 17-10-6.2.

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

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

78 **SECTION 2.**

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

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

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

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

87 **SECTION 3.**

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

89 "5-7-6.

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

91 **SECTION 4.**

92 Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
 93 relating to schedules, offenses, and penalties for controlled substances, is amended by

94 revising Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana,
95 or methamphetamine and penalties, as follows:

96 "16-13-31.

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

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

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

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

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

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

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

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

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

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

138 (1) If the quantity of marijuana involved is in excess of ~~10~~ ten pounds, but less than
139 2,000 pounds, the person shall be sentenced to a mandatory minimum term of
140 imprisonment of five years and shall pay a fine of \$100,000.00;

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

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

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

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

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

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

163 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
164 substance involved is 28 grams or more, but less than 200 grams, the person shall be

165 sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a
166 fine of \$200,000.00;

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

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

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

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

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

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

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

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

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

- 203 (i) The defendant was not a leader of the criminal conduct;
204 (ii) The defendant did not possess or use a weapon during the crime;
205 (iii) The criminal conduct did not result in a death or serious bodily injury to a person
206 other than to a person who is a party to the crime;
207 (iv) The defendant has no prior felony conviction; and
208 (v) The interests of justice will not be served by the imposition of the prescribed
209 mandatory minimum sentence.

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

- 212 (i) Any person convicted of violating paragraph (1) of subsection (b) or (d) of this
213 Code section, two years and six months to five years imprisonment and a fine of not
214 less than \$25,000.00 nor more than \$50,000.00;
215 (ii) Any person convicted of violating paragraph (1) of subsection (c) of this Code
216 section, two years and six months to five years imprisonment and a fine of not less
217 than \$50,000.00 nor more than \$100,000.00;
218 (iii) Any person convicted of violating paragraph (2) of subsection (c) of this Code
219 section, three years and six months to seven years imprisonment and a fine of not less
220 than \$125,000.00 nor more than \$250,000.00;
221 (iv) Any person convicted of violating subparagraph (a)(1)(A), paragraph (2) of
222 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(A)
223 of this Code section, or paragraph (1) of subsection (e) or (f) of this Code section, five
224 to ten years imprisonment and a fine of not less than \$100,000.00 nor more than
225 \$200,000.00;
226 (v) Any person convicted of violating paragraph (2) of subsection (b) of this Code
227 section, five to ten years imprisonment and a fine of not less than \$50,000.00 nor
228 more than \$100,000.00;
229 (vi) Any person convicted of violating subparagraph (a)(1)(B), paragraph (2) of
230 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(B)
231 of this Code section, or paragraph (2) of subsection (e) or (f) of this Code section,
232 seven years and six months to 15 years imprisonment and a fine of not less than
233 \$150,000.00 nor more than \$300,000.00;
234 (vii) Any person convicted of violating paragraph (3) of subsection (c) of this Code
235 section, seven years and six months to 15 years imprisonment and a fine of not less
236 than \$500,000.00 nor more than \$1 million;

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

240 (ix) Any person convicted of violating paragraph (3) of subsection (b) of this Code
 241 section, 12 years and six months to 25 years imprisonment and a fine of not less than
 242 \$250,000.00 nor more than \$500,000.00; and

243 (x) Any person convicted of violating subparagraph (a)(1)(C), paragraph (2) of
 244 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(C)
 245 of this Code section, or paragraph (3) of subsection (e) or (f) of this Code section,
 246 12 years and six months to 25 years imprisonment and a fine of not less than
 247 \$500,000.00 nor more than \$1 million.

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

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

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

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

256 (3) In the court's discretion, the judge may depart from the mandatory minimum sentence
 257 specified in this Code section for a person who is convicted of a violation of this Code
 258 section when the prosecuting attorney and the defendant have agreed to a sentence that
 259 is below such mandatory minimum.

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

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

271 **SECTION 5.**

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

274 "16-13-31.1.

275 (a) Any person who knowingly sells, manufactures, delivers, brings into this state, or has
 276 possession of 28 grams or more of 3, 4-methylenedioxyamphetamine or 3,
 277 4-methylenedioxymethamphetamine, or any mixture containing 3,
 278 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine as described in
 279 Schedule I, in violation of this article commits the felony offense of trafficking in 3,
 280 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine and, upon
 281 conviction thereof, shall be punished as follows:

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

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

290 (3) If the quantity of such substance involved is 400 grams or more, the person shall be
 291 sentenced to a mandatory minimum term of imprisonment of ten years but not more than
 292 30 years and shall pay a fine of not less than \$100,000.00 nor more than \$250,000.00.

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

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

297 (B) The defendant did not possess or use a weapon during the crime;

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

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

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

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

305 (A) Any person convicted of violating paragraph (1) of subsection (a) of this Code
 306 section, one year and six months to 30 years imprisonment and a fine of not less than
 307 \$12,500.00 nor more than \$250,000.00;

308 (B) Any person convicted of violating paragraph (2) of subsection (a) of this Code
 309 section, two years and six months to 30 years imprisonment and a fine of not less than
 310 \$25,000.00 nor more than \$250,000.00; and

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

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

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

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

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

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

329 (d) In the court's discretion, the judge may depart from the mandatory minimum sentence
 330 specified in this Code section for a person who is convicted of a violation of this Code
 331 section when the prosecuting attorney and the defendant have agreed to a sentence that is
 332 below such mandatory minimum.

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

341 **SECTION 5A.**

342 Said part is further amended by adding a new Code section to read as follows:

343 "16-13-54.1.
 344 When an offense in this part measures a controlled substance or marijuana by weight or
 345 quantity, the defendant's knowledge of such weight or quantity shall not be an essential
 346 element of the offense, and the state shall not have the burden of proving that a defendant
 347 knew the weight or quantity of the controlled substance or marijuana in order to be
 348 convicted of an offense."

349 **SECTION 6.**

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

354 "(2) Active probation supervision shall terminate in all cases no later than two years from
 355 the commencement of active probation supervision unless specially extended or
 356 reinstated by the sentencing court upon notice and hearing and for good cause shown;
 357 provided, however, that in those cases involving the collection of fines, restitution, or
 358 other funds, the period of active probation supervision shall remain in effect for so long
 359 as any such obligation is outstanding, or until termination of the sentence, whichever first
 360 occurs, and for those cases involving a conviction under Chapter 15 of Title 16, the
 361 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation
 362 supervision shall remain in effect until the termination of the sentence, but shall not
 363 exceed five years unless as otherwise provided in this paragraph. Active probation
 364 supervision shall not be required for defendants sentenced to probation while the
 365 defendant is in the legal custody of the Department of Corrections or the State Board of
 366 Pardons and Paroles. ~~As used in this paragraph, the term: 'active probation supervision'~~
 367 ~~shall have the same meaning as the term 'active supervision' as set forth in Code Section~~
 368 ~~42-1-1."~~

369 "(A) ~~Where~~ When a defendant has been sentenced to probation, the court shall retain
 370 jurisdiction throughout the period of the probated sentence as provided for in subsection
 371 (g) of Code Section 42-8-34. Without limiting the generality of the foregoing, the court
 372 may shorten the period of active probation supervision or ~~administrative~~ unsupervised
 373 ~~probation supervision~~ on motion of the defendant or on its own motion, or upon the
 374 request of a probation supervisor, if the court determines that probation is no longer
 375 necessary or appropriate for the ends of justice, the protection of society, and the
 376 rehabilitation of the defendant. Prior to entering any order for shortening a period of
 377 probation, the court shall afford notice to the victim or victims of all sex related
 378 offenses or violent offenses resulting in serious bodily injury or death and, upon request

379 of the victim or victims so notified, shall afford notice and an opportunity for hearing
380 to the defendant and the prosecuting attorney."

381 ~~"(C) As used in this paragraph, the terms 'active probation supervision' and~~
382 ~~'administrative probation supervision' shall have the same meanings as the terms 'active~~
383 ~~supervision' and 'administrative supervision,' respectively, as set forth in Code Section~~
384 ~~42-1-1."~~

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

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

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

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

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

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

394 **SECTION 7.**

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

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

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

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

409 (B) Rape;

410 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
411 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
412 16-6-4;

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

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

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

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

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

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

439 **SECTION 8.**

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

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

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

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

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

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

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

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

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

464 **SECTION 9.**

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

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

469 (2) ~~Any~~ Except as provided in subsection (e) of Code Section 17-10-6.1, any person who
 470 has been convicted of a serious violent felony in this state or who has been convicted
 471 under the laws of any other state or of the United States of a crime which if committed
 472 in this state would be a serious violent felony and who after such first conviction
 473 subsequently commits and is convicted of a serious violent felony for which such person
 474 is not sentenced to death shall be sentenced to imprisonment for life without parole. Any
 475 such sentence of life without parole shall not be suspended, stayed, probated, deferred,
 476 or withheld, and any such person sentenced pursuant to this paragraph shall not be
 477 eligible for any form of pardon, parole, or early release administered by the State Board
 478 of Pardons and Paroles or for any earned time, early release, work release, leave, or any
 479 other sentence-reducing measures under programs administered by the Department of
 480 Corrections, the effect of which would be to reduce the sentence of life imprisonment
 481 without possibility of parole, except as may be authorized by any existing or future
 482 provisions of the Constitution."

483 **SECTION 10.**

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

485

"CHAPTER 19486 17-19-1.

487 (a) There is created the Georgia Council on Criminal Justice Reform for the purpose of
488 conducting periodic comprehensive reviews of criminal laws, criminal procedure,
489 sentencing laws, adult correctional issues, juvenile justice issues, enhancement of probation
490 and parole supervision, better management of the prison population and of the population
491 in the custody of the Department of Juvenile Justice, and other issues related to criminal
492 and accountability courts. The Georgia Council on Criminal Justice Reform shall be
493 responsible for establishing performance measures that track the implementation of
494 criminal justice and juvenile justice reforms through the analysis of data collected under
495 law and shall propose additional reforms to further the reduction of recidivism, the
496 lowering of state expenses, and the maintenance of an effective and efficient Code that will
497 promote public safety.

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

500 17-19-2.

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

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

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

519 (d) The council shall be attached for administrative purposes only to the Governor's Office
520 for Children and Families. The Governor's Office for Children and Families and the
521 Criminal Justice Coordinating Council shall provide staff support for the council. The
522 Governor's Office for Children and Families and the Criminal Justice Coordinating Council
523 shall use any funds specifically appropriated to it to support the work of the council.

524 17-19-3.

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

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

530 (c) Any legislative members of the council shall receive the allowances provided for in
531 Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the
532 amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or
533 transportation allowance authorized for state employees. Members of the council who are
534 state officials, other than legislative members, or state employees shall receive no
535 compensation for their services on the council, but they shall be reimbursed for expenses
536 incurred by them in the performance of their duties as members of the council in the same
537 manner as they are reimbursed for expenses in their capacities as state officials or state
538 employees. The funds necessary for the reimbursement of the expenses of state officials,
539 other than legislative members, and state employees shall come from funds appropriated
540 to or otherwise available to their respective departments. All other funds necessary to carry
541 out the provisions of this chapter shall come from funds appropriated to the Senate and the
542 House of Representatives.

543 17-19-4.

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

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

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

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

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

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

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

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

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

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

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

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

572 17-19-5.

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

575 **SECTION 11.**

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

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

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

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

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

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

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

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

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

- 627 (i) Going to his or her place of employment or performing the normal duties of his
 628 or her occupation;
- 629 (ii) Receiving scheduled medical care or obtaining prescription drugs;
- 630 (iii) Attending a college or school at which he or she is regularly enrolled as a
 631 student; or
- 632 (iv) Attending regularly scheduled sessions or meetings of support organizations for
 633 persons who have addiction or abuse problems related to alcohol or other drugs,
 634 which organizations are recognized by the commissioner.

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

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

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

660 **SECTION 12.**

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

662 "40-5-76.

663 A judge presiding in a drug court division or mental health court division may order the
 664 department to restore a defendant's driver's license that has been or should be suspended
 665 pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited
 666 driving permit in accordance with the provisions set forth in subsections (c) and (d) of
 667 Code Section 40-5-64 or with whatever conditions the court determines to be appropriate
 668 under the circumstances as a reward or sanction to the defendant's behavior in such court
 669 division. The court shall determine what fees, if any, shall be paid to the department for
 670 such reward or sanction, provided that such fee shall not be greater than the fee normally
 671 imposed for such services."

672 **SECTION 13.**

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

676 **SECTION 14.**

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

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

684 **SECTION 14A.**

685 Said title is further amended in Code Section 42-9-43, relating to information to be
 686 considered by the State Board of Pardons and Paroles generally, by redesignating subsections
 687 (b) through (e) as subsections (c) through (f), respectively, and by adding a new subsection
 688 (b) to read as follows:

689 "(b)(1) As used in this subsection, the term:

690 (A) 'Debilitating terminal illness' means a disease that cannot be cured or adequately
 691 treated and that is reasonably expected to result in death within six months.

692 (B) 'Entirely incapacitated' means an offender who:

693 (i) Requires assistance in order to perform two or more necessary daily life functions
694 or who is completely immobile; and
695 (ii) Has such limited physical or mental ability, strength, or capacity that he or she
696 poses an extremely low risk of physical threat to others or to the community.
697 (C) 'Necessary daily life function' means eating, breathing, dressing, grooming,
698 toileting, walking, or bathing.
699 (2) The board may issue a medical reprieve to an entirely incapacitated person suffering
700 a progressively debilitating terminal illness in accordance with Article IV, Section II,
701 Paragraph II of the Constitution."

702 **SECTION 15.**

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

706 **SECTION 16.**

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