

Senate Bill 145

By: Senators James of the 35th, Rhett of the 33rd, Henson of the 41st, Seay of the 34th,
Butler of the 55th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual
2 offenses, so as to revise the offense of rape for applicability to victims across genders, gender
3 identities, and sexual orientations; to delete the offense of aggravated sodomy and include
4 the elements of such offense into the offense of rape; to delete the offense of aggravated
5 sexual battery and include the elements of such offense into the offense as rape; to amend
6 Code Section 9-3-33.1, Title 15, Title 16, Title 17, Chapter 2 of Title 20, Chapter 4 of
7 Title 24, Title 31, Title 42, and Code Section 49-2-14.1 of the Official Code of Georgia
8 Annotated, relating to actions for childhood sexual abuse, courts, crimes and offenses,
9 criminal procedure, elementary and secondary education, relevant evidence and its limits,
10 health, penal institutions, and overcrowding of prison system as creating state of emergency,
11 paroling inmates to reduce prison system population to capacity and report of inmates
12 paroled, respectively, so as to correct cross-references; to provide for related matters; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**PART I**
16 style="text-align:center">**SECTION 1-1.**

17 Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses,
18 is amended by revising subsection (a) and adding a new subsection to Code Section 16-6-1,
19 relating to rape, as follows:

20 "(a) A person commits the offense of rape when he or she has carnal knowledge of:

21 (1) A ~~female~~ person forcibly and against his or her will; or

22 (2) A ~~female~~ person who is less than ten years of age.

23 Carnal knowledge in rape occurs when there is any penetration of the ~~female sex organ~~
24 genital or anal orifices by the ~~male sex organ~~ penis, finger, mouth, or other body organ or
25 appendage or by a foreign object; any sexual act involving the genitalia of a person and the

26 mouth, anus, or genitalia of the victim; or any sexual act involving the mouth of a person
 27 and the anus or genitalia of the victim. The fact that the person allegedly raped is the wife
 28 spouse of the defendant shall not be a defense to a charge of rape."
 29 "(d) As used in this Code section, the term 'foreign object' means any article or instrument
 30 other than the penis, finger, or other body organ or appendage of a person."

31 SECTION 1-2.

32 Said chapter is further amended by revising Code Section 16-6-2, relating to sodomy and
 33 medical expenses, as follows:

34 "16-6-2.

35 (a)(1) A person commits the offense of sodomy when he or she performs or submits to
 36 any sexual act involving the sex organs of one person and the mouth or anus of another.

37 ~~(2) A person commits the offense of aggravated sodomy when he or she commits~~
 38 ~~sodomy with force and against the will of the other person or when he or she commits~~
 39 ~~sodomy with a person who is less than ten years of age. The fact that the person~~
 40 ~~allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of~~
 41 ~~aggravated sodomy.~~

42 (b)(1) Except as provided in subsection ~~(d)~~ (c) of this Code section, a person convicted
 43 of the offense of sodomy shall be punished by imprisonment for not less than one nor
 44 more than 20 years and shall be subject to the sentencing and punishment provisions of
 45 Code Section 17-10-6.2.

46 ~~(2) A person convicted of the offense of aggravated sodomy shall be punished by~~
 47 ~~imprisonment for life or by a split sentence that is a term of imprisonment for not less~~
 48 ~~than 25 years and not exceeding life imprisonment, followed by probation for life. Any~~
 49 ~~person convicted under this Code section of the offense of aggravated sodomy shall, in~~
 50 ~~addition, be subject to the sentencing and punishment provisions of Code Sections~~
 51 ~~17-10-6.1 and 17-10-7.~~

52 (c) ~~When evidence relating to an allegation of aggravated sodomy is collected in the~~
 53 ~~course of a medical examination of the person who is the victim of the alleged crime, the~~
 54 ~~Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall~~
 55 ~~be financially responsible for the cost of the medical examination to the extent that expense~~
 56 ~~is incurred for the limited purpose of collecting evidence.~~

57 ~~(d)~~ If the victim is at least 13 but less than 16 years of age and the person convicted of
 58 sodomy is 18 years of age or younger and is no more than four years older than the victim,
 59 such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and
 60 punishment provisions of Code Section 17-10-6.2."

61 **SECTION 1-3.**

62 Said chapter is further amended by deleting Code Section 16-6-22.2, relating to aggravated
63 sexual battery, in its entirety.

64 **PART II**65 **SECTION 2-1.**

66 Code Section 9-3-33.1 of the Official Code of Georgia Annotated, relating to actions for
67 childhood sexual abuse, is amended by revising paragraph (1) of subsection (a) and
68 paragraph (1) of subsection (b) as follows:

69 "(a)(1) As used in this subsection, the term 'childhood sexual abuse' means any act
70 committed by the defendant against the plaintiff which occurred when the plaintiff was
71 under 18 years of age and which would be in violation of:

- 72 (A) Rape, as prohibited in Code Section 16-6-1;
- 73 (B) Sodomy ~~or aggravated sodomy~~, as prohibited in Code Section 16-6-2;
- 74 (C) Statutory rape, as prohibited in Code Section 16-6-3;
- 75 (D) Child molestation or aggravated child molestation, as prohibited in Code Section
76 16-6-4;
- 77 (E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;
- 78 (F) Pandering, as prohibited in Code Section 16-6-12;
- 79 (G) Pandering by compulsion, as prohibited in Code Section 16-6-14;
- 80 (H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;
- 81 (I) Incest, as prohibited in Code Section 16-6-22;
- 82 (J) Sexual battery, as prohibited in Code Section 16-6-22.1; or
- 83 (K) ~~Aggravated sexual battery, as prohibited in Code Section 16-6-22.2~~ Reserved."

84 "(b)(1) As used in this subsection, the term 'childhood sexual abuse' means any act
85 committed by the defendant against the plaintiff which occurred when the plaintiff was
86 under 18 years of age and which would be in violation of:

- 87 (A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;
- 88 (B) Rape, as prohibited in Code Section 16-6-1;
- 89 (C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years
90 of age or older at the time of the act;
- 91 (D) ~~Aggravated sodomy, as prohibited in Code Section 16-6-2~~ Reserved;
- 92 (E) Child molestation or aggravated child molestation, as prohibited in Code Section
93 16-6-4, unless the violation would be subject to punishment as provided in paragraph
94 (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code
95 Section 16-6-4;

- 96 (F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless
 97 the violation would be subject to punishment as provided in subsection (c) of Code
 98 Section 16-6-5;
 99 (G) Incest, as prohibited in Code Section 16-6-22;
 100 (H) ~~Aggravated sexual battery, as prohibited in Code Section 16-6-22.2 Reserved;~~ or
 101 (I) Part 2 of Article 3 of Chapter 12 of Title 16."

102 **SECTION 2-2.**

103 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 104 paragraph (3) of subsection (b) of Code Section 15-1-16, relating to mental health court
 105 divisions, as follows:

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

127 **SECTION 2-3.**

128 Said title is further amended by revising paragraph (3) of subsection (b) of Code Section
 129 15-1-17, relating to veterans court divisions, as follows:

130 "(3) Each veterans court division shall establish a planning group to develop a written
 131 work plan. The planning group shall include judges, prosecuting attorneys, sheriffs or
 132 their designees, public defenders, community supervision officers, and persons having
 133 expertise in services available to veterans. The work plan shall address the operational,
 134 coordination, resource, information management, and evaluation needs of the veterans
 135 court division. The work plan shall include veterans court division policies and practices
 136 related to implementing the standards and practices developed pursuant to paragraph (4)
 137 of this subsection. The veterans court division shall combine judicial supervision,
 138 treatment of veterans court division participants, and drug and mental health testing. The
 139 work plan shall include eligibility criteria for the veterans court division. Defendants
 140 charged with murder, armed robbery, rape, ~~aggravated sodomy, aggravated sexual~~
 141 ~~battery~~, aggravated child molestation, or child molestation shall not be eligible for entry
 142 into the veterans court division, except in the case of a separate court supervised reentry
 143 program designed to more closely monitor veterans returning to the community after
 144 having served a term of incarceration. Any such court supervised community reentry
 145 program for mentally ill offenders shall be subject to the work plan as provided for in this
 146 paragraph."

147 **SECTION 2-4.**

148 Said title is further amended by revising paragraph (4) of subsection (i) of Code Section
 149 15-6-77, relating to fees and construction of other fee provisions, as follows:

150 "(4) Costs associated with the filing of criminal charges by an alleged victim of a
 151 violation of Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, or
 152 16-6-22.1, ~~or 16-6-22.2~~ or an alleged victim of any domestic violence offense or for the
 153 issuance or service of a warrant, protective order, or witness subpoena arising from the
 154 violation of Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, or
 155 16-6-22.1, ~~or 16-6-22.2~~ or the incident of domestic violence."

156 **SECTION 2-5.**

157 Said title is further amended by revising Code Section 15-10-82, relating to hearing fee on
 158 application for search or arrest warrant or deposit account fraud citation and no fee assessed
 159 against certain alleged victims, as follows:

160 "15-10-82.

161 For hearing an application for an arrest or search warrant or deposit account fraud citation,
 162 the fee charged shall not exceed \$20.00, but this fee may be waived by the issuing
 163 magistrate if he or she finds that because of the financial circumstances of the party
 164 applying for the warrant or citation or for other reasons this fee should not be charged in

165 justice, provided that no fee shall be assessed against the alleged victim of a violation of
 166 Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, or 16-6-22.1, ~~or~~
 167 ~~16-6-22.2~~ or against the alleged victim of any domestic violence offense for costs
 168 associated with the filing of criminal charges against the stalking offender, sexual offender,
 169 or domestic violence offender or for the issuance or service of a warrant, protective order,
 170 or witness subpoena arising from the incident of stalking, sexual assault, or domestic
 171 violence."

172 SECTION 2-6.

173 Said title is further amended by revising paragraph (6) of subsection (a) of Code Section
 174 15-11-203, relating to when reasonable efforts by DFCS not required, as follows:

175 "(6) Has been convicted of rape, sodomy, ~~aggravated sodomy~~, child molestation,
 176 ~~aggravated child molestation, incest, or sexual battery, or aggravated sexual battery~~ of the
 177 alleged dependent child or another child of the parent;"

178 SECTION 2-7.

179 Said title is further amended by revising subparagraphs (b)(1)(F) and (b)(1)(G) of Code
 180 Section 15-11-505, relating to use of detention assessments to determine if detention is
 181 warranted and "serious delinquent act" defined, as follows:

182 "(E) ~~Aggravated sexual battery~~ Reserved;
 183 (F) ~~Aggravated sodomy~~ Reserved;"

184 SECTION 2-8.

185 Said title is further amended by revising subparagraph (5) of subsection (b) and paragraph
 186 (1) of subsection (e) of Code Section 15-11-560, relating to concurrent and original
 187 jurisdiction of superior court, as follows:

188 "(5) ~~Aggravated sodomy~~ Reserved;"

189 "(e)(1) After indictment, the superior court may after investigation transfer to the juvenile
 190 court any case involving a child 13 to 17 years of age alleged to have committed
 191 voluntary manslaughter ~~aggravated sodomy~~, or aggravated child molestation, ~~or~~
 192 ~~aggravated sexual battery~~. In considering the transfer of such case, the court shall
 193 consider the criteria set forth in Code Section 15-11-562. Any such transfer shall be
 194 appealable by the State of Georgia pursuant to Code Section 5-7-1. Upon such a transfer
 195 by the superior court, jurisdiction shall vest in the juvenile court and jurisdiction of the
 196 superior court shall terminate."

197 **SECTION 2-9.**

198 Said title is further amended by revising subsection (a) of Code Section 15-11-562, relating
199 to transfer criteria and written report, as follows:

200 "(a) The criteria that the juvenile court shall consider in determining whether to transfer
201 an alleged delinquent child as set forth in subsection (a) of Code Section 15-11-561 to
202 superior court and the criteria that the superior court shall consider in determining whether
203 to transfer any case involving a child 13 to 17 years of age alleged to have committed
204 voluntary manslaughter, ~~aggravated sodomy~~, or aggravated child molestation, ~~or~~
205 ~~aggravated sexual battery~~ to juvenile court as set forth in subsection (e) of Code Section
206 15-11-560 includes, but shall not be limited to:

- 207 (1) The age of such child;
- 208 (2) The seriousness of the alleged offense, especially if personal injury resulted;
- 209 (3) Whether the protection of the community requires transfer of jurisdiction;
- 210 (4) Whether the alleged offense involved violence or was committed in an aggressive or
211 premeditated manner;
- 212 (5) The impact of the alleged offense on the alleged victim, including the permanence
213 of any physical or emotional injury sustained, health care expenses incurred, and lost
214 earnings suffered;
- 215 (6) The culpability of such child including such child's level of planning and
216 participation in the alleged offense;
- 217 (7) Whether the alleged offense is a part of a repetitive pattern of offenses which
218 indicates that such child may be beyond rehabilitation in the juvenile justice system;
- 219 (8) The record and history of such child, including experience with the juvenile justice
220 system, other courts, supervision, commitments to juvenile institutions, and other
221 placements;
- 222 (9) The sophistication and maturity of such child as determined by consideration of his
223 or her home and environmental situation, emotional condition, and pattern of living;
- 224 (10) The program and facilities available to the juvenile court in considering disposition;
225 and
- 226 (11) Whether or not a child can benefit from the treatment or rehabilitative programs
227 available to the juvenile court."

228 **SECTION 2-10.**

229 Said title is further amended by revising subsection (h) of Code Section 15-16-21, relating
230 to fees for sheriff's services and disposition of fees, as follows:

231 "(h) No fee shall be assessed against the alleged victim of a violation of Code Section
232 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, or 16-6-22.1, ~~or 16-6-22.2~~ or

233 against the alleged victim of any domestic violence offense for costs associated with the
 234 filing of criminal charges against the stalking offender, sexual offender, or domestic
 235 violence offender or for the issuance or service of a warrant, protective order, or witness
 236 subpoena arising from the incident of stalking, sexual assault, or domestic violence."

237 **SECTION 2-11.**

238 Said title is further amended by revising paragraph (2) of Code Section 15-24-1, relating to
 239 definitions, as follows:

240 "(2) 'Sexual assault' means rape, sodomy, ~~aggravated sodomy~~, incest, and sexual battery;
 241 ~~and aggravated sexual battery~~ as those terms are defined in Chapter 6 of Title 16."

242 **SECTION 2-12.**

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

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

254 **SECTION 2-13.**

255 Title 16 of the Official Code of Georgia Annotated, related to crimes and offenses, is
 256 amended by revising subsection (b) of Code Section 16-11-133, relating to minimum periods
 257 of confinement for persons convicted who have prior convictions, as follows:

258 "(b) Any person who has previously been convicted of or who has previously entered a
 259 guilty plea to the offense of murder, murder in the second degree, armed robbery, home
 260 invasion in any degree, kidnapping, rape, aggravated child molestation, ~~aggravated~~
 261 ~~sodomy~~, ~~aggravated sexual battery~~, or any felony involving the use or possession of a
 262 firearm and who shall have on or within arm's reach of his or her person a firearm during
 263 the commission of, or the attempt to commit:

- 264 (1) Any crime against or involving the person of another;
 265 (2) The unlawful entry into a building or vehicle;
 266 (3) A theft from a building or theft of a vehicle;

267 (4) Any crime involving the possession, manufacture, delivery, distribution, dispensing,
 268 administering, selling, or possession with intent to distribute any controlled substance as
 269 provided in Code Section 16-13-30; or

270 (5) Any crime involving the trafficking of cocaine, marijuana, or illegal drugs as
 271 provided in Code Section 16-13-31,

272 and which crime is a felony, commits a felony and, upon conviction thereof, shall be
 273 punished by confinement for a period of 15 years, such sentence to run consecutively to
 274 any other sentence which the person has received."

275 **SECTION 2-14.**

276 Said title is further amended by revising subsection (b) of Code Section 16-12-1.1, relating
 277 to child, family, or group-care facility operators prohibited from employing or allowing to
 278 reside or be domiciled persons with certain past criminal violations, as follows:

279 "(b) Unless otherwise authorized as provided in Code Section 20-1A-43, it shall be
 280 unlawful for any operator of a facility to knowingly have any person reside at, be domiciled
 281 at, or be employed at any such facility if such person has been convicted of or has entered
 282 a plea of guilty or nolo contendere to or has been adjudicated a delinquent for:

283 (1) A violation of Code Section 16-4-1, relating to criminal attempt, when the crime
 284 attempted is any of the crimes specified in paragraphs (2) through ~~(10)~~ (9) of this
 285 subsection;

286 ~~(5)~~(2) A violation of Code Section 16-5-1, relating to murder, malice murder, felony
 287 murder, and murder in the second degree;

288 ~~(6)~~(3) A violation of Code Section 16-5-2, relating to voluntary manslaughter;

289 ~~(2)~~(4) A violation of Code Section 16-5-23.1, relating to battery, when the victim at the
 290 time of such offense was a minor;

291 ~~(3)~~(5) A violation of any provision of Chapter 6 of this title, relating to sexual offenses,
 292 when the victim at the time of such offense was a minor;

293 ~~(7)~~(6) A violation of Code Section ~~16-6-2~~ 16-6-1, relating to ~~aggravated sodomy rape~~;

294 ~~(8)~~(7) A violation of Code Section 16-6-3, relating to statutory rape;

295 ~~(10)~~(8) A violation of Code Section 16-8-41, relating to armed robbery, robbery by
 296 intimidation, and taking controlled substance from pharmacy in course of committing
 297 offense if committed with a firearm; ~~or~~

298 ~~(4)~~(9) A violation of Code Section 16-12-1, relating to contributing to the delinquency,
 299 unruliness, or deprivation of a minor; ~~;~~

300 ~~(9) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery; or"~~

301 **SECTION 2-15.**

302 Said title is further amended by revising paragraph (1) of subsection (d), paragraph (1) of
303 subsection (e) and paragraph (1) of subsection (f) of Code Section 16-12-100.2, relating to
304 computer or electronic pornography and child exploitation prevention, as follows:

305 "(d)(1) It shall be unlawful for any person intentionally or willfully to utilize a computer
306 wireless service or Internet service, including, but not limited to, a local bulletin board
307 service, Internet chat room, e-mail, instant messaging service, or other electronic device,
308 to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child,
309 another person believed by such person to be a child, any person having custody or
310 control of a child, or another person believed by such person to have custody or control
311 of a child to commit any illegal act by, with, or against a child as described in Code
312 Section 16-6-1, relating to rape; Code Section 16-6-2, relating to the offense of sodomy
313 ~~or aggravated sodomy~~ and medical expenses; Code Section 16-6-4, relating to the offense
314 of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the
315 offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the
316 offense of public indecency, or to engage in any conduct that by its nature is an unlawful
317 sexual offense against a child."

318 "(e)(1) A person commits the offense of obscene Internet contact with a child if he or she
319 has contact with someone he or she knows to be a child or with someone he or she
320 believes to be a child via a computer wireless service or Internet service, including, but
321 not limited to, a local bulletin board service, Internet chat room, e-mail, or instant
322 messaging service, and the contact involves any matter containing explicit verbal
323 descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual
324 excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual
325 desire of either the child or the person, provided that no conviction shall be had for a
326 violation of this subsection on the unsupported testimony of a child."

327 "(f)(1) It shall be unlawful for any owner or operator of a computer online service,
328 Internet service, local bulletin board service, or other electronic device that is in the
329 business of providing a service that may be used to sexually exploit a child to
330 intentionally or willfully to permit a subscriber to utilize the service to commit a violation
331 of this Code section, knowing that such person intended to utilize such service to violate
332 this Code section. No owner or operator of a public computer online service, Internet
333 service, local bulletin board service, or other electronic device that is in the business of
334 providing a service that may be used to sexually exploit a child shall be held liable on
335 account of any action taken in good faith in providing the aforementioned services."

336 **SECTION 2-16.**

337 Said title is further amended by revising subparagraph (C) of paragraph (1) of Code Section
338 16-15-3, relating to definitions, as follows:

339 "(C) Any offense defined in Code Section 16-6-1 as rape, ~~16-6-2 as aggravated~~
340 ~~sodomy, or 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;~~"

341 **SECTION 2-17.**

342 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
343 amended by revising subsection (d) of Code Section 17-3-1, relating to limitations on
344 prosecution generally, as follows:

345 "(d) A prosecution for the following offenses may be commenced at any time when
346 deoxyribonucleic acid (DNA) evidence is used to establish the identity of the accused:

347 ~~(2)~~(1) Kidnapping, as defined in Code Section 16-5-40;

348 ~~(3)~~(2) Rape, as defined in Code Section 16-6-1;

349 ~~(4)~~(3) Aggravated child molestation, as defined in Code Section 16-6-4;

350 ~~(1)~~(4) Armed robbery, as defined in Code Section 16-8-41;

351 (5) ~~Aggravated sodomy, as defined in Code Section 16-6-2~~ Reserved; or

352 (6) ~~Aggravated sexual battery, as defined in Code Section 16-6-22.2~~ Reserved;

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

357 **SECTION 2-18.**

358 Said title is further amended by revising paragraph (3) of subsection (a) and paragraph (4)
359 of subsection (b) of Code Section 17-3-2.1, relating to exclusions for certain offenses
360 involving a victim under 16 years of age, as follows:

361 "~~(3) Sodomy or aggravated sodomy, as defined in Code Section 16-6-2;~~"

362 "~~(4) Aggravated sodomy, as defined in Code Section 16-6-2~~ Reserved;"

363 **SECTION 2-19.**

364 Said title is further amended by revising paragraph (3) of Code Section 17-5-70, relation to
365 definitions, as follows:

366 "(3) 'Sexual assault' means rape, sodomy, ~~aggravated sodomy~~, statutory rape, child
367 molestation, aggravated child molestation, sexual assault against a person in custody,
368 sexual assault against a person detained in a hospital or other institution, sexual assault
369 by a practitioner of psychotherapy against a patient, incest, bestiality, and sexual battery,

370 ~~and aggravated sexual battery~~ as those terms and offenses are set forth and defined in
 371 Chapter 6 of Title 16."

372 **SECTION 2-20.**

373 Said title is further amended by deleting in their entirety paragraphs (4) and (8) of Code
 374 Section 17-6-1, relating to where offenses bailable, procedure, schedule of bails, and appeal
 375 bonds and designating such paragraphs as reserved.

376 **SECTION 2-21.**

377 Said title is further amended by revising subsection (b) of Code Section 17-8-55, relating to
 378 testimony of child less than seventeen years old outside physical presence of accused, as
 379 follows:

380 "(b) This Code section shall apply to all proceedings when a child is a witness to or an
 381 alleged victim of a violation of Code Section 16-5-1, 16-5-20, 16-5-23, 16-5-23.1, 16-5-40,
 382 16-5-70, 16-5-90, 16-5-95, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5, 16-6-5.1, 16-6-11,
 383 16-6-14, 16-6-22, 16-6-22.1, ~~16-6-22.2~~, 16-8-41, or 16-15-4."

384 **SECTION 2-22.**

385 Said title is further amended by deleting paragraphs (6) and (7) of subsection (a) and
 386 subparagraphs (D) and (E) of paragraph (2) of subsection (b) of Code Section 17-10-6.1,
 387 relating to punishment for serious violent offenders and authorization for reduction in
 388 mandatory minimum sentencing, and designating such paragraphs and subparagraphs as
 389 reserved.

390 **SECTION 2-23.**

391 Said title is further amended by deleting in their entirety paragraph (4) of Code Section
 392 17-10-9.1, relating to voluntary surrender to county jail or correctional institution and release
 393 of defendant, and designating such paragraph as reserved.

394 **SECTION 2-24.**

395 Said title is further amended by revising paragraph (11) of Code Section 17-10-30, relating
 396 to procedure for imposition of death penalty generally, as follows:

397 "(11) The offense of murder, rape, or kidnapping was committed by a person previously
 398 convicted of rape, ~~aggravated sodomy~~, or aggravated child molestation, ~~or aggravated~~
 399 ~~sexual battery~~."

400 **SECTION 2-25.**

401 Said title is further amended by revising paragraph (6) of Code Section 17-15-2, relating to
402 definitions, as follows:

403 "(6) 'Forensic medical examination' means an examination provided to a person pursuant
404 to subsection (c) of Code Section 16-6-1 ~~or subsection (c) of Code Section 16-6-2~~ by
405 trained medical personnel in order to gather evidence. Such examination shall include,
406 but shall not be limited to:

- 407 (A) An examination for physical trauma;
408 (B) A determination as to the nature and extent of the physical trauma;
409 (C) A patient interview;
410 (D) Collection and evaluation of the evidence collected; and
411 (E) Any additional testing deemed necessary by the examiner in order to collect
412 evidence and provide treatment."

413 **SECTION 2-26.**

414 Said title is further amended by revising Code Section 17-18-1, relating to the duty of certain
415 officials to offer written statement of information to victims of rape or forcible sodomy, as
416 follows:

417 "17-18-1.

418 When any employee of the Department of Human Services, Department of Community
419 Health, Department of Public Health, Department of Behavioral Health and Developmental
420 Disabilities, a law enforcement agency, or a court has reason to believe that he or she in the
421 course of official duties is speaking to an adult who is or has been a victim of a violation
422 of Code Section 16-6-1, relating to rape, ~~or Code Section 16-6-2, relating to aggravated~~
423 ~~sodomy~~, such employee shall offer or provide such adult a written statement of information
424 for victims of rape ~~or aggravated sodomy~~. Such written statement shall, at a minimum,
425 include the information set out in Code Section 17-18-2 and may include additional
426 information regarding resources available to victims of sexual assault. Information for
427 victims of rape ~~or aggravated sodomy~~ may be provided in any language."

428 **SECTION 2-27.**

429 Said title is further amended by revising Code Section 17-18-2, relating to information for
430 victims of rape or forcible sodomy, as follows:

431 "17-18-2.

432 The following information in substantially the form set out in this Code section shall be
433 provided to adult victims of rape ~~or aggravated sodomy~~ in accordance with Code Section
434 17-18-1:

435 INFORMATION FOR VICTIMS OF RAPE ~~OR FORCIBLE SODOMY~~

436 If you are the victim of rape ~~or forcible sodomy~~, you have certain rights under the law.
 437 Rape ~~or forcible sodomy~~ by a stranger or a person known to you, including rape ~~or~~
 438 ~~forcible sodomy~~ by a person married to you, is a crime. You can ask the government's
 439 lawyer to prosecute a person who has committed a crime. The government pays the cost
 440 of prosecuting for crimes.

441 If you are the victim of rape ~~or forcible sodomy~~, you should contact a local police
 442 department or other law enforcement agency immediately. A police officer will come to
 443 take a report and collect evidence. You should keep any clothing you were wearing at
 444 the time of the crime as well as any other evidence such as bed sheets. Officers will take
 445 you to the hospital for a medical examination. You should not shower or douche before
 446 the examination. The law requires that the Georgia Crime Victims Emergency Fund pay
 447 for the medical examination to the extent of the cost for the collection of evidence of the
 448 crime."

449 **SECTION 2-28.**

450 Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and
 451 secondary education, is amended by revising paragraph (1) of subsection (d) of Code Section
 452 20-2-751.7, relating to state mandated process for students to follow in reporting instances
 453 of alleged inappropriate behavior by teacher or other school personnel, notice of process,
 454 training, and investigations, as follows:

455 "(d)(1) The staff of the Professional Standards Commission shall be authorized, without
 456 notification to the Professional Standards Commission, to immediately open an
 457 investigation submitted to the commission by a local school superintendent, with
 458 approval of the local board of education, of a complaint by a student against an educator
 459 alleging a sexual offense, as provided for in Code Sections 16-6-1 through 16-6-17,
 460 16-6-20, ~~16-6-22.2~~, or 16-12-100."

461 **SECTION 2-29.**

462 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section
 463 20-2-984.2, relating to the Professional Standards Commission and reports of criminal
 464 offenses to local boards of education, requests by local boards for investigation, and
 465 immunity, as follows:

466 "(2) Any sexual offense, as provided for in Code Sections 16-6-1 through 16-6-17 or
 467 Code Sections 16-6-20 through ~~16-6-22.2~~ 16-6-22.1;"

468

SECTION 2-30.

469 Said chapter is further amended by revising paragraph (5) of subsection (a) of Code Section
 470 20-2-984.3, relating to the Professional Standards Commission and preliminary
 471 investigations of violations, requirement for automatic investigation, and investigation of
 472 sexual offenses, as follows:

473 "(5) Complaints alleging that an educator has been convicted of any felony, of any crime
 474 involving moral turpitude, of any other criminal offense involving the manufacture,
 475 distribution, trafficking, sale, or possession of a controlled substance or marijuana as
 476 provided for in Chapter 13 of Title 16, or of any other sexual offense as provided for in
 477 Code Sections 16-6-1 through 16-6-17 or Code Section 16-6-20, ~~16-6-22.2~~, or 16-12-100
 478 in the courts of this state or any other state, territory, or country or in the courts of the
 479 United States. As used in this paragraph, the term 'convicted' shall include a finding or
 480 verdict of guilty or a plea of nolo contendere, regardless of whether an appeal of the
 481 conviction has been sought; a situation where first offender treatment without
 482 adjudication of guilt pursuant to the charge was granted; and a situation where an
 483 adjudication of guilt or sentence was otherwise withheld or not entered on the charge or
 484 the charge was otherwise disposed of in a similar manner in any jurisdiction."

485

SECTION 2-31.

486 Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to relevant evidence
 487 and its limits, is amended by revising subsections (a) and (b) of Code Section 24-4-412,
 488 relating to complainant's past sexual behavior not admissible in prosecutions for certain
 489 sexual offenses and exceptions, as follows:

490 "(a) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault
 491 with the intent to rape in violation of Code Section 16-5-21; ~~aggravated sodomy~~ or sodomy
 492 in violation of Code Section 16-6-2; statutory rape in violation of Code Section 16-6-3;
 493 aggravated child molestation or child molestation in violation of Code Section 16-6-4;
 494 incest in violation of Code Section 16-6-22; or sexual battery in violation of Code Section
 495 16-6-22.1; ~~or aggravated sexual battery in violation of Code Section 16-6-22.2~~, evidence
 496 relating to the past sexual behavior of the complaining witness shall not be admissible,
 497 either as direct evidence or on cross-examination of the complaining witness or other
 498 witnesses, except as provided in this Code section. For the purposes of this Code section,
 499 evidence of past sexual behavior includes, but is not limited to, evidence of the
 500 complaining witness's marital history, mode of dress, general reputation for promiscuity,
 501 nonchastity, or sexual mores contrary to the community standards.

502 (b) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault
 503 with the intent to rape in violation of Code Section 16-5-21; ~~aggravated sodomy~~ or sodomy

504 in violation of Code Section 16-6-2; statutory rape in violation of Code Section 16-6-3;
 505 aggravated child molestation or child molestation in violation of Code Section 16-6-4;
 506 incest in violation of Code Section 16-6-22; or sexual battery in violation of Code Section
 507 16-6-22.1; ~~or aggravated sexual battery in violation of Code Section 16-6-22.2~~, evidence
 508 relating to the past sexual behavior of the complaining witness may be introduced if the
 509 court, following the procedure described in subsection (c) of this Code section, finds that
 510 the past sexual behavior directly involved the participation of the accused and finds that the
 511 evidence expected to be introduced supports an inference that the accused could have
 512 reasonably believed that the complaining witness consented to the conduct complained of
 513 in the prosecution."

514 **SECTION 2-32.**

515 Said chapter is further amended by revising paragraph (1) of subsection (d) of Code Section
 516 24-4-413, relating to evidence of similar transaction crimes in sexual assault cases, as
 517 follows:

518 "(1) Conduct that would be a violation of Code Section 16-6-1, 16-6-2, 16-6-3, 16-6-5.1,
 519 16-6-22, or 16-6-22.1, ~~or 16-6-22.2;~~"

520 **SECTION 2-33.**

521 Said chapter is further amended by revising subparagraph (d)(2)(A) of Code Section
 522 24-4-415, relating to evidence of similar acts in civil or administrative proceedings
 523 concerning sexual assault or child molestation, as follows:

524 "(A) Conduct that would be a violation of Code Section 16-6-1, 16-6-2, 16-6-3,
 525 16-6-5.1, 16-6-22, or 16-6-22.1, ~~or 16-6-22.2;~~"

526 **SECTION 2-34.**

527 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by deleting
 528 subparagraph (a)(2)(K) of Code Section 31-2-9, relating to records check requirement for
 529 certain health care facilities, definitions, use of information gathered in investigation,
 530 penalties for unauthorized release or disclosure, and rules and regulations, and designating
 531 such subparagraph as reserved.

532 **SECTION 2-35.**

533 Said title is further amended by deleting in its entirety paragraph (a)(3)(C) of Code Section
 534 31-22-9.1, relating to HIV tests and who may perform test, and designating such paragraph
 535 as reserved.

536

SECTION 2-36.

537 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 538 by deleting divisions (a)(10)(A)(iii), (a)(10)(A)(v), (a)(10)(B)(vi), (a)(10)(B)(xiv),
 539 (a)(10)(B.1)(vi), and (a)(10)(B.1)(xiv) of Code Section 42-1-12, relating to the state sexual
 540 offender registry, and designating such divisions as reserved.

541

SECTION 2-37.

542 Said title is further amended by revising subsection (a) of Code Section 42-5-56, relating to
 543 visitation with minors by convicted sexual offenders, as follows:

544 "(a) As used in this Code section, the term 'sexual offense' means a violation of Code
 545 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
 546 offense of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense
 547 of sexual assault against a person in custody; sexual assault by persons with supervisory
 548 or disciplinary authority, sexual assault by practitioner of psychotherapy against patient,
 549 consent not a defense, and penalty upon conviction for sexual assault; or Code Section
 550 16-6-22, relating to the offense of incest; or Code Section 16-6-22.2, relating to the offense
 551 of aggravated sexual battery, when the victim was under 18 years of age at the time of the
 552 commission of any such offense; or a violation of Code Section 16-6-3, relating to the
 553 offense of statutory rape; Code Section 16-6-4, relating to the offenses of child molestation
 554 and aggravated child molestation; or Code Section 16-6-5, relating to the offense of
 555 enticing a child for indecent purposes, when the victim was under 16 years of age at the
 556 time of the commission of any such offense."

557

SECTION 2-38.

558 Said title is further amended by revising paragraph (2) of subsection (a) of Code Section
 559 42-9-60, relating to overcrowding of prison system as creating state of emergency, paroling
 560 inmates to reduce prison system population to capacity, and annual report of inmates paroled,
 561 as follows:

562 "(2) 'Dangerous offender' means a state prison inmate who is imprisoned for conviction
 563 of any one or more of the following crimes as defined by Title 16, the 'Criminal Code of
 564 Georgia': murder, voluntary manslaughter, kidnapping, armed robbery, rape, aircraft
 565 hijacking, ~~aggravated sodomy~~, aggravated battery, aggravated assault, incest, child
 566 molestation, child abuse, or enticing a child for indecent purposes, or any felony
 567 punishable under Code Section 16-13-31, relating to prohibited acts regarding marijuana,
 568 cocaine, and illegal drugs. The term 'dangerous offender' shall also include an inmate
 569 who is incarcerated for a second or subsequent time for the commission of a crime for
 570 which the inmate could have been sentenced to life imprisonment."

571 **SECTION 2-39.**

572 Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to definitions
573 and records check requirement for licensing certain facilities, is amended by deleting
574 subparagraphs (a)(2)(G) and (a)(2)(K) and designating such subparagraphs as reserved."

575 **PART III**

576 **SECTION 3-1.**

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