

Senate Bill 174

By: Senators Kennedy of the 18th, Miller of the 49th, Martin of the 9th, Walker III of the 20th, Shafer of the 48th and others

A BILL TO BE ENTITLED
AN ACT

1 To provide for reform for individuals supervised under accountability courts, the Department
2 of Community Supervision, and the State Board of Pardons and Paroles and enact reforms
3 recommended by the Georgia Council on Criminal Justice Reform; to amend Title 15 and
4 Code Section 49-3-6 of the Official Code of Georgia Annotated, relating to courts and
5 functions of a county or district department of family and children services, respectively, so
6 as to require veterans court divisions to adhere to the same policies, procedures, and
7 standards as other accountability courts; to change provisions relating to family treatment
8 court divisions; to provide for protocols involving family treatment court divisions; to amend
9 Article 1 of Chapter 10 of Title 17, Title 42, and Code Section 51-1-54 of the Official Code
10 of Georgia Annotated, relating to the procedure for sentencing and the imposition of
11 punishment, penal institutions, and the Program and Treatment Completion Certificate,
12 respectively, so as to provide for presumptive probation under certain circumstances; to
13 provide for definitions; to change provisions relating to active probation supervision; to
14 provide for the use of updated evaluation tools; to provide for matters related to probation;
15 to provide for the Board of Community Supervision to issue Program and Treatment
16 Completion Certificates; to create certain rebuttable presumptions pertinent to individuals
17 issued such certificates; to allow community supervision officers to provide supervision to
18 defendants in certain accountability courts under certain circumstances; to modify provisions
19 relating to the confidentiality of records and information held by the State Board of Pardons
20 and Paroles under certain circumstances; to allow the prosecuting attorney and victim of a
21 crime to submit information to the State Board of Pardons and Paroles relative to its
22 consideration of the parole or conditional release of an inmate; to require that conditions of
23 probation be imposed as conditions of parole when a defendant is serving a split sentence;
24 to provide for notice of certain hearings; to clarify provisions relating to commutation; to
25 provide for related matters; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

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Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising paragraph (4) of subsection (b) of Code Section 15-1-17, relating to veterans court divisions, as follows:

"(4)(A) The Council of Accountability Court Judges of Georgia shall adopt standards and practices for veterans court divisions, taking into consideration guidelines and principles based on available current research and findings published by experts on veterans' health needs and treatment options, including, but not limited to, the VA and the Georgia Department of Veterans Service. The Council of Accountability Court Judges of Georgia shall update its standards and practices to incorporate research, findings, and developments in the veterans court field if any such research, findings, or developments are created. Each veterans court division shall adopt policies and practices that will be consistent with any standards and practices published by the Council of Accountability Court Judges of Georgia. Such standards and practices shall serve as a flexible framework for developing effective veterans court divisions and provide a structure for conducting research and evaluation for accountability. Such standards and practices are not intended to be a certification or regulatory checklist.

(B) The Council of Accountability Court Judges of Georgia shall provide technical assistance to veterans court divisions to assist them with the implementation of policies and practices, including, but not limited to, guidance on the implementation of risk and needs assessments in veterans court divisions.

(C) The Council of Accountability Court Judges of Georgia shall create and manage a certification and peer review process to ensure veterans court divisions are adhering to the Council of Accountability Court Judges of Georgia's standards and practices and shall create a waiver process for veterans court divisions to seek an exception to the Council of Accountability Court Judges of Georgia's standards and practices. In order to receive state appropriated funds, any veterans court division established on and after July 1, 2017, shall be certified pursuant to this subparagraph or, for good cause shown to the Council of Accountability Court Judges of Georgia, shall receive a waiver from the Council of Accountability Court Judges of Georgia.

(D) On and after July 1, 2017, the award of any state funds for a veterans court division shall be conditioned upon a veterans court division attaining certification or a waiver by the Council of Accountability Court Judges of Georgia. On or before September 1, the Council of Accountability Court Judges of Georgia shall publish an annual report listing certified veterans court divisions.

63 (E) The Council of Accountability Court Judges of Georgia and the Georgia Council
 64 on Criminal Justice Reform shall develop and manage an electronic information system
 65 for performance measurement and accept submission of performance data in a
 66 consistent format from all veterans court divisions. The Council of Accountability
 67 Court Judges of Georgia shall identify elements necessary for performance
 68 measurement, including, but not limited to, recidivism, the number of moderate-risk
 69 and high-risk participants in a veterans court division, drug testing results, drug testing
 70 failures, participant employment, the number of participants who successfully complete
 71 the program, and the number of participants who fail to complete the program.
 72 (F) On or before July 1, 2018, and every three years thereafter, the Council of
 73 Accountability Court Judges of Georgia shall conduct a performance peer review of the
 74 veterans court divisions for the purpose of improving veterans court division policies
 75 and practices and the certification and recertification process."

76 **SECTION 1-2.**

77 Said title is further amended by revising paragraph (4) of subsection (a) and subparagraphs
 78 (a)(5)(C) and (a)(5)(D) of Code Section 15-11-70, relating to the establishment of family
 79 treatment court divisions, as follows:

80 "(4) Each family treatment court division shall establish a planning group to develop a
 81 work plan. The planning group shall include the judges, prosecuting attorneys, special
 82 assistant attorneys general, public defenders, attorneys who represent children and
 83 parents, law enforcement officials, probation officers, community supervision officers,
 84 court appointed special advocates, guardians ad litem, DFCS employees, and other
 85 individuals having expertise in services available to families in dependency proceedings.
 86 The work plan shall address the operational, coordination, resource, information
 87 management, and evaluation needs of the family treatment court division. The work plan
 88 shall include family treatment court division policies and practices related to
 89 implementing the standards and practices developed pursuant to paragraph (5) of this
 90 subsection. The work plan shall ensure a risk and needs assessment is used to identify
 91 the likelihood of recidivating and identify the needs that, when met, reduce recidivism.
 92 The work plan shall include eligibility criteria for the family treatment court division.
 93 The family treatment court division shall combine judicial supervision, treatment of
 94 family treatment court division participants, drug testing, and mental health treatment."

95 "(C) The Council of Accountability Court Judges of Georgia shall create and manage
 96 a certification and peer review process to ensure family treatment court divisions are
 97 adhering to the Council of Accountability Court Judges of Georgia's standards and
 98 practices and shall create a waiver process for family treatment court divisions to seek

99 an exception to the Council of Accountability Court Judges of Georgia's standards and
 100 practices. The Council of Accountability Court Judges of Georgia shall create a
 101 certification process to allow a court to demonstrate its need for additional state grant
 102 funds, as authorized by Code Section 15-11-52, for one or more part-time judges to
 103 operate a family treatment court division. In order to receive state appropriated funds,
 104 any family treatment court division established on and after July 1, 2017, shall be
 105 certified pursuant to this subparagraph or, for good cause shown to the Council of
 106 Accountability Court Judges of Georgia, shall receive a waiver from the Council of
 107 Accountability Court Judges of Georgia.

108 (D) On and after July 1, 2017, the award of any state funds for a family treatment court
 109 division shall be conditioned upon a family treatment court division attaining
 110 certification or a waiver by the Council of Accountability Court Judges of Georgia. On
 111 or before September 1, the Council of Accountability Court Judges of Georgia shall
 112 publish an annual report listing certified family treatment court divisions."

113 **SECTION 1-3.**

114 Said title is further amended in subsection (a) of Code Section 15-11-70, relating to the
 115 establishment of family treatment court divisions, by adding a new paragraph to read as
 116 follows:

117 "(11) A court instituting a family treatment court division shall comply with the periodic
 118 review process as required by Code Section 15-11-216."

119 **SECTION 1-4.**

120 Said title is further amended by revising subsection (f) of Code Section 15-11-212, relating
 121 to the disposition of a dependent child, as follows:

122 "(f) If a child is adjudicated as a dependent child and the dependency is found to have been
 123 the result of substance abuse by his or her parent, guardian, or legal custodian and the court
 124 orders transfer of temporary legal custody of such child, the court shall be authorized to
 125 further order that legal custody of such child may not be transferred back to his or her
 126 parent, guardian, or legal custodian unless such parent, guardian, or legal custodian
 127 undergoes:

128 (1) Undergoes substance abuse treatment and random substance abuse screenings and
 129 those screenings remain negative for a period of no less than ~~six~~ 12 consecutive months;
 130 or
 131 (2) Successfully completes programming through a family treatment court division."

132 **SECTION 1-5.**

133 Code Section 49-3-6 of the Official Code of Georgia Annotated, relating to the functions of
 134 a county or district department of family and children services, is amended by revising
 135 subsection (a) as follows:

136 "(a) The primary purpose of county departments shall be to protect children. To achieve
 137 this primary purpose, the county departments shall, in accordance with rules and
 138 regulations of the Division of Family and Children Services of the department:

139 (1) Investigate reports of abuse ~~and~~ or neglect;

140 (2) Assess, promote, and support the safety of a child in a safe and stable family or other
 141 appropriate placement in response to allegations of abuse or neglect;

142 (3) Work cooperatively with law enforcement regarding reports that include criminal
 143 conduct allegations; ~~and~~

144 (4) In collaboration with the family treatment court division planning group, if one
 145 exists, establish a written protocol to assess cases involving substantiated reports of abuse
 146 or neglect for possible referral to a family treatment court division. Such protocol shall
 147 be consistent with the Council of Accountability Courts of Georgia's certification
 148 requirements and include sufficient criteria to determine the need for substance abuse
 149 treatment; and

150 ~~(4)~~(5) Without compromising child safety, coordinate services to achieve and maintain
 151 permanency on behalf of the child, strengthen the family, and provide prevention,
 152 intervention, and treatment services pursuant to this title."

153 **PART II**154 **SECTION 2-1.**

155 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
 156 procedure for sentencing and the imposition of punishment, is amended by revising
 157 paragraphs (1) and (2) of subsection (a) and subsection (d) of Code Section 17-10-1, relating
 158 to fixing of sentence, as follows:

159 "(a)(1)(A) Except in cases in which life imprisonment, life without parole, or the death
 160 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
 161 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
 162 shall prescribe a determinate sentence for a specific number of months or years which
 163 shall be within the minimum and maximum sentences prescribed by law as the
 164 punishment for the crime. The judge imposing the sentence is granted power and
 165 authority to suspend or probate all or any part of the entire sentence under such rules
 166 and regulations as the judge deems proper, including service of a probated sentence in

167 the sentencing options system, as provided by Article 9 6 of Chapter 8 3 of Title 42, and
168 including the authority to revoke the suspension or probation when the defendant has
169 violated any of the rules and regulations prescribed by the court, even before the
170 probationary period has begun, subject to the conditions set out in this subsection;
171 provided, however, that such action shall be subject to the provisions of Code Sections
172 17-10-6.1 and 17-10-6.2.

173 (B)(i) As used in this subparagraph, the term 'nonviolent offense' means a felony
174 offense of:

175 (I) Burglary in the second degree in violation of Code Section 16-7-1;

176 (II) Smash and grab burglary in violation of Code Section 16-7-2, provided that the
177 damage caused was less than \$5,000.00 total;

178 (III) Possession of tools for the commission of crime in violation of Code Section
179 16-7-20;

180 (IV) Criminal damage to property in the second degree in violation of Code Section
181 16-7-23;

182 (V) Interference with government property in violation of Code Section 16-7-24;

183 (VI) Vandalism to a place of worship in violation of Code Section 16-7-26;

184 (VII) Arson in the third degree in violation of Code Section 16-7-62;

185 (VIII) Burning of woodlands, brush, fields, or other lands in violation of Code
186 Section 16-7-63 when the punishment is as set forth in paragraph (2) of subsection
187 (c) of Code Section 16-7-63;

188 (IX) Theft in violation of Code Sections 16-8-2 through 16-8-9 when the
189 punishment is as set forth in subparagraph (a)(1)(C) of Code Section 16-8-12;

190 (X) Theft by shoplifting in violation of Code Section 16-8-14;

191 (XI) Refund fraud in violation of Code Section 16-8-14.1;

192 (XII) Conversion of payments for real property improvements in violation of Code
193 Section 16-8-15;

194 (XIII) Entering an automobile or other motor vehicle with intent to commit theft
195 or felony in violation of Code Section 16-8-18;

196 (XIV) Livestock theft in violation of Code Section 16-8-20;

197 (XV) Forgery in the third degree in violation of subsection (d) of Code Section
198 16-9-1;

199 (XVI) Printing, executing, or negotiating checks, drafts, orders, or debit card sales
200 drafts knowing information thereon to be in error, fictitious, or assigned to another
201 account holder in violation of Code Section 16-9-21;

202 (XVII) Financial transaction card offenses in violation of Code Section 16-9-31,
203 16-9-32, 16-9-33, 16-9-34, 16-9-35, 16-9-36.1, 16-9-37, or 16-9-39 when the
204 punishment is as set forth in Code Section 16-9-38;

205 (XVIII) Failing to pay for natural products or chattels in violation of Code Section
206 16-9-58;

207 (XIX) Purchasing, possessing, manufacturing, delivering, distributing,
208 administering, selling, or possessing with the intent to distribute controlled
209 substances, marijuana, counterfeit substances, or flunitrazepam in violation of Code
210 Section 16-13-30;

211 (XX) Unlawfully manufacturing, delivering, distributing, selling, or possessing
212 with the intent to distribute noncontrolled substances in violation of Code Section
213 16-13-30.1;

214 (XXI) Possession of substances containing ephedrine or pseudoephedrine or sales
215 of products containing those ingredients in violation of Code Section 16-13-30.3
216 when the punishment is as set forth in subsection (b) of Code Section 16-13-30.3;
217 and

218 (XXII) Violation of Article 3 of Chapter 13 of Title 16 when the punishment is as
219 set forth in subsection (b) of Code Section 16-13-79.

220 (ii) When a defendant is convicted of a nonviolent offense and has no prior felony
221 conviction, the court shall impose a sentence of probation, not to include a split
222 sentence, unless the court finds by a preponderance of the evidence that confinement
223 in prison is necessary and appropriate for the ends of justice and the protection of
224 society. In considering a probationary sentence, the court shall take into consideration
225 whether the defendant has previously been adjudicated pursuant to Code Section
226 16-13-2 or Article 3 of Chapter 8 of Title 42 or has completed a program in an
227 accountability court, as such term is defined in Code Section 15-1-20. If the
228 prosecuting attorney objects to a sentence of probation, the court shall attach an order
229 which includes findings of fact and conclusions of law to the final disposition form.

230 (iii) When a defendant is sentenced under division (ii) of this subparagraph, the court
231 shall include a behavioral incentive date in its sentencing order that does not exceed
232 three years from the date such sentence is imposed. Within 60 days of the expiration
233 of such incentive date, if the defendant has not been arrested for anything other than
234 a nonserious traffic offense as defined in Code Section 35-3-37, has been compliant
235 with the general and special conditions of probation imposed, and has paid all
236 restitution owed, the Department of Community Supervision shall notify the
237 prosecuting attorney and the court of such facts. The Department of Community
238 Supervision shall provide the court with an order to terminate such defendant's

239 probation which the court shall execute unless the court or the prosecuting attorney
 240 requests a hearing on such matter within 30 days of the receipt of such order.

241 (2) Active probation supervision shall terminate in all cases no later than two years from
 242 the commencement of active probation supervision unless specially extended or
 243 reinstated by the sentencing court upon notice and hearing and for good cause shown;
 244 provided, however, that in those cases involving the collection of ~~fin~~es, restitution, or
 245 ~~other funds~~, the period of active probation supervision shall remain in effect for so long
 246 as any such obligation is outstanding, or until termination of the sentence, whichever first
 247 occurs, and for those cases involving a conviction under Chapter 15 of Title 16, the
 248 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation
 249 supervision shall remain in effect until the termination of the sentence, but shall not
 250 exceed five years unless as otherwise provided in this paragraph. Supervision shall not
 251 be required for defendants sentenced to probation while the defendant is in the legal
 252 custody of the Department of Corrections or the State Board of Pardons and Paroles."

253 "(d) In any case involving a misdemeanor or a felony in which the defendant has been
 254 punished in whole or in part by a fine, the sentencing judge shall be authorized to allow the
 255 defendant to satisfy such fine through community service as defined in Code Section
 256 42-3-50. One hour of community service shall equal the dollar amount of one hour of paid
 257 labor at the minimum wage under the federal Fair Labor Standards Act of 1938, ~~as now or~~
 258 ~~hereafter amended~~ in effect on January 1, 2017, unless otherwise specified by the
 259 sentencing judge. A defendant shall be required to serve the number of hours in
 260 community service which equals the number derived by dividing the amount of the fine by
 261 the federal minimum hourly wage or by the amount specified by the sentencing judge.
 262 Prior to or subsequent to sentencing, a defendant, or subsequent to sentencing, a
 263 community supervision officer, may request that the court that make all or any portion of
 264 a fine ~~may~~ be satisfied under this subsection."

265 **SECTION 2-2.**

266 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 267 by revising subsection (c) of Code Section 42-2-11, relating to the powers and duties of the
 268 Board of Corrections, as follows:

269 "(c)(1) The board shall adopt rules governing the assignment, housing, working, feeding,
 270 clothing, treatment, discipline, rehabilitation, training, and hospitalization of all inmates
 271 coming under its custody.

272 (2)(A) As used in this paragraph, the term:

273 (i) 'Evidence based practices' means supervision policies, procedures, programs, and
 274 practices that scientific research demonstrates reduce recidivism among individuals
 275 who are under some form of correctional supervision.

276 (ii) 'Recidivism' means returning to prison or jail within three years of being placed
 277 on probation or being discharged or released from a department or jail facility.

278 (B) The board shall adopt rules and regulations governing the management and
 279 treatment of inmates coming under its custody to ensure that evidence based practices,
 280 including the use of a risk and needs assessment and any other method the board deems
 281 appropriate, guide decisions related to preparing inmates for release into the
 282 community. Any risk and needs assessment instrument shall be revalidated by
 283 January 1, 2019, and every five years thereafter. The board shall require the department
 284 to collect and analyze data and performance outcomes relevant to the level and type of
 285 treatment given to an inmate and the outcome of the treatment on his or her recidivism
 286 and prepare an annual report regarding such information which shall be submitted to
 287 the Governor, the Lieutenant Governor, the Speaker of the House of Representatives,
 288 and the chairpersons of the House Committee on ~~State Properties~~ Judiciary and the
 289 Senate ~~State Institutions and Property~~ Judiciary Committee.

290 (C) Using evidence based practices, the board shall evaluate the quality of the
 291 programming utilized at all department facilities, except state prisons, by January 1,
 292 2019, and every five years thereafter, and shall publicly publish its report."

293 **SECTION 2-3.**

294 Said title is further amended by revising subsections (g) through (j) of and adding a new
 295 subsection to Code Section 42-3-2, relating to the creation of the Board of Community
 296 Supervision and its duties, to read as follows:

297 "(g)(1) As used in this subsection, the term:

298 (A) 'Evidence based practices' means supervision policies, procedures, programs, and
 299 practices that scientific research demonstrates reduce recidivism among individuals
 300 who are under some form of correctional supervision.

301 (B) 'Recidivism' means returning to prison or jail within three years of being placed on
 302 probation or being discharged or released from a ~~Department of Corrections~~ department
 303 or jail facility.

304 (2) The board shall adopt rules and regulations governing the management and treatment
 305 of probationers and parolees to ensure that evidence based practices, including the use of
 306 a risk and needs assessment and any other method the board deems appropriate, guide
 307 decisions related to managing probationers and parolees in the community. Any risk and
 308 needs assessment instrument shall be revalidated by January 1, 2019, and every five years

309 thereafter. The board shall require DCS to collect and analyze data and performance
310 outcomes relevant to the level and type of treatment given to a probationer or parolee and
311 the outcome of the treatment on his or her recidivism and prepare an annual report
312 regarding such information which shall be submitted to the Governor, the Lieutenant
313 Governor, the Speaker of the House of Representatives, and the chairpersons of the
314 House Committee on ~~State Properties~~ Judiciary and the Senate ~~State Institutions and~~
315 ~~Property~~ Judiciary Committee.

316 (3) Using evidence based practices, the board shall evaluate the quality of the
317 programming utilized at day reporting centers by January 1, 2019, and every five years
318 thereafter, and shall publicly publish its report.

319 (h)(1) The board, acting alone or in cooperation with the State Board of the Technical
320 College System of Georgia or other relevant educational organizations and agencies, may
321 provide educational programs for probationers and shall exercise program approval
322 authority. The board may enter into written agreements with other educational
323 organizations and agencies in order to provide probationers with such education and
324 employment skills most likely to encourage gainful employment and discourage return
325 to criminal activity. The board may also enter into agreements with other educational
326 organizations and agencies to attain program certification for its vocational and technical
327 education programs.

328 (2) The board shall create a Program and Treatment Completion Certificate that may be
329 issued to probationers under the rules and regulations of the board. Such certificate shall
330 symbolize a probationer's achievements toward successful reentry into society. The
331 board's rules and regulations relating to the issuance of such certificate shall take into
332 account a probationer's violations of the terms of his or her probation and any other factor
333 the board deems relevant to an individual's qualification for such certificate. The board's
334 rules and regulations shall specify eligibility considerations and requirements for
335 completion of such certificate.

336 (3) Nothing in this subsection shall be construed to constitute a waiver of the sovereign
337 immunity of the state, and no action shall be maintained against the state or any agency
338 or department thereof for issuance of or failure to issue any Program and Treatment
339 Completion Certificate.

340 ~~(h)~~(i) The board shall adopt rules and regulations and such rules and regulations shall be
341 adopted, established, promulgated, amended, repealed, filed, and published in accordance
342 with the applicable provisions and procedure as set forth in Chapter 13 of Title 50, the
343 'Georgia Administrative Procedure Act.' The courts shall take judicial notice of any such
344 rules or regulations.

345 ~~(i)~~(j) As used in this Code section, the term 'rules and regulations' shall have the same
 346 meaning as the word 'rule' as defined in paragraph (6) of Code Section 50-13-2.
 347 ~~(j)~~(k) The board shall perform duties required of it by law and shall, in addition thereto,
 348 be responsible for promulgation of all rules and regulations not in conflict with this chapter
 349 that may be necessary and appropriate to the administration of DCS, to the accomplishment
 350 of the purposes of this chapter and Chapters 8 and 9 of this title, and to the performance of
 351 the duties and functions of DCS as set forth in this chapter and Chapters 8 and 9 of this
 352 title."

353 SECTION 2-4.

354 Said title is further amended by revising subsection (c) of Code Section 42-5-36, relating to
 355 confidentiality of information supplied by inmates, penalties for breach, classified nature of
 356 department investigation reports, confidentiality of certain identifying information, and
 357 custodians of records, as follows:

358 "(c) All institutional inmate files and central office inmate files of the department shall be
 359 classified as confidential state secrets and privileged under law, unless declassified in
 360 writing by the commissioner; provided, however, these records shall be subject to subpoena
 361 by a court of competent jurisdiction of this state and provided, further, that the
 362 commissioner shall prepare a summary of the conduct of record of any inmate serving a
 363 sentence for a serious violent felony, as such term is defined in Code Section 17-10-6.1,
 364 and it shall be subject to disclosure under paragraph (2) of subsection (a) of Code Section
 365 42-9-43."

366 SECTION 2-5.

367 Said title is further amended by revising Code Section 42-8-27, relating to the duties of
 368 community supervision officers, as follows:

369 "42-8-27.

370 An officer shall supervise and counsel probationers and parolees in the judicial circuit to
 371 which he or she is assigned. Each officer shall perform the duties prescribed in this chapter
 372 and other duties as are prescribed by DCS and shall make and keep any records and files
 373 and make such reports as are required of him or her by DCS, the State Board of Pardons
 374 and Paroles, or a court. Officers shall be authorized to provide supervision of defendants
 375 who are participants in a drug court division, mental health court division, or veterans court
 376 division operated by a superior court, provided that sufficient staff and resources exist for
 377 such supervision."

378 **SECTION 2-6.**

379 Said title is further amended by revising subsection (e) of Code Section 42-8-34, relating to
 380 sentencing hearings and determinations, as follows:

381 "(e)(1) The court may, in its discretion, require the payment of a fine ~~or costs, or both,~~
 382 fees, or restitution as a condition of probation. Chapter 14 of Title 17 shall control when
 383 determining the amount of restitution. When probation supervision is required, the court
 384 may require the payment of a probation supervision fee as a condition of probation. In
 385 determining the financial obligations, other than restitution, to impose on the defendant,
 386 the court may consider:

387 (A) The defendant's financial resources and other assets, including whether any such
 388 asset is jointly controlled;

389 (B) The defendant's earnings and other income;

390 (C) The defendant's financial obligations, including obligations to dependents;

391 (D) The period of time during which the probation order will be in effect;

392 (E) The goal of the punishment being imposed; and

393 (F) Any other factor the court deems appropriate.

394 (2) The court may convert fines, statutory surcharges, and probation supervision fees to
 395 community service on the same basis as it allows a defendant to pay a fine through
 396 community service as set forth in subsection (d) of Code Section 17-10-1.

397 (3)(A) As used in this subsection, the term:

398 (i) 'Developmental disability' shall have the same meaning as set forth in Code
 399 Section 37-1-1.

400 (ii) 'Indigent' means an individual who earns less than 100 percent of the federal
 401 poverty guidelines unless there is evidence that the individual has other resources that
 402 might reasonably be used without undue hardship for such individual or his or her
 403 dependents.

404 (iii) 'Significant financial hardship' means a reasonable probability that an individual
 405 will be unable to satisfy his or her financial obligations for two or more consecutive
 406 months.

407 (iv) 'Totally and permanently disabled' shall have the same meaning as set forth in
 408 Code Section 49-4-80.

409 (B) The court shall waive, modify, or convert fines, statutory surcharges, probation
 410 supervision fees, and any other moneys assessed by the court or a provider of probation
 411 services upon a determination by the court prior to or subsequent to sentencing that a
 412 defendant has a significant financial hardship or inability to pay or that there are any
 413 other extenuating factors which prohibit payment or collection; provided, however, that

414 the imposition of sanctions for failure to pay such sums shall be within the discretion
 415 of the court through judicial process or hearings.

416 (C) Unless rebutted by a preponderance of the evidence that a defendant will be able
 417 to satisfy his or her financial obligations without undue hardship to the defendant or his
 418 or her dependents, a defendant shall be presumed to have a significant financial
 419 hardship if he or she:

420 (i) Has a developmental disability;

421 (ii) Is totally and permanently disabled;

422 (iii) Is indigent; or

423 (iv) Has been released from confinement within the preceding 12 months and was
 424 incarcerated for more than 30 days before his or her release."

425 **SECTION 2-7.**

426 Said title is further amended by revising Code Section 42-8-37, relating to the effect of the
 427 termination of the probated portion of a sentence and the review of cases of persons receiving
 428 probated sentences, as follows:

429 "42-8-37.

430 (a) Upon the termination of the probated portion of a sentence, the probationer shall be
 431 released from probation and shall not be liable to sentence for the crime for which
 432 probation was allowed; provided, however, that the foregoing shall not be construed to
 433 prohibit the conviction and sentencing of the probationer for the subsequent commission
 434 of the same or a similar offense or for the subsequent continuation of the offense for which
 435 he or she was previously sentenced.

436 (b) The court may at any time cause the probationer to appear before it to be admonished
 437 or commended and, when satisfied that its action would be for the best interest of justice
 438 and the welfare of society, may discharge the probationer from further supervision.

439 (c) Notwithstanding when a probated sentence is imposed, the ~~The~~ case of each person
 440 receiving a probated sentence of ~~more than two years~~ three years or more shall be reviewed
 441 by the officer responsible for such case after service of ~~two~~ three years on probation, and
 442 a written report of the probationer's progress shall be submitted to the sentencing court
 443 along with the officer's recommendation as to early termination. The report shall
 444 specifically state whether the defendant has been arrested for anything other than a
 445 nonserious traffic offense as defined in Code Section 35-3-37, whether the defendant has
 446 been compliant with the general and special conditions of probation imposed, and the status
 447 of the defendant's payments toward restitution or any fines and fees imposed. Each such
 448 case shall be reviewed and a written report submitted annually thereafter until the
 449 termination, expiration, or other disposition of the case.

450 (d)(1) DCS shall file a petition to terminate probation for a person convicted of a
 451 nonviolent offense as defined in Code Section 17-10-1 if, after serving three years on
 452 probation, the person has:

453 (A) Paid all restitution owed;

454 (B) Not had his or her probation revoked during such period; and

455 (C) Not been arrested for anything other than a nonserious traffic offense as defined
 456 in Code Section 35-3-37.

457 (2) This subsection is intended to be retroactive and applied to any person under the
 458 supervision of DCS."

459 **SECTION 2-8.**

460 Said title is further amended by revising subsection (b) of Code Section 42-9-41, relating to
 461 the duty of the State Board of Pardons and Paroles to obtain and place in records information
 462 respecting persons subject to relief or placed on probation, investigations, and rules, as
 463 follows:

464 "(b) The board in its discretion may also obtain and place in its permanent records similar
 465 information on each person who may be placed on probation. The board shall immediately
 466 examine such records and any other records obtained and make such other investigation
 467 as it may deem necessary. It shall be the duty of the court and of all community
 468 supervision officers and other appropriate officers to furnish to the board, upon its request,
 469 such information as may be in their possession or under their control. The Department of
 470 Behavioral Health and Developmental Disabilities and all other state, county, and city
 471 agencies, all sheriffs and their deputies, and all peace officers shall cooperate with the
 472 board and shall aid and assist it in the performance of its duties. The board may make such
 473 rules as to the privacy or privilege of such information and as to its use by persons other
 474 than the board and its staff as may be deemed expedient in the performance of its duties,
 475 provided that such rules do not conflict with Code Section 42-9-61."

476 **SECTION 2-9.**

477 Said title is further amended by revising subsections (c), (d), and (e) of Code Section
 478 42-9-42, relating to the procedure for granting relief from sentence, conditions and
 479 prerequisites, public access to information, and violation of parole, as follows:

480 "(c) Good conduct, achievement of a fifth-grade level or higher on standardized reading
 481 tests, and efficient performance of duties by an inmate shall be considered by the board in
 482 his or her favor and shall merit consideration of an application for pardon or parole. No
 483 inmate shall be placed on parole until and unless the board shall find that there is
 484 reasonable probability that, if he or she is so released, he or she will live and conduct

485 himself or herself as a respectable and law-abiding person and that his or her release will
 486 be compatible with his or her own welfare and the welfare of society. Furthermore, no
 487 person shall be released on pardon or placed on parole unless and until the board is
 488 satisfied that he or she will be suitably employed in self-sustaining employment or that he
 489 or she will not become a public charge. However, notwithstanding other provisions of this
 490 chapter, the board may, in its discretion, grant pardon or parole to any aged or disabled
 491 persons.

492 (d)(1) Any person who is paroled shall be released on such terms and conditions as the
 493 board shall prescribe, and if he or she is serving a split sentence, the board's conditions
 494 shall include all of the terms of probation imposed by the sentencing court. The board
 495 shall diligently see that no peonage is allowed in the guise of parole relationship or
 496 supervision. The parolee shall remain in the legal custody of the board until the
 497 expiration of the maximum term specified in his or her sentence, ~~or until~~ he or she is
 498 pardoned by the board, or his or her supervision is terminated as provided in Code
 499 Section 42-9-52.

500 (2) The board may require the payment of a parole supervision fee of at least \$10.00 per
 501 month as a condition of parole or ~~other~~ conditional release. The monthly amount shall
 502 be set by rule of the board and shall be uniform state wide. ~~The board may require or the~~
 503 ~~parolee or person under conditional release may request that up to 24 months of the~~
 504 ~~supervision fee be paid in advance of the time to be spent on parole or conditional~~
 505 ~~release. In such cases, any advance payments are nonreimbursable in the event of parole~~
 506 ~~or conditional release revocation or if parole or conditional release is otherwise~~
 507 ~~terminated prior to the expiration of the sentence being served on parole or conditional~~
 508 ~~release.~~ Such fees shall be collected by the department to be paid into the general fund
 509 of the state treasury.

510 (e) If a parolee or conditional releasee violates the terms of his or her parole or conditional
 511 release, he or she shall be subject to rearrest or extradition for placement in the actual
 512 custody of the board, to be redelivered to any state or county correctional institution of this
 513 state or placed in any other Department of Corrections facility, including a probation
 514 detention center, not to exceed 180 days, or in a residential substance abuse treatment
 515 facility, as such term is defined in Code Section 42-8-111, as deemed appropriate by the
 516 board. Nothing in this subsection shall be construed to limit or restrict the authority of the
 517 commissioner of corrections in making custodial assignments."

518 **SECTION 2-10.**

519 Said title is further amended by revising Code Section 42-9-43, relating to information to be
 520 considered by board generally, conduct of investigation and examination, and determination
 521 as to grant of relief, as follows:

522 "42-9-43.

523 (a) The board, in considering any case within its power, shall cause to be brought before
 524 it all pertinent information on the person in question. Included therein shall be:

525 (1) A report by the superintendent, warden, or jailer of the jail or state or county
 526 correctional institution in which the person has been confined upon the conduct of record
 527 of the person while in such jail or state or county correctional institution;

528 (2) A summary of the conduct of record of the person serving a sentence for a serious
 529 violent felony, as such term is defined in Code Section 17-10-6.1, who is in the custody
 530 of the Department of Corrections;

531 ~~(2)~~(3) The results of such physical and mental examinations as may have been made of
 532 the person;

533 ~~(3)~~(4) The extent to which the person appears to have responded to the efforts made to
 534 improve his or her social attitude;

535 ~~(4)~~(5) The industrial record of the person while confined, the nature of his or her
 536 occupations while so confined, and a recommendation as to the kind of work he or she
 537 is best fitted to perform and at which he or she is most likely to succeed when and if he
 538 or she is released;

539 ~~(5)~~(6) The educational programs in which the person has participated and the level of
 540 education which the person has attained based on standardized reading tests;

541 ~~(6)~~(7) The written statements or oral testimony, if any, of the district attorney of the
 542 circuit in which the person was sentenced expressing views and making any
 543 recommendation as to parole, conditional release, a pardon for a serious offense, as such
 544 term is defined in Code Section 42-9-42, or commutation of a death sentence;

545 ~~(7)~~(8) The written, oral, audiotaped, or videotaped testimony of the victim, the victim's
 546 family, or a witness having personal knowledge of the victim's personal characteristics,
 547 including any information prepared by the victim or any individual offering or preparing
 548 information on behalf of the victim, for the purpose of the board's consideration of a
 549 parole, conditional release, pardon, or commutation of a death sentence if the victim has
 550 provided such information to the board; and

551 ~~(8)~~(9) If the person is or was required to register pursuant to Code Section 42-1-12, any
 552 court order issued releasing the person from registration requirements or residency or
 553 employment restrictions.

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

555 (A) 'Debilitating terminal illness' means a disease that cannot be cured or adequately
556 treated and that is reasonably expected to result in death within 12 months.

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

558 (i) Requires assistance in order to perform two or more necessary daily life functions
559 or who is completely immobile; and

560 (ii) Has such limited physical or mental ability, strength, or capacity that he or she
561 poses an extremely low risk of physical threat to others or to the community.

562 (C) 'Necessary daily life function' means eating, breathing, dressing, grooming,
563 toileting, walking, or bathing.

564 (2) The board may issue a medical reprieve to an entirely incapacitated person suffering
565 a progressively debilitating terminal illness in accordance with Article IV, Section II,
566 Paragraph II of the Constitution.

567 (c)(1) The board shall give at least 30 days' advance written notification to the district
568 attorney of the circuit in which the person was sentenced whenever it considers making
569 a final decision on a pardon for a serious offense, as such term is defined in Code Section
570 42-9-42, and at least 90 days' advance written notification to such district attorney prior
571 to making a final decision on parole or conditional release for a person sentenced for a
572 serious violent felony, as such term is defined in Code Section 17-10-6.1, and shall
573 provide the district attorney an opportunity to submit information and file a written
574 objection to such ~~action~~ actions and shall also provide the person being considered for
575 parole or conditional release an opportunity to submit information.

576 (2) Within 72 hours of receiving a request to commute a death sentence, the board shall
577 provide written notification to the district attorney of the circuit in which the person was
578 sentenced of the date set for hearing such request and shall provide the district attorney
579 an opportunity to submit information and file a written response to such request.

580 (3) The board may also make such other investigation as it may deem necessary in order
581 to be fully informed about the person.

582 (d)(1) Before releasing any person on parole or conditional release, granting a pardon,
583 or commuting a death sentence, the board may have the person appear before it and may
584 personally examine him or her and consider any information it deems relevant or
585 necessary. When objections to relief have been tendered, the board may hold a hearing
586 and consider oral testimony. If the board holds a hearing, it shall provide the district
587 attorney of the circuit in which the person was sentenced 30 days' notice via e-mail of
588 such hearing date and the district attorney or his or her designee may attend such hearing
589 and present evidence to the board and shall also provide the person being considered 30
590 days' notice of such hearing date and he or she may present evidence to the board. Upon
591 consideration of the reports, files, records, papers, documents information, and oral

592 testimony submitted, the board shall make its findings and determine whether or not such
 593 person shall be granted a pardon, parole, or other relief within the power of the board and
 594 determine the terms and conditions thereof, and if such person is serving a split sentence,
 595 the board's conditions shall include all of the terms of probation imposed by the
 596 sentencing court.

597 (2) Notice of the board's determination shall be given to the person being considered, the
 598 correctional official having him or her in custody, if applicable, the district attorney who
 599 submitted any information or objection, and the victim ~~in accordance with Code Section~~
 600 ~~17-17-13~~ if the victim has expressed a desire for such notification and has provided the
 601 board with a current mailing or e-mail address and telephone number.

602 (e) If a person in custody is granted a pardon, ~~or a parole, or conditional release,~~ the
 603 correctional official having such person in custody, upon notification thereof, shall inform
 604 him or her of the terms and conditions thereof and shall, in strict accordance therewith,
 605 release the person."

606 **SECTION 2-11.**

607 Said title is further amended by revising Code Section 42-9-44, relating to the terms and
 608 conditions of parole, adoption of general and special rules, violation of parole, and certain
 609 parolees to obtain high school diploma or general educational development (GED) diploma,
 610 as follows:

611 "42-9-44.

612 (a) The board, upon placing a person on parole or conditional release, shall specify in
 613 writing the terms and conditions thereof, and if such person is serving a split sentence, the
 614 board's conditions shall include all of the terms of probation imposed by the sentencing
 615 court. A certified copy of the conditions shall be given to the parolee or conditional
 616 releasee. Thereafter, a copy shall be sent to the clerk of the court in which the person was
 617 convicted. The board shall adopt general rules concerning the terms and conditions of
 618 parole or conditional release and concerning what shall constitute a violation thereof and
 619 shall make special rules to govern particular cases. The rules, both general and special,
 620 may include, among other things, a requirement that the parolee or conditional releasee
 621 shall not leave this state or any definite area in this state without the consent of the board;
 622 that the parolee or conditional releasee shall contribute to the support of his or her
 623 dependents to the best of the parolee's or conditional releasee's ability; that the parolee or
 624 conditional releasee shall make reparation or restitution for his or her crime; that the
 625 parolee or conditional releasee shall abandon evil associates and ways; and that the parolee
 626 or conditional releasee shall carry out the instructions of his or her community supervision
 627 officer, and, in general, so comport himself or herself as the ~~parolee's~~ community

628 supervision officer shall determine. A violation of the terms of parole or conditional
 629 release may render the parolee or conditional releasee liable to arrest and a return to a penal
 630 institution to serve out the term for which the parolee or conditional releasee was
 631 sentenced.

632 (b) Each parolee or conditional releasee who does not have a high school diploma or a
 633 general educational development (GED) diploma shall be required as a condition of parole
 634 or conditional release to obtain a high school diploma or general educational development
 635 (GED) diploma or to pursue a trade at a vocational or technical school. Any such parolee
 636 or conditional releasee who demonstrates to the satisfaction of the board an existing ability
 637 or skill which does in fact actually furnish the parolee or conditional releasee a reliable,
 638 regular, and sufficient income shall not be subject to this ~~provision~~ subsection. Any
 639 parolee or conditional releasee who is determined by the department or the board to be
 640 incapable of completing such requirements shall only be required to attempt to improve his
 641 or her basic educational skills. Failure of any parolee or conditional releasee subject to this
 642 requirement to attend the necessary schools or courses or to make reasonable progress
 643 toward fulfillment of such requirement shall be grounds for revocation of parole or
 644 conditional release. The board shall establish regulations regarding reasonable progress
 645 as required by this subsection. ~~This subsection shall apply to paroles granted on or after~~
 646 ~~July 1, 1995."~~

647 **SECTION 2-12.**

648 Said title is further amended by revising Code Section 42-9-46, relating to cases in which
 649 inmate has failed to serve time required for automatic initial consideration, as follows:

650 "42-9-46.

651 When the board considers a ~~Notwithstanding any other provisions of law to the contrary,~~
 652 ~~if the board is to consider any~~ case in which an inmate has failed to serve not served the
 653 time required by law Code Section 42-9-45 for automatic initial parole consideration, the
 654 board shall notify in writing, at least ten days prior to such early consideration, the
 655 sentencing judge, the district attorney of the county circuit in which the person inmate was
 656 sentenced, and any victim of ~~crimes against the person~~ a violation of Chapter 5 of Title 16
 657 or, if such victim is deceased, the spouse, children, or parents of the deceased victim if such
 658 person's contact information is ~~provided pursuant to Code Section 17-17-13~~ has been
 659 provided to the board with a current mailing or e-mail address and telephone number. Such
 660 notice shall provide a time frame in which such individuals may file an objection to early
 661 parole consideration. The sentencing judge, district attorney, or victim or, if such victim
 662 is deceased, the spouse, children, or parents of the deceased victim shall be given notice
 663 of a hearing date if a hearing will be held and, in order to express their views and make

664 their recommendation as to whether the inmate should be granted early parole, may appear
 665 at a such hearing held by the board or may make a written statement to the board
 666 expressing their views and making their recommendation as to whether the person should
 667 be paroled. If an objection was filed and the board grants early parole, it shall issue a
 668 statement explaining its reasoning for granting such parole and such statement shall be
 669 served on any party who filed an objection."

670 **SECTION 2-13.**

671 Said title is further amended by revising Code Section 42-9-52, relating to discharge from
 672 parole, earned-time allowance, granting of pardons, commutations, and remissions of fines,
 673 forfeitures, or penalties, as follows:

674 "42-9-52.

675 (a) No person who has been placed on parole shall be discharged therefrom by the board
 676 prior to the expiration of the term for which he or she was sentenced or until he or she shall
 677 have been duly pardoned or otherwise released as provided in this Code section or as
 678 otherwise provided by law.

679 (b) The board may adopt rules and regulations, policies, and procedures for the granting
 680 of earned time to persons while serving their sentences on parole or other conditional
 681 release to the same extent and in the same amount as if such person were serving the
 682 sentence in custody. The board shall also be authorized to withhold or to forfeit, in whole
 683 or in part, any such earned-time allowance.

684 (c) When a parolee or conditional releasee is serving a split sentence for a nonviolent
 685 offense, as such term is defined in Code Section 17-10-1, the board shall review such case
 686 after such parolee or conditional releasee has successfully completed 12 consecutive
 687 months of parole supervision to consider commutation of such sentence. The board may
 688 relieve a ~~person on parole or other conditional release~~ parolee or conditional releasee from
 689 making further reports and may permit ~~the~~ such person to leave the state or county if
 690 satisfied that this is for the parolee's or conditional releasee's best interest and for the best
 691 interest of society. When a parolee or ~~other~~ conditional releasee has, in the opinion of the
 692 board, so conducted himself or herself as to deserve a pardon or a commutation of sentence
 693 or the remission in whole or in part of any fine, forfeiture, or penalty, the board may grant
 694 such relief in cases within its power. The board may take into consideration whether or not
 695 a person is serving a split sentence in its determination of granting any relief."

696

SECTION 2-14.

697 Said title is further amended by revising Code Section 42-9-53, relating to the preservation
 698 of documents, classification of information and documents, divulgence of confidential state
 699 secrets, and conduct of hearings, as follows:

700 "42-9-53.

701 (a) Subject to other laws, the board shall preserve on file all documents on which it has
 702 acted in the granting of pardons, paroles, conditional releases, and other relief.

703 (b)(1) All information, both oral and written, received by the members of the board in
 704 the performance of their duties under this chapter and all ~~records, papers, and documents~~
 705 reports, files, records, and information coming into their possession by reason of the
 706 performance of their duties under this chapter shall be classified as confidential state
 707 secrets until declassified by the board; provided, however, that the board shall be
 708 authorized to:

709 (A) To disclose to an alleged violator of parole or conditional release the evidence
 710 introduced against him or her at a final hearing on the matter of revocation of parole or
 711 conditional release; and

712 (B) To disclose information as provided in Code Section 42-9-61.

713 (2) The department may make supervision records of the department available to
 714 officials employed with the Department of Corrections and the Sexual Offender
 715 Registration Review Board, provided that the same shall remain confidential and not
 716 available to any other person or subject to subpoena unless declassified by the
 717 commissioner of community supervision.

718 (c) No person shall divulge or cause to be divulged in any manner any confidential state
 719 secret. Any person violating this Code section or any person who causes or procures a
 720 violation of this Code section or conspires to violate this Code section shall, upon
 721 conviction, be guilty of a misdemeanor.

722 (d) All hearings required to be held by this chapter shall be public, and the transcript
 723 thereof shall be exempt from subsection (b) of this Code section. All records and
 724 documents which were public records at the time they were received by the board ~~are~~ shall
 725 be exempt from subsection (b) of this Code section. All information, reports, and
 726 documents required by law to be made available to the General Assembly, the Governor,
 727 or the state auditor ~~are~~ shall be exempt from subsection (b) of this Code section."

728

SECTION 2-15.

729 Said title is further amended by adding a new Code section to read as follows:

730 "42-9-61.

731 (a) After the board provides the notice of making a final decision on parole or conditional
 732 release as required by subsection (c) of Code Section 42-9-43, both the prosecuting
 733 attorney and the person being considered for such relief may make a written request to the
 734 board for the summary set forth in paragraph (2) of subsection (a) of Code Section 42-9-43
 735 and the board shall promptly provide such summary as well as any other information the
 736 board has declassified.

737 (b) The disclosure of the summary set forth in paragraph (2) of subsection (a) of Code
 738 Section 42-9-43 pursuant to this Code section shall not vitiate the confidential nature of
 739 such summary and such summary shall not be subject to disclosure under Article 4 of
 740 Chapter 18 of Title 50."

741 **SECTION 2-16.**

742 Code Section 51-1-54 of the Official Code of Georgia Annotated, relating to the Program and
 743 Treatment Completion Certificate, is amended by revising subsections (a) and (b) as follows:

744 "(a) As used in this Code section, the term 'Program and Treatment Completion Certificate'
 745 means the certificate issued pursuant to Code Section 42-2-5.2 or Code Section 42-3-2.

746 (b) Issuance of a Program and Treatment Completion Certificate by the ~~Department Board~~
 747 of Corrections or the Board of Community Supervision or the granting of a pardon from
 748 the State Board of Pardons and Paroles as provided in the Constitution and Code Section
 749 42-9-42 shall create a presumption of due care in hiring, retaining, licensing, leasing to,
 750 admitting to a school or program, or otherwise engaging in activity with the individual to
 751 whom the Program and Treatment Completion Certificate was issued or the pardon was
 752 granted. Such presumption may be rebutted by relevant evidence which extends beyond
 753 the scope of the Program and Treatment Completion Certificate or pardon and which was
 754 known or should have been known by the person against whom negligence is asserted."

755 **PART III**

756 **SECTION 3-1.**

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