

House Bill 485

By: Representatives Moore of the 95<sup>th</sup>, Werkheiser of the 157<sup>th</sup>, Holcomb of the 81<sup>st</sup>, Mitchell of the 88<sup>th</sup>, Kennard of the 102<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend the Official Code of Georgia Annotated so as to repeal the imposition of the death  
2 penalty in this state; to repeal references to procedures related to capital cases; to provide for  
3 related matters; to provide for an effective date; to repeal conflicting laws; and for other  
4 purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to  
8 procedure for sentencing and imposition of punishment, is amended by adding a new Code  
9 section to read as follows:

10 "17-10-1.5.

11 Notwithstanding any other provision of law to the contrary, on and after the effective date  
12 of this Code section, the imposition of capital punishment is prohibited in this state. The  
13 sentence of any person under sentence of death on the effective date of this Code section  
14 shall be commuted to a sentence of life without parole."

H. B. 485

15

**SECTION 2.**

16 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended  
17 by revising Code Section 5-5-40, relating to time of motion for new trial generally,  
18 amendments, extension of time for filing transcript, time of hearing, priority to cases in  
19 which death penalty imposed, appeal not limited to grounds urged, and new trial on court's  
20 own motion, as follows:

21 "5-5-40.

22 (a) All motions for new trial, except in extraordinary cases, shall be made within 30 days  
23 of the entry of the judgment on the verdict or entry of the judgment where the case was  
24 tried without a jury.

25 (b) The motion may be amended any time on or before the ruling thereon.

26 (c) Where the grounds of the motion require consideration of the transcript of evidence or  
27 proceedings, the court may in its discretion grant an extension of time, ~~except in cases~~  
28 ~~where the death penalty is imposed~~, for the preparation and filing of the transcript, which  
29 may be done any time on or before the hearing; or the court may in its discretion hear and  
30 determine the motion before the transcript of evidence and proceedings is prepared and  
31 filed.

32 (d) The grounds of the motion need not be approved by the court.

33 (e) The motion may be heard at any time; but, where it is not heard at the time specified  
34 in the order, it shall stand for hearing at such time as the court by order at any time may  
35 prescribe, unless sooner disposed of.

36 ~~(f) Motions for new trial in cases in which the death penalty is imposed shall be given~~  
37 ~~priority.~~

38 ~~(g)~~ On appeal, a party shall not be limited to the grounds urged in the motion or any  
39 amendment thereof.

40 ~~(h)~~(g) The court also shall be empowered to grant a new trial on its own motion within 30  
41 days from entry of the judgment, except in criminal cases where the defendant was  
42 acquitted."

43 **SECTION 3.**

44 Said title is further amended by revising Code Section 5-6-11, relating to issuance of  
45 remittitur in cases involving death penalty, as follows:

46 "5-6-11.

47 ~~In all cases where the Supreme Court of Georgia has affirmed the imposition of the death~~  
48 ~~penalty in a case or has affirmed the denial of a petition for a writ of habeas corpus in any~~  
49 ~~case in which the death penalty has been imposed, the remittitur shall not issue from that~~  
50 ~~court for at least 90 days from the date of the court's decision, or from the date of the~~  
51 ~~court's denial of a motion for a rehearing, if such motion is timely filed, whichever is later;~~  
52 ~~provided, however, that this Code section shall not apply where the defendant has~~  
53 ~~previously applied for a writ of habeas corpus which has been denied and the denial thereof~~  
54 ~~has been affirmed by the Supreme Court of Georgia, or where the writ has been granted but~~  
55 ~~the grant thereof has been reversed by the Supreme Court of Georgia. Reserved."~~

56 **SECTION 4.**

57 Said title is further amended in Code Section 5-6-34, relating to judgments and rulings  
58 deemed directly appealable, procedure for review of judgments, orders, or decisions not  
59 subject to direct appeal, scope of review, and hearings in criminal cases involving a capital  
60 offense for which death penalty is sought, by revising subsection (c) as follows:

61 ~~"(c) In criminal cases involving a capital offense for which the death penalty is sought, a~~  
62 ~~hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall be~~  
63 ~~a review of pretrial proceedings by the Supreme Court prior to a trial before a jury. Review~~  
64 ~~of pretrial proceedings, if ordered by the trial court, shall be exclusively as provided by~~

65 ~~Code Section 17-10-35.1 and no certificate of immediate review shall be necessary.~~  
66 Reserved."

67 **SECTION 5.**

68 Said title is further amended by revising Code Section 5-6-38, relating to time of filing notice  
69 of appeal, cross appeal, record and transcript for cross appeal, division of costs, and appeals  
70 in capital offense cases for which death penalty is sought, as follows:

71 "5-6-38.

72 (a) A notice of appeal shall be filed within 30 days after entry of the appealable decision  
73 or judgment complained of; but when a motion for new trial, a motion in arrest of  
74 judgment, or a motion for judgment notwithstanding the verdict has been filed, the notice  
75 shall be filed within 30 days after the entry of the order granting, overruling, or otherwise  
76 finally disposing of the motion. In civil cases, the appellee may institute cross appeal by  
77 filing notice thereof within 15 days from service of the notice of appeal by the appellant;  
78 and the appellee may present for adjudication on the cross appeal all errors or rulings  
79 adversely affecting him or her; and in no case shall the appellee be required to institute an  
80 independent appeal on his or her own right, although the appellee may at his or her option  
81 file an independent appeal. The notice of cross appeal shall set forth the title and docket  
82 number of the case, the name of the appellee, the name and address of his or her attorney,  
83 and a designation of any portions of the record or transcript designated for omission by the  
84 appellant and which the appellee desires included and shall state that the appellee takes a  
85 cross appeal. In all cases where the notice of appeal did not specify that a transcript of  
86 evidence and proceedings was to be transmitted as a part of the record on appeal, the notice  
87 of cross appeal shall state whether such transcript is to be filed for inclusion in the record  
88 on appeal. A copy of the notice of cross appeal shall be served on other parties of record  
89 in the manner prescribed by Code Section 5-6-32.

90 (b) Where a cross appeal is filed, only one record and, where specified, only one transcript  
91 of evidence and proceedings need be prepared and transmitted to the appellate court; but  
92 the cross appellant may, at his or her election, require that such a separate record (and  
93 transcript, if required) be transmitted. Where a cross appeal is filed and only one record  
94 (and transcript, where required) is sent up, the court shall by order provide for the division  
95 of costs therefor between the parties if they are unable to do so by agreement.

96 ~~(c) Notwithstanding subsection (a) of this Code section, where either the state or the~~  
97 ~~defendant wishes to appeal any judgment, ruling, or order in the pretrial proceedings of a~~  
98 ~~criminal case involving a capital offense for which the death penalty is sought, such appeal~~  
99 ~~shall be brought as provided in Code Section 17-10-35.1."~~

100

#### SECTION 6.

101 Said title is further amended in Code Section 5-6-41, relating to reporting, preparation, and  
102 disposition of transcript, correction of omissions or misstatements, preparation of transcript  
103 from recollections, filing of disallowed papers, filing of stipulations in lieu of transcript, and  
104 reporting at party's expense, by revising subsection (e) as follows:

105 "(e) Where a civil or criminal trial is reported by a court reporter and the evidence and  
106 proceedings are transcribed, the reporter shall complete the transcript and file the original  
107 and one copy thereof with the clerk of the trial court, together with the court reporter's  
108 certificate attesting to the correctness thereof. ~~In criminal cases where the accused was~~  
109 ~~convicted of a capital felony, an additional copy shall be filed for the Attorney General, for~~  
110 ~~which the court reporter shall receive compensation from the Department of Law as~~  
111 ~~provided by law.~~ The original transcript shall be transmitted to the appellate court as a part  
112 of the record on appeal; and one copy will be retained in the trial court, both as referred to  
113 in Code Section 5-6-43. Upon filing by the reporter, the transcript shall become a part of  
114 the record in the case and need not be approved by the trial judge."

115 **SECTION 7.**

116 Said title is further amended in Code Section 5-6-43, relating to preparation and transmittal  
117 of record on appeal by court clerk, retention of copy by clerk, furnishing at no cost to  
118 Attorney General in capital cases, and notification where defendant confined to jail, by  
119 revising subsection (b) as follows:

120 "~~(b) Where the accused in a criminal case was convicted of a capital felony, the clerk shall~~  
121 ~~likewise furnish, at no cost, the Attorney General with an exact copy of the record on~~  
122 ~~appeal. Reserved.~~"

123 **SECTION 8.**

124 Said title is further amended in Code Section 5-6-45, relating to operation of notice of appeal  
125 as supersedeas in criminal cases, bond, and review, by revising subsection (a) as follows:

126 "(a) In all criminal cases, the notice of appeal filed as provided in Code Sections 5-6-37  
127 and 5-6-38 shall serve as supersedeas in all cases where ~~a sentence of death has been~~  
128 ~~imposed or where~~ the defendant is admitted to bail. If the sentence isailable, the  
129 defendant may give bond in an amount prescribed by the presiding judge, with security  
130 approved by the clerk, conditioned upon the defendant's personal appearance to abide the  
131 final judgment or sentence of the court. If the judgment or sentence is or includes a fine  
132 which is unconditionally required to be paid, and is not required to be paid over a period  
133 of probation, nor as a condition of a suspended or probated sentence, nor as an alternative  
134 sentence, the bond may also be conditioned upon payment of the fine at the time the  
135 defendant appears to abide the final judgment or sentence."

136 **SECTION 9.**

137 Said title is further amended by revising Code Section 5-7-5, relating to right of accused to  
138 bail and amount of bail reviewable by appellate court, as follows:

139 "5-7-5.

140 In the event the state files an appeal as authorized in this chapter, the accused shall be  
 141 entitled to be released on reasonable bail pending the disposition of the appeal, ~~except in~~  
 142 ~~those cases punishable by death.~~ The amount of the bail, to be set by the court, shall be  
 143 reviewable on direct application by the court to which the appeal is taken."

144 **SECTION 10.**

145 Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus,  
 146 is amended by revising Code Section 9-14-4, relating to petition for writ, verification, and  
 147 to whom presented, as follows:

148 "9-14-4.

149 The petition for the writ of habeas corpus ~~must~~ shall be verified by the oath of the applicant  
 150 or some other person in his or her behalf. It may be presented to the judge of the superior  
 151 court of the circuit in which the illegal detention exists who may order the party restrained  
 152 of his or her liberty to be brought before him or her from any county in his or her circuit,  
 153 or it may be presented to the judge of the probate court of the county, except in cases ~~of~~  
 154 ~~capital felonies or in which a person is held for extradition under warrant of the Governor."~~

155 **SECTION 11.**

156 Said chapter is further amended in Code Section 9-14-42, relating to grounds for writ and  
 157 waiver of objection to jury composition, by revising subsection (c) as follows:

158 "(c) Any action brought pursuant to this article shall be filed within one year in the case  
 159 of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four  
 160 years in the case of a felony, ~~other than one challenging a conviction for which a death~~  
 161 ~~sentence has been imposed or challenging a sentence of death,~~ from:

162 (1) The judgment of conviction becoming final by the conclusion of direct review or the  
 163 expiration of the time for seeking such review; provided, however, that any person whose

164 conviction has become final as of July 1, 2004, regardless of the date of conviction, shall  
165 have until July 1, 2005, in the case of a misdemeanor or until July 1, 2008, in the case of  
166 a felony to bring an action pursuant to this Code section;

167 (2) The date on which an impediment to filing a petition which was created by state  
168 action in violation of the Constitution or laws of the United States or of this state is  
169 removed, if the petitioner was prevented from filing such state action;

170 (3) The date on which the right asserted was initially recognized by the Supreme Court  
171 of the United States or the Supreme Court of Georgia, if that right was newly recognized  
172 by said courts and made retroactively applicable to cases on collateral review; or

173 (4) The date on which the facts supporting the claims presented could have been  
174 discovered through the exercise of due diligence."

175 **SECTION 12.**

176 Said chapter is further amended by revising Code Section 9-14-47, relating to time for  
177 answer and hearing, as follows:

178 "9-14-47.

179 ~~Except as otherwise provided in Code Section 9-14-47.1 with respect to petitions~~  
180 ~~challenging for the first time state court proceedings resulting in a sentence of death, within~~  
181 Within 20 days after the filing and docketing of a petition under this article or within such  
182 further time as the court may set, the respondent shall answer or move to dismiss the  
183 petition. The court shall set the case for a hearing on the issues within a reasonable time  
184 after the filing of defensive pleadings."

185 **SECTION 13.**

186 Said chapter is further amended by repealing Code Section 9-14-47.1, relating to petitions  
187 challenging for the first time state court proceedings resulting in death sentence, in its  
188 entirety.



189 **SECTION 14.**

190 Said chapter is further amended in Code Section 9-14-48, relating to hearing, evidence,  
191 depositions, affidavits, determination of compliance with procedural rules, and disposition,  
192 by revising subsection (e) as follows:

193 "~~(e) A petition, other than one challenging a conviction for which a death sentence has~~  
194 ~~been imposed or challenging a sentence of death,~~ may be dismissed if there is a  
195 particularized showing that the respondent has been prejudiced in its ability to respond to  
196 the petition by delay in its filing unless the petitioner shows by a preponderance of the  
197 evidence that it is based on grounds of which he or she could not have had knowledge by  
198 the exercise of reasonable diligence before the circumstances prejudicial to the respondent  
199 occurred. This subsection shall apply only to convictions had before July 1, 2004."

200 **SECTION 15.**

201 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
202 Code Section 15-1-9.1, relating to requesting judicial assistance from other courts, as  
203 follows:

204 "15-1-9.1.

205 (a) As used in this Code section, the term:

206 (1) 'Administrative judge' means a superior court judge or senior judge of the superior  
207 court elected within an administrative district as provided by Code Section 15-5-4.

208 (2) 'Chief judge' means the judge most senior in time of service or, if applicable, the  
209 judge to whom the administrative duties of a court have been assigned.

210 (3) 'Judge' includes Justices, judges, senior judges, magistrates, and every other such  
211 judicial officer of whatever name existing or created.

212 (4) 'Part-time judge' means a judge who serves on a continuing or periodic basis but who  
213 is permitted by law to devote time to some other profession or occupation and whose  
214 compensation for that reason is less than that of a full-time judge.

215 (b)(1) If assistance is needed from a judge outside of the county, a superior court judge  
216 of this state or the chief judge of a class of courts other than an appellate court may make  
217 a request for judicial assistance in the court served by said requesting judge to the  
218 administrative judge of the judicial administrative district in which said requesting judge's  
219 court is located, if any of the following circumstances arises:

220 (A) A judge of the requesting court is disqualified for any cause from presiding in any  
221 matter pending before the court;

222 (B) A judge of the requesting court is unable to preside because of disability, illness,  
223 or absence;

224 (C) A judge of the requesting court is unable to preside because such judge is  
225 performing ordered military duty as such term is defined in Code Section 38-2-279; or

226 (D) A majority of the judges of the requesting court determines that the business of the  
227 court requires the temporary assistance of an additional judge or additional judges.

228 (2) If assistance is needed from a judge from the same county, the chief judge of any  
229 court within such county of this state may make a written request for assistance to the  
230 chief judge of any other court within such county, a senior judge of the superior court, a  
231 retired judge, or a judge emeritus of any court within the county. The request by the chief  
232 judge may be made if any of the following circumstances arises:

233 (A) A judge of the requesting court is disqualified for any cause from presiding in any  
234 matter pending before the court;

235 (B) A judge of the requesting court is unable to preside because of disability, illness,  
236 or absence;

237 (C) A judge of the requesting court is unable to preside because such judge is  
238 performing ordered military duty as such term is defined in Code Section 38-2-279;

239 (D) A majority of the judges of the requesting court determines that the business of the  
240 court requires the temporary assistance of an additional judge or additional judges; or

241 (E) A majority of the judges of the requesting court determines that the business of the  
242 court requires the permanent assistance of an additional judge or additional judges. If  
243 the requesting court is a state or superior court, the assisting judge or assisting judges  
244 may hear and decide matters otherwise in the exclusive jurisdiction of the state or  
245 superior court without regard to time, type of case, or limitations contained in the rules  
246 of such state or superior court; provided, however, that a chief magistrate or magistrate  
247 may serve as a permanent assisting judge only in counties having a population of  
248 180,000 or more according to the United States decennial census of 1990 or any future  
249 such census.

250 ~~(3) When a petition for habeas corpus is filed challenging for the first time state court~~  
251 ~~proceedings resulting in a death sentence, the clerk of the superior court acting on behalf~~  
252 ~~of the chief judge shall make a request for judicial assistance to the president of The~~  
253 ~~Council of Superior Court Judges of Georgia. Within 30 days of receipt of a request for~~  
254 ~~judicial assistance, the president of The Council of Superior Court Judges of Georgia~~  
255 ~~shall, under guidelines promulgated by the executive committee of said council, assign~~  
256 ~~the case to a judge of a circuit other than the circuit in which the conviction and sentence~~  
257 ~~were imposed.~~

258 ~~(4) In petitions under this article challenging for a second or subsequent time a state~~  
259 ~~court proceeding resulting in a death sentence, the chief judge of the court where the~~  
260 ~~petition is filed may make a request for judicial assistance to the president of The Council~~  
261 ~~of Superior Court Judges of Georgia upon certifying that the business of the court will~~  
262 ~~be impaired unless assistance is obtained. Within 30 days of receipt of a request for~~  
263 ~~judicial assistance, the president of The Council of Superior Court Judges of Georgia~~  
264 ~~shall, under guidelines promulgated by the executive committee of said council, assign~~  
265 ~~the case to a judge of a circuit other than the circuit in which the conviction and sentence~~  
266 ~~were imposed.~~

267 (c) A chief judge of a requesting court or assisting court shall be presumed to act with the  
268 consent of all judges of the court. However, if a judge of a court shall insist, all judges of  
269 that court shall vote upon whether to ratify the action taken by the chief judge under this  
270 Code section.

271 (d)(1) If the chief judge is unable because of disability, illness, or absence to make a  
272 request for assistance, a majority of the judges of the court may make such a request for  
273 him or her. If a court is served by only one judge who, himself or herself, is unable to  
274 make a request because of disability, illness, or absence, or when the judge or judges of  
275 the court fail to procure assistance in the event of the absence, illness, disability, or  
276 disqualification of one of the judges, and it is satisfactorily made to appear to the  
277 Governor that any regular or special term of any court will not be held or continued in  
278 session because of such failure to procure assistance, the Governor shall request the  
279 administrative judge of the judicial administrative district within which district the court  
280 in need of assistance lies to assign another judge to hold the regular or special term of  
281 such court. However, no judge shall be named or assigned to hold court when the time  
282 fixed by law for holding the term of court conflicts with the holding of any regular or  
283 special term already called by ~~him~~ such judge in his or her own court.

284 (2) If a vacancy shall occur in the judicial office for which the Governor has had to  
285 request assistance from the administrative judge of the judicial administrative district in  
286 a situation wherein the conditions exist as provided in paragraph (1) of this subsection,  
287 the Governor may appoint a judge of a court of record as an interim judge to fill  
288 temporarily such vacancy until the vacancy is permanently filled as provided by law.

289 (e) The administrative judge of the district receiving a request for assistance shall  
290 designate a judge to preside as requested. The designated judge may consent to preside in  
291 the requesting court provided he or she is otherwise qualified to serve as a judge in the  
292 requesting court. The qualifications of residency within a particular political or geographic

293 subdivision of the state shall not apply to a designated judge. The designation shall be  
294 made in writing and delivered to the judge requesting assistance.

295 (f) The written designation shall identify the court in need of assistance, the county where  
296 located, the time period covered, the specific case or cases for which assistance is sought  
297 if applicable, and the reason that assistance is needed. The written designation shall be  
298 filed and recorded on the minutes of the clerk of the court requesting assistance. Any  
299 amendment to the designation shall be written, filed, and recorded as is the original  
300 designation.

301 (g) A judge rendering assistance in accordance with this Code section shall discharge all  
302 the duties and shall exercise all of the powers and authority of a judge of the court in which  
303 he or she is presiding.

304 (h) The governing authority responsible for funding the operation of the requesting court  
305 shall bear the expenses of the judge rendering assistance in accordance with this Code  
306 section, except that such judges presiding in the appellate or superior courts in accordance  
307 with this Code section shall be compensated by state funds appropriated or otherwise  
308 available for the operation of these courts.

309 (i) Senior judges of the superior courts, senior judges appointed pursuant to Code  
310 Section 15-1-9.3, part-time judges, and retired judges or judges emeritus of the state courts  
311 shall receive the amount of compensation and payment for expenses as provided by Code  
312 Section 15-1-9.2. All other judges rendering assistance in accordance with this Code  
313 section shall be entitled to actual travel and lodging expenses but shall not be entitled to  
314 any additional compensation for this assistance.

315 (j) The court reporter, support personnel, facilities, equipment, and supplies necessary to  
316 perform the duties requested shall be provided to any judge rendering assistance in  
317 accordance with this Code section by the requesting court, unless otherwise agreed.

318 (k) In the event that the judge requesting assistance is a superior court judge other than a  
319 chief judge, then a copy of the assignment shall also be filed with the chief judge of the  
320 court to be assisted.

321 (l) As an alternative to the other provisions of this Code section, any judge other than a  
322 superior court judge may, under the circumstances described in subparagraph (b)(1)(B) or  
323 (b)(1)(C) of this Code section, request judicial assistance from any other judge who is not  
324 a superior court judge and who is otherwise qualified; and the judge so requested may  
325 agree to so serve. When one judge serves in the court of another pursuant to this  
326 subsection, a written designation by the requesting judge shall be filed and recorded on the  
327 minutes in the same general manner as provided for in subsection (f) of this Code section  
328 and the provisions of subsection (h) of this Code section shall apply with respect to the  
329 payment of expenses. The provisions of this subsection are supplementary to the  
330 provisions of the other subsections of this Code section.

331 (m) This Code section shall be supplementary to other laws relating to the authorization  
332 of replacement judges.

333 ~~(n) Notwithstanding the provisions of this Code section, a senior judge shall not be~~  
334 ~~assigned, designated, or preside in any criminal case involving a capital offense for which~~  
335 ~~the death penalty may be imposed once the state has filed a notice of its intention to seek~~  
336 ~~the death penalty; provided, however, that a senior judge may be assigned, designated, or~~  
337 ~~preside in such a case if the judge had previously been assigned or designated and presided~~  
338 ~~over such case while serving as an elected superior court judge prior to attaining senior~~  
339 ~~judge status."~~

340 **SECTION 16.**

341 Said title is further amended by revising Code Section 15-1-9.2, relating to senior judge of  
342 superior courts, as follows:

343 "15-1-9.2.

344 (a) The office of senior judge of the superior courts is created, and judges of the superior  
345 courts or former judges of the superior courts may become senior judges as follows:

346 (1) Any judge of the superior courts who retires pursuant to the provisions of Chapter 8  
347 or Chapter 23 of Title 47 and any such judge who receives a disability retirement benefit  
348 under such chapter may become a senior judge beginning on the effective date of the  
349 judge's retirement; and

350 (2) Any judge of the superior courts, whether or not said judge is a member of the  
351 retirement system created by Chapter 23 of Title 47, who ceases holding office as a judge  
352 of the superior courts and who has at least ten years of service as a judge of the superior  
353 courts at the time of ceasing to hold office and who is not eligible for appointment to the  
354 office of senior judge under any other law of this state may become a senior judge.

355 (a.1) Notwithstanding the provisions of subsection (a) of this Code section, any Justice of  
356 the Supreme Court of Georgia, Judge of the Court of Appeals, superior court judge, state  
357 court judge, magistrate court judge, or juvenile court judge who ceases holding office as  
358 a judge and who has a total of ten years of service in any combination of such offices or  
359 a total of nine years of service in any combination of such offices plus at least one year of  
360 service as chairperson of the State Board of Workers' Compensation may become a senior  
361 judge. Said combination must include at least five years' service as a Justice of the  
362 Supreme Court, Judge of the Court of Appeals, or judge of the superior court or at least five  
363 years as total served in combination as Justice of the Supreme Court, Judge of the Court  
364 of Appeals, or judge of the superior court.

365 (a.2) Senior judge status as provided in this Code section shall be acquired by a qualified  
366 former judge's applying to the Governor for appointment as senior judge. The Governor  
367 shall appoint each qualified applicant as a senior judge.

368 (b) The chief judge of any appellate or superior court of this state may make a written  
369 request for assistance to a senior judge. The request by the chief judge may be made if one  
370 of the following circumstances arise:

371 (1) A judge of the requesting court is disqualified for any cause from presiding in any  
372 matter pending before the court;

373 (2) A judge of the requesting court is unable to preside because of disability, illness, or  
374 absence; or

375 (3) A majority of the judges of the requesting court determines that the business of the  
376 court requires the temporary assistance of an additional judge or additional judges as  
377 provided for in Code Section 15-1-9.1.

378 (c) An active judge may call upon a senior judge to serve in an emergency or when the  
379 volume of cases or other unusual circumstances cause such service to be necessary in order  
380 to provide for the speedy and efficient disposition of the business of the circuit.

381 (d)(1) Senior judges serving as judges of an appellate or superior court under this Code  
382 section or any other provision of law shall receive compensation from state funds for each  
383 day of service, in the amount of the annual state salary of a judge of the applicable court,  
384 divided by 235. In addition to such compensation, such senior judges shall receive their  
385 actual expenses or, at the judge's option, in the event of service outside the county of the  
386 judge's residence, the same per diem expense authorized by law for members of the  
387 General Assembly and shall receive mileage at the same rate as other state employees for  
388 such services. Such compensation, expenses, and mileage shall be paid from state funds  
389 appropriated or otherwise available for the operation of the appellate or superior courts,  
390 upon a certificate by the senior judge as to the number of days served or the expenses and  
391 mileage. Such compensation shall not affect, diminish, or otherwise impair the payment  
392 or receipt of any retirement or pension benefits, when applicable, of such judge.

393 (2) Senior judges serving as judges of any court other than an appellate or superior court  
394 under this Code section or any other provision of law shall receive compensation for each



395 day of service, in the amount of the annual salary of a judge of the applicable court,  
396 divided by 235. In addition to such compensation, such senior judges shall receive their  
397 actual expenses or, at the judge's option, in the event of service outside the county of the  
398 judge's residence, the same per diem expense authorized by law for members of the  
399 General Assembly and shall receive mileage at the same rate as state employees for such  
400 services. Such compensation, expenses, and mileage shall be paid from funds  
401 appropriated or otherwise available for the operation of the applicable court, upon a  
402 certificate by the senior judge as to the number of days served or the expenses and  
403 mileage. Such compensation shall not affect, diminish, or otherwise impair the payment  
404 or receipt of any retirement or pension benefits, when applicable, of such judge.

405 ~~(e) Notwithstanding the provisions of this Code section, a senior judge shall not be~~  
406 ~~assigned, designated, or preside in any criminal case involving a capital offense for which~~  
407 ~~the death penalty may be imposed once the state has filed a notice of its intention to seek~~  
408 ~~the death penalty; provided, however, that a senior judge may be assigned, designated, or~~  
409 ~~preside in such a case if the judge had previously been assigned or designated and presided~~  
410 ~~over such case while serving as an elected superior court judge prior to attaining senior~~  
411 ~~judge status."~~

412

### SECTION 17.

413 Said title is further amended by revising Code Section 15-1-9.3, relating to senior judge of  
414 state court, probate court, or juvenile court, and capital cases, as follows:

415 "15-1-9.3.

416 (a)(1) Any state court judge or juvenile court judge who retires pursuant to the provisions  
417 of Chapter 23 of Title 47 after having served for ten or more years in any combination  
418 of service as a judge of a state court or juvenile court may be appointed a senior judge of  
419 the type of court from which the judge retired.

420 (2) Any state court or juvenile court judge, whether or not said judge is a member of the  
421 retirement fund created by Chapter 23 of Title 47, who ceases holding office as a judge  
422 and who has at least ten years in any combination of service as judge of a state court or  
423 juvenile court at the time of ceasing to hold office and who is not eligible for appointment  
424 to the office of senior judge under any other law of this state may be appointed as a senior  
425 judge as provided in this Code section.

426 (3) No judge of a state court or juvenile court who retires because of disability pursuant  
427 to the provisions of Chapter 23 of Title 47 shall be eligible for appointment as a senior  
428 judge pursuant to the provisions of this Code section.

429 (4) In this paragraph, 'probate court' has the same meaning as set out in paragraph (2) of  
430 Code Section 15-9-120. Any judge of the probate court who ceases holding office as a  
431 judge of the probate court after serving as such for at least ten years and who has not been  
432 appointed to the office of senior judge under any other law of this state may be appointed  
433 as a senior judge as provided in this Code section.

434 (b) Upon becoming eligible for appointment pursuant to the provisions of this Code  
435 section, a judge who ceases to hold office may become a senior judge and in that capacity  
436 may be called upon to serve as a justice or judge in any court of this state.

437 (c) Senior judge status shall be acquired by a qualified former judge's applying to the  
438 Governor for appointment as senior judge. The Governor shall appoint each qualified  
439 applicant as a senior judge.

440 (d) The judge of any court of this state may make a written request for assistance to a  
441 senior judge. The request by the judge may be made if one of the following circumstances  
442 arise:

443 (1) A judge of the requesting court is disqualified for any cause from presiding in any  
444 matter pending before the court;

445 (2) A judge of the requesting court is unable to preside because of disability, illness, or  
446 absence; or

447 (3) A majority of the judges of the requesting court determines that the business of the  
448 court requires the temporary assistance of an additional judge or additional judges as  
449 provided for in Code Section 15-1-9.1.

450 (e) An active judge may call upon a senior judge to serve in an emergency or when the  
451 volume of cases or other unusual circumstances cause such service to be necessary in order  
452 to provide for the timely and efficient disposition of the business of the court.

453 (f) A senior judge shall receive compensation and expenses as provided in subsection (d)  
454 of Code Section 15-1-9.2.

455 ~~(g) Notwithstanding the provisions of this Code section, a senior judge shall not be~~  
456 ~~assigned, designated, or preside in any criminal case involving a capital offense for which~~  
457 ~~the death penalty may be imposed once the state has filed a notice of its intention to seek~~  
458 ~~the death penalty; provided, however, that a senior judge may be assigned, designated, or~~  
459 ~~preside in such a case if the judge had previously been assigned or designated and presided~~  
460 ~~over such case while serving as an elected superior court judge prior to attaining senior~~  
461 ~~judge status."~~

462 **SECTION 18.**

463 Said title is further amended by revising Code Section 15-3-3, relating to jurisdiction over  
464 certain crimes, as follows:

465 "15-3-3.

466 Pursuant to Article VI, Section V, Paragraph III of the Constitution of this state, the Court  
467 of Appeals shall have jurisdiction of the trial and correction of errors of law in cases  
468 involving the crimes of armed robbery, rape, and kidnapping ~~wherein the death penalty has~~  
469 ~~not been imposed."~~

470 **SECTION 19.**

471 Said title is further amended in Code Section 15-12-142, relating to separation and  
472 confinement, by revising subsection (a) as follows:

473 "(a) At any time during the trial of a civil or criminal case, ~~except in capital cases,~~ either  
474 before or during jury deliberation, the judge may, in his or her discretion, allow the jury to  
475 be separated and the members thereof to be dispersed under appropriate instructions."

476 **SECTION 20.**

477 Said title is further amended by revising Code Section 15-12-160.1, relating to impanelling  
478 jurors for criminal trials and choosing and summoning prospective jurors if necessary to fill  
479 panel, as follows:

480 "15-12-160.1.

481 On and after July 1, 2012, when any person stands indicted for a felony, the court shall  
482 have impaneled 30 jurors from which the defense and prosecution may strike jurors;  
483 ~~provided, however, that in any case in which the state announces its intention to seek the~~  
484 ~~death penalty, the court shall have impaneled 42 jurors from which the defense and state~~  
485 ~~may strike jurors.~~ If, for any reason, after striking from the panel there remain fewer than  
486 12 qualified jurors to try the case, the clerk shall choose and cause to be summoned such  
487 numbers of persons who are competent prospective jurors as may be necessary to provide  
488 a full panel or successive panels. In making up the panel or successive panels, the clerk  
489 shall choose the names of prospective trial jurors in the same manner as prospective trial  
490 jurors are chosen and cause such persons to be summoned."

491 **SECTION 21.**

492 Said title is further amended in Code Section 15-12-164, relating to questions on voir dire  
493 and setting aside juror for cause, by revising subsection (a) as follows:

494 "(a) On voir dire examination in a felony trial, the jurors shall be asked the following  
495 questions:

496 (1) 'Have you, for any reason, formed and expressed any opinion in regard to the guilt  
497 or innocence of the accused?' If the juror answers in the negative, the question in  
498 paragraph (2) of this subsection shall be propounded to him or her;

499 (2) 'Have you any prejudice or bias resting on your mind either for or against the  
500 accused?' If the juror answers in the negative, the question in paragraph (3) of this  
501 subsection shall be propounded to him or her;

502 (3) 'Is your mind perfectly impartial between the state and the accused?' If the juror  
503 answers this question in the affirmative, ~~he~~ the juror shall be adjudged and held to be a  
504 competent juror in all cases ~~where the authorized penalty for the offense does not involve~~  
505 ~~the life of the accused; but when it does involve the life of the accused, the question in~~  
506 ~~paragraph (4) of this subsection shall also be put to him;~~

507 ~~(4) 'Are you conscientiously opposed to capital punishment?' If the juror answers this~~  
508 ~~question in the negative, he shall be held to be a competent juror."~~

509 **SECTION 22.**

510 Said title is further amended by revising Code Section 15-12-165, relating to number of  
511 peremptory challenges, as follows:

512 "15-12-165.

513 Every person accused of a felony may peremptorily challenge nine of the jurors impaneled  
514 to try him or her. The state shall be allowed the same number of peremptory challenges  
515 allowed to the accused; ~~provided, however, that in any case in which the state announces~~  
516 ~~its intention to seek the death penalty, the accused may peremptorily challenge 15 jurors~~  
517 ~~and the state shall be allowed the same number of peremptory challenges."~~

518 **SECTION 23.**

519 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
520 amended in Code Section 16-1-3, relating to definitions, by revising paragraph (5) as  
521 follows:

522 "(5) 'Felony' means a crime punishable ~~by death~~, by imprisonment for life; or by  
523 imprisonment for more than 12 months."

524 **SECTION 24.**

525 Said title is further amended by revising Code Section 16-4-6, relating to penalties for  
526 criminal attempt, as follows:

527 "16-4-6.

528 (a) A person convicted of the offense of criminal attempt to commit a crime punishable  
529 ~~by death~~ or by life imprisonment shall be punished by imprisonment for not less than one  
530 year nor more than 30 years.

531 (b) A person convicted of the offense of criminal attempt to commit a felony, other than  
532 a felony punishable by ~~death~~ or life imprisonment, shall be punished by imprisonment for  
533 not less than one year nor more than one-half the maximum period of time for which he or  
534 she could have been sentenced if he or she had been convicted of the crime attempted, by  
535 one-half the maximum fine to which he or she could have been subjected if he or she had  
536 been convicted of the crime attempted, or both.

537 (c) A person convicted of the offense of criminal attempt to commit a misdemeanor shall  
538 be punished as for a misdemeanor."

539 **SECTION 25.**

540 Said title is further amended in Code Section 16-4-7, relating to criminal solicitation, by  
541 revising subsection (b) as follows:

542 "(b) A person convicted of the offense of criminal solicitation to commit a felony shall be  
543 punished by imprisonment for not less than one nor more than three years. A person  
544 convicted of the offense of criminal solicitation to commit a crime punishable ~~by death or~~  
545 by life imprisonment shall be punished by imprisonment for not less than one nor more  
546 than five years."

547 **SECTION 26.**

548 Said title is further amended by revising Code Section 16-4-8, relating to conspiracy to  
549 commit a crime, as follows:

550 "16-4-8.

551 A person commits the offense of conspiracy to commit a crime when he or she together  
552 with one or more persons conspires to commit any crime and any one or more of such  
553 persons does any overt act to ~~effect~~ affect the object of the conspiracy. A person convicted  
554 of the offense of criminal conspiracy to commit a felony shall be punished by  
555 imprisonment for not less than one year nor more than one-half the maximum period of  
556 time for which he or she could have been sentenced if he or she had been convicted of the  
557 crime conspired to have been committed, by one-half the maximum fine to which he or she  
558 could have been subjected if he had been convicted of such crime, or both. A person  
559 convicted of the offense of criminal conspiracy to commit a misdemeanor shall be punished  
560 as for a misdemeanor. A person convicted of the offense of criminal conspiracy to commit  
561 a crime punishable ~~by death or~~ by life imprisonment shall be punished by imprisonment  
562 for not less than one year nor more than ten years."

563 **SECTION 27.**

564 Said title is further amended in Code Section 16-5-1, relating to murder, malice murder,  
565 felony murder, and murder in the second degree, by revising paragraph (1) of subsection (e)  
566 as follows:

567 "(e)(1) A person convicted of the offense of murder shall be punished ~~by death~~, by  
568 imprisonment for life without parole; or by imprisonment for life."

569 **SECTION 28.**

570 Said title is further amended in Code Section 16-5-40, relating to kidnapping, by revising  
571 subsection (d) as follows:

572 "(d) A person convicted of the offense of kidnapping shall be punished by:

573 (1) Imprisonment for not less than ten nor more than 20 years if the kidnapping involved  
574 a victim who was 14 years of age or older;

575 (2) Imprisonment for life or by a split sentence that is a term of imprisonment for not less  
576 than 25 years and not exceeding life imprisonment, followed by probation for life, if the  
577 kidnapping involved a victim who is less than 14 years of age;

578 (3) Life imprisonment ~~or death~~ if the kidnapping was for ransom; or

579 (4) Life imprisonment ~~or death~~ if the person kidnapped received bodily injury."

580 **SECTION 29.**

581 Said title is further amended in Code Section 16-5-44, relating to hijacking an aircraft, by  
582 revising subsection (c) as follows:

583 "(c) A person convicted of the offense of hijacking an aircraft shall be punished by ~~death~~  
584 ~~or life imprisonment.~~"

585 **SECTION 30.**

586 Said title is further amended in Code Section 16-6-1, relating to rape, by revising subsection  
587 (b) as follows:

588 "(b) A person convicted of the offense of rape shall be punished ~~by death~~, by imprisonment  
589 for life without parole, by imprisonment for life, or by a split sentence that is a term of  
590 imprisonment for not less than 25 years and not exceeding life imprisonment, followed by



591 probation for life. Any person convicted under this Code section shall, in addition, be  
592 subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and  
593 17-10-7."

594 **SECTION 31.**

595 Said title is further amended in Code Section 16-8-41, relating to armed robbery, robbery by  
596 intimidation, and taking controlled substance from pharmacy in course of committing  
597 offense, by revising subsection (b) as follows:

598 "(b) A person convicted of the offense of armed robbery shall be punished by ~~death or~~  
599 imprisonment for life or by imprisonment for not less than ten nor more than 20 years."

600 **SECTION 32.**

601 Said title is further amended in Code Section 16-10-70, relating to perjury, by revising  
602 subsection (b) as follows:

603 "(b) A person convicted of the offense of perjury shall be punished by a fine of not more  
604 than \$1,000.00 or by imprisonment for not less than one nor more than ten years, or both.  
605 A person convicted of the offense of perjury that was a cause of another's being imprisoned  
606 shall be sentenced to a term not to exceed the sentence provided for the crime for which  
607 the other person was convicted. ~~A person convicted of the offense of perjury that was a~~  
608 ~~cause of another's being punished by death shall be punished by life imprisonment."~~

609 **SECTION 33.**

610 Said title is further amended in Code Section 16-11-1, relating to treason, by revising  
611 subsection (b) as follows:

612 "(b) A person convicted of the offense of treason shall be punished ~~by death or~~ by  
613 imprisonment for life or for not less than 15 years."

614 **SECTION 34.**

615 Said title is further amended in Code Section 16-11-221, relating to penalties regarding  
616 domestic terrorism, by revising paragraph (1) of subsection (a) as follows:

617 "(1) If death results to any individual, ~~by death,~~ by imprisonment for life without parole;  
618 or by imprisonment for life;"

619 **SECTION 35.**

620 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
621 amended in Code Section 17-3-1, relating to limitation on prosecutions generally, by revising  
622 subsection (b) as follows:

623 "(b) Except as otherwise provided in Code Section 17-3-2.1, prosecution for other crimes  
624 punishable by ~~death~~ or life imprisonment shall be commenced within seven years after the  
625 commission of the crime except as provided by subsection (d) of this Code section;  
626 provided, however, that prosecution for the crime of forcible rape shall be commenced  
627 within 15 years after the commission of the crime."

628 **SECTION 36.**

629 Said title is further amended in Code Section 17-5-56, relating to maintenance of physical  
630 evidence containing biological material, by revising subsection (b) as follows:

631 "(b) ~~In a case in which the death penalty is imposed, the evidence shall be maintained until~~  
632 ~~the sentence in the case has been carried out.~~ Evidence in all felony cases that contains  
633 biological material, including, but not limited to, stains, fluids, or hair samples that relate  
634 to the identity of the perpetrator of the crime shall be maintained for the period of time that  
635 the crime remains unsolved or until the sentence in the case is completed, whichever occurs  
636 last."

637

**SECTION 37.**

638 Said title is further amended in Code Section 17-6-1, relating to where offenses bailable,  
639 procedure, schedule of bails, and appeal bonds, by revising subsection (h) as follows:

640 "(h) Except in cases in which life imprisonment ~~or the death penalty~~ may be imposed, a  
641 judge of the superior court by written order may delegate the authority provided for in this  
642 Code section to any judge of any court of inquiry within such superior court judge's circuit.  
643 However, such authority may not be exercised outside the county in which said judge of  
644 the court of inquiry was appointed or elected. The written order delegating such authority  
645 shall be valid for a period of one year, but may be revoked by the superior court judge  
646 issuing such order at any time prior to the end of that one-year period."

647

**SECTION 38.**

648 Said title is further amended by revising Code Section 17-7-50, relating to right to grand jury  
649 hearing within 90 days where bail refused and right to have bail set absent hearing within 90  
650 day period, as follows:

651 "17-7-50.

652 Any person who is arrested for a crime and who is refused bail shall, within 90 days after  
653 the date of confinement, be entitled to have the charge against him or her heard by a grand  
654 jury having jurisdiction over the accused person; ~~provided, however, that if the person is~~  
655 ~~arrested for a crime for which the death penalty is being sought, the superior court may,~~  
656 ~~upon motion of the district attorney for an extension and after a hearing and good cause~~  
657 ~~shown, grant one extension to the 90 day period not to exceed 90 additional days; and,~~  
658 ~~provided, further, that if such extension is granted by the court, the person shall not be~~  
659 ~~entitled to have the charge against him or her heard by the grand jury until the expiration~~  
660 ~~of such extended period. In the event no grand jury considers the charges against the~~  
661 ~~accused person within the 90 day period of confinement or within the extended period of~~

662 ~~confinement where such an extension is granted by the court, the accused shall have bail~~  
663 ~~set upon application to the court."~~

664 **SECTION 39.**

665 Said title is further amended by revising Code Section 17-7-50.1, relating to time for  
666 presentment of child's case to a grand jury and exception, as follows:

667 "17-7-50.1.

668 (a) Any child who is charged with a crime that is within the jurisdiction of the superior  
669 court, as provided in Code Section 15-11-560 or 15-11-561, who is detained shall within  
670 180 days of the date of detention be entitled to have the charge against him or her presented  
671 to the grand jury. The superior court shall, upon motion for an extension of time and after  
672 a hearing and good cause shown, grant one extension to the original 180 day period, not  
673 to exceed 90 additional days.

674 (b) If the grand jury does not return a true bill against the detained child within the time  
675 limitations set forth in subsection (a) of this Code section, the detained child's case shall  
676 be transferred to the juvenile court and shall proceed thereafter as provided in Chapter 11  
677 of Title 15.

678 ~~(c) The provisions of this Code section shall not apply to any case in which the prosecuting~~  
679 ~~attorney files notice with the court that the detained child is a codefendant to a case in~~  
680 ~~which an adult is charged with committing the same offense and the state has filed a notice~~  
681 ~~of its intention to seek the death penalty."~~

682 **SECTION 40.**

683 Said title is further amended by revising Code Section 17-7-70, relating to trial upon  
684 accusations in felony cases and trial upon accusations of felony and misdemeanor cases in  
685 which guilty plea entered and indictment waived, as follows:

686 "17-7-70.

687 (a) In all felony cases, ~~other than cases involving capital felonies~~, in which defendants  
688 have been bound over to the superior court, are confined in jail or released on bond pending  
689 a commitment hearing, or are in jail having waived a commitment hearing, the district  
690 attorney shall have authority to prefer accusations, and such defendants shall be tried on  
691 such accusations, provided that defendants going to trial under such accusations shall, in  
692 writing, waive indictment by a grand jury.

693 (b) Judges of the superior court may open their courts at any time without the presence of  
694 either a grand jury or a trial jury to receive and act upon pleas of guilty in misdemeanor  
695 cases and in felony cases, except those punishable by ~~death or~~ life imprisonment, when the  
696 judge and the defendant consent thereto. The judge may try the issues in such cases  
697 without a jury upon an accusation filed by the district attorney where the defendant has  
698 waived indictment and consented thereto in writing and counsel is present in court  
699 representing the defendant either by virtue of his or her employment or by appointment by  
700 the court."

701 **SECTION 41.**

702 Said title is further amended in Code Section 17-7-95, relating to plea of nolo contendere in  
703 noncapital felony cases, imposition of sentence, use of plea in other proceedings, use of plea  
704 to effect civil disqualifications, and imposition of sentence upon plea deemed jeopardy, by  
705 revising subsection (a) as follows:

706 "(a) The defendant in all criminal cases ~~other than capital felonies~~ in any court of this state,  
707 whether the offense charged is a felony or a misdemeanor, may, with the consent and  
708 approval of the judge of the court, enter a plea of nolo contendere instead of a plea of guilty  
709 or not guilty."

710 **SECTION 42.**

711 Said title is further amended by revising Code Section 17-7-131, relating to proceedings upon  
712 plea of insanity or mental incompetency at time of crime, as follows:

713 "17-7-131.

714 (a) For purposes of this Code section, the term:

715 (1) 'Insane at the time of the crime' means meeting the criteria of Code Section 16-3-2  
716 or 16-3-3. However, the term shall not include a mental state manifested only by  
717 repeated unlawful or antisocial conduct.

718 (2) 'Intellectual disability' means having significantly subaverage general intellectual  
719 functioning resulting in or associated with impairments in adaptive behavior which  
720 manifested during the developmental period.

721 (3) 'Mentally ill' means having a disorder of thought or mood which significantly impairs  
722 judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary  
723 demands of life. However, the term 'mental illness' shall not include a mental state  
724 manifested only by repeated unlawful or antisocial conduct.

725 (b)(1) In all cases in which the defense of insanity, mental illness, or intellectual  
726 disability is interposed, the jury, or the court if tried by it, shall find whether the  
727 defendant is:

728 (A) Guilty;

729 (B) Not guilty;

730 (C) Not guilty by reason of insanity at the time of the crime;

731 (D) Guilty but mentally ill at the time of the crime, but the finding of guilty but  
732 mentally ill shall be made only in felony cases; or

733 (E) Guilty but with intellectual disability, but the finding of intellectual disability shall  
734 be made only in felony cases.

735 (2) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but with  
736 intellectual disability shall not be accepted until the defendant has undergone examination

737 by a licensed psychologist or psychiatrist and the court has examined the psychological  
738 or psychiatric reports, held a hearing on the issue of the defendant's mental condition, and  
739 is satisfied that there is a factual basis that the defendant was mentally ill at the time of  
740 the offense or has intellectual disability to which the plea is entered.

741 (2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be  
742 accepted and the defendant adjudicated not guilty by reason of insanity by the court  
743 without a jury until the defendant has undergone examination by a licensed psychologist  
744 or psychiatrist and the court has examined the psychological or psychiatric reports, has  
745 held a hearing on the issue of the defendant's mental condition, and the court is satisfied  
746 that the defendant was insane at the time of the crime according to the criteria of Code  
747 Section 16-3-2 or 16-3-3.

748 (3) In all cases in which the defense of insanity, mental illness, or intellectual disability  
749 is interposed, the trial judge shall charge the jury, in addition to other appropriate charges,  
750 the following:

751 (A) I charge you that should you find the defendant not guilty by reason of insanity at  
752 the time of the crime, the defendant will be committed to a state mental health facility  
753 until such time, if ever, that the court is satisfied that he or she should be released  
754 pursuant to law.

755 (B) I charge you that should you find the defendant guilty but mentally ill at the time  
756 of the crime, the defendant will be placed in the custody of the Department of  
757 Corrections which will have responsibility for the evaluation and treatment of the  
758 mental health needs of the defendant, which may include, at the discretion of the  
759 Department of Corrections, referral for temporary hospitalization at a facility operated  
760 by the Department of Behavioral Health and Developmental Disabilities.

761 (C) I charge you that should you find the defendant guilty but with intellectual  
762 disability, the defendant will be placed in the custody of the Department of Corrections,  
763 which will have responsibility for the evaluation and treatment of the mental health

764 needs of the defendant, which may include, at the discretion of the Department of  
765 Corrections, referral for temporary hospitalization at a facility operated by the  
766 Department of Behavioral Health and Developmental Disabilities.

767 (c) In all criminal trials in any of the courts of this state wherein an accused shall contend  
768 that he or she was insane, mentally ill, or intellectually disabled at the time the act or acts  
769 charged against him or her were committed, the trial judge shall instruct the jury that they  
770 may consider, in addition to verdicts of 'guilty' and 'not guilty,' the additional verdicts of  
771 'not guilty by reason of insanity at the time of the crime,' 'guilty but mentally ill at the time  
772 of the crime,' and 'guilty but with intellectual disability.'

773 (1) The defendant may be found 'not guilty by reason of insanity at the time of the crime'  
774 if he or she meets the criteria of Code Section 16-3-2 or 16-3-3 at the time of the  
775 commission of the crime. If the court or jury should make such finding, it shall so  
776 specify in its verdict.

777 (2) The defendant may be found 'guilty but mentally ill at the time of the crime' if the  
778 jury, or court acting as trier of facts, finds beyond a reasonable doubt that the defendant  
779 is guilty of the crime charged and was mentally ill at the time of the commission of the  
780 crime. If the court or jury should make such finding, it shall so specify in its verdict.

781 (3) The defendant may be found 'guilty but with intellectual disability' if the jury, or  
782 court acting as trier of facts, finds beyond a reasonable doubt that the defendant is guilty  
783 of the crime charged and is with intellectual disability. If the court or jury should make  
784 such finding, it shall so specify in its verdict.

785 (d) Whenever a defendant is found not guilty by reason of insanity at the time of the crime,  
786 the court shall retain jurisdiction over the person so acquitted and shall order such person  
787 to be detained in a state mental health facility, to be selected by the Department of  
788 Behavioral Health and Developmental Disabilities, for a period not to exceed 30 days from  
789 the date of the acquittal order, for evaluation of the defendant's present mental condition.  
790 Upon completion of the evaluation, the proper officials of the mental health facility shall



791 send a report of the defendant's present mental condition to the trial judge, the prosecuting  
792 attorney, and the defendant's attorney, if any.

793 (e)(1) After the expiration of the 30 days' evaluation period in the state mental health  
794 facility, if the evaluation report from the Department of Behavioral Health and  
795 Developmental Disabilities indicates that the defendant does not meet the inpatient  
796 commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the trial judge may  
797 issue an order discharging the defendant from custody without a hearing.

798 (2) If the defendant is not so discharged, the trial judge shall order a hearing to determine  
799 if the defendant meets the inpatient commitment criteria of Chapter 3 of Title 37 or  
800 Chapter 4 of Title 37. If such criteria are not met, the defendant must be discharged.

801 (3) The defendant shall be detained in custody until completion of the hearing. The  
802 hearing shall be conducted at the earliest opportunity after the expiration of the 30 days'  
803 evaluation period but in any event within 30 days after receipt by the prosecuting attorney  
804 of the evaluation report from the mental health facility. The court may take judicial  
805 notice of evidence introduced during the trial of the defendant and may call for testimony  
806 from any person with knowledge concerning whether the defendant is currently a  
807 mentally ill person in need of involuntary treatment, as defined by paragraph (12) of  
808 Code Section 37-3-1, or a person with a developmental disability, as defined in paragraph  
809 (8) of Code Section 37-1-1, who presents a substantial risk of imminent harm to himself  
810 or herself or others. The prosecuting attorney may cross-examine the witnesses called  
811 by the court and the defendant's witnesses and present relevant evidence concerning the  
812 issues presented at the hearing.

813 (4) If the judge determines that the defendant meets the inpatient commitment criteria  
814 of Chapter 3 of Title 37 or Chapter 4 of Title 37, the judge shall order the defendant to  
815 be committed to the Department of Behavioral Health and Developmental Disabilities to  
816 receive involuntary treatment under Chapter 3 of Title 37 or to receive services under  
817 Chapter 4 of Title 37. The defendant is entitled to the following rights specified below

818 and shall be notified in writing of these rights at the time of his or her admission for  
819 evaluation under subsection (d) of this Code section. Such rights are:

820 (A) A notice that a hearing will be held and the time and place thereof;

821 (B) A notice that the defendant has the right to counsel and that the defendant or his  
822 or her representatives may apply immediately to the court to have counsel appointed  
823 if the defendant cannot afford counsel and that the court will appoint counsel for the  
824 defendant unless he or she indicates in writing that he or she does not desire to be  
825 represented by counsel;

826 (C) The right to confront and cross-examine witnesses and to offer evidence;

827 (D) The right to subpoena witnesses and to require testimony before the court in person  
828 or by deposition from any person upon whose evaluation the decision of the court may  
829 rest;

830 (E) Notice of the right to have established an individualized service plan specifically  
831 tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title  
832 37 and Chapter 4 of Title 37; and

833 (F) A notice that the defendant has the right to be examined by a physician or a  
834 licensed clinical psychologist of his or her own choice at his or her own expense and  
835 to have that physician or psychologist submit a suggested service plan for the patient  
836 which conforms with the requirements of Chapter 3 of Title 37 or Chapter 4 of Title 37,  
837 whichever is applicable.

838 (5)(A) If a defendant appears to meet the criteria for outpatient involuntary treatment  
839 as defined in Part 3 of Article 3 of Chapter 3 of Title 37, which shall be the criteria for  
840 release on a trial basis in the community in preparation for a full release, the court may  
841 order a period of conditional release subject to certain conditions set by the court. The  
842 court is authorized to appoint an appropriate community service provider to work in  
843 conjunction with the Department of Behavioral Health and Developmental Disabilities

844 to monitor the defendant's compliance with these conditions and to make regular reports  
845 to the court.

846 (B) If the defendant successfully completes all requirements during this period of  
847 conditional release, the court shall discharge the individual from commitment at the end  
848 of that period. Such individuals may be referred for community mental health,  
849 developmental disabilities, or substance abuse services as appropriate. The court may  
850 require the individual to participate in outpatient treatment or any other services or  
851 programs authorized by Chapter 3, 4, or 7 of Title 37.

852 (C) If the defendant does not successfully complete any or all requirements of the  
853 conditional release period, the court may:

854 (i) Revoke the period of conditional release and return the defendant to a state  
855 hospital for inpatient services; or

856 (ii) Impose additional or revise existing conditions on the defendant as appropriate  
857 and continue the period of conditional release.

858 (D) For any decision rendered under subparagraph (C) of this paragraph, the defendant  
859 may request a review by the court of such decision within 20 days of the order of the  
860 court.

861 (E) The Department of Behavioral Health and Developmental Disabilities and any  
862 community services providers, including the employees and agents of both, providing  
863 supervision or treatment during a period of conditional release shall not be held  
864 criminally or civilly liable for any acts committed by a defendant placed by the  
865 committing court on a period of conditional release.

866 (f) A defendant who has been found not guilty by reason of insanity at the time of the  
867 crime and is ordered committed to the Department of Behavioral Health and  
868 Developmental Disabilities under subsection (e) of this Code section may only be  
869 discharged from that commitment by order of the committing court in accordance with the  
870 procedures specified in this subsection:

871 (1) Application for the release of a defendant who has been committed to the Department  
872 of Behavioral Health and Developmental Disabilities under subsection (e) of this Code  
873 section upon the ground that he or she does not meet the civil commitment criteria under  
874 Chapter 3 of Title 37 or Chapter 4 of Title 37 may be made to the committing court,  
875 either by such defendant or by the superintendent of the state hospital in which the said  
876 defendant is detained;

877 (2) The burden of proof in such release hearing shall be upon the applicant. The  
878 defendant shall have the same rights in the release hearing as set forth in subsection (e)  
879 of this Code section; and

880 (3) If the finding of the court is adverse to release in such hearing held pursuant to this  
881 subsection on the grounds that such defendant does meet the inpatient civil commitment  
882 criteria, a further release application by the defendant shall not be heard by the court until  
883 12 months have elapsed from the date of the hearing upon the last preceding application.  
884 The Department of Behavioral Health and Developmental Disabilities shall have the  
885 independent right to request a release hearing once every 12 months.

886 (g)(1) Whenever a defendant is found guilty but mentally ill at the time of a felony or  
887 guilty but has intellectual disability, or enters a plea to that effect that is accepted by the  
888 court, the court shall sentence him or her in the same manner as a defendant found guilty  
889 of the offense, ~~except as otherwise provided in subsection (j) of this Code section.~~ A  
890 defendant who is found guilty but mentally ill at the time of the felony or guilty but has  
891 intellectual disability shall be committed to an appropriate penal facility and shall be  
892 evaluated then treated, if indicated, within the limits of state funds appropriated therefor,  
893 in such manner as is psychiatrically indicated for his or her mental illness or intellectual  
894 disability.

895 (2) If at any time following the defendant's conviction as a guilty but mentally ill or  
896 guilty but with intellectual disability offender it is determined that a temporary transfer  
897 to the Department of Behavioral Health and Developmental Disabilities is clinically

898 indicated for his or her mental illness or intellectual disability, then the defendant shall  
899 be transferred to the Department of Behavioral Health and Developmental Disabilities  
900 pursuant to procedures set forth in regulations of the Department of Corrections and the  
901 Department of Behavioral Health and Developmental Disabilities. In all such cases, the  
902 legal custody of the defendant shall be retained by the Department of Corrections. Upon  
903 notification from the Department of Behavioral Health and Developmental Disabilities  
904 to the Department of Corrections that hospitalization at a Department of Behavioral  
905 Health and Developmental Disabilities facility is no longer clinically indicated for his or  
906 her mental illness or intellectual disability, the Department of Corrections shall transfer  
907 the defendant back to its physical custody and shall place such individual in an  
908 appropriate penal institution.

909 (h) If a defendant who is found guilty but mentally ill at the time of a felony or guilty but  
910 with intellectual disability is placed on probation under the 'State-wide Probation Act,'  
911 Article 2 of Chapter 8 of Title 42, the court may require that the defendant undergo  
912 available outpatient medical or psychiatric treatment or seek similar available voluntary  
913 inpatient treatment as a condition of probation. Persons required to receive such services  
914 may be charged fees by the provider of the services.

915 (i) In any case in which the defense of insanity is interposed or a plea of guilty but  
916 mentally ill at the time of the felony or a plea of guilty but with intellectual disability is  
917 made and an examination is made of the defendant pursuant to Code Section 17-7-130.1  
918 or paragraph (2) of subsection (b) of this Code section, upon the defendant's being found  
919 guilty or guilty but mentally ill at the time of the crime or guilty but with intellectual  
920 disability, a copy of any such examination report shall be forwarded to the Department of  
921 Corrections with the official sentencing document. The Department of Behavioral Health  
922 and Developmental Disabilities shall forward, in addition to its examination report, any  
923 records maintained by such department that it deems appropriate pursuant to an agreement  
924 with the Department of Corrections, within ten business days of receipt by the Department

925 of Behavioral Health and Developmental Disabilities of the official sentencing document  
926 from the Department of Corrections.

927 ~~(j)(1) In the trial of any case in which the death penalty is sought which commences on~~  
928 ~~or after July 1, 1988, should the judge find in accepting a plea of guilty but mentally~~  
929 ~~retarded, or the jury or court find in its verdict that the defendant is guilty of the crime~~  
930 ~~charged but mentally retarded, the death penalty shall not be imposed and the court shall~~  
931 ~~sentence the defendant to imprisonment for life.~~

932 ~~(2) In the trial of any case in which the death penalty is sought which commences on or~~  
933 ~~after July 1, 2017, should the judge find in accepting a plea of guilty but with intellectual~~  
934 ~~disability, or the jury or court find in its verdict that the defendant is guilty of the crime~~  
935 ~~charged but with intellectual disability, the death penalty shall not be imposed and the~~  
936 ~~court shall sentence the defendant to imprisonment for life."~~

937 **SECTION 43.**

938 Said title is further amended in Code Section 17-7-171, relating to time for demand for  
939 speedy trial in capital cases, discharge and acquittal where no trial held before end of two  
940 court terms of demand, and counting of terms in cases in which death penalty is sought, by  
941 revising subsection (c) as follows:

942 ~~"(c) In cases involving a capital offense for which the death penalty is sought, if a demand~~  
943 ~~for speedy trial is entered, the counting of terms under subsection (b) of this Code section~~  
944 ~~shall not begin until the convening of the first term following the completion of pretrial~~  
945 ~~review proceedings in the Supreme Court under Code Section 17-10-35.1. Reserved."~~

946 **SECTION 44.**

947 Said title is further amended in Code Section 17-8-4, relating to procedure for trial of jointly  
948 indicted defendants, right of defendants to testify for or against one another, order of separate

949 trials, acquittal or conviction where offense requires joint action or concurrence, and number  
950 of strikes allowed defendants, by revising subsection (a) as follows:

951 "(a) When two or more defendants are jointly indicted for a ~~capital offense, any defendant~~  
952 ~~so electing shall be separately tried unless the state shall waive the death penalty. When~~  
953 ~~indicted for a capital felony when the death penalty is waived, or for a felony less than~~  
954 ~~capital~~; or for a misdemeanor, such defendants may be tried jointly or separately in the  
955 discretion of the trial court. In any event, a jointly indicted defendant may testify for  
956 another jointly indicted defendant or on behalf of the state. When separate trials are  
957 ordered in any case, the defendants shall be tried in the order requested by the state. If the  
958 offense requires joint action and concurrence of two or more persons, acquittal or  
959 conviction of one defendant shall not operate as acquittal or conviction of others not tried."

960

#### SECTION 45.

961 Said title is further amended in Code Section 17-8-5, relating to recordation of testimony in  
962 felony cases, entering testimony on minutes of court where guilty verdict found, preparation  
963 of transcript where death sentence imposed, and preparation of transcript where mistrial  
964 results in felony case, by revising subsection (a) as follows:

965 "(a) On the trial of all felonies the presiding judge shall have the testimony taken down  
966 and, when directed by the judge, the court reporter shall exactly and truly record or take  
967 stenographic notes of the testimony and proceedings in the case, except the argument of  
968 counsel. In the event of a verdict of guilty, the testimony shall be entered on the minutes  
969 of the court or in a book to be kept for that purpose. ~~In the event that a sentence of death~~  
970 ~~is imposed, the transcript of the case shall be prepared within 90 days after the sentence is~~  
971 ~~imposed by the trial court. Upon petition by the court reporter, the Chief Justice of the~~  
972 ~~Supreme Court of Georgia may grant an additional period of time for preparation of the~~  
973 ~~transcript, such period not to exceed 60 days. The requirement that a transcript be prepared~~

974 ~~within a certain period in cases in which a sentence of death is imposed shall not inure to~~  
975 ~~the benefit of a defendant."~~

976 **SECTION 46.**

977 Said title is further amended in Code Section 17-8-31, relating to grounds for granting of  
978 continuances, party, leading attorney, or material witness in attendance on active duty as  
979 member of National Guard or component of armed forces of the United States, and setting  
980 bail in certain cases, by revising subsection (d) as follows:

981 "(d) In any case in which the court grants the state a continuance pursuant to subsection (c)  
982 of this Code section, the defendant shall have bail set upon application to the court, except  
983 in those cases punishable by ~~death~~ or imprisonment for life without parole. In any case in  
984 which the defendant is accused of committing a serious violent felony, as defined by  
985 subsection (a) of Code Section 17-10-6.1, the court shall consider but shall not be required  
986 to set bail."

987 **SECTION 47.**

988 Said title is further amended by revising Code Section 17-8-73, relating to time limits on  
989 closing argument in noncapital and capital felony cases, as follows:

990 "17-8-73.

991 In felony cases ~~other than those involving capital felonies~~, counsel shall be limited in their  
992 closing arguments to one hour for each side. ~~In cases involving capital felonies, counsel~~  
993 ~~shall be limited to two hours for each side."~~

994 **SECTION 48.**

995 Said title is further amended by revising Code Section 17-9-3, relating to recommendations  
996 for mercy in capital cases other than those of homicide, effect of no recommendation for



997 mercy in capital cases generally, and where defendant under age of 17 at time of commission  
998 of offense, as follows:

999 "17-9-3.

1000 ~~In all capital cases, other than those of homicide, when the verdict is 'guilty,' with a~~  
1001 ~~recommendation for mercy, it shall be legal and shall mean imprisonment for life. When~~  
1002 ~~the verdict is 'guilty,' without a recommendation for mercy, it shall be legal and shall mean~~  
1003 ~~that the convicted person shall be sentenced to death. When it is shown that a person~~  
1004 ~~convicted of a capital offense without a recommendation for mercy had not reached his~~  
1005 ~~seventeenth birthday at the time of the commission of the offense, the punishment of such~~  
1006 ~~person shall not be death but shall be imprisonment for life. Reserved."~~

1007

#### SECTION 49.

1008 Said title is further amended in Code Section 17-10-1, relating to fixing of sentence,  
1009 suspension or probation of sentence, change in sentence, eligibility for parole, prohibited  
1010 modifications, and exceptions, by revising paragraph (1) of subsection (a) as follows:

1011 "(a)(1)(A) Except in cases in which life imprisonment; or life without parole; ~~or the~~  
1012 ~~death penalty~~ may be imposed, upon a verdict or plea of guilty in any case involving  
1013 a misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence  
1014 shall prescribe a determinate sentence for a specific number of months or years which  
1015 shall be within the minimum and maximum sentences prescribed by law as the  
1016 punishment for the crime. The judge imposing the sentence is granted power and  
1017 authority to suspend or probate all or any part of the entire sentence under such rules  
1018 and regulations as the judge deems proper, including service of a probated sentence in  
1019 the sentencing options system, as provided by Article 6 of Chapter 3 of Title 42, and  
1020 including the authority to revoke the suspension or probation when the defendant has  
1021 violated any of the rules and regulations prescribed by the court, even before the  
1022 probationary period has begun, subject to the conditions set out in this subsection;

1023 provided, however, that such action shall be subject to the provisions of Code  
1024 Sections 17-10-6.1 and 17-10-6.2.

1025 (B) When a defendant with no prior felony conviction is convicted of felony offenses  
1026 or is charged with felony offenses and is sentenced pursuant to subsection (a) or (c) of  
1027 Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42, and the court imposes a  
1028 sentence of probation or not more than 12 months of imprisonment followed by a term  
1029 of probation, the court shall include a behavioral incentive date in its sentencing order  
1030 that does not exceed three years from the date such sentence is imposed. Within 60  
1031 days of the expiration of such incentive date, if the defendant has not been arrested for  
1032 anything other than a nonserious traffic offense as defined in Code Section 35-3-37, has  
1033 been compliant with the general and special conditions of probation imposed, and has  
1034 paid all restitution owed, the Department of Community Supervision shall notify the  
1035 prosecuting attorney and the court of such facts. The Department of Community  
1036 Supervision shall provide the court with an order to terminate such defendant's  
1037 probation which the court shall execute unless the court or the prosecuting attorney  
1038 requests a hearing on such matter within 30 days of the receipt of such order. The court  
1039 shall take whatever action it determines would be for the best interest of justice and the  
1040 welfare of society."

1041 **SECTION 50.**

1042 Said title is further amended in Code Section 17-10-1.2, relating to oral victim impact  
1043 statement, presentation of evidence, cross-examination and rebuttal by defendant, effect of  
1044 noncompliance, and no creation of cause of action or right of appeal, by revising  
1045 subsection (a) as follows:

1046 ~~"(a)(1) In all cases in which the death penalty may be imposed, subsequent to an~~  
1047 ~~adjudication of guilt and in conjunction with the procedures in Code Section 17-10-30,~~  
1048 ~~the court shall allow evidence from the family of the victim, or such other witness having~~

1049 ~~personal knowledge of the victim's personal characteristics and the emotional impact of~~  
1050 ~~the crime on the victim, the victim's family, or the community. Except as provided in~~  
1051 ~~paragraph (4) of this subsection, such evidence shall be given in the presence of the~~  
1052 ~~defendant and of the jury and shall be subject to cross-examination.~~

1053 ~~(2) The admissibility of the evidence described in paragraph (1) of this subsection and~~  
1054 ~~the number of witnesses other than immediate family who may testify shall be in the sole~~  
1055 ~~discretion of the judge and in any event shall be permitted only in such a manner and to~~  
1056 ~~such a degree as not to inflame or unduly prejudice the jury. As used in this paragraph,~~  
1057 ~~the term 'immediate family' means the victim's spouse, child, parent, stepparent,~~  
1058 ~~grandparent, grandchild, sibling, stepbrother, stepsister, mother-in-law, father-in-law,~~  
1059 ~~sister-in-law, or brother-in-law and the spouses of any such individuals.~~

1060 ~~(3)(1) In all cases other than those in which the death penalty may be imposed, prior~~  
1061 ~~Prior to fixing of the sentence as provided for in Code Section 17-10-1 or the imposing~~  
1062 ~~of life imprisonment as mandated by law, and before rendering the appropriate sentence,~~  
1063 ~~including any order of restitution, the court shall allow the victim, as such term is defined~~  
1064 ~~in Code Section 17-17-3, the family of the victim, or such other witness having personal~~  
1065 ~~knowledge of the crime to testify about the impact of the crime on the victim, the family~~  
1066 ~~of the victim, or the community. Except as provided in paragraph (4)(2) of this~~  
1067 ~~subsection, such evidence shall be given in the presence of the defendant and shall be~~  
1068 ~~subject to cross-examination. The admissibility of the testimony and evidence in support~~  
1069 ~~of such testimony shall be in the sole discretion of the judge and in any event shall be~~  
1070 ~~permitted only in such a manner as to allow for cross-examination by the defendant and~~  
1071 ~~to such a degree as not to unduly prejudice the defendant. If the judge excludes the~~  
1072 ~~testimony or evidence in support of such testimony, the state shall be allowed to make a~~  
1073 ~~proffer of such testimony or evidence.~~

1074 ~~(4)(2) Upon a finding by the court specific to the case and the witness that the witness~~  
1075 ~~would not be able to testify in person without showing undue emotion or that testifying~~

1076 in person will cause the witness severe physical or emotional distress or trauma, evidence  
1077 presented pursuant to this subsection may be in the form of, but not limited to, a written  
1078 statement or a prerecorded audio or video statement, provided that such witness is subject  
1079 to cross-examination and the evidence itself will not be available to the jury during  
1080 deliberations. Photographs of the victim may be included with any evidence presented  
1081 pursuant to this subsection.

1082 ~~(5)~~(3) If the accused has been convicted of a serious violent felony as defined in Code  
1083 Section 17-10-6.1, attempted murder or attempted kidnapping, or any violation of Code  
1084 Section 16-5-90, 16-5-91, 16-7-82, 16-7-84, or 16-7-86, and the victim or a representative  
1085 of the victim is not present at the presentence hearing, it shall be the duty of the court to  
1086 inquire of the prosecuting attorney whether or not the victim has been notified of the  
1087 presentence hearing as provided in Code Section 17-17-5. If the court finds that the  
1088 prosecuting attorney has not made a reasonable attempt to notify the victim, the  
1089 presentence hearing shall be recessed in order to provide the victim the opportunity to  
1090 attend prior to sentence being imposed; provided, however, that prior to recessing the  
1091 presentence hearing, the court shall allow the state or the accused to call any witnesses  
1092 who were subpoenaed and are present at such presentence hearing. Following any such  
1093 testimony, the presentence hearing shall be recessed and the victim shall be notified of  
1094 the date, time, and location when the presentence hearing shall resume."

1095

### SECTION 51.

1096 Said title is further amended by revising Code Section 17-10-2, relating to conduct of  
1097 presentence hearings in felony cases and effect of reversal for error in presentence hearing,  
1098 as follows:

1099 "17-10-2.

1100 (a)(1) ~~Except in cases in which the death penalty may be imposed, upon~~ Upon the return  
1101 of a verdict of 'guilty' by the jury in any felony case, the judge shall dismiss the jury and

1102 shall conduct a presentence hearing at which the only issue shall be the determination of  
1103 punishment to be imposed. In the hearing the judge shall hear additional evidence in  
1104 extenuation, mitigation, and aggravation of punishment, including the record of any prior  
1105 criminal convictions and pleas of guilty or nolo contendere of the accused, or the absence  
1106 of any prior conviction and pleas.

1107 (2) The judge shall also hear argument by the accused or the accused's counsel and the  
1108 prosecuting attorney, as provided by law, regarding the punishment to be imposed.  
1109 ~~Except in cases where the death penalty may be imposed, the~~ The prosecuting attorney  
1110 shall open and conclude the argument. ~~In cases where the death penalty may be imposed,~~  
1111 ~~the prosecuting attorney shall open and the accused or the accused's counsel shall~~  
1112 ~~conclude the argument.~~

1113 (3) Upon the conclusion of the evidence and arguments, the judge shall impose the  
1114 sentence or shall recess the trial for the purpose of taking the sentence to be imposed  
1115 under advisement. The judge shall fix a sentence within the limits prescribed by law.

1116 ~~(b) In cases in which the death penalty may be imposed, the judge, when sitting without~~  
1117 ~~a jury, in addition to the procedure set forth in subsection (a) of this Code section, shall~~  
1118 ~~follow the procedures provided for in Code Section 17-10-30.~~

1119 ~~(c) In all cases tried by a jury in which the death penalty may be imposed, upon a return~~  
1120 ~~of a verdict of 'guilty' by the jury, the court shall resume the trial and conduct a presentence~~  
1121 ~~hearing before the jury. The hearing shall be conducted in the same manner as presentence~~  
1122 ~~hearings conducted before the judge as provided for in subsection (a) of this Code section.~~  
1123 ~~Upon the conclusion of the evidence and arguments, the judge shall give the jury~~  
1124 ~~appropriate instructions, and the jury shall retire to determine whether any mitigating or~~  
1125 ~~aggravating circumstances, as defined in Code Section 17-10-30, exist and whether to~~  
1126 ~~recommend mercy for the accused. Upon the findings of the jury, the judge shall fix a~~  
1127 ~~sentence within the limits prescribed by law.~~

1128 ~~(d)~~(b) If the trial court is reversed on appeal because of error only in the presentence  
 1129 hearing, the new trial which may be ordered shall apply only to the issue of punishment."

1130

**SECTION 52.**

1131 Said title is further amended in Code Section 17-10-6.1, relating to punishment for serious  
 1132 violent offenders, by revising subsection (c) as follows:

1133 "(c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a  
 1134 first conviction of a serious violent felony in which the accused has been sentenced to life  
 1135 imprisonment, that person shall not be eligible for any form of parole or early release  
 1136 administered by the State Board of Pardons and Paroles until that person has served a  
 1137 minimum of 30 years in prison. The minimum term of imprisonment shall not be reduced  
 1138 by any earned time, early release, work release, leave, or other sentence-reducing  
 1139 measures under programs administered by the Department of Corrections.

1140 ~~(2) For a first conviction of a serious violent felony in which the accused has been~~  
 1141 ~~sentenced to death but the sentence of death has been commuted to life imprisonment,~~  
 1142 ~~that person shall not be eligible for any form of parole or early release administered by~~  
 1143 ~~the State Board of Pardons and Paroles until that person has served a minimum of 30~~  
 1144 ~~years in prison. The minimum term of imprisonment shall not be reduced by any earned~~  
 1145 ~~time, early release, work release, leave, or other sentence-reducing measures under~~  
 1146 ~~programs administered by the Department of Corrections.~~

1147 ~~(3)~~(2) For a first conviction of a serious violent felony in which the accused has been  
 1148 sentenced to imprisonment for life without parole, that person shall not be eligible for any  
 1149 form of parole or early release administered by the State Board of Pardons and Paroles  
 1150 or for any earned time, early release, work release, leave, or other sentence-reducing  
 1151 measures under programs administered by the Department of Corrections.

1152 ~~(4)~~(3) Except as otherwise provided in this subsection, any sentence imposed for the first  
 1153 conviction of any serious violent felony shall be served in its entirety as imposed by the

1154 sentencing court and shall not be reduced by any form of parole or early release  
1155 administered by the State Board of Pardons and Paroles or by any earned time, early  
1156 release, work release, leave, or other sentence-reducing measures under programs  
1157 administered by the Department of Corrections, the effect of which would be to reduce  
1158 the period of incarceration ordered by the sentencing court; provided, however, that  
1159 during the final year of incarceration an offender so sentenced shall be eligible to be  
1160 considered for participation in a department administered transitional center or work  
1161 release program."

1162 **SECTION 53.**

1163 Said title is further amended in Code Section 17-10-7, relating to punishment of repeat  
1164 offenders and punishment and eligibility for parole of persons convicted of fourth felony  
1165 offense, by revising paragraph (2) of subsection (b) as follows:

1166 "(2) Except as provided in subsection (e) of Code Section 17-10-6.1, any person who has  
1167 been convicted of a serious violent felony in this state or who has been convicted under  
1168 the laws of any other state or of the United States of a crime which if committed in this  
1169 state would be a serious violent felony and who after such first conviction subsequently  
1170 commits and is convicted of a serious violent felony ~~for which such person is not~~  
1171 ~~sentenced to death~~ shall be sentenced to imprisonment for life without parole. Any such  
1172 sentence of life without parole shall not be suspended, stayed, probated, deferred, or  
1173 withheld, and any such person sentenced pursuant to this paragraph shall not be eligible  
1174 for any form of pardon, parole, or early release administered by the State Board of  
1175 Pardons and Paroles or for any earned time, early release, work release, leave, or any  
1176 other sentence-reducing measures under programs administered by the Department of  
1177 Corrections, the effect of which would be to reduce the sentence of life imprisonment  
1178 without possibility of parole, except as may be authorized by any existing or future  
1179 provisions of the Constitution."

1180 **SECTION 54.**

1181 Said title is further amended in Code Section 17-10-9.1, relating to voluntary surrender to  
1182 county jail or correctional institution and release of defendant, by revising subsection (e) as  
1183 follows:

1184 "~~(e) The provisions of this Code section shall not apply to any defendant convicted of a~~  
1185 ~~capital felony. Reserved.~~"

1186 **SECTION 55.**

1187 Said title is further amended by revising Code Section 17-10-16, relating to sentence to  
1188 imprisonment for life without parole authorized and ineligibility for parole or leave  
1189 programs, as follows:

1190 "17-10-16.

1191 ~~(a) Notwithstanding any other provision of law, a person who is convicted of an offense~~  
1192 ~~committed after May 1, 1993, for which the death penalty may be imposed under the laws~~  
1193 ~~of this state may be sentenced to death, imprisonment for life without parole, or life~~  
1194 ~~imprisonment as provided in Article 2 of this chapter.~~

1195 ~~(b) Notwithstanding any other provision of law, any person who is convicted of an offense~~  
1196 ~~for which the death penalty may be imposed and who is sentenced to imprisonment for life~~  
1197 ~~without parole shall not be eligible for any form of parole during such person's natural life~~  
1198 ~~unless the State Board of Pardons and Paroles or a court of this state shall, after notice and~~  
1199 ~~public hearing, determine that such person was innocent of the offense for which the~~  
1200 ~~sentence of imprisonment for life without parole was imposed. Such person shall not be~~  
1201 ~~eligible for any work release program, leave, or any other program administered by the~~  
1202 ~~Department of Corrections the effect of which would be to reduce the term of actual~~  
1203 ~~imprisonment to which such person was sentenced. Reserved.~~"



1204 **SECTION 56.**

1205 Said title is further amended by repealing Code Section 17-10-16.1, relating to seeking death  
1206 penalty not prerequisite to life without parole sentence, in its entirety.

1207 **SECTION 57.**

1208 Said title is further amended in Chapter 10, relating to sentence and punishment, by deleting  
1209 the designation of Article 1, relating to procedure for sentencing and imposition of  
1210 punishment, and by repealing Article 2, relating to the death penalty generally, and Article 3,  
1211 relating to mentally incompetent to be executed, in their entirety.

1212 **SECTION 58.**

1213 Said title is further amended in Chapter 11, relating to assessment and payment of costs of  
1214 criminal proceedings, by deleting the designation of Article 1, relating to general provisions,  
1215 and by repealing Article 2, relating to reimbursement of counties for expenses of capital  
1216 felony prosecutions, in its entirety.

1217 **SECTION 59.**

1218 Said title is further amended in Code Section 17-12-5, relating to the director of the Public  
1219 Defender Standards Council, qualifications, powers, and responsibilities, by revising  
1220 paragraph (1) of subsection (b) as follows:

1221 "(b)(1) The director shall work with and provide support services and programs for  
1222 circuit public defender offices and other attorneys representing indigent persons in  
1223 criminal or juvenile cases in order to improve the quality and effectiveness of legal  
1224 representation of such persons and otherwise fulfill the purposes of this chapter. Such  
1225 services and programs shall include, but shall not be limited to, technical, research, and  
1226 administrative assistance; educational and training programs for attorneys, investigators,  
1227 and other staff; assistance with the representation of indigent defendants with mental

1228 disabilities; assistance with the representation of juveniles; ~~assistance with death penalty~~  
1229 ~~cases~~; and assistance with appellate advocacy."

1230 **SECTION 60.**

1231 Said title is further amended by revising Code Section 17-12-12, relating to the Georgia  
1232 capital defender division, duties, responsibilities, and management, as follows:

1233 "17-12-12.

1234 ~~(a) The Georgia capital defender division shall represent all indigent persons charged with~~  
1235 ~~a capital felony for which the death penalty is being sought in any court in this state and~~  
1236 ~~shall be the successor to the Office of the Georgia Capital Defender created by Article 6~~  
1237 ~~of this chapter as it existed on June 30, 2008. Any assets or resources of the Office of the~~  
1238 ~~Georgia Capital Defender shall be transferred to the council. The Georgia capital defender~~  
1239 ~~division shall serve all counties of this state.~~

1240 ~~(b) Whenever any person accused of a capital felony for which the death penalty is being~~  
1241 ~~sought has been determined to be an indigent person who has requested the assistance of~~  
1242 ~~counsel, the court in which the charges are pending shall notify the Georgia capital~~  
1243 ~~defender division, and the division shall assume the defense of such person except as~~  
1244 ~~provided in Code Section 17-12-12.1.~~

1245 ~~(c) No person shall be assigned the primary responsibility of representing an indigent~~  
1246 ~~person accused of a capital offense for which the death penalty is sought unless such person~~  
1247 ~~is authorized to practice law in this state and is otherwise competent to counsel and defend~~  
1248 ~~a person charged with a capital felony.~~

1249 ~~(d) The Georgia capital defender division or appointed counsel's defense of a defendant~~  
1250 ~~in a case in which the death penalty is sought shall include all proceedings in the trial court~~  
1251 ~~and any appeals to the Supreme Court of Georgia. Neither the Georgia capital defender~~  
1252 ~~division nor appointed counsel shall assist with any petition for a writ of habeas corpus in~~  
1253 ~~federal court.~~

1254 ~~(e) The director shall be responsible for management of the Georgia capital defender~~  
1255 ~~division; provided, however, that the director may delegate day-to-day operations of the~~  
1256 ~~division to the capital defender. Reserved."~~

1257 **SECTION 61.**

1258 Said title is further amended by repealing Code Section 17-12-12.1, relating to payment of  
1259 attorney in event of conflict of interest in capital cases, number of attorneys appointed,  
1260 county governing authority's financial responsibility, and expenses, in its entirety.

1261 **SECTION 62.**

1262 Said title is further amended by revising Code Section 17-13-34, relating to arrest without  
1263 warrant of a person charged with a crime in another state, as follows:

1264 "17-13-34.

1265 The arrest of a person may be lawfully made by any peace officer or private person,  
1266 without a warrant, upon reasonable information that the accused stands charged in the  
1267 courts of a state with a crime punishable by ~~death~~ or imprisonment for a term exceeding  
1268 one year, but when so arrested, the accused must be taken before a judge or magistrate with  
1269 all practicable speed and complaint must be made against him or her under oath, setting  
1270 forth the ground for the arrest, as provided in Code Section 17-13-33; and thereafter the  
1271 answer of the accused shall be heard as if he or she had been arrested on a warrant."

1272 **SECTION 63.**

1273 Said title is further amended by revising Code Section 17-13-36, relating to granting of bail,  
1274 as follows:

1275 "17-13-36.  
1276 Unless the offense with which the prisoner is charged is shown to be an offense punishable  
1277 by ~~death~~ or life imprisonment under the laws of the state in which it was committed, a  
1278 judge or magistrate in this state may admit the prisoner to bail by bond, with sufficient  
1279 sureties, in such sum as he or she deems proper, conditioned for the prisoner's appearance  
1280 before the judge or magistrate at a time specified in such bond and for the prisoner's  
1281 surrender to be arrested upon the warrant of the Governor of this state."

1282 **SECTION 64.**

1283 Said title is further amended by revising Code Section 17-16-2, relating to applicability of  
1284 article, as follows:

1285 "17-16-2.

1286 (a) This article shall apply to all criminal cases in which at least one felony offense is  
1287 charged in the event that at or prior to arraignment, or at such time as the court permits, the  
1288 defendant provides written notice to the prosecuting attorney that such defendant elects to  
1289 have this article apply to the defendant's case. When one defendant in a multidefendant  
1290 case demands discovery under this article, the provisions of this article shall apply to all  
1291 defendants in the case, unless a severance is granted.

1292 (b) Except as provided in subsection (c) of this Code section, this article shall not apply  
1293 to juvenile court proceedings.

1294 (c) This article shall be deemed to have been automatically invoked, without the written  
1295 notice provided for in subsection (a) of this Code section, when a defendant has sought  
1296 discovery pursuant to Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' pursuant to  
1297 Part 8 of Article 6 of Chapter 11 of Title 15, or pursuant to the Uniform Rules for the  
1298 Juvenile Courts of Georgia where such discovery material is the same as the discovery  
1299 material that may be provided under this article when a written notice is filed pursuant to  
1300 subsection (a) of this Code section.

1301 (d) Except as provided under Code Section 17-16-8, this article is not intended to authorize  
1302 discovery or inspection of attorney work product.

1303 (e) This article shall apply also to all criminal cases in which at least one felony offense  
1304 is charged which was docketed, indicted, or in which an accusation was returned prior to  
1305 January 1, 1995, if both the prosecuting attorney and the defendant agree in writing that the  
1306 provisions of this article shall apply to the case.

1307 ~~(f) Except as provided in paragraph (3) of subsection (b) of Code Section 17-16-4, if a~~  
1308 ~~defendant has elected to have the provisions of this article apply, the provisions of this~~  
1309 ~~article shall also apply to sentencing hearings and the sentencing phase of a death penalty~~  
1310 ~~trial."~~

1311 **SECTION 65.**

1312 Said title is further amended by revising Code Section 17-17-12, relating to notification to  
1313 victim of accused's motion for new trial or appeal, release on bail of recognizance, appellate  
1314 proceedings, and outcome of appeal, notifications regarding death penalty cases, and victim's  
1315 rights retained at new trial or on appeal, as follows:

1316 "17-17-12.

1317 (a) Upon the written request of the victim, the prosecuting attorney shall notify the victim  
1318 of the following:

1319 (1) That the accused has filed a motion for new trial, an appeal of his or her conviction,  
1320 or an extraordinary motion for new trial;

1321 (2) Whether the accused has been released on bail or other recognizance pending the  
1322 disposition of the motion or appeal;

1323 (3) The time and place of any appellate court proceedings relating to the motion or  
1324 appeal and any changes in the time or place of those proceedings; and

1325 (4) The result of the motion or appeal.

1326 (b) The Attorney General shall notify the prosecuting attorney of the filing of collateral  
 1327 attacks on convictions of this state which are being defended by the Attorney General.

1328 ~~(b.1) In cases in which the accused is convicted of a capital offense and receives the death  
 1329 penalty, the Attorney General shall:~~

1330 ~~(1) Notify the prosecuting attorney and upon the written request of the victim notify the  
 1331 victim of the filing and disposition of all collateral attacks on such conviction which are  
 1332 being defended by the Attorney General, including, but not limited to, petitions for a writ  
 1333 of habeas corpus, and the time and place of any such proceedings and any changes in the  
 1334 time or place of those proceedings, and~~

1335 ~~(2) Provide the prosecuting attorney and upon the written request of the victim provide  
 1336 the victim with a report on the status of all pending appeals, collateral attacks, and other  
 1337 litigation concerning such conviction which is being defended by the Attorney General  
 1338 at least every six months until the accused dies or the sentence or conviction is overturned  
 1339 or commuted or otherwise reduced to a sentence other than the death penalty.~~

1340 (c) In the event the accused is granted a new trial or the conviction is reversed or remanded  
 1341 and the case is returned to the trial court for further proceedings, the victim shall be entitled  
 1342 to request the rights and privileges provided by this chapter."

1343 **SECTION 66.**

1344 Said title is further amended by revising Code Section 17-17-13, relating to notification to  
 1345 victim of impending parole, release for period exceeding 60 days, or pardon, and notice of  
 1346 hearing on request to commute death sentence, as follows:

1347 "17-17-13.

1348 The State Board of Pardons and Paroles shall give 20 days' advance notification to a victim  
 1349 whenever it considers making a final decision to grant parole, release a defendant for a  
 1350 period exceeding 60 days, or grant a pardon; and the board shall provide the victim with  
 1351 an opportunity to file a written objection to such action. ~~Within 72 hours of receiving a~~

1352 ~~request to commute a death sentence, the State Board of Pardons and Paroles shall provide~~  
1353 ~~notification to a victim of the date set for hearing such request and provide such victim an~~  
1354 ~~opportunity to file a written response to such request.~~ No notification to the victim need  
1355 be given unless the victim has expressed a desire for such notification and has provided the  
1356 State Board of Pardons and Paroles with a current mailing or ~~e-mail~~ email address and  
1357 telephone number. Failure of the victim to inform the board of a change of address or  
1358 telephone number shall not void a decision of the board."

1359 **SECTION 67.**

1360 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by  
1361 revising Code Section 24-13-60, relating to order requiring prisoner's delivery to serve as  
1362 witness or criminal defendant generally, expenses, and prisoner under death sentence as  
1363 witness, as follows:

1364 "24-13-60.

1365 (a) When a prisoner confined in any state prison, county correctional institution, or other  
1366 penal institution under the jurisdiction of the Board of Corrections, ~~other than a prisoner~~  
1367 ~~under a death sentence~~, is needed as a witness in any judicial proceeding in any court of  
1368 record in this state or when it is desired that such person stand trial on an indictment or  
1369 accusation charging the prisoner with commission of a felony or misdemeanor, the judge  
1370 of the court wherein the proceeding is pending shall be authorized to and shall issue an ex  
1371 parte order, directed to the commissioner of corrections, requiring the prisoner's delivery  
1372 to the sheriff of the county where the prisoner is desired as a witness or accused. The  
1373 sheriff or his or her deputies shall take custody of the prisoner on the date named in the  
1374 order, safely keep the prisoner pending the proceeding, and return him or her to the original  
1375 place of detention after the prisoner's discharge by the trial judge.

1376 (b) If the prisoner was desired as a witness by this state in a criminal proceeding or if the  
1377 prisoner's release to the sheriff was for the purpose of standing trial on criminal charges,

1378 the county wherein the proceeding was pending shall pay all expenses of transportation and  
1379 keeping, including per diem and mileage of the sheriff, jail fees, and any other proper  
1380 expense approved by the trial judge.

1381 (c) If the prisoner was desired as a witness by the accused in a criminal proceeding or by  
1382 either party to a civil proceeding, the costs and expenses referred to in subsection (b) of this  
1383 Code section shall be borne by the party requesting the prisoner as a witness. The court  
1384 shall require a deposit of money sufficient to defray same, except where the judge, after  
1385 examining into the matter, determines that the prisoner's presence is required by the  
1386 interests of justice and that the party requesting it is financially unable to make the deposit,  
1387 in which case the expenses shall be taxed as costs of court.

1388 ~~(d) If a prisoner under a death sentence is needed as a witness for either the prosecution~~  
1389 ~~or the defense in any felony case, the requesting party may interview the proposed witness.~~  
1390 ~~Following such interview, the requesting party may move for a writ of habeas corpus ad~~  
1391 ~~testificandum. Such motion shall be accompanied by a proffer of the testimony of the~~  
1392 ~~proposed witness. The requesting party shall make such motion and proffer as soon as~~  
1393 ~~possible but shall not make such motion later than 20 days prior to the date of the trial.~~  
1394 ~~Nothing in this Code section shall limit the right of a party from presenting a material~~  
1395 ~~witness at a hearing or trial and to have compulsory process for that purpose."~~

1396

#### **SECTION 68.**

1397 Said title is further amended in Code Section 24-13-93, relating to criminal or grand jury  
1398 proceedings in foreign state, certificate of need for prisoner's testimony, order by judge in  
1399 requesting state, and applicability, by revising subsection (d) as follows:

1400 "(d) This Code section shall not apply to any person in this state confined as insane or  
1401 mentally ill ~~or under sentence of death."~~



1402 **SECTION 69.**

1403 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
1404 by revising Code Section 42-1-3, relating to defendant sentenced to death or life  
1405 imprisonment not to be made trusty during time case on appeal and manner of confinement  
1406 of defendant, as follows:

1407 "42-1-3.

1408 Any defendant who has been convicted of a felony and sentenced to ~~death or life~~  
1409 imprisonment shall not be made a trusty at any penal institution or facility in this state  
1410 during the time that his or her case is on appeal. The defendant shall be confined in the  
1411 same manner as other prisoners."

1412 **SECTION 70.**

1413 Said title is further amended by revising Code Section 42-5-20, relating to Alcohol or Drug  
1414 Use Risk Reduction Program, as follows:

1415 "42-5-20.

1416 The department shall provide within the correctional system an Alcohol or Drug Use Risk  
1417 Reduction Program. The program shall be made available to every person sentenced to the  
1418 custody of the state whose criminal offense or history indicates alcohol or drug  
1419 involvement; provided, however, that the provisions of this Code section shall not apply  
1420 to a ~~person who has been sentenced to the punishment of death or those deemed mentally~~  
1421 incompetent."

1422 **SECTION 71.**

1423 Said title is further amended by revising Code Section 42-5-21, relating to Family Violence  
1424 Counseling Program, as follows:

1425 "42-5-21.

1426 The department shall provide within the correctional system a Family Violence Counseling  
1427 Program. The program shall be made available to every person sentenced to the custody  
1428 of the state who committed an offense which has been identified to involve family violence  
1429 as such term is defined in Code Section 19-13-1; provided, however, that the provisions of  
1430 this Code section shall not apply to a person who has been sentenced to the punishment of  
1431 ~~death or to~~ those deemed mentally incompetent."

1432 **SECTION 72.**

1433 Said title is further amended in Code Section 42-5-51, relating to jurisdiction over certain  
1434 misdemeanor offenders, designation of place of confinement of inmates, reimbursement of  
1435 county, and transfer of inmates to federal authority, by revising subsection (c) as follows:

1436 "(c) After proper documentation is received from the clerk of the court, the department  
1437 shall have 15 days to transfer an inmate under sentence to the place of confinement. If the  
1438 inmate is not transferred within the 15 days, the department shall reimburse the county, in  
1439 a sum not less than \$7.50 per day per inmate and in such an amount as may be appropriated  
1440 for this purpose by the General Assembly, for the cost of the incarceration, commencing  
1441 15 days after proper documentation is received by the department from the clerk of the  
1442 court; provided, however, that, subject to an appropriation of funds, local governing  
1443 authorities that have entered into memorandums of understanding or agreement or that  
1444 demonstrate continuous attempts to enter into memorandums of understanding or  
1445 agreement with the federal government under Section 287(g) of the federal Immigration  
1446 and Nationality Act shall receive an additional payment in the amount of 10 percent of the  
1447 established rate paid for reimbursement for the confinement of state inmates in local  
1448 confinement facilities. The reimbursement provisions of this Code section shall only apply  
1449 to payment for the incarceration of felony inmates available for transfer to the department;  
1450 ~~except inmates under death sentence awaiting transfer after their initial trial,~~ and shall not

1451 apply to inmates who were incarcerated under the custody of the commissioner at the time  
1452 they were returned to the county jail for trial on additional charges or returned to the county  
1453 jail for any other purposes, including for the purpose of a new trial."

1454 **SECTION 73.**

1455 Said title is further amended by revising Code Section 42-5-64, relating to educational  
1456 programming, as follows:

1457 "42-5-64.

1458 (a) The commissioner shall maintain an educational program within the state prison system  
1459 to assist inmates in achieving at least a fifth-grade level on standardized reading tests.  
1460 Inmates who test below the fifth-grade level and who have been sentenced to incarceration  
1461 for a period of one year or longer shall be required by institutional staff to attend  
1462 appropriate classes until they attain this level or until they are released from incarceration,  
1463 whichever event occurs first; provided, however, that inmates who have remained in the  
1464 educational program for 90 school days may voluntarily withdraw thereafter. The  
1465 commissioner or his or her designee shall have the discretion to exclude certain inmates  
1466 from the provisions of this subsection due to the inability of such inmates to benefit from  
1467 an educational program for reasons which may include: custody status, ~~particularly of those~~  
1468 ~~inmates under a death sentence~~; mental handicap or physical illness; participation in a boot  
1469 camp program; or possession of a general education diploma or high school diploma. The  
1470 State Board of Pardons and Paroles shall incorporate satisfactory participation in such an  
1471 educational program into the parole guidelines adopted pursuant to Code Section 42-9-40.

1472 (b) For the purposes of this Code section, educational programming shall not apply to  
1473 inmates who:

1474 ~~(1) Have been sentenced to death;~~

1475 ~~(2)~~(1) Have attained 50 years of age; or

1476 ~~(3)~~(2) Have serious learning disabilities.

1477 (c) The commissioner shall provide additional educational programs in which inmates can  
1478 voluntarily participate to further their education beyond the fifth-grade level.

1479 (d) The commissioner shall utilize available services and programs within the Department  
1480 of Education, and the Department of Education shall cooperate with the commissioner in  
1481 the establishment of educational programs and the testing of inmates as required in this  
1482 Code section.

1483 (e) The commissioner shall be authorized to promulgate rules and regulations necessary  
1484 to carry out the provisions of this Code section."

1485 **SECTION 74.**

1486 Said title is further amended in Code Section 42-5-85, relating to leave privileges of inmates  
1487 serving murder sentences, by revising subsection (a) as follows:

1488 "(a) As used in this Code section, the term:

1489 (1) 'Aggravating circumstance' means that:

1490 (A) The murder was committed by a person with a prior record of conviction for a  
1491 capital felony;

1492 (B) The murder was committed while the offender was engaged in the commission of  
1493 ~~another capital felony~~, aggravated battery, burglary in any degree, or arson in the first  
1494 degree;

1495 (C) The offender, by his or her act of murder, knowingly created a great risk of death  
1496 to more than one person in a public place by means of a weapon or device which would  
1497 normally be hazardous to the lives of more than one person;

1498 (D) The offender committed the murder for himself, herself, or another, for the purpose  
1499 of receiving money or any other thing of monetary value;

1500 (E) The murder of a judicial officer, former judicial officer, district attorney or  
1501 solicitor-general, or former district attorney, solicitor, or solicitor-general was  
1502 committed during or because of the exercise of his or her official duties;

- 1503 (F) The offender caused or directed another to commit murder or committed murder  
 1504 as an agent or employee of another person;
- 1505 (G) The murder was outrageously or wantonly vile, horrible, or inhuman in that it  
 1506 involved torture, depravity of mind, or an aggravated battery to the victim;
- 1507 (H) The murder was committed against any peace officer, corrections employee, or  
 1508 firefighter while engaged in the performance of his or her official duties;
- 1509 (I) The murder was committed by a person in, or who has escaped from, the lawful  
 1510 custody of a peace officer or place of lawful confinement; or
- 1511 (J) The murder was committed for the purpose of avoiding, interfering with, or  
 1512 preventing a lawful arrest or custody in a place of lawful confinement of himself,  
 1513 herself, or another.
- 1514 (2) 'Murder' means a violation of Code Section 16-5-1."

1515 **SECTION 75.**

1516 Said title is further amended by revising Code Section 42-7-2, relating to definitions  
 1517 regarding treatment of youthful offenders, as follows:

1518 "42-7-2.

1519 As used in this chapter, the term:

- 1520 (1) 'Board' means the Board of Corrections.
- 1521 (2) 'Commissioner' means the commissioner of corrections.
- 1522 (3) 'Conviction' means a judgment on a verdict or finding of guilty, a plea of guilty, or  
 1523 a plea of nolo contendere in a felony case but excludes all judgments upon criminal  
 1524 offenses for which the maximum punishment provided by law is ~~death~~ or life  
 1525 imprisonment.
- 1526 (4) 'Court' means any court of competent jurisdiction other than a juvenile court.
- 1527 (5) 'Department' means the Department of Corrections.

1528 (6) 'Treatment' means corrective and preventative incarceration, guidance, and training  
1529 designed to protect the public by correcting the antisocial tendencies of youthful  
1530 offenders, which may include but is not limited to vocational, educational, and other  
1531 training deemed fit and necessary by the department.

1532 (7) 'Youthful offender' means any male offender who is at least 17 but less than 25 years  
1533 of age at the time of conviction and who in the opinion of the department has the  
1534 potential and desire for rehabilitation."

1535 **SECTION 76.**

1536 Said title is further amended in Code Section 42-8-34, relating to hearings and  
1537 determinations, payment of fees, fines, and costs, post-conviction, continuing jurisdiction,  
1538 and transferal of probation supervision, by revising subsection (a) as follows:

1539 "(a) Any court of this state which has original jurisdiction of criminal actions, except  
1540 municipal courts and probate courts, in which the defendant in a criminal case has been  
1541 found guilty upon verdict or plea or has been sentenced upon a plea of nolo contendere,  
1542 except for an offense punishable by ~~death~~ or life imprisonment, may, at a time to be  
1543 determined by the court, hear and determine the question of the probation of such  
1544 defendant."

1545 **SECTION 77.**

1546 Said title is further amended by revising Code Section 42-9-20, relating to general duties of  
1547 the State Board of Pardons and Paroles, as follows:

1548 "42-9-20.

1549 (a) ~~In all cases in which the chairperson of the board or any other member designated by~~  
1550 ~~the board has suspended the execution of a death sentence to enable the full board to~~  
1551 ~~consider and pass on same, it shall be mandatory that the board act within a period not~~  
1552 ~~exceeding 90 days from the date of the suspension order.~~ In the cases which the board has

1553 power to consider, the board shall be charged with the duty of determining which inmates  
1554 serving sentences imposed by a court of this state may be released on pardon or parole and  
1555 fixing the time and conditions thereof. The board shall also be charged with the duty of  
1556 determining violations of parole and taking action with reference thereto and making such  
1557 investigations as may be necessary. It shall be the duty of the board personally to study the  
1558 cases of those inmates whom the board has power to consider so as to determine their  
1559 ultimate fitness for such relief as the board has power to grant. ~~The board by an affirmative  
1560 vote of a majority of its members shall have the power to commute a sentence of death to  
1561 one of life imprisonment.~~

1562 (b) The board shall provide The Council of Superior Court Clerks of Georgia the data set  
1563 forth in Code Section 15-12-40.1, without charge and in the electronic format requested."

1564 **SECTION 78.**

1565 Said title is further amended in Code Section 42-9-42, relating to procedure for granting  
1566 relief from sentence, conditions and prerequisites, public access to information, and violation  
1567 of parole, by revising subsection (a) as follows:

1568 "(a) No person shall be granted clemency, pardon, parole, or other relief from sentence  
1569 except by a majority vote of the board. ~~A majority of the members of the board may  
1570 commute a death sentence to life imprisonment, as provided in Code Section 42-9-20."~~

1571 **SECTION 79.**

1572 This Act shall become effective upon its approval by the Governor or upon its becoming law  
1573 without such approval.

1574 **SECTION 80.**

1575 All laws and parts of laws in conflict with this Act are repealed.