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Title 42. Penal Institutions

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2025 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2025.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice Forms Annotated.
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American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

In Volume 41A, an updated version of Table Fifteen reflects legislation through the 2025 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2025 supplement pamphlets and in the bound volumes of the Code.

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41-2-2. Filing of complaint to abate public nuisance; impeding travel of public service personnel.

(a) Private citizens may not generally interfere to have a public nuisance abated. A complaint must be filed by the district attorney, solicitor-general, city attorney, or county attorney on behalf of the public. However, a public nuisance may be abated upon filing of a complaint by any private citizen specially injured.

(b)(1) This subsection shall apply to any event hosted by a promoter or organizer that is not properly permitted by the appropriate local governing authority that results in a public nuisance that impedes travel by police, fire service, emergency medical services personnel, other public safety personnel, or employees or officials of local, state, or federal governments acting in their official capacities.

(2) Where a district attorney, solicitor-general, city attorney, or county attorney on behalf of the public files a complaint pursuant to subsection (a) of this Code section and the complaint includes a statement that the conditions set forth in paragraph (1) of this subsection have been satisfied, he or she may seek in such complaint and recover on behalf of the public from a promoter or organizer of the

unpermitted event reimbursement of all expenses incurred by a local governing authority associated with public safety, including, but not limited to, costs and fees for the provision of traffic control, supplemental law enforcement, fire suppression services, emergency medical technician or paramedic services, and sanitation services.

History.

Orig. Code 1863, § 3999; Code 1868, § 4027; Code 1873, § 4098; Code 1882, § 4098; Civil Code 1895, §§ 4761, 4766; Civil Code 1910, §§ 5330, 5338; Code 1933, § 72-202; Ga. L. 1980, p. 620, § 2; Ga. L. 1999, p. 467, § 1; Ga. L. 2024, p. 13, § 1/SB 443, effective April 8, 2024.

Amendments.

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CHAPTER 1

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42-1-11.5.	Compliance with immigration detainer notices.	42-1-19.	Petition for release from registration requirements.

ARTICLE 1

INMATE POLICIES

42-1-7. Notification to transporting law enforcement agency of inmate's or patient's infectious or communicable disease.

(a) For the purposes of this Code section, the term "infectious or communicable disease" shall include infectious hepatitis, tuberculosis, influenza, measles, chicken pox, meningitis, HIV as defined in Code Section 31-22-9.1, or any sexually transmitted disease as defined in Code Section 31-17-1.

(b) Notwithstanding any other provision of law, any state or county correctional institution, municipal or county detention facility, or any facility as defined in Code Section 37-3-1 shall notify any state or local law enforcement agency required to transport an inmate or patient if such inmate or patient has been diagnosed as having an infectious or communicable disease. Notification shall be limited to the fact that such inmate or patient has an infectious or communicable disease and whether such disease is airborne or transmissible by blood or other body fluids; provided, however, that the specific disease shall not be disclosed. The Department of Public Health shall provide a guide for appropriate precautions to be taken by any person or persons transporting such inmate or patient and shall develop a form to be used for the purpose of ensuring that such precautions are taken.

(c) Information released or obtained pursuant to this Code section shall be privileged and confidential and shall only be released or obtained by the institutions, facilities, or agencies who are parties to the transportation of the patient or inmate. Any person making an unauthorized disclosure of such information shall be guilty of a misdemeanor.

History.

Code 1981, § 42-1-7, enacted by Ga. L. 1991, p. 1319, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2020, p. 55, § 8/SB 372; Ga. L. 2024, p. 143, § 7/HB 1028, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted “as defined” for “enumerated” near the end in subsection (a).

42-1-11.4. Reports regarding foreign-born inmates in custody.

The commissioner shall, on the official public website used by the department, publish a report of aggregate data on the immigration status, offenses, and home countries of inmates who are confined under the authority of the department who are not citizens of the United States and to whom the United States Immigration and Customs Enforcement Division of the Department of Homeland Security has issued immigration detainer notices as such term is defined in Code Section 42-1-11.5. Each report shall include the total number of inmates who are not citizens of the United States; provided, however, that any inmates who are citizens of both the United States and one or more other countries shall be designated as such as a separate category. Such report shall be first published on October 1, 2024, and every 90 days thereafter; provided, however, that if the ninetieth day falls on a state holiday or Saturday or Sunday, then such report shall be published the next business day.

History.

Code 1981, § 42-1-11.4, enacted by Ga.

L. 2024, p. 491, § 7/HB 1105, effective May 1, 2024.

Effective date.

This Code section became effective May 1, 2024.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2024, “42-1-11.5” was substituted for “42-4-16” at the end of the first sentence.

Editor’s notes.

Ga. L. 2024, p. 491, § 1/HB 1105, not

codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Criminal Alien Track and Report Act of 2024.’”

Law reviews.

For article on the 2024 enactment of this Code section, see 41 Ga. St. U.L. Rev. 71 (2024).

42-1-11.5. Compliance with immigration detainer notices.

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

(1) “Custodial authority” means the commissioner if a person is in physical custody at a penal institution, the sheriff if a person is in physical custody at a county jail, the warden if a person is in physical custody at county correctional institution, and the chief of police if a person is in physical custody at a municipal detention facility.

(2) “Immigration detainer notice” means documentation issued by the federal government requesting that a custodial authority maintain temporary custody of an illegal alien as such term is defined in Code Section 42-4-14, including a United States Department of Homeland Security Form I-247 document or a similar successor form.

(b) Any custodial authority who has custody of a person who is subject to an immigration detainer notice shall:

(1) Comply with, honor, and fulfill any request made in the immigration detainer notice; and

(2) Inform the person identified in the immigration detainer notice that the person is being held pursuant to such notice.

History.

Code 1981, § 42-1-11.5, enacted by Ga. L. 2024, p. 491, § 8/HB 1105, effective May 1, 2024.

Effective date.

This Code section became effective May 1, 2024.

Editor’s notes.

Ga. L. 2024, p. 491, § 1/HB 1105, not

codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Criminal Alien Track and Report Act of 2024.’”

Law reviews.

For article on the 2024 enactment of this Code section, see 41 Ga. St. U.L. Rev. 71 (2024).

ARTICLE 2**SEXUAL OFFENDER RISK REVIEW BOARD****42-1-12. State Sexual Offender Registry.**

(a) As used in this article, the term:

(1) “Address” means the street or route address of the sexual offender’s residence. For purposes of this Code section, the term shall not mean a post office box.

(2) “Appropriate official” means:

(A) With respect to a sexual offender who is sentenced to probation without any sentence of incarceration in the state prison system or who is sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, the Department of Community Supervision;

(B) With respect to a sexual offender who is sentenced to a period of incarceration in a prison under the jurisdiction of the Department of Corrections and who is subsequently released from prison or placed on probation, the commissioner of corrections or his or her designee;

(C) With respect to a sexual offender who is placed on parole, the chairperson of the State Board of Pardons and Paroles or his or her designee; and

(D) With respect to a sexual offender who is placed on probation through a private probation agency, the director of the private probation agency or his or her designee.

(3) “Area where minors congregate” shall include all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, school bus stops, public libraries, and public and community swimming pools.

(4) “Assessment criteria” means the tests that the board members use to determine the likelihood that a sexual offender will commit another criminal offense against a victim who is a minor or commit a dangerous sexual offense.

(5) “Board” means the Sexual Offender Risk Review Board.

(6) “Child care facility” means all public and private pre-kindergarten facilities, child care learning centers, preschool facilities, and long-term care facilities for children.

(6.1) “Child care learning center” shall have the same meaning as set forth in paragraph (3) of Code Section 20-1A-2.

(7) “Church” means a place of public religious worship.

(8) “Conviction” includes a final judgment of conviction entered upon a verdict or finding of guilty of a crime, a plea of guilty, or a plea of nolo contendere. A defendant who is discharged without adjudication of guilt and who is not considered to have a criminal conviction pursuant to Article 3 of Chapter 8 of this title, relating to first

offenders, shall be subject to the registration requirements of this Code section for the period of time prior to the defendant's discharge after completion of his or her sentence or upon the defendant being adjudicated guilty. Unless otherwise required by federal law, a defendant who is discharged without adjudication of guilt and who is not considered to have a criminal conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall not be subject to the registration requirements of this Code section upon the defendant's discharge.

(8.1) "Criminal history record information" shall have the same meaning as set forth in Code Section 35-3-30.

(9)(A) "Criminal offense against a victim who is a minor" with respect to convictions occurring on or before June 30, 2001, means any criminal offense under Title 16 or any offense under federal law or the laws of another state or territory of the United States which consists of:

- (i) Kidnapping of a minor, except by a parent;
- (ii) False imprisonment of a minor, except by a parent;
- (iii) Criminal sexual conduct toward a minor;
- (iv) Solicitation of a minor to engage in sexual conduct;
- (v) Use of a minor in a sexual performance;
- (vi) Solicitation of a minor to practice prostitution; or
- (vii) Any conviction resulting from an underlying sexual offense against a victim who is a minor.

(B) "Criminal offense against a victim who is a minor" with respect to convictions occurring after June 30, 2001, means any criminal offense under Title 16 or any offense under federal law or the laws of another state or territory of the United States which consists of:

- (i) Kidnapping of a minor, except by a parent;
- (ii) False imprisonment of a minor, except by a parent;
- (iii) Criminal sexual conduct toward a minor;
- (iv) Solicitation of a minor to engage in sexual conduct;
- (v) Use of a minor in a sexual performance;
- (vi) Solicitation of a minor to practice prostitution;
- (vii) Use of a minor to engage in any sexually explicit conduct to produce any visual medium depicting such conduct;

(viii) Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor's body engaged in sexually explicit conduct;

(ix) Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct;

(x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct; or

(xi) Any conduct which, by its nature, is a sexual offense against a victim who is a minor.

(C) For purposes of this paragraph, a conviction for a misdemeanor shall not be considered a criminal offense against a victim who is a minor, and conduct which is adjudicated in juvenile court shall not be considered a criminal offense against a victim who is a minor.

(10)(A) "Dangerous sexual offense" with respect to convictions occurring on or before June 30, 2006, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Rape in violation of Code Section 16-6-1;

(iii) Aggravated sodomy in violation of Code Section 16-6-2;

(iv) Aggravated child molestation in violation of Code Section 16-6-4; or

(v) Aggravated sexual battery in violation of Code Section 16-6-22.2.

(B) "Dangerous sexual offense" with respect to convictions occurring between July 1, 2006, and June 30, 2015, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) False imprisonment in violation of Code Section 16-5-41 which involves a victim who is less than 14 years of age, except by a parent;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;

(xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;

(xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

(xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.1) “Dangerous sexual offense” with respect to convictions occurring between July 1, 2015, and June 30, 2017, means any

criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) Trafficking a person for sexual servitude in violation of Code Section 16-5-46;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;

(xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;

(xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

(xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.2) “Dangerous sexual offense” with respect to convictions occurring between July 1, 2017, and June 30, 2019, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;

(xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;

(xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

(xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.3) “Dangerous sexual offense” with respect to convictions occurring between July 1, 2019, and June 30, 2021, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Improper sexual contact by employee or agent in the first or second degree in violation of Code Section 16-6-5.1, unless the punishment imposed was not subject to Code Section 17-10-6.2;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second or subsequent conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;

(xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;

(xviii) A second or subsequent conviction for obscene telephone contact in violation of Code Section 16-12-100.3; or

(xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.4) “Dangerous sexual offense” with respect to convictions occurring after June 30, 2021, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Improper sexual contact by employee or agent in the first or second degree or improper sexual contact by person in a position of trust in the first or second degree in violation of Code Section 16-6-5.1, unless the punishment imposed was not subject to Code Section 17-10-6.2;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second or subsequent conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;

(xvii) A second or subsequent conviction for obscene telephone contact in violation of Code Section 16-12-100.3; or

(xviii) Any conduct which, by its nature, is a felony sexual offense against a victim who is a minor or an attempt to commit a felony sexual offense against a victim who is a minor.

(C) For purposes of this paragraph, a conviction for a misdemeanor shall not be considered a dangerous sexual offense, and conduct which is adjudicated in juvenile court shall not be considered a dangerous sexual offense.

(11) "Institution of higher education" means a private or public community college, state university, state college, or independent postsecondary institution.

(12) "Level I risk assessment classification" means the sexual offender is a low sex offense risk and low recidivism risk for future sexual offenses.

(13) "Level II risk assessment classification" means the sexual offender is an intermediate sex offense risk and intermediate recidivism risk for future sexual offenses and includes all sexual offenders who do not meet the criteria for classification either as a sexually dangerous predator or for Level I risk assessment.

(14) "Minor" means any individual under the age of 18 years and any individual that the sexual offender believed at the time of the offense was under the age of 18 years if such individual was the victim of an offense.

(15) "Public and community swimming pools" includes municipal, school, hotel, motel, or any pool to which access is granted in

exchange for payment of a daily fee. The term includes apartment complex pools, country club pools, or subdivision pools which are open only to residents of the subdivision and their guests. This term does not include a private pool or hot tub serving a single-family dwelling and used only by the residents of the dwelling and their guests.

(16) “Required registration information” means:

(A) Name; social security number; age; race; sex; date of birth; height; weight; hair color; eye color; fingerprints; and photograph;

(B) Address, within this state or out of state, and, if applicable in addition to the address, a rural route address and a post office box;

(C) If the place of residence is a motor vehicle or trailer, the vehicle identification number, the license tag number, and a description, including color scheme, of the motor vehicle or trailer;

(D) If the place of residence is a mobile home, the mobile home location permit number; the name and address of the owner of the home; a description, including the color scheme of the mobile home; and, if applicable, a description of where the mobile home is located on the property;

(E) If the place of residence is a manufactured home, the name and address of the owner of the home; a description, including the color scheme of the manufactured home; and, if applicable, a description of where the manufactured home is located on the property;

(F) If the place of residence is a vessel, live-aboard vessel, or houseboat, the hull identification number; the manufacturer’s serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat;

(F.1) If the place of residence is the status of homelessness, information as provided under paragraph (2.1) of subsection (f) of this Code section;

(G) Date of employment, place of any employment, and address of employer;

(H) Place of vocation and address of the place of vocation;

(I) Vehicle make, model, color, and license tag number;

(J) If enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the name, address, and county of each institution, including each campus attended, and enrollment or employment status;

(K) The name of the crime or crimes for which the sexual offender is registering and the date released from prison or placed on probation, parole, or supervised release; and

(L) The landline and mobile telephone numbers of the sexual offender.

(17) “Risk assessment classification” means the notification level into which a sexual offender is placed based on the board’s assessment.

(18) “School” means all public and private kindergarten, elementary, and secondary schools.

(19) “School bus stop” means a school bus stop as designated by local school boards of education or by a private school.

(20) “Sexual offender” means any individual:

(A) Who has been convicted of a criminal offense against a victim who is a minor or any dangerous sexual offense;

(B) Who has been convicted under the laws of another state or territory, under the laws of the United States, under the Uniform Code of Military Justice, or in a tribal court of a criminal offense against a victim who is a minor or a dangerous sexual offense; or

(C) Who is required to register pursuant to subsection (e) of this Code section.

(21) “Sexually dangerous predator” means a sexual offender:

(A) Who was designated as a sexually violent predator between July 1, 1996, and June 30, 2006; or

(B) Who is determined by the Sexual Offender Risk Review Board to be at risk of perpetrating any future dangerous sexual offense.

(22) “Vocation” means any full-time, part-time, or volunteer employment with or without compensation exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year.

(b) Before a sexual offender who is required to register under this Code section is released from prison or placed on parole, supervised release, or probation, the appropriate official shall:

(1) Inform the sexual offender of the obligation to register, the amount of associated fees, and how to maintain registration;

(2) Obtain the information necessary for the required registration information;

(3) Inform the sexual offender that, if the sexual offender changes any of the required registration information, other than residence address, the sexual offender shall give the new information to the sheriff of the county with whom the sexual offender is registered within 72 hours of the change of information; if the information is the sexual offender's new residence address, the sexual offender shall give the information to the sheriff of the county with whom the sexual offender last registered within 72 hours prior to moving and to the sheriff of the county to which the sexual offender is moving within 72 hours prior to moving;

(4) Inform the sexual offender that he or she shall also register in any state where he or she is employed, carries on a vocation, or is a student;

(5) Inform the sexual offender that, if he or she changes residence to another state, the sexual offender shall register the new address with the sheriff of the county with whom the sexual offender last registered and that the sexual offender shall also register with a designated law enforcement agency in the new state within 72 hours after establishing residence in the new state;

(6) Obtain fingerprints and a current photograph of the sexual offender;

(7) Require the sexual offender to read and sign a form stating that the obligations of the sexual offender have been explained;

(8) Obtain and forward any information obtained from the clerk of court pursuant to Code Section 42-5-50 to the sheriff's office of the county in which the sexual offender will reside; and

(9) If required by a court or by Code Section 42-1-13.1, place any required location tracking device upon a sexual offender and explain its operation and cost.

(c) The Department of Corrections shall:

(1) Forward to the Georgia Bureau of Investigation a copy of the form stating that the obligations of the sexual offender have been explained;

(2) Forward any required registration information to the Georgia Bureau of Investigation;

(3) Forward the sexual offender's fingerprints and photograph to the sheriff's office of the county where the sexual offender is going to reside;

(4) Inform the board and the prosecuting attorney for the jurisdiction in which a sexual offender was convicted of the impending

release of a sexual offender at least eight months prior to such release so as to facilitate compliance with Code Section 42-1-14; and

(5) Keep all records of sexual offenders in a secure facility in accordance with Code Sections 15-1-10, 15-6-62, and 15-6-62.1 until official proof of death of a registered sexual offender; thereafter, the records shall be destroyed.

(c.1) The Department of Community Supervision shall keep all records of sexual offenders in a secure facility in accordance with Code Sections 15-1-10, 15-6-62, and 15-6-62.1 until official proof of death of a registered sexual offender; thereafter, the records shall be destroyed.

(d) No sexual offender shall be released from prison or placed on parole, supervised release, or probation until:

(1) The appropriate official has provided the Georgia Bureau of Investigation and the sheriff's office in the county where the sexual offender will be residing with the sexual offender's required registration information and risk assessment classification level; and

(2) The sexual offender's name has been added to the list of sexual offenders maintained by the Georgia Bureau of Investigation and the sheriff's office as required by this Code section.

(e) Registration pursuant to this Code section shall be required by any individual who:

(1) Is convicted on or after July 1, 1996, of a criminal offense against a victim who is a minor;

(2) Is convicted on or after July 1, 1996, of a dangerous sexual offense;

(3) Has previously been convicted of a criminal offense against a victim who is a minor and may be released from prison or placed on parole, supervised release, or probation on or after July 1, 1996;

(4) Has previously been convicted of a sexually violent offense or dangerous sexual offense and may be released from prison or placed on parole, supervised release, or probation on or after July 1, 1996;

(5) Is a resident of Georgia who intends to reside in this state and who is convicted under the laws of another state or the United States, under the Uniform Code of Military Justice, or in a tribal court of a sexually violent offense, a criminal offense against a victim who is a minor on or after July 1, 1999, or a dangerous sexual offense on or after July 1, 1996;

(6) Is a nonresident who changes residence from another state or territory of the United States or any other place to Georgia who is required to register as a sexual offender under federal law, military

law, tribal law, or the laws of another state or territory or who has been convicted in this state of a criminal offense against a victim who is a minor or any dangerous sexual offense;

(7) Is a nonresident sexual offender who enters this state for the purpose of employment or any other reason for a period exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year regardless of whether such sexual offender is required to register under federal law, military law, tribal law, or the laws of another state or territory; or

(8) Is a nonresident sexual offender who enters this state for the purpose of attending school as a full-time or part-time student regardless of whether such sexual offender is required to register under federal law, military law, tribal law, or the laws of another state or territory.

(f) Any sexual offender required to register under this Code section shall:

(1) Provide the required registration information to the appropriate official before being released from prison or placed on parole, supervised release, or probation;

(2) Register in person with the sheriff of the county in which the sexual offender resides within 72 hours after the sexual offender's release from prison or placement on parole, supervised release, probation, or entry into this state;

(2.1) In the case of a sexual offender whose place of residence is the status of homelessness, in lieu of the requirements of paragraph (2) of this subsection, register in person with the sheriff of the county in which the sexual offender sleeps within 72 hours after the sexual offender's release from prison or placement on parole, supervised release, probation, or entry into this state and provide the location where he or she sleeps;

(3) Maintain the required registration information with the sheriff of each county in which the sexual offender resides or sleeps;

(4) Renew the required registration information with the sheriff of the county in which the sexual offender resides or sleeps by reporting in person to the sheriff within 72 hours prior to such offender's birthday each year to be photographed and fingerprinted;

(4.1) In the case of a sexual offender who resides in a state or privately operated hospice facility, skilled nursing home, or residential health care facility, with the approval of the sheriff of the county where such sexual offender resides, the sexual offender may satisfy the annual registration requirements of paragraph (4) of this subsec-

tion by registering at any time during the sexual offender's month of birth. Additionally, in the case of a sexual offender who resides in a state or privately operated hospice facility, skilled nursing home, or residential health care facility, with the approval of the sheriff of the county where such sexual offender resides, such sexual offender shall not be required to be fingerprinted pursuant to paragraph (4) of this subsection but the sheriff shall be authorized to photograph the offender;

(5) Update the required registration information with the sheriff of the county in which the sexual offender resides within 72 hours of any change to the required registration information, other than where he or she resides or sleeps if such person is homeless. If the information is the sexual offender's new address, the sexual offender shall give the information regarding the sexual offender's new address to the sheriff of the county in which the sexual offender last registered within 72 hours prior to any change of address and to the sheriff of the county to which the sexual offender is moving within 72 hours prior to establishing such new address. If the sexual offender is homeless and the information is the sexual offender's new sleeping location, within 72 hours of changing sleeping locations, the sexual offender shall give the information regarding the sexual offender's new sleeping location to the sheriff of the county in which the sexual offender last registered, and if the county has changed, to the sheriff of the county to which the sexual offender has moved; and

(6) Continue to comply with the registration requirements of this Code section for the entire life of the sexual offender, excluding ensuing periods of incarceration.

(g) A sexual offender required to register under this Code section may petition to be released from the registration requirements and from the residency or employment restrictions of this Code section in accordance with the provisions of Code Section 42-1-19.

(h)(1) The appropriate official or sheriff shall, within 72 hours after receipt of the required registration information, forward such information to the Georgia Bureau of Investigation. Once the data is entered into the Criminal Justice Information System by the appropriate official or sheriff, the Georgia Crime Information Center shall notify the sheriff of the sexual offender's county of residence, either permanent or temporary, the sheriff of the county of employment, and the sheriff of the county where the sexual offender attends an institution of higher education within 24 hours of entering the data or any change to the data.

(2) The Georgia Bureau of Investigation shall:

(A) Transmit all information, including the conviction data and

fingerprints, to the Federal Bureau of Investigation within 24 hours of entering the data;

(B) Establish operating policies and procedures concerning record ownership, quality, verification, modification, and cancellation; and

(C) Perform mail out and verification duties as follows:

(i) Send each month Criminal Justice Information System network messages to sheriffs listing sexual offenders due for verification;

(ii) Create a photo image file from original entries and provide such entries to sheriffs to assist in sexual offender identification and verification;

(iii) Mail a nonforwardable verification form to the last reported address of the sexual offender within ten days prior to the sexual offender's birthday;

(iv) If the sexual offender changes residence to another state, notify the law enforcement agency with which the sexual offender shall register in the new state; and

(v) Maintain records required under this Code section.

(i) The sheriff's office in each county shall:

(1) Prepare and maintain a list of all sexual offenders and sexually dangerous predators residing in each county. Such list shall include the sexual offender's name; age; physical description; address; crime of conviction, including conviction date and the jurisdiction of the conviction; photograph; and the risk assessment classification level provided by the board, and an explanation of how the board classifies sexual offenders and sexually dangerous predators;

(2) Electronically submit and update all information provided by the sexual offender within two business days to the Georgia Bureau of Investigation in a manner prescribed by the Georgia Bureau of Investigation;

(3) Maintain and provide a list, manually or electronically, of every sexual offender residing in each county so that it may be available for inspection:

(A) In the sheriff's office;

(B) In any county administrative building;

(C) In the main administrative building for any municipal corporation;

(D) In the office of the clerk of the superior court so that such list is available to the public; and

(E) On a website maintained by the sheriff of the county for the posting of general information;

(4) Update the public notices required by paragraph (3) of this subsection within two business days of the receipt of such information;

(5) Inform the public of the presence of sexual offenders in each community;

(6) Update the list of sexual offenders residing in the county upon receipt of new information affecting the residence address of a sexual offender or upon the registration of a sexual offender moving into the county by virtue of release from prison, relocation from another county, conviction in another state, federal court, military tribunal, or tribal court. Such list, and any additions to such list, shall be delivered, within 72 hours of updating the list of sexual offenders residing in the county, to all schools or institutions of higher education located in the county;

(7) Within 72 hours of the receipt of changed required registration information, notify the Georgia Bureau of Investigation through the Criminal Justice Information System of each change of information;

(8) Retain the verification form stating that the sexual offender still resides at the address last reported;

(9) Enforce the criminal provisions of this Code section. The sheriff may request the assistance of the Georgia Bureau of Investigation to enforce the provisions of this Code section;

(10) Cooperate and communicate with other sheriffs' offices in this state and in the United States to maintain current data on the location of sexual offenders;

(11) Determine the appropriate time of day for reporting by sexual offenders, which shall be consistent with the reporting requirements of this Code section; and

(12) Provide current information on names and addresses of all registered sexual offenders to campus police with jurisdiction for the campus of an institution of higher education if the campus is within the sheriff's jurisdiction.

(j)(1) The sheriff of the county where the sexual offender resides or last registered shall be the primary law enforcement official charged with communicating the whereabouts of the sexual offender and any changes in required registration information to the sheriff's office of

the county or counties where the sexual offender is employed, volunteers, attends an institution of higher education, or moves.

(2) The sheriff's office may post the list of sexual offenders in any public building in addition to those locations enumerated in subsection (h) of this Code section.

(k) The Georgia Crime Information Center shall create the Criminal Justice Information System network transaction screens by which appropriate officials shall enter original data required by this Code section. Screens shall also be created for sheriffs' offices for the entry of record confirmation data; employment; changes of residence, institutions of higher education, or employment; or other pertinent data to assist in sexual offender identification.

(l)(1) On at least an annual basis, the Department of Education shall obtain from the Georgia Bureau of Investigation a complete list of the names and addresses of all registered sexual offenders and shall provide access to such information, accompanied by a hold harmless provision, to each school in this state. In addition, the Department of Education shall provide information to each school in this state on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders.

(2) On at least an annual basis, the Department of Early Care and Learning shall provide current information to all child care programs regulated pursuant to Code Section 20-1A-10 and to all child care learning centers, day-care, group day-care, and family day-care programs regulated pursuant to Code Section 49-5-12 on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders and shall include, on a continuing basis, such information with each application for licensure, commissioning, or registration for early care and education programs.

(3) On at least an annual basis, the Department of Human Services shall provide current information to all long-term care facilities for children on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders.

(m) Within ten days of the filing of a defendant's discharge and exoneration of guilt pursuant to Article 3 of Chapter 8 of this title, the clerk of court shall transmit the order of discharge and exoneration to the Georgia Bureau of Investigation and any sheriff maintaining records required under this Code section.

(n) Any individual who:

(1) Is required to register under this Code section and who fails to comply with the requirements of this Code section;

(2) Provides false information; or

(3) Fails to respond directly to the sheriff of the county where he or she resides or sleeps within 72 hours prior to such individual's birthday

shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than 30 years; provided, however, that upon the conviction of the second offense under this subsection, the defendant shall be punished by imprisonment for not less than five nor more than 30 years.

(o) The information collected pursuant to this Code section shall be treated as private data except that:

(1) Such information may be disclosed to law enforcement agencies for law enforcement purposes;

(2) Such information may be disclosed to government agencies conducting confidential background checks; and

(3) The Georgia Bureau of Investigation or any sheriff maintaining records required under this Code section shall, in addition to the requirements of this Code section to inform the public of the presence of sexual offenders in each community, release such other relevant information collected under this Code section that is necessary to protect the public concerning sexual offenders required to register under this Code section, except that the identity of a victim of an offense that requires registration under this Code section shall not be released.

(p) The Board of Public Safety is authorized to promulgate rules and regulations necessary for the Georgia Bureau of Investigation and the Georgia Crime Information Center to implement and carry out the provisions of this Code section.

(q) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this article.

(r) Any violation of this Code section is declared to be a continuous offense, and venue for such offense shall be considered to have been committed in any county where:

(1) A sexual offender is required to register;

(2) An accused fails to comply with the requirements of this Code section; or

(3) An accused provides false information.

History.

Code 1981, § 42-1-12, enacted by Ga. L. 1996, p. 1520, § 1; Ga. L. 1997, p. 143, § 42; Ga. L. 1997, p. 380, § 1; Ga. L. 1998, p. 831, § 1; Ga. L. 1999, p. 81, § 42; Ga. L. 1999, p. 837, § 1; Ga. L. 2001, p. 1004, § 1; Ga. L. 2002, p. 571, § 1; Ga. L. 2002, p. 1400, §§ 1, 2; Ga. L. 2003, p. 140, § 42; Ga. L. 2003, p. 281, § 1; Ga. L. 2004, p. 645, § 5; Ga. L. 2004, p. 1064, §§ 1, 2; Ga. L. 2005, p. 453, § 1/HB 106; Ga. L. 2006, p. 72, § 42/SB 465; Ga. L. 2006, p. 379, § 24/HB 1059; Ga. L. 2008, p. 680, §§ 2, 3/SB 1; Ga. L. 2008, p. 810, §§ 3, 4/SB 474; Ga. L. 2009, p. 8, § 42/SB 46; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 167, § 1/HB 651; Ga. L. 2010, p. 168, §§ 5, 6, 7, 8, 9, 10, 11/HB 571; Ga. L. 2011,

p. 752, § 42/HB 142; Ga. L. 2012, p. 173, § 2-9/HB 665; Ga. L. 2013, p. 135, § 10/HB 354; Ga. L. 2015, p. 422, § 5-65/HB 310; Ga. L. 2015, p. 675, § 4-2/SB 8; Ga. L. 2017, p. 489, § 6/HB 341; Ga. L. 2019, p. 912, § 5/SB 9; Ga. L. 2020, p. 588, § 1/HB 983; Ga. L. 2021, p. 417, § 2/HB 495; Ga. L. 2021, p. 516, § 4/SB 117; Ga. L. 2022, p. 352, § 42/HB 1428; Ga. L. 2023, p. 637, § 6-1/HB 188, effective May 4, 2023; Ga. L. 2025, p. 1029, § 42(1)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “paragraph (3)” for “paragraph (2)” in paragraph (a)(6.1).

JUDICIAL DECISIONS**ANALYSIS****GENERAL CONSIDERATION****EVIDENCE AND PROCEDURAL ISSUES****General Consideration**

Registration as sex offender not required. — Sex offender registration was improperly ordered against the defendant because the victim of the custody interference crime was not a minor. *Myers v. State*, 370 Ga. App. 643, 898 S.E.2d 834, 2024 Ga. App. LEXIS 68 (2024).

Evidence and Procedural Issues**Sufficient evidence to support conviction of failure to notify of change of residence.**

Evidence was sufficient to support defendant’s conviction for failure to register as a sex offender because defendant’s previous address was not only a residence but also a “sleeping location,” such that when defendant became homeless, defendant was required to notify the sheriff of defendant’s “new sleeping location.” Because

the undisputed evidence showed that defendant failed to provide the sheriff’s office with defendant’s new sleeping location within 72 hours of becoming homeless, defendant violated O.C.G.A. § 42-1-12. *Lester v. State*, 368 Ga. App. 51, 889 S.E.2d 159, 2023 Ga. App. LEXIS 260 (2023).

Evidence insufficient to support conviction.

Evidence was insufficient to support defendant’s conviction for failing to register as a sex offender as the 72-hour timeframe under O.C.G.A. § 42-1-12(f)(5) was an essential element of the crime and without proof that 72 hours had passed since the change in employment, the state failed to prove that essential element beyond a reasonable doubt. *Buchanan v. State*, 371 Ga. App. 401, 900 S.E.2d 310, 2024 Ga. App. LEXIS 156 (2024).

42-1-18. Photographing minor without consent of parent or guardian; use of unmanned aircraft systems.

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

(1) “Minor” shall have the same meaning as set forth in Code Section 42-1-12.

(2) “Photograph” means to create, capture, transmit, or record by electronic or other means a photographic image or similar visual representation or image of a person.

(3) “Unmanned aircraft system” means a powered, aerial vehicle, not including a satellite, that:

(A) Does not carry a human operator and is operated without the possibility of direct human intervention from within or on the vehicle;

(B) Uses aerodynamic forces to provide vehicle lift;

(C) Can fly autonomously or be piloted remotely;

(D) Can be expendable or recoverable; and

(E) Has the ability to photograph.

(b)(1) No person required to register as a sexual offender pursuant to Code Section 42-1-12 shall intentionally photograph a minor without the consent of the minor’s parent or guardian.

(2) Any person who commits the offense of intentionally photographing a minor without the consent of such minor’s parent or guardian in violation of paragraph (1) of this subsection shall, upon the first conviction thereof, be guilty of a misdemeanor of a high and aggravated nature and shall be punished as provided by Code Section 17-10-4; provided, however, that, if a fine is imposed pursuant to Code Section 17-10-4, such fine shall not be less than \$1,500.00.

(3) Any person who commits the offense of intentionally photographing a minor without the consent of such minor’s parent or guardian in violation of paragraph (1) of this subsection shall, upon a second or subsequent conviction thereof, be guilty of a felony and shall be punished by imprisonment for not less than one nor more than 30 years and a fine of not less than \$5,000.00 nor more than \$100,000.00.

(4) For the purpose of this subsection, the term “conviction” shall include a plea of nolo contendere.

(c)(1) No person required to register as a sexual offender pursuant to Code Section 42-1-12 shall knowingly possess, own, or operate an unmanned aircraft system with the intent to photograph, observe, follow, or contact any particular person without his or her consent or photograph, observe, follow, or contact any person in a way that violates the person’s reasonable expectation of privacy.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and shall be punished by imprisonment for not less than five nor more than ten years and a fine of not less than \$20,000.00 nor more than \$100,000.00.

History.

Code 1981, § 42-1-18, enacted by Ga. L. 2010, p. 168, § 14/HB 571; Ga. L. 2011, p. 505, § 1/HB 162; Ga. L. 2024, p. 226, § 1/SB 493, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted the current provisions of this Code section for the former provisions, which read: “(a) As used in this Code section, the term “photograph” means to take any picture, film or digital photograph, motion picture film, videotape, or similar visual representation or image of a person.

“(b) No person required to register as a sexual offender pursuant to Code Section 42-1-12 shall intentionally photograph a minor without the consent of the minor’s parent or guardian.

“(c) Any person who knowingly violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature.”. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2024, p. 226, § 4/SB 493, not codified by the General Assembly, makes this Code section applicable to all offenses committed on or after July 1, 2024.

42-1-19. Petition for release from registration requirements.

(a) An individual required to register pursuant to Code Section 42-1-12 may petition a superior court for release from registration requirements and from any residency or employment restrictions of this article if the individual:

(1) Has completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12 and:

(A) Is confined to a hospice facility, skilled nursing home, residential care facility for the elderly, or nursing home;

(B) Is totally and permanently disabled as such term is defined in Code Section 49-4-80;

(C) Is otherwise seriously physically incapacitated due to illness or injury; or

(D) Has reached the age of 80 years;

(2) Was sentenced for a crime that became punishable as a misdemeanor on or after July 1, 2006, and meets the criteria set forth in subparagraphs (c)(1)(A) through (c)(1)(F) of Code Section 17-10-6.2;

(3) Is required to register solely because he or she was convicted of kidnapping or false imprisonment involving a minor and such offense did not involve a sexual offense against such minor or an attempt to commit a sexual offense against such minor. For purposes of this

paragraph, the term “sexual offense” means any offense listed in division (a)(10)(B)(i) or (a)(10)(B)(iv) through (a)(10)(B)(xix) of Code Section 42-1-12;

(4) Has completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12 and meets the criteria set forth in subparagraphs (c)(1)(A) through (c)(1)(F) of Code Section 17-10-6.2; or

(5) Was convicted of a sexual offense and required to register under the laws of another state or territory, under the laws of the United States, under the Uniform Code of Military Justice, or in a tribal court and:

(A) Has completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12 and meets the criteria set forth in subparagraphs (c)(1)(A) through (c)(1)(F) of Code Section 17-10-6.2; and

(B) Has been removed from the registry in the other state or territory and can provide the court with documentation supporting the same.

(b)(1) A petition for release pursuant to this Code section shall be filed in the superior court of the jurisdiction in which the individual was convicted; provided, however, that, if the individual was not convicted in this state, such petition shall be filed in the superior court of the county where the individual resides.

(2) Such petition shall be served on the district attorney of the jurisdiction where the petition is filed, the sheriff of the county where the petition is filed, and the sheriff of the county where the individual resides. Service on the district attorney and sheriff may be had by mailing a copy of the petition with a proper certificate of service.

(3) If a petition for release is denied, another petition for release shall not be filed within a period of two years from the date of the final order on a previous petition.

(c)(1) An individual who meets the requirements of paragraph (1), (2), or (3) of subsection (a) of this Code section shall be considered for release from registration requirements and from residency or employment restrictions.

(2) An individual who meets the requirements of paragraph (4) of subsection (a) of this Code section may be considered for release from registration requirements and from residency or employment restrictions only if:

(A) Five years have elapsed since the individual completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12; and

(B) The individual has been classified by the board as a Level I risk assessment classification, provided that, if the board has not done a risk assessment classification for such individual within the last five years, the court shall order such classification to be completed prior to considering the petition for release.

(3) An individual who meets the requirements of paragraph (5) of subsection (a) of this Code section may be considered for release from registration requirements and from residency or employment restrictions only if:

(A) Ten years have elapsed since the individual completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12; and

(B) The individual has been classified by the board as a Level I risk assessment classification, provided that, if the board has not done a risk assessment classification for such individual within the last five years, the court shall order such classification to be completed prior to considering the petition for release.

(d) In considering a petition pursuant to this Code section, the court may consider:

(1) Any evidence introduced by the petitioner;

(2) Any evidence introduced by the district attorney, board, or sheriff; and

(3) Any other relevant evidence.

(e) The court shall hold a hearing on the petition if requested by the petitioner.

(f) The court may issue an order releasing the individual from registration requirements or residency or employment restrictions, in whole or part, if the court finds by a preponderance of the evidence that the individual does not pose a substantial risk of perpetrating any future dangerous sexual offense. The court may release an individual from such requirements or restrictions for a specific period of time. The court shall send a copy of any order releasing an individual from any requirements or restrictions to the sheriff and the district attorney of the jurisdiction where the petition is filed, to the sheriff of the county where the individual resides, to the Department of Corrections, to the Department of Community Supervision, and to the Georgia Bureau of Investigation.

History.
Code 1981, § 42-1-19, enacted by Ga. L. 2010, p. 168, § 15/HB 571; Ga. L. 2015, p. 422, § 5-67/HB 310; Ga. L. 2024, p. 226, § 2/SB 493, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, at the end of paragraph (a)(1), substituted “and:” for “; and”; deleted “or” from the end of subparagraph (a)(1)(B); added “or” to the end of subparagraph (a)(1)(C); added subparagraph (a)(1)(D); deleted “or” from the end of paragraph (a)(3); added “; or” at the end of paragraph (a)(4) and added paragraph (a)(5); inserted a comma following “that” in paragraph (b)(1); in subparagraph (c)(2)(A), substituted “Five years” for “Ten years” at the beginning and substituted “and” for “or” at the end; in subparagraph (c)(2)(B), inserted a comma following “that” and inserted “within the last five years”; added paragraph (c)(3); and inserted “; board,” in paragraph (d)(2). See Editor’s notes for applicability.

Editor’s notes.
Ga. L. 2024, p. 226, § 4/SB 493, not codified by the General Assembly, makes the amendments to this Code section applicable to all offenses committed on or after July 1, 2024.

CHAPTER 4

JAILS

Article 1		Sec.	
General Provisions		42-4-16.	Inmate reports by county jails and municipal detention facilities.
Sec. 42-4-1.	Appointment of county and municipal jailers; arrest powers.		
42-4-14.	Identity verification of persons confined in a jail or detention facility.		
Article 2			Conditions of Detention
		42-4-32.	Sanitation and health requirements.

ARTICLE 1

GENERAL PROVISIONS

42-4-1. Appointment of county and municipal jailers; arrest powers.

- (a) By virtue of their offices, sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law.
- (b) By virtue of their offices, chiefs of police are the jailers of the municipal corporations and have the authority to appoint other jailers, subject to the supervision of the municipal governing authority, as prescribed by law. Each jailer of a municipal corporation shall maintain the records required of sheriffs by subsection (a) of Code Section 42-4-7.
- (c) Jailers who have been certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the

course of training required by Chapter 8 of Title 35, the “Georgia Peace Officer Standards and Training Act,” shall be authorized to arrest any person found to be in violation of a criminal law that occurs within the jail or within the perimeter guard lines of such jail established pursuant to subsection (j) of Code Section 42-4-13. Jailers shall be further authorized to exercise arrest powers upon any person for whom a complaint or arrest warrant is pending who surrenders into custody at his or her jail.

History.

Orig. Code 1863, § 331; Code 1868, § 392; Code 1873, § 356; Code 1882, § 356; Penal Code 1895, § 1120; Penal Code 1910, § 1149; Code 1933, § 77-101;

Ga. L. 1988, p. 266, § 1; Ga. L. 2024, p. 502, § 3/SB 37, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, added subsection (c).

42-4-14. Identity verification of persons confined in a jail or detention facility.

(a) As used in this Code section, the term “illegal alien” means a person who is verified by the federal government to be present in the United States in violation of the federal Immigration and Nationality Act.

(b) When any person is confined, for any period, in the jail of a county or a detention facility of a municipality or a jail operated by a regional jail authority in compliance with Article 36 of the Vienna Convention on Consular Relations, a reasonable effort shall be made within 48 hours of such person’s arrival at the jail or detention facility and pursuant to subsection (c) or (d) of this Code section to determine:

- (1) The nationality of the person so confined; and
- (2) That the person so confined is not an illegal alien.

(c) If a person to be admitted to a county jail or municipal detention facility claims to be a consular officer or diplomat, the jailer shall attempt to obtain such person’s identification and, upon verification of such person’s status as a consular officer or diplomat, provide for his or her immediate release. If a person who claims to be a consular officer or diplomat is unable to produce credentials which provide for verification of diplomatic status, a person in a supervisory role at such jail or detention facility shall contact the United States Department of State during normal business hours or the Command Center of the Office of Security of the United States Department of State outside of normal business hours to request verification of such person’s status as a consular officer or of other diplomatic status.

(d)(1) Unless a person admitted to a county jail or municipal detention facility has been positively identified as a consular officer or diplomat, the county jail or municipal detention facility receiving the

person for confinement shall attempt to verify lawful presence through presentation of a driver's license or identification card issued by this state or any state from the list compiled by the State Law Department pursuant to paragraph (5) of subsection (b) of Code Section 13-10-91 or one of the following:

(A) A Form I-94 Arrival/Departure Record issued by the United States Department of Homeland Security;

(B) A permanent resident alien card Form 551;

(C) A valid Nexus card;

(D) A valid global entry identification card issued by the United States Department of Homeland Security; or

(E) A valid passport indicating the person is a United States citizen, has been issued a visa, or is a citizen of a country participating in a visa waiver program administered by the United States Department of State.

(2) If a person fails to produce a document required by this subsection, or verification of the authenticity of any such document is necessary, a person in a supervisory role at the county jail or municipal detention facility shall contact the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or the Atlanta office of the United States Immigration and Customs Enforcement Division of the Department of Homeland Security for a determination of the person's lawful presence. If the LESC of the United States Department of Homeland Security responds to contact pursuant to this paragraph with a request to detain an illegal alien, he or she shall not be released within 48 hours of receipt of such request; provided, however, that if such person was released prior to such request to detain, such fact shall be communicated to the LESC of the United States Department of Homeland Security. Any response received pursuant to this paragraph which indicates an illegal alien is confined in a county jail or municipal detention facility shall be forwarded to the local United States Immigration and Customs Enforcement Division of the Department of Homeland Security.

(3) No person shall be detained solely due to the inability to contact the LESC of the United States Department of Homeland Security pursuant to the provisions of this subsection.

(4) No person identified as an illegal alien by the LESC of the United States Department of Homeland Security pursuant to this subsection shall be detained unless a request to detain has been received pursuant to paragraph (2) of this subsection.

(e) A county jail or municipal detention facility shall provide an

interpreter for any person to be confined who is unable to effectively communicate or understand the requirements of this Code section.

(f) Each county jail or municipal detention facility shall maintain a record of all communications made pursuant to this Code section for any person taken into custody of such jail or detention facility.

(g) Nothing in this Code section shall be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release; provided, however, that, upon verification that any person confined in a county jail or municipal detention facility is an illegal alien, such person may be detained, arrested, and transported as authorized by state and federal law.

(h)(1) It shall be unlawful for any jailer to knowingly and willfully violate any provision of this Code section.

(2) A person convicted of a violation of this Code section shall be punished as for a misdemeanor. A person convicted of a second or subsequent violation of this Code section shall be punished as for a misdemeanor of a high and aggravated nature.

History.

Code 1981, § 42-4-14, enacted by Ga. L. 2006, p. 105, § 5/SB 529; Ga. L. 2008, p. 1137, § 4/SB 350; Ga. L. 2009, p. 8, § 42/SB 46; Ga. L. 2009, p. 970, § 2/HB 2; Ga. L. 2011, p. 794, § 13/HB 87; Ga. L. 2024, p. 491, § 9/HB 1105, effective May 1, 2024.

Amendments.

The 2024 amendment, effective May 1, 2024, substituted “the federal Immigration and Nationality Act” for “federal immigration law” at the end of subsection (a); substituted the current provisions of subsection (b) for the former provisions, which read: “When any person is confined, for any period, in the jail of a county or municipality or a jail operated by a regional jail authority in compliance with

Article 36 of the Vienna Convention on Consular Relations, a reasonable effort shall be made to determine the nationality of the person so confined.”; deleted former subsections (c) and (e); added present subsections (c) through (f) and (h); and redesignated former subsection (d) as subsection (g).

Editor’s notes.

Ga. L. 2024, p. 491, § 1/HB 1105, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Criminal Alien Track and Report Act of 2024.’”

Law reviews.

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 71 (2024).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from violations of subsection (h) of O.C.G.A. § 42-4-14 appear to be offenses

for which fingerprinting is required. 2024 Op. Att’y Gen. No. 24-3.

42-4-16. Inmate reports by county jails and municipal detention facilities.

(a) At least quarterly, an individual in a supervisory role at a county

jail or municipal detention facility shall prepare and post on the public website of the local jurisdiction where his or her jail or detention facility is located, a report for his or her jail or detention facility which includes the following information for the most recent quarter:

- (1) The total number of inmates booked into the county jail or municipal detention facility;
 - (2) The total number of inquiries made to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or any other federal agency inquiring relating to the immigration status or prior arrests of foreign-born inmates;
 - (3) The total number of responses received for requests made by the county jail or municipal detention facility pursuant to paragraph (2) of this subsection;
 - (4) The total number of responses as provided for in paragraph (3) of this subsection that indicated a foreign-born inmate of the county jail or municipal detention facility is an illegal alien as such term is defined in Code Section 42-4-14;
 - (5) The number of immigration detainers issued by the United States Immigration and Customs Enforcement Division of the Department of Homeland Security for prisoners in the county jail or municipal detention facility; and
 - (6) A sworn affidavit signed by the individual in a supervisory role at the county jail or municipal detention facility verifying compliance with Code Section 42-4-14 and all other applicable law.
- (b) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in a report required by this Code section shall be guilty of a violation of Code Section 16-10-20.

History.

Code 1981, § 42-4-16, enacted by Ga. L. 2024, p. 491, § 10/HB 1105, effective December 31, 2024.

Effective date.

This Code section becomes effective December 31, 2024.

Editor’s notes.

Ga. L. 2024, p. 491, § 1/HB 1105, not

codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Criminal Alien Track and Report Act of 2024.’”

Law reviews.

For article on the 2024 enactment of this Code section, see 41 Ga. St. U.L. Rev. 71 (2024).

ARTICLE 2

CONDITIONS OF DETENTION

42-4-32. Sanitation and health requirements.

- (a) All aspects of food preparation and food service shall conform to the applicable standards of the Department of Public Health.
- (b) All inmates shall be given not less than two substantial and wholesome meals daily.
- (c) Sanitation inspections of both facilities and inmates shall be made as frequently as is necessary to ensure against the presence of unsanitary conditions. New inmates should be carefully classified, with adequate separation and treatment given as needed.
- (d) The officer in charge or his designated representative shall assure that each inmate is observed daily, and a physician shall be immediately called if there are indications of serious injury, wound, or illness. The instructions of the physician shall be strictly carried out. Ill inmates shall be furnished such food as is prescribed by the attending physician.

History.
Ga. L. 1973, p. 890, § 3; Ga. L. 1977, p. 761, § 1; Ga. L. 1990, p. 135, § 2; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214; Ga. L. 2024, p. 143, § 8/HB 1028, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, deleted the second sentence of subsection (c), which read: “An official from the Department of Public Health or an officer designated by the commissioner of public health shall inspect the facilities at least once every three months.”

CHAPTER 5

CORRECTIONAL INSTITUTIONS OF STATE AND COUNTIES

Article 1		Sec.	
General Provisions			authorization; penalty; use of unmanned aircraft to accomplish violations.
Sec.			Article 3
42-5-2.	Care and services required for inmates; responsibility of costs; prohibited procedures and treatments.		Conditions of Detention Generally
42-5-18.	Items prohibited for possession by inmates; warden’s	42-5-64.	Educational programming; information provided to released prisoners.

ARTICLE 1
GENERAL PROVISIONS

42-5-2. Care and services required for inmates; responsibility of costs; prohibited procedures and treatments.

(a) As used in this Code section, the term “state inmate” means any inmate in the custody of the department and for whom the department shall be responsible for the payment of medical care.

(b) Except as provided in subsection (c) of this Code section, it shall be the responsibility of the governmental unit, subdivision, or agency having the physical custody of an inmate to maintain the inmate, furnishing such inmate food, clothing, and any needed medical and hospital attention; to defend any habeas corpus or other proceedings instituted by or on behalf of the inmate; and to bear all expenses relative to any escape and recapture, including the expenses of extradition. Except as provided in subsection (c) of this Code section, it shall be the responsibility of the department to bear the costs of any reasonable and necessary emergency medical and hospital care which is provided to any inmate after the receipt by the department of the notice provided by subsection (a) of Code Section 42-5-50 who is in the physical custody of any other political subdivision or governmental agency of this state, except a county correctional institution, if the inmate is available and eligible for the transfer of his custody to the department pursuant to Code Section 42-5-50. Except as provided in subsection (c) of this Code section, the department shall also bear the costs of any reasonable and necessary follow-up medical or hospital care rendered to any such inmate as a result of the initial emergency care and treatment of the inmate. With respect to state inmates housed in county correctional institutions, the department shall bear the costs of direct medical services required for emergency medical conditions posing an immediate threat to life or limb if the inmate cannot be placed in a state institution for the receipt of this care. The responsibility for payment will commence when the costs for direct medical services exceed an amount specified by rules and regulations of the board. The department will pay only the balance in excess of the specified amount. Except as provided in subsection (c) of this Code section, it shall remain the responsibility of the governmental unit having the physical custody of an inmate to bear the costs of such medical and hospital care, if the custody of the inmate has been transferred from the department pursuant to any order of any court

within this state. The department shall have the authority to promulgate rules and regulations relative to payment of such medical and hospital costs by the department.

(c)(1) The officer in charge will provide an inmate access to medical services or hospital care and may arrange for the inmate's health insurance carrier to pay the health care provider for the services or care rendered as provided in Article 3 of Chapter 4 of this title.

(2) With respect to an inmate covered under Article 3 of Chapter 4 of this title, the costs of any medical services, emergency medical and hospital care, or follow-up medical or hospital care as provided in subsection (b) of this Code section for which a local governmental unit is responsible shall mean the costs of such medical services and hospital care which have not been paid by the inmate's health insurance carrier or the Department of Community Health.

(d) A hospital authority or hospital which is not a party to a contract with the department or its agents on July 1, 2009, shall be reimbursed no more than the applicable Georgia Medicaid rate for emergency services provided to such state inmate. Nothing in this Code section shall prohibit the department from negotiating higher fees or rates with health care providers. It is the intent of the General Assembly that the department or its agents enter into negotiations with health care providers to contract for the provision of services as provided in this Code section.

(e)(1) Except as otherwise provided for in paragraph (2) of this subsection, no state funds or resources shall be used for the following treatments for state inmates:

(A) Sex reassignment surgeries or any other surgical procedures that are performed for the purpose of altering primary or secondary sexual characteristics;

(B) Hormone replacement therapies; and

(C) Cosmetic procedures or prosthetics intended to alter the appearance of primary or secondary sexual characteristics.

(2) The board shall adopt rules and regulations regarding the procedures and therapies prohibited by this subsection, which shall provide for the following limited instances in which the treatments set forth in paragraph (1) of this subsection shall be authorized:

(A) Treatments for medical conditions where such treatments are considered medically necessary, provided that such condition is not gender dysphoria or the purpose of such treatment is not for sex reassignment;

(B) Treatments for individuals born with a medically verifiable disorder of sex development, including individuals born with am-

biguous genitalia or chromosomal abnormalities resulting in ambiguity regarding the individual’s biological sex;

(C) Treatments for individuals with partial androgen insensitivity syndrome; and

(D) Hormone replacement therapy treatment for state inmates who were being treated with such therapy prior to May 8, 2025, provided that the provision of such therapy is solely for the purpose of transitioning off such therapy.

History.

Ga. L. 1956, p. 161, § 13; Ga. L. 1982, p. 1361, §§ 1, 2; Ga. L. 1983, p. 3, § 31; Ga. L. 1986, p. 493, § 1; Ga. L. 1992, p. 2125, § 3; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 136, § 1A/HB 464; Ga. L. 2025, p. 229, § 1/SB 185, effective May 8, 2025.

Amendments.

The 2025 amendment, effective May 8, 2025, added subsection (a); redesignated former subsections (a) through (c) as subsections (b) through (d); in subsection (b), substituted “subsection (c)” for “subsection (b)” in three places, substituted “such inmate” for “him”, and substituted “of the board” for “of the Board of Corrections”; in paragraph (c)(2), substi-

tuted “subsection (b)” for “subsection (a)”; in subsection (d), substituted “department” for “Georgia Department of Corrections” in three places and deleted the former second sentence, which read: “For purposes of this subsection, the term ‘state inmate’ means any inmate for whom the Georgia Department of Corrections shall be responsible for the payment of medical care thereof.”; and added subsection (e).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2025, “May 8, 2025” was substituted for “the effective date of this Act” in division (e)(2)(D).

42-5-17. Loitering near inmates after being ordered to desist.

JUDICIAL DECISIONS

Constitutionality. — Defendant’s convictions for loitering near inmates and obstructing an office were upheld because the trial court did not abuse its discretion in denying the defendant’s request for a jury instruction on the First Amendment right to record matters of public interest on public property, as that right did not

extend to nonpublic forums like correctional facilities and O.C.G.A. § 42-5-17 was not unconstitutionally vague as applied to the defendant’s conduct of standing around and refusing to leave. *Metz v. State*, 321 Ga. 402, 915 S.E.2d 613, 2025 Ga. LEXIS 90 (2025).

42-5-18. Items prohibited for possession by inmates; warden’s authorization; penalty; use of unmanned aircraft to accomplish violations.

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

(1) “Inmate” means a prisoner, detainee, criminal suspect, immigration detainee, or other person held, incarcerated, or detained in a place of incarceration, whether or not such person is inside or outside of such place of incarceration.

(2) "Place of incarceration" means any prison, probation detention center, jail, or institution, including any state, federal, local, or privately operated facility, used for the purpose of incarcerating criminals or detainees.

(3) "Telecommunications device" means a device, an apparatus associated with a device, or a component of a device that enables, or may be used to enable, communication with a person outside a place of incarceration, including a telephone, cellular telephone, personal digital assistant, transmitting radio, or computer connected or capable of being connected to a computer network, by wireless or other technology, or otherwise capable of communicating with a person or device outside of a place of incarceration.

(4) "Warden or superintendent" means the commissioner or any warden, superintendent, sheriff, chief jailer, or other person who is responsible for the overall management and operation of a place of incarceration.

(b) It shall be unlawful for any person to obtain for, to procure for, or to give to an inmate a gun, pistol, or any other weapon; any intoxicating liquor; amphetamines, biphetaamines, or any other hallucinogenic drugs or other drugs, regardless of the amount; any telecommunications device; or any other article or item without the authorization of the warden or superintendent or his or her designee.

(b.1) It shall be unlawful for any person to obtain for, to procure for, or to give to an inmate tobacco or any product containing tobacco without the authorization of the warden or superintendent or his or her designee.

(c) It shall be unlawful for an inmate to possess a gun, pistol, or any other weapon; any intoxicating liquor; tobacco or any product containing tobacco; amphetamines, biphetaamines, or any other hallucinogenic drugs or other drugs, regardless of the amount; a telecommunications device; or any other item without the authorization of the warden or superintendent or his or her designee.

(d)(1) An inmate who commits or attempts to commit a violation of subsection (c) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years; provided, however, that, if an inmate violates this Code section while being held pursuant to an arrest or conviction for a misdemeanor offense, the possession of a telecommunications device in violation of this Code section shall be treated as a misdemeanor.

(2) Except as otherwise provided in paragraph (4) of this subsection, any person who commits or attempts to commit a violation of

subsection (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be sentenced to a term of imprisonment of ten years.

(3) Except as otherwise provided for in paragraph (4) of this subsection, any person who commits or attempts to commit a violation of subsection (b.1) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.

(4) An employee or contractor of the department who commits or attempts to commit a violation of subsection (b) or (b.1) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be sentenced to a term of imprisonment of ten years.

(e)(1) It shall be unlawful for an inmate to possess a stored value card, the account number of a stored value card, or the personal identification number of a stored value card.

(2) It shall be unlawful for any person to obtain for, to procure for, or to give an inmate a stored value card, the account number of a stored value card, or the personal identification number of a stored value card.

(3) A person who commits a violation of this subsection shall be guilty of a felony and, upon conviction thereof, shall be sentenced to a term of imprisonment of not less than one nor more than ten years, unless the judge imposes a misdemeanor sentence pursuant to Code Section 17-10-5.

(f)(1) It shall be unlawful for any person to intentionally use an unmanned aircraft system to violate the provisions of subsection (b) or (b.1) of this Code section.

(2)(A) It shall be unlawful for any person to intentionally photograph or otherwise record images of a place of incarceration through the use of an unmanned aircraft system for purposes of committing a criminal offense.

(B) Any person may secure prior authorization from the warden or the superintendent, or his or her designated representative, of such place of incarceration for photographing or recording as evidence of a noncriminal intent; provided, however, that failure to secure such prior authorization shall not evidence a criminal intent.

(3) Any person who commits or attempts to commit a violation of this subsection shall be guilty of a felony and, upon conviction thereof, shall be sentenced as follows:

(A) Any person convicted of a violation of paragraph (1) of this subsection shall be imprisoned for not less than one nor more than ten years; and

(B) Any person convicted of paragraph (2) of this subsection shall be imprisoned for not less than five nor more than ten years.

(4) For purposes of this Code section, the term “unmanned aircraft system” shall have the same meaning as provided for in Code Section 6-1-4.

History.

Ga. L. 1976, p. 1506, § 2; Ga. L. 1984, p. 593, § 1; Ga. L. 2008, p. 533, § 1/SB 366; Ga. L. 2016, p. 811, § 8/HB 874; Ga. L. 2017, p. 673, § 3-3/SB 149; Ga. L. 2018, p. 1112, § 42/SB 365; Ga. L. 2019, p. 293, § 1/SB 6; Ga. L. 2020, p. 493, § 42/SB 429; Ga. L. 2024, p. 514, § 1/SB 159, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted “jailer” for “jailor” in paragraph (a)(4); substituted the current provisions of paragraph (d)(2) for the former provisions, which read: “A person who commits or attempts to commit a violation

of subsection (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be sentenced to a mandatory minimum term of imprisonment of two years but not more than ten years, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.”; substituted “Except as otherwise provided for in paragraph (4) of this subsection, any person” for “A person” at the beginning of paragraph (d)(3); added paragraph (d)(4); and substituted “five nor more than ten years” for “one nor more than five years” at the end of subparagraph (f)(3)(B).

JUDICIAL DECISIONS

Indictment cited the wrong statute.

— Even though defendant’s indictment charging the defendant with furnishing tobacco to an inmate cited the wrong statute, reversal of the defendant’s conviction was not required because the language of the indictment tracked the statutory language. *Henry v. State*, 374 Ga. App. 246, 911 S.E.2d 455, 2025 Ga. App. LEXIS 10 (2025).

Venue. — Venue was proper in Dooly

County because that was where the prison was located; the state was not required to show that the defendant purchased the contraband items in Dooly County because it was the act of obtaining the items for the inmate who was in Dooly State prison that made the conduct unlawful. *Henry v. State*, 374 Ga. App. 246, 911 S.E.2d 455, 2025 Ga. App. LEXIS 10 (2025).

ARTICLE 3

CONDITIONS OF DETENTION GENERALLY

42-5-58. Prohibition against corporal punishment; use of handcuffs, leg chains, and other restraints; permissible punishment generally.

RESEARCH REFERENCES

ALR. Shock Belt During Course of State Criminal Trial, 92 A.L.R.7th 3.
Propriety and Prejudicial Effect of Requiring Defendant to Wear Stun Belt or

42-5-64. Educational programming; information provided to released prisoners.

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

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

- (1) Have been sentenced to death;
- (2) Have attained 50 years of age; or
- (3) Have serious learning disabilities.

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

(d) The commissioner shall utilize available services and programs within the Department of Education, and the Department of Education

shall cooperate with the commissioner in the establishment of educational programs and the testing of inmates as required in this Code section.

(e) When a person is released from confinement from the department, the department shall, upon request from an eligible person, who is not an illegal alien as defined in Code Section 16-11-201, provide such person with the relevant documentation to assist him or her in obtaining post-release employment and shall coordinate with the Department of Driver Services to provide a state issued identification card pursuant to Code Section 40-5-107 if such person does not have a current state issued identification card or driver's license. The department may also include a Program and Treatment Completion Certificate, if such person is eligible.

(f) For purposes of assisting an inmate in obtaining post-release employment, the department shall, upon request from an eligible person, provide the inmate with the following documentation upon such person's release:

- (1) A copy of the vocational training record of the inmate, if applicable;
- (2) A copy of the work record of the inmate, if applicable;
- (3) A certified copy of the birth certificate of the inmate, if obtainable;
- (4) A social security card or a replacement social security card for the inmate, if obtainable;
- (5) A resume that includes any trade learned by the inmate and such inmate's proficiency at such trade;
- (6) Documentation that the inmate has completed a practice job interview; and
- (7) A notification to the inmate if he or she is eligible to apply for a license from a state entity charged with oversight of an occupational license or certification.

(g) The following categories of inmates are not required to complete resumes or practice job interviews prior to their release from incarceration:

- (1) Inmates 65 years of age or older;
- (2) Inmates releasing to medical reprieve or discharging from a prison infirmary setting;
- (3) Inmates releasing to the custody of another jurisdiction on a warrant or detainer; and

- (4) Inmates that the department determines would be physically or mentally unable to return to the workforce upon release from incarceration.
- (h) The commissioner and other relevant state agencies shall be authorized to promulgate rules and regulations necessary to carry out the provisions of this Code section.

History.

Code 1981, § 42-5-64, enacted by Ga. L. 1986, p. 1596, § 2; Ga. L. 1992, p. 3219, § 1; Ga. L. 2023, p. 548, § 2/SB 218, effective July 1, 2023; Ga. L. 2025, p. 875, § 1/SB 147, effective July 1, 2025; Ga. L. 2025, p. 1029, § 42(2)/SB 153, effective July 1, 2025.

Amendments.

The first 2025 amendment, effective July 1, 2025, rewrote subsections (e) and (f); added subsection (g); redesignated former subsection (g) as subsection (h); and inserted “and other relevant state agencies” in subsection (h).

The second 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substi-

tuted “an identification card” for “a personal identification card” in the first sentence of subsection (f).

Editor’s notes.

Ga. L. 2025, p. 1029, § 54(e)/SB 153, not codified by the General Assembly, provides: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2025 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of such conflict.” Accordingly, the amendment to subsection (f) of this Code section by Ga. L. 2025, p. 1029, § 42(2)/SB 153, was not given effect.

CHAPTER 6
DETAINERS

ARTICLE 2
INTERSTATE AGREEMENT ON DETAINERS

42-6-20. Enactment and text of agreement.

JUDICIAL DECISIONS

ANALYSIS

INITIATING DETAINING PROCEEDINGS
1. ARTICLE III

Initiating Detaining Proceedings
1. Article III

Denial of dismissal of charges proper. — While the evidence may have shown compliance with the mailing requirements of Article III(a) of the Inter-

state Agreement on Detainers Act (IAD), O.C.G.A. § 42-6-20 et seq., sufficient to create a rebuttable presumption that the letter was received by someone, the trial court was not required to find that the letter was delivered to the prosecuting officer and the appropriate court and the

order denying defendant’s motion to dismiss based on failure to comply with Article III(a) of the IAD was proper. Capote v. State, 368 Ga. App. 331, 890

S.E.2d 75, 2023 Ga. App. LEXIS 311 (2023), cert. denied, 320 Ga. 191, 908 S.E.2d 540, 2024 Ga. LEXIS 271 (2024).

CHAPTER 8

PROBATION

Article 2

State-wide Probation System

Sec.

42-8-35. Terms and conditions of probation; supervision.

ARTICLE 2

STATE-WIDE PROBATION SYSTEM

42-8-34. Sentencing hearings and determinations; presentence investigations; payment of fees, fines, and costs; post-conviction, presentence bond; continuing jurisdiction; transferal of probation supervision.

JUDICIAL DECISIONS

ANALYSIS

PROBATION OR SUSPENSION OF SENTENCE

CONTINUING JURISDICTION OF SENTENCING COURT

Probation or Suspension of Sentence

Sentence upon revocation of probation.

Trial court’s attempt to revoke part of defendant’s probation sentence was a nullity because the trial court was unable to revoke Irving’s probation as it had expired by the time the state filed its petition for probation revocation on June 30, 2022. Because defendant was no longer on probation, pursuant to O.C.G.A. § 42-8-34, there was nothing for the court to revoke. Irving v. State, 367 Ga. App. 814, 888

S.E.2d 591, 2023 Ga. App. LEXIS 235 (2023).

Continuing Jurisdiction of Sentencing Court

Modification of sentence.

Trial court’s modification of defendant’s sentence was not permissible pursuant to O.C.G.A. § 42-8-34 because the modification was made during the five-year custodial portion of defendant’s sentence. State v. Devine, 373 Ga. App. 568, 908 S.E.2d 258, 2024 Ga. App. LEXIS 414 (2024).

42-8-34.1. **Revocation of probated or suspended sentence; alternative sentencing; burden of proof; length of probation supervision.**

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATIONS
EVIDENCE INSUFFICIENT FOR REVOCATION

General Considerations

Special conditions not memorialized in written order meant revocation improper. — Trial court order revoking the balance of the defendant’s probation was vacated as the trial court manifestly abused the court’s discretion by concluding that the 2019 violation involved a special condition as while the oral statement by the trial court at the 2019 probation hearing stated all conditions were made special, the written order did not state such condition. *Hodge v. State*, 368 Ga. App. 839, 891 S.E.2d 70, 2023 Ga. App. LEXIS 375 (2023).

Improper probation revocation. — After the defendant failed to complete an inpatient treatment program and the trial court revoked the defendant’s probation based on an officer’s affidavit without a hearing, the revocation was vacated because the trial court violated the defendant’s due process rights by revoking probation without a hearing or admission. *Greathouse v. State*, 373 Ga. App. 769, 909 S.E.2d 461, 2024 Ga. App. LEXIS 475 (2024).

Probation revocation’s two-year limitation. — In an action where the defendant received a 10-year suspended sentence for two counts of possession of a firearm by a convicted felon, the trial court was only authorized to impose two years of the defendant’s original ten-year suspended sentence for the defendant’s failure to enter inpatient drug and alcohol treatment because the violation involved a general, rather than a special, condition of suspension. *Sullivan v. State*, 370 Ga. App. 272, 896 S.E.2d 712, 2023 Ga. App. LEXIS 570 (2023).

Evidence Insufficient for Revocation

Violation not established by pre-

ponderance of the evidence. — Trial court erred by revoking defendant’s probation based on violations for which no evidence was presented at the hearing as while the trial court made no reference to the alleged Cobb County offenses or violation of court-ordered fees when it orally concluded that it was revoking the balance of probation, and, therefore, those offenses likely played no role in the decision, that was not an assumption the reviewing court was willing or able to make given the trial court’s written order. *Murphy v. State*, 370 Ga. App. 738, 899 S.E.2d 307, 2024 Ga. App. LEXIS 81 (2024).

Aggravated assault violation established but insufficient for probation revocation. — Evidence that the defendant choked an ex-girlfriend was sufficient to establish the aggravated assault violation by a preponderance of the evidence, but the trial court erred by revoking the defendant’s probation based on violations for which no evidence was presented at the hearing. *Murphy v. State*, 370 Ga. App. 738, 899 S.E.2d 307, 2024 Ga. App. LEXIS 81 (2024).

Insufficient evidence for probation revocation of first offender. — Trial court was not permitted to revoke the defendant’s probation or adjudicate the defendant guilty and resentence him in the first offender case because the trial court’s sentence was four times more than the amount the parties agreed to, and defendant was not given the opportunity to testify or present evidence in the first offender case and the defendant never consented to the revocation of any portion of the defendant’s probation outside the terms of the defendant’s negotiated agreement with the state. *Troupe v. State*, 372

Ga. App. 16, 903 S.E.2d 721, 2024 Ga.
App. LEXIS 248 (2024).

42-8-35. Terms and conditions of probation; supervision.

(a) The court shall determine the terms and conditions of probation and may provide that the probationer shall:

- (1) Avoid injurious and vicious habits;
- (2) Avoid persons or places of disreputable or harmful character;
- (3) Report to the officer as directed;
- (4) Permit the officer to visit the probationer at the probationer's home or elsewhere;
- (5) Work faithfully at suitable employment insofar as may be possible;
- (6) Remain within a specified location; provided, however, that the court shall not banish a probationer to any area within this state:
 - (A) That does not consist of at least one entire judicial circuit as described by Code Section 15-6-1; or
 - (B) In which any service or program in which the probationer must participate as a condition of probation is not available;
- (7) Make reparation or restitution to any aggrieved person for the damage or loss caused by the probationer's offense, in an amount to be determined by the court. Unless otherwise provided by law, no reparation or restitution to any aggrieved person for the damage or loss caused by the probationer's offense shall be made if the amount is in dispute unless the same has been adjudicated;
- (8) Make reparation or restitution as reimbursement to a municipality or county for the payment for medical care furnished the person while incarcerated pursuant to the provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local governmental unit for the provision of medical care shall be made if the amount is in dispute unless the same has been adjudicated;
- (9) Repay the costs incurred by any municipality or county for wrongful actions by an inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section 42-4-71;
- (10) Support the probationer's legal dependents to the best of the probationer's ability;
- (11) Violate no local, state, or federal laws and be of general good behavior;

(12) If permitted to move or travel to another state, agree to waive extradition from any jurisdiction where the probationer may be found and not contest any effort by any jurisdiction to return the probationer to this state;

(13) Submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming as directed by DCS;

(14) Wear a device capable of tracking the location of the probationer by means including electronic surveillance or global positioning satellite systems. DCS shall assess and collect fees from the probationer for such monitoring at levels set by regulation of the Board of Community Supervision;

(15) Complete a residential or nonresidential program for substance abuse or mental health treatment as indicated by a risk and needs assessment;

(16) Agree to the imposition of graduated sanctions when, in the discretion of the officer, the probationer's behavior warrants a graduated sanction; and

(17) Pay for the cost of drug screening. DCS shall assess and collect fees from the probationer for such screening at levels set by regulation of the Board of Community Supervision.

(b) In determining the terms and conditions of probation for a probationer who has been convicted of a criminal offense against a victim who is a minor or dangerous sexual offense as those terms are defined in Code Section 42-1-12, the court may provide that the probationer shall be:

(1) Prohibited from entering or remaining present at a victim's school, place of employment, place of residence, or other specified place at times when a victim is present or from loitering in areas where minors congregate, child care facilities, churches, or schools as those terms are defined in Code Section 42-1-12;

(2) Required, either in person or through remote monitoring, to allow viewing and recording of the probationer's incoming and outgoing email, history of websites visited and content accessed, and other internet based communication;

(3) Required to have periodic unannounced inspections of the contents of the probationer's computer or any other device with internet access, including the retrieval and copying of all data from the computer or device and any internal or external storage or portable media and the removal of such information, computer, device, or medium;

(4) Prohibited from seeking election to a local board of education; and

(5) Prohibited from possessing, owning, or operating an unmanned aircraft system as defined in Code Section 42-1-18.

(c) The supervision provided for under subsection (b) of this Code section shall be conducted by an officer, law enforcement officer, or computer information technology specialist working under the supervision of an officer or law enforcement agency.

History.

Ga. L. 1956, p. 27, § 10; Ga. L. 1958, p. 15, § 11A; Ga. L. 1965, p. 413, § 3; Ga. L. 1992, p. 2125, § 4; Ga. L. 1992, p. 2942, § 2; Ga. L. 2004, p. 761, § 3; Ga. L. 2004, p. 775, § 4; Ga. L. 2006, p. 379, § 25/HB 1059; Ga. L. 2006, p. 425, § 1/HB 692; Ga. L. 2008, p. 810, § 5/SB 474; Ga. L. 2012, p. 899, § 7-8/HB 1176; Ga. L. 2013, p. 222, § 18/HB 349; Ga. L. 2015, p. 422, § 4-1/HB 310; Ga. L. 2021, p. 922, § 42/HB 497; Ga. L. 2024, p. 226, § 3/SB 493, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted “and” from the end of paragraph (b)(3); substituted “; and” for a period at the end of paragraph (b)(4); and added paragraph (b)(5). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2024, p. 226, § 4/SB 493, not codified by the General Assembly, makes paragraph (b)(5) of this Code section applicable to all offenses committed on or after July 1, 2024.

JUDICIAL DECISIONS

ANALYSIS

PROBATION TERMS AND CONDITIONS

1. IN GENERAL

Probation Terms and Conditions

1. In General

Condition requiring eye exams. — Trial court did not lack authority to require as a condition of probation that defendant undergo an eye examination and report to the Department of Driver Services any changes in the defendant’s

vision because there was no express statutory prohibition pertaining to eye exams and the requirement was reasonably related to the defendant’s offense as defendant, then 70 years old, failed to yield and turned left in front of a vehicle causing a fatal crash. *Smith v. State*, 372 Ga. App. 535, 905 S.E.2d 189, 2024 Ga. App. LEXIS 323 (2024).

42-8-36. Duty of probationer to inform officer of residence and whereabouts; violations; tolling; unpaid moneys.

JUDICIAL DECISIONS

Tolling of a probated sentence. — Defendant’s probation was not tolled as the tolling order was never entered because the order was not filed by the clerk

of court. *Irving v. State*, 367 Ga. App. 814, 888 S.E.2d 591, 2023 Ga. App. LEXIS 235 (2023).

42-8-38. Arrest or graduated sanctions for probationers violating terms; hearing; disposition of charge; procedure when probation revoked in county other than that of conviction.

JUDICIAL DECISIONS

ANALYSIS

PROBATION REVOCATION PROCEDURE

3. CONSTITUTIONAL REQUIREMENTS

C. HEARING

D. RIGHT TO COUNSEL

Probation Revocation Procedure

3. Constitutional Requirements

C. Hearing

Failure to hold probation revocation hearing. — After defendant failed to complete an inpatient treatment program and the trial court revoked the defendant’s probation based on an officer’s affidavit without a hearing, the revocation was vacated because the trial court violated the defendant’s due process rights by revoking probation without a hearing or admission. *Greathouse v. State*, 373 Ga.

App. 769, 909 S.E.2d 461, 2024 Ga. App. LEXIS 475 (2024).

D. Right to Counsel

No violation when first hearing was held 28 days after appointment of counsel. — State did not violate defendant’s rights under O.C.G.A. § 42-8-38 because the defendant’s first hearing occurred 28 days after counsel was appointed to represent defendant and 22 days after the state filed its probation revocation petition and, therefore, there was no unreasonable delay. *Cooper v. State*, 370 Ga. App. 187, 895 S.E.2d 522, 2023 Ga. App. LEXIS 550 (2023).

ARTICLE 3

FIRST OFFENDERS

42-8-60. Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge.

JUDICIAL DECISIONS

Procedure

Failure to timely file petition for revocation. — While the state may have satisfied due process when it notified defendant of its intent to revoke his probation, it did not seek the revocation because it failed to timely file that petition. The

state was required to timely file a petition with the court, and its failure to do so results in defendant’s automatic discharge. *Martin v. State*, 369 Ga. App. 193, 892 S.E.2d 826, 2023 Ga. App. LEXIS 429 (2023).

42-8-66. Petition for exoneration and discharge; hearing; retroactive grant of first offender status; no filing fee.

JUDICIAL DECISIONS

Quo warranto not appropriate vehicle to challenge constitutionality of statute. — Trial court erred by issuing a writ of quo warranto finding that the district attorney impermissibly acted in a judicial capacity by using the power under O.C.G.A. § 42-8-66(a) to deny petitioner resentencing as a first offender because quo warranto was not the permissible vehicle for challenging the constitutionality of the statute. *Edwards v. Smith*, 369 Ga. App. 128, 892 S.E.2d 566, 2023 Ga. App. LEXIS 417 (2023).

Failure to obtain consent of prosecutor. — Trial court did not err in failing to hold a hearing on the defendant’s peti-

tion for retroactive first offender treatment because the defendant failed to obtain the consent of the prosecuting attorney before filing a petition for such treatment as required. *Sumrall v. State*, 320 Ga. 617, 910 S.E.2d 186, 2024 Ga. LEXIS 286 (2024).

Defendant’s petition for retroactive first-offender treatment was properly denied because the defendant failed to show that the prosecuting attorney consented to the filing of the petition, which was a threshold requirement. *Ballard v. State*, 321 Ga. 352, 914 S.E.2d 793, 2025 Ga. LEXIS 71 (2025).

CHAPTER 9

PARDONS AND PAROLES

Article 2		Sec.	
Grants of Pardons, Paroles, and Other Relief		42-9-45. 42-9-60.	General rule-making power. Overcrowding of prison system as creating state of emergency; paroling inmates to reduce prison system population to capacity; annual report of inmates paroled.
Sec. 42-9-42.	Procedure for granting relief from sentence; conditions and prerequisites; public access to information; violation of parole.		

ARTICLE 2

GRANTS OF PARDONS, PAROLES, AND OTHER RELIEF

42-9-42. Procedure for granting relief from sentence; conditions and prerequisites; public access to information; violation of parole.

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

(b)(1) As used in this subsection, the term “serious offense” means:

(A) A serious violent felony as such term is defined in Code Section 17-10-6.1; or

(B) A felony offense of:

(i) False imprisonment in violation of Code Section 16-5-41 when the victim is not the child of the accused and the victim is less than 14 years of age;

(ii) Aggravated assault in violation of Code Section 16-5-21;

(iii) Aggravated battery in violation of Code Section 16-5-24;

(iv) Trafficking of persons for labor or sexual servitude in violation of Code Section 16-5-46;

(v) Cruelty to children in violation of Code Section 16-5-70;

(vi) Stalking in violation of Code Section 16-5-90;

(vii) Aggravated stalking in violation of Code Section 16-5-91;

(viii) Exploitation and intimidation of disabled adults, elder persons, and residents in violation of Code Section 16-5-102;

(ix) Sodomy in violation of Code Section 16-6-2;

(x) Statutory rape in violation of Code Section 16-6-3;

(xi) Child molestation in violation of Code Section 16-6-4;

(xii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xiii) Sexual assault of certain persons in violation of Code Section 16-6-5.1;

(xiv) Incest in violation of Code Section 16-6-22;

(xv) Sexual battery in violation of Code Section 16-6-22.1;

(xvi) Burglary in violation of Code Section 16-7-1;

(xvii) Home invasion in violation of Code Section 16-7-5;

(xviii) Arson in violation of Code Section 16-7-60;

(xix) Possession, manufacture, transport, distribution, possession with the intent to distribute, or offering to distribute an explosive device in violation of Code Section 16-7-82;

(xx) Possessing, transporting, or receiving explosives or destructive devices with the intent to kill, injure, or intimidate individuals or destroy public buildings in violation of Code Section 16-7-88;

- (xxi) Theft by receiving stolen property in violation of Code Section 16-8-7;
- (xxii) Robbery in violation of Code Section 16-8-40;
- (xxiii) Sexual exploitation of children in violation of Code Section 16-12-100;
- (xxiv) Drug related objects in violation of Code Section 16-13-1;
- (xxv) Approval by the federal Food and Drug Administration as prerequisite to certain sales in violation of Code Section 16-13-4;
- (xxvi) Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana in violation of Code Section 16-13-30;
- (xxvii) Licenses for sale, transfer, or purchase for resale of products containing pseudoephedrine; reporting and record-keeping requirements in violation of Code Section 16-13-30.4;
- (xxviii) Possession of substances with intent to use or convey such substances for the manufacture of Schedule I or Schedule II controlled substances in violation of Code Section 16-13-30.5;
- (xxix) Trafficking of substances in violation of Code Section 16-13-31;
- (xxx) Trafficking in ecstasy in violation of Code Section 16-13-31.1;
- (xxxi) Transactions in drug related objects in violation of Code Section 16-13-32;
- (xxxii) Transactions in drug related objects in violation of Code Section 16-13-32.1;
- (xxxiii) Use of a communication facility in committing or facilitating commission of an act which constitutes a felony in violation of Code Section 16-13-32.3;
- (xxxiv) Manufacturing, distributing, dispensing, or possessing controlled substances in, on, or near public or private schools in violation of Code Section 16-13-32.4;
- (xxxv) Manufacturing, distributing, dispensing, or possessing controlled substances, marijuana, or counterfeit substances near a park or housing project in violation of Code Section 16-13-32.5;
- (xxxvi) Manufacturing, distributing, dispensing, or possessing with intent to distribute controlled substances or marijuana in,

on, or within a drug-free commercial zone in violation of Code Section 16-13-32.6;

(xxxvii) Unauthorized distribution and dispensation of a controlled substance in violation of Code Section 16-13-42;

(xxxviii) Unauthorized distribution of a controlled substance in violation of Code Section 16-13-43;

(xxxix) A violation of Article 3 of Chapter 13 of Title 16 involving dangerous drugs;

(xl) A violation of Chapter 14 of Title 16 involving racketeer influenced and corrupt organizations; or

(xli) Participating in gang activity in violation of Code Section 16-15-4.

(2) A grant of pardon, parole, or other relief from sentence shall be rendered only by a written decision which shall be signed by at least the number of board members required for the relief granted and which shall become a part of such individual's permanent record.

(3) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50 or any provisions of this chapter relating to the confidentiality of records, a written decision relating to a pardon for a serious offense or commutation of a death sentence shall:

(A) Include the board's findings which reflect the board's consideration of the evidence offered that supports the board's decision; and

(B) Be available for public inspection.

(c) Good conduct, achievement of a fifth-grade level or higher on standardized reading tests, and efficient performance of duties by an inmate shall be considered by the board in his or her favor and shall merit consideration of an application for pardon or parole. No inmate shall be placed on parole until and unless the board shall find that there is reasonable probability that, if he or she is so released, he or she will live and conduct himself or herself as a respectable and law-abiding person and that his or her release will be compatible with his or her own welfare and the welfare of society. Furthermore, no person shall be released on pardon or placed on parole unless and until the board is satisfied that he or she will be suitably employed in self-sustaining employment or that he or she will not become a public charge. However, notwithstanding other provisions of this chapter, the board may, in its discretion, grant pardon or parole to any aged or disabled persons.

(d)(1) Any person who is paroled shall be released on such terms and conditions as the board shall prescribe, and if he or she is serving a

split sentence, the board's conditions shall include all of the terms of probation imposed by the sentencing court. The board shall diligently see that no peonage is allowed in the guise of parole relationship or supervision. The parolee shall remain in the legal custody of the board until the expiration of the maximum term specified in his or her sentence, he or she is pardoned by the board, or his or her supervision is terminated as provided in Code Section 42-9-52.

(2) The board may require the payment of a parole supervision fee of at least \$10.00 per month as a condition of parole or conditional release. The monthly amount shall be set by rule of the board and shall be uniform state wide. Such fees shall be collected by the department to be paid into the general fund of the state treasury.

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

History.

Ga. L. 1943, p. 185, § 13; Ga. L. 1974, p. 474, § 1; Ga. L. 1975, p. 795, § 1; Ga. L. 1984, p. 775, § 1; Ga. L. 1985, p. 414, § 1; Ga. L. 1986, p. 1596, § 3; Ga. L. 2015, p. 207, § 3/HB 71; Ga. L. 2015, p. 422, § 5-86/HB 310; Ga. L. 2017, p. 585, § 2-10/SB 174; Ga. L. 2025, p. 460, § 2-8/SB 79, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted "of substances" for "in cocaine, illegal drugs, marijuana, or meth-

amphetamine" in division (b)(1)(B)(xxix). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2025, p. 460, § 1-1/SB 79, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Fentanyl Eradication and Removal Act.'"

Ga. L. 2025, p. 460, § 3-1/SB 79, not codified by the General Assembly, provides that the 2025 amendment shall be applicable to all offenses committed on or after July 1, 2025.

42-9-45. General rule-making power.

(a) The board may adopt and promulgate rules and regulations, not inconsistent with this chapter, touching all matters dealt with in this chapter, including, among others, the practice and procedure in matters pertaining to paroles, pardons, and remission of fines and bond forfeitures. The rules and regulations shall contain an eligibility requirement for parole which shall set forth the time when the automatic initial consideration for parole of inmates under the jurisdiction of the Department of Corrections shall take place and also the times at which periodic reconsideration thereafter shall take place. Such consideration

shall be automatic, and no written or formal application shall be required.

(b)(1) An inmate serving a misdemeanor sentence or misdemeanor sentences shall only be eligible for consideration for parole after the expiration of six months of his or her sentence or sentences or one-third of the time of his or her sentence or sentences, whichever is greater.

(2) Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7 and paragraphs (3) and (4) of this subsection, an inmate serving a felony sentence or felony sentences shall only be eligible for consideration for parole after the expiration of nine months of his or her sentence or one-third of the time of the sentences, whichever is greater. Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7 and paragraphs (3) and (4) of this subsection, inmates serving sentences aggregating 21 years or more shall become eligible for consideration for parole upon completion of the service of seven years.

(3) When an inmate was sentenced pursuant to subsection (d) of Code Section 16-13-30 and subsection (c) of Code Section 17-10-7 to a term of at least 12 years and up to a life sentence, he or she may become eligible for consideration for parole if he or she:

(A) Has never been convicted of:

(i) A serious violent felony as such term is defined in Code Section 17-10-6.1;

(ii) An offense for which he or she was or could have been required to register pursuant to Code Section 42-1-12; provided, however, that this paragraph shall not apply to any felony that became punishable as a misdemeanor on or after July 1, 2006;

(iii) A violation of paragraph (1) or (2) of subsection (a) of Code Section 16-5-21;

(iv) A violation of Code Section 16-11-106; and

(v) A violation of Code Section 16-11-131;

(B) Has completed at least 12 years of his or her sentence;

(C) Has obtained a low-risk for recidivism rating as determined by a validated risk assessment instrument approved by the Department of Corrections;

(D) Has been classified as a medium or less than medium security risk for institutional housing classification purposes by the Department of Corrections;

(E) Has completed all criminogenic programming requirements as determined by a validated risk assessment instrument approved by the Department of Corrections;

(F) In the 12 months preceding consideration, has not been found guilty of any serious disciplinary infractions; and

(G) Has a high school diploma or state approved high school equivalency (HSE) diploma, unless he or she is unable to obtain such educational achievement due to a learning disability or illiteracy. If the inmate is incapable of obtaining such education, he or she shall have completed a job skills training program, a literacy program, an adult basic education program, or a faith based program.

(4) When an inmate was sentenced pursuant to subsection (c), (e), or (l) of Code Section 16-13-30 and subsection (c) of Code Section 17-10-7 to a term of at least six years, he or she may become eligible for consideration for parole if he or she:

(A) Has never been convicted of:

(i) A serious violent felony as such term is defined in Code Section 17-10-6.1;

(ii) An offense for which he or she was or could have been required to register pursuant to Code Section 42-1-12; provided, however, that this paragraph shall not apply to any felony that became punishable as a misdemeanor on or after July 1, 2006;

(iii) A violation of paragraph (1) or (2) of subsection (a) of Code Section 16-5-21;

(iv) A violation of Code Section 16-11-106; and

(v) A violation of Code Section 16-11-131;

(B) Has completed at least six years of his or her sentence;

(C) Has obtained a low-risk for recidivism rating as determined by a validated risk assessment instrument approved by the Department of Corrections;

(D) Has been classified as a medium or less than medium security risk for institutional housing classification purposes by the Department of Corrections;

(E) Has completed all criminogenic programming requirements as determined by a validated risk assessment instrument approved by the Department of Corrections;

(F) In the 12 months preceding consideration, has not been found guilty of any serious disciplinary infractions; and

(G) Has a high school diploma or state approved high school equivalency (HSE) diploma, unless he or she is unable to obtain such educational achievement due to a learning disability or illiteracy. If the inmate is incapable of obtaining such education, he or she shall have completed a job skills training program, a literacy program, an adult basic education program, or a faith based program.

(c) The board shall adopt rules and regulations governing the granting of other forms of clemency, which shall include pardons, reprieves, commutation of penalties, removal of disabilities imposed by law, and the remission of any part of a sentence, and shall prescribe the procedure to be followed in applying for them. Applications for the granting of such other forms of clemency and for exceptions to parole eligibility rules established by statute or promulgated by the board shall be made in such manner as the board shall direct by rules and regulations.

(d) All rules and regulations adopted pursuant to this Code section shall be adopted, established, promulgated, amended, repealed, filed, and published in accordance with the applicable provisions and procedure as set forth in Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” The courts shall take judicial notice of the rules and regulations.

(e) For the purposes of this Code section, the words “rules and regulations” shall have the same meaning as the word “rule,” as defined in Code Section 50-13-2, except that the words “rules and regulations” shall not be construed to include the terms and conditions prescribed by the board to which a person paroled by the board may be subjected.

(f) Except to correct a patent miscarriage of justice and not otherwise, no inmate serving a sentence imposed for any of the crimes listed in this subsection shall be granted release on parole until and unless said inmate has served on good behavior seven years of imprisonment or one-third of the prison term imposed by the sentencing court for the violent crime, whichever first occurs. No inmate serving a sentence for any crime listed in this subsection shall be released on parole for the purpose of regulating jail or prison populations. This subsection shall govern parole actions in sentences imposed for any of the following crimes: voluntary manslaughter, statutory rape, incest, cruelty to children, arson in the first degree, homicide by vehicle while under the influence of alcohol or as a habitual traffic violator, aggravated battery, aggravated assault, trafficking of substances in violation of Code Section 16-13-31 or 16-13-31.1, and violations of Chapter 14 of Title 16, the “Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act.”

(g) No inmate serving a sentence for murder, murder in the second

degree, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery shall be released on parole for the purpose of regulating jail or prison populations.

(h) An inmate whose criminal offense or history indicates alcohol or drug involvement shall not be considered for parole until such inmate has successfully completed an Alcohol or Drug Use Risk Reduction Program offered by the Department of Corrections.

(i) An inmate who has committed an offense which has been identified to involve family violence as such term is defined in Code Section 19-13-1 shall not be released on parole until such inmate has successfully completed a Family Violence Counseling Program offered by the Department of Corrections.

History.

Ga. L. 1943, p. 185, § 23; Ga. L. 1964, p. 487, § 1; Ga. L. 1969, p. 948, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 94, § 42; Ga. L. 1992, p. 3221, § 10; Ga. L. 1994, p. 1959, § 15; Ga. L. 1995, p. 625, § 3; Ga. L. 1996, p. 1113, § 3; Ga. L. 2014, p. 444, § 2-12/HB 271; Ga. L. 2015, p. 519, § 2-2/HB 328; Ga. L. 2015, p. 693, § 3-32/HB 233; Ga. L. 2016, p. 443, § 9-1/SB 367; Ga. L. 2018, p. 1112, § 42/SB 365; Ga. L. 2022, p. 168, § 9/SB 397; Ga. L. 2025, p. 460, § 2-9/SB 79, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted “of substances in vio-

lation of Code Section 16-13-31 or 16-13-31.1” for “in drugs” in the last sentence of subsection (f). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2025, p. 460, § 1-1/SB 79, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Fentanyl Eradication and Removal Act.’”

Ga. L. 2025, p. 460, § 3-1/SB 79, not codified by the General Assembly, provides that the 2025 amendment shall be applicable to all offenses committed on or after July 1, 2025.

42-9-60. Overcrowding of prison system as creating state of emergency; paroling inmates to reduce prison system population to capacity; annual report of inmates paroled.

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

(1) “Capacity” shall mean the actual bed space in the prison system of the State of Georgia now or in the future, as certified by the commissioner of corrections and approved by the director of the Office of Planning and Budget.

(2) “Dangerous offender” means a state prison inmate who is imprisoned for conviction of any one or more of the following crimes as defined by Title 16, the “Criminal Code of Georgia”: murder, voluntary manslaughter, kidnapping, armed robbery, rape, aircraft hijacking, aggravated sodomy, aggravated battery, aggravated assault, incest, child molestation, child abuse, enticing a child for indecent purposes, or any felony violation of trafficking of substances

in violation of Code Section 16-13-31. Such term shall also include an inmate who is incarcerated for a second or subsequent time for the commission of a crime for which the inmate could have been sentenced to life imprisonment.

(3) “Population” shall mean the actual number of inmates present in the correctional institutions of the state prison system and shall not include state inmates assigned to county operated correctional institutions.

(b) The Governor, upon certification by the commissioner of corrections and approval by the director of the Office of Planning and Budget that the population of the prison system of the State of Georgia has exceeded the capacity for 30 consecutive days, may, within five days of receipt of the commissioner’s certification, declare a state of emergency with regard to jail and prison overcrowding.

(c) Upon the declaration of a state of emergency with regard to the jail and prison overcrowding by the Governor, the board shall select sufficient state prison inmates to reduce the state prison population to 100 percent of its capacity and issue such selected inmates a parole, but no dangerous offender shall be eligible for selection by the board. The board shall give special consideration for early release under this Code section to inmates who have participated in educational programs and who have achieved a fifth-grade level or higher on standardized reading tests. The selection of state prison inmates to be released under the authority contained in this Code section may be made without regard to limitations placed upon the service of a portion of the prison sentence provided by Code Section 42-9-45.

(d) It shall be the duty of the director of the Office of Planning and Budget to prepare an annual report on prison inmates who are paroled pursuant to this Code section. Such report shall summarize each such former inmate’s behavior since parole and generally evaluate the former inmate’s success or lack of success in becoming a law-abiding member of society. The annual report shall be filed with the Clerk of the House of Representatives and the Secretary of the Senate on or before December 31, with the first such report submitted by December 31 of the first year that prison inmates are paroled pursuant to this Code section. A notice of the filing of this report shall be submitted to each member of the General Assembly when the annual report is filed with the Clerk of the House of Representatives and the Secretary of the Senate. Copies of this report shall be made available to members of the General Assembly upon their request. The board, the Department of Corrections, and other departments and agencies of the state government shall cooperate with and assist the director of the Office of Planning and Budget in developing the information necessary to prepare the annual reports required by this subsection.

History.

Ga. L. 1982, p. 1356, §§ 2-5; Code 1981, § 42-9-60, enacted by Ga. L. 1982, p. 1356, § 6; Ga. L. 1983, p. 3, § 31; Ga. L. 1984, p. 22, § 42; Ga. L. 1985, p. 149, § 42; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 1596, § 5; Ga. L. 1997, p. 143, § 42; Ga. L. 2025, p. 460, § 2-10/SB 79, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, in paragraph (a)(2), deleted “or” following “child abuse,” and substituted “violation of trafficking of substances in violation of Code Section 16-13-31. Such term” for “punishable under Code Section

16-13-31, relating to prohibited acts regarding marijuana, cocaine, and illegal drugs. The term ‘dangerous offender’” in the first sentence. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2025, p. 460, § 1-1/SB 79, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Fentanyl Eradication and Removal Act.’”

Ga. L. 2025, p. 460, § 3-1/SB 79, not codified by the General Assembly, provides that the 2025 amendment shall be applicable to all offenses committed on or after July 1, 2025.

ARTICLE 4

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

42-9-81. Execution of compact.

RESEARCH REFERENCES

ALR.

Deliberative Process Exemption from Freedom of Information Act (FOIA), 5

U.S.C.A. § 552(b) — Advisory Documents, 82 A.L.R. Fed. 3d 6.

CHAPTER 12

PRISON LITIGATION REFORM

Sec.

42-12-5. In forma pauperis procedure; contents and service of

affidavit; judicial determinations.

42-12-5. In forma pauperis procedure; contents and service of affidavit; judicial determinations.

(a)(1) A prisoner’s affidavit of in forma pauperis status shall contain each of the following:

(A) The prisoner’s identity, including any and all aliases, and the prisoner’s inmate number;

(B) The nature and amount of any income as well as the source of that income;

(C) Real and personal property owned by the prisoner; and

(D) Cash and checking accounts held by the prisoner.

(2) The affidavit shall also contain the following sworn statement and signature of the prisoner:

I, _____, do swear and affirm under penalty of law that the statements contained in this affidavit are true. I further attest that this application for in forma pauperis status is not presented to harass or to cause unnecessary delay or needless increase in the costs of litigation.

(3) The affidavit shall contain a copy of the prisoner's inmate account of the last 12 months or the period of incarceration, whichever is less. The institution shall promptly provide said account information upon request.

(4) The prisoner shall serve the affidavit, including all attachments, on the court and all named defendants.

Failure by the prisoner to comply with this subsection shall result in dismissal without prejudice of the prisoner's action.

(b)(1) A judicial order authorizing a prisoner to proceed in forma pauperis shall not prevent the freezing of a prisoner's inmate account nor the forwarding of any future deposits into that account to the court in accordance with the provisions of this chapter.

(2) In the event that the court denies the prisoner's application for in forma pauperis status, the court shall give written notice to the inmate that the inmate's action will be dismissed without prejudice if the filing fees are not paid within 30 days of the date of the order.

(3) Upon the denial of in forma pauperis status the court shall make a finding as to whether in forma pauperis status was sought fraudulently, frivolously, or maliciously. If the court finds that the in forma pauperis status was sought fraudulently, frivolously, or maliciously, the action shall be dismissed with prejudice, and the court shall assess filing costs.

(4) If an action is dismissed without prejudice and the prisoner refiles the action in substantially the same form:

(A) All filing requirements including filing fees must be met in their entirety; and

(B) No amount paid for court fees in any earlier action or any part thereof shall be credited to the prisoner.

History.

Code 1981, § 42-12-5, enacted by Ga. L. 1996, p. 400, § 1.

Editor's notes.

This Code section is set out in the supplement to correct a formatting issue.