House Bill 194 (COMMITTEE SUBSTITUTE)

By: Representatives Sainz of the 180th, Burchett of the 176th, Efstration of the 104th, Hitchens of the 161st, and Mainor of the 56th

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to appellate practice, so as to revise the name of the Sexual Offender Registration Review Board; to amend Title 16 of the official Code of Georgia Annotated, relating to crimes and offenses, so as to provide a definition; to provide that punishment for certain sexual offenses shall be life imprisonment and shall require such persons to wear a device capable of tracking the location of the probationer by electronic means, including global positioning satellite systems; to provide for the removal of an electronic monitoring device; to provide for determination of unit of prosecution with regard to visual media; to amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of punishment, and Code Section 35-3-4, relating to powers and duties of bureau generally, so as to revise the name of the Sexual Offender Registration Review Board; to increase the time frame for defendant review by the board; to provide for definitions; to provide for procedures; to amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to revise the name of the Sexual Offender Registration Review Board; to remove the registration fee; to provide for the transfer investigators from the Georgia Bureau of Investigation to the Sexual Offender Risk Review Board; to provide for presentence risk assessment classification of sexual offenders;

to provide for termination of certain probated sentences; to make conforming changes; to provide for related matters; to provide for an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to appellate practice, is amended in Code Section 5-6-35, relating to cases requiring application for appeal, requirements for application, exhibits, response, issuance of appellate court order regarding appeal, procedure, supersedeas, jurisdiction of appeal, and appeals involving nonmonetary judgments in custody cases, by revising paragraph (5.1) of subsection (a) as follows:

"(5.1) Appeals from decisions of superior courts reviewing decisions of the Sexual Offender ~~Registration~~ Risk Review Board;"

PART II

SECTION 2-1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising subsection (j) of Code Section 16-5-21, relating to aggravated assault, as follows:

"(j)(1) Any person who commits the offense of aggravated assault with intent to rape against a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years.

(2) Any person convicted under this ~~subsection~~ paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(A) As used in this paragraph, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(B) Any person having been previously convicted of a sexual felony who is convicted of the offense of aggravated assault with the intent to rape shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14.″

SECTION 2-2.

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

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

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

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

(2.1)(A) As used in this paragraph, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(B) Any person having been previously convicted of a sexual felony who is convicted of the offense kidnapping which involves a victim who is less than 14 years of age, except by a parent, shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14.

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

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

SECTION 2-3.

Said title is further amended by revising subsection (f) of Code Section 16-5-46, relating to trafficking of persons for labor or sexual servitude, as follows:

"(f)(1) Except as provided in paragraph (2) of this subsection, any person who commits the offense of trafficking an individual for labor servitude or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years and a fine not to exceed $100,000.00.

(2) Any person who commits the offense of trafficking an individual for labor servitude or sexual servitude against an individual who is under 18 years of age or if the offense is committed against an individual who has a developmental disability, the person shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than 25 nor more than 50 years or life imprisonment and a fine not to exceed $100,000.00.

(3)(A) As used in this paragraph, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(B) Any person having been previously convicted of the offense of trafficking of persons for labor or sexual servitude shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14."

SECTION 2-4.

Said title is further amended by adding a new subsection to Code Section 16-6-1, relating to rape, to read as follows:

″(d)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Any person having been previously convicted of a sexual felony who is convicted of the offense of rape shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14.″

SECTION 2-5.

Said title is further amended by adding a new subsection to Code Section 16-6-2, relating to sodomy, aggravated sodomy, and medical expenses, to read as follows:

″(e)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Any person having been previously convicted of a sexual felony who is convicted of the felony offense of aggravated sodomy shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14.″

SECTION 2-6.

Said title is further amended by adding a new subsection to Code Section 16-6-3, relating to statutory rape, to read as follows:

″(d)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Any person having been previously convicted of a sexual felony who is convicted of the felony offense of statutory rape when the individual convicted was 21 years of age or older, shall be punished by imprisonment for life or a split sentence that is a term of

imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14."

SECTION 2-7.

Said title is further amended by adding a new subsection to Code Section 16-6-4, relating to child molestation and aggravated child molestation, to read as follows:

"(f)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Except as provided in paragraph (2) of subsection (b) of this Code section, any person having been previously convicted of a sexual felony who is convicted of the felony offense of child molestation or aggravated child molestation shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14."

SECTION 2-8.

Said title is further amended by adding a new subsection to Code Section 16-6-5, relating to enticing a child for indecent purposes, to read as follows:

"(d)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Any person having been previously convicted of a sexual felony who is convicted of the felony offense of enticing a child for indecent purposes shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14."

SECTION 2-9.

Said title is further amended by adding a new subsection to Code Section 16-6-5.1, relating to improper sexual contact by employee, agent, or foster parent, consent not a defense, and penalty, to read as follows:

"(h)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Except as provided in paragraph (3) of subsection (g) of this Code section, any person having been previously convicted of a sexual felony who is convicted of the felony offense of improper sexual contact by employee, agent, or foster parent in the first degree, shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14."

SECTION 2-10.

Said title is further amended by adding a new subsection to Code Section 16-6-22, relating to incest, to read as follows:

"(c)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Any person having been previously convicted of a sexual felony who is convicted of the offense of incest shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in (e) of Code Section 42-1-14."

SECTION 2-11.

Said title is further amended by adding a new subsection to Code Section 16-6-22.2, relating to aggravated sexual battery, to read as follows:

"(d)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Any person having been previously convicted of a sexual felony who is convicted of the offense of aggravated sexual battery shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14."

SECTION 2-12.

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

"16-6-26.

(a) As used in this Code section, the term 'sexual felony' shall mean a felony conviction of:

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

(2) 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;

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

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

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

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

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

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

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

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

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

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

(13) Sexual exploitation of children in violation of Code Section 16-12-100."

SECTION 2-13.

Said title is further amended in Code Section 16-7-29 of the Official Code of Georgia Annotated, relating to interference with electronic monitoring devices, "electronic monitoring device" defined, and penalty, is amended by revising subsection (b) as follows:

"(b) It shall be unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device which is being used for the purpose of monitoring a person who is:

(1) Complying with a home arrest program as set forth in Code Section 42-1-8;

(2) Wearing an electronic monitoring device as a condition of bond or pretrial release;

(3) Wearing an electronic monitoring device as a condition of probation; or

(4) Wearing an electronic monitoring device as a condition of parole~~; or~~

~~(5) Wearing an electronic monitoring device as required in Code Section 42-1-14~~."

SECTION 2-14.

Said title is further amended by adding a new subsection to Code Section 16-12-100, relating to sexual exploitation of children, reporting violation, civil forfeiture, and penalties, to read as follows:

"(g)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in Code Section 16-6-26.

(2) Any person having been previously convicted of a sexual felony who is convicted of

the felony offense of sexual exploitation of children shall be punished by imprisonment for life or a split sentence that is a term of imprisonment followed by probation for life. As a condition of probation, the court shall impose the requirement of electronic monitoring as set forth in subsection (e) of Code Section 42-1-14.

(h) For the purposes of determining the unit of prosecution under this Code section, each depiction or image of visual medium constitutes a separate offense. This subsection shall not apply to multiple copies of the same film, videotape, photograph, or other similar visual reproduction or depiction by computer that are identical to each other."

PART III

SECTION 3-1.

Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of punishment, is amended by revising subsection (d) of Code Section 17-10-6.2, relating to punishment for sexual offenders, by revising subsection (d) as follows:

"(d) If the court imposes a probated sentence, the defendant shall submit to review by the Sexual Offender ~~Registration~~ Risk Review Board for purposes of risk assessment classification within ~~ten~~ 60 days of being sentenced and shall otherwise comply with Article 2 of Chapter 1 of Title 42."

PART IV

SECTION 4-1.

Code Section 35-3-4 of the Official Code of Georgia Annotated, relating to powers and duties of bureau generally, is amended by revising paragraph (15) of subsection (a) as follows:

"(15)(A) Upon request, provide to the board an analysis of criminal history record information to ~~Acquire, collect, analyze, and provide to the board any information which will~~ assist the board in determining a sexual offender's risk assessment classification in accordance with the board's duties as specified in Code Section 42-1-14~~, including, but not limited to, obtaining:~~

~~(i) Incident, investigative, supplemental, and arrest reports from law enforcement agencies;~~

~~(ii) Records from clerks of court;~~

~~(iii) Records and information maintained by prosecuting attorneys;~~

~~(iv) Records maintained by state agencies, provided that any records provided by the State Board of Pardons and Paroles that are classified as confidential state secrets pursuant to Code Section 42-9-53 shall remain confidential and shall not be made available to any other person or entity or be subject to subpoena unless declassified by the State Board of Pardons and Paroles; and~~

~~(v) Other documents or information as requested by the board~~.

(B) As used in this paragraph, the term:

(i) 'Board' means the Sexual Offender ~~Registration~~ Risk Review Board.

(ii) 'Criminal history record information' has the same meaning as set forth in Code Section 35-3-30.

(iii) 'Risk assessment classification' means the level into which a sexual offender is placed based on the board's assessment.

~~(iii)~~(iv) 'Sexual offender' has the same meaning as set forth in Code Section 42-1-12; and"

PART V

SECTION 5-1.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended in Code Section 42-1-12, relating to State Sexual Offender Registry, by revising paragraph (5) of subsection (a), paragraph (9) of subsection (b), and paragraphs (12) through (14) of subsection (i) as follows:

"(5) 'Board' means the Sexual Offender ~~Registration~~ Risk Review Board."

"(9) If required by a court or by Code Section 42-1-14, place any required electronic monitoring system on the ~~sexually dangerous predator~~ sexual offender and explain its operation and cost."

"(12) If required by a court by Code Section 42-1-14, place any electronic monitoring system on the ~~sexually dangerous predator~~ sexual offender and explain its operation and cost; and

(13) 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.~~; and~~

~~(14) Collect the annual $250.00 registration fee from the sexual offender and transmit such fees to the state for deposit into the general fund.~~"

SECTION 5-2.

Said title is further amended by revising Code Section 42-1-13, relating to Sexual Offender Registration Review Board, composition, appointment, administration and duties, and immunity from liability, as follows:

"42-1-13.

(a) The Sexual Offender ~~Registration~~ Risk Review Board shall be composed of three professionals licensed under Title 43 and knowledgeable in the field of the behavior and

treatment of sexual offenders; at least one representative from a victims' rights advocacy group or agency; and at least two representatives from law enforcement, each of whom is either employed by a law enforcement agency as a certified peace officer under Title 35 or retired from such employment. The members of the board shall be appointed by the commissioner of behavioral health and developmental disabilities for terms of four years. On and after July 1, 2006, successors to the members of the board shall be appointed by the Governor. Members of the board shall take office on the first day of September immediately following the expired term of that office and shall serve for a term of four years and until the appointment of their respective successors. No member shall serve on the board more than two consecutive terms. Vacancies occurring on the board, other than those caused by expiration of a term of office, shall be filled in the same manner as the original appointment to the position vacated for the remainder of the unexpired term and until a successor is appointed. Members shall be entitled to an expense allowance and travel cost reimbursement the same as members of certain other boards and commissions as provided in Code Section 45-7-21.

(b) The board shall be attached to the Department of Behavioral Health and Developmental Disabilities for administrative purposes and, provided there is adequate funding, shall:

(1) Exercise its quasi-judicial, rule-making, or policy-making functions independently of the department and without approval or control of the department;

(2) Prepare its budget, if any, and submit its budgetary requests, if any, through the department; and

(3) Hire its own personnel, including but not limited to administrative personnel and clinical evaluators.

(c) Investigative positions which, as of June 30, 2021, were under the Georgia Bureau of Investigation, shall be transferred to the board on July 1, 2021, ~~Any investigator who, as of June 30, 2012, was employed by the board shall be transferred to the Georgia Bureau~~

~~of Investigation on July 1, 2012,~~ and shall no longer be under the administration or supervision of the ~~board, except as required to provide the board with information as set forth in paragraph (15) of subsection (a) of Code Section 35-3-4. The executive director of the~~ Georgia Bureau of Investigation; provided, however, that one position shall remain with the Georgia Bureau of Investigation to facilitate the provision of information to the board from the Georgia Crime Information Center and National Crime Information Center. The director of the Georgia Bureau of Investigation and the executive director of the board shall arrange administratively for the transfer of any equipment relating to the transfer of such personnel.

(d) Members of the board shall be immune from liability for good faith conduct under this article."

SECTION 5-3.

Said title is further amended by repealing Code Section 42-1-14, relating to risk assessment classification, classification as "sexually dangerous predator," and electronic monitoring, in its entirety and enacting a new Code Section 42-1-14 to read as follows:

"42-1-14.

(a)(1) The board shall determine the likelihood that a sexual offender will engage in another crime against a victim who is a minor or a dangerous sexual offense. Any sexual offender who changes residence from another state or territory of the United States or any other place to this state and who is not already designated under Georgia law as a sexually dangerous predator, sexual predator, or sexually violent predator shall have his or her required registration information forwarded by the sheriff of his or her county of registration to the board for the purpose of risk assessment classification. The board shall also make such risk assessment classification upon the request of a superior court judge for purposes of considering a petition to be released from registration requirements or residency or employment restrictions as provided for in Code Section 42-1-19.

(2) A sexual offender shall be placed into Level I risk assessment classification, Level II risk assessment classification, or sexually dangerous predator classification based upon the board's assessment criteria and by information obtained and reviewed by the board. The sexual offender may provide the board with information, including, but not limited to, psychological evaluations, sexual history polygraph information, treatment history, and personal, social, educational, and work history. If the sexual offender has undergone treatment or supervision through the Department of Corrections or the Department of Community Supervision, such treatment records shall also be submitted to the board for evaluation. The prosecuting attorney shall provide the board with any information available to assist the board in rendering an opinion, including, but not limited to, criminal history and records related to previous criminal history and shall provide the same information to the sexual offender as was provided to the board. The board shall be authorized to obtain available information from supervision records prior to July 1, 2015, and all public records obtained and electronically retained by the State Board of Pardons and Paroles during its investigation of such sexual offender and shall provide the same information to such sexual offender as was provided to the board, but if such records are classified as confidential state secrets, such records shall remain confidential state secrets in accordance with Code Section 42-9-53 and shall not be made available to any other person or entity or be subject to subpoena unless declassified by the State Board of Pardons and Paroles. Any person divulging or causing to be divulged any confidential state secret shall be guilty of a misdemeanor. The clerk of the court of the appropriate jurisdiction where the sexual offender resides shall send a copy of the order seeking declassification for purposes of sentencing and a copy of the sexual offender's conviction to the board and notify the board that a sexual offender's risk assessment evaluation will need to be performed. The board shall render its recommendation for risk assessment classification within:

(A) Sixty days of receipt of a request for a risk assessment evaluation if the sexual offender is being sentenced pursuant to subsection (c) of Code Section 17-10-6.2 or as part of a presentence investigation pursuant to subsection (b) of Code Section 42-8-34;

(B) Six months prior to the sexual offender's proposed release from confinement if the offender is incarcerated;

(C) Sixty days of receipt of the required registration information from the sheriff when the sexual offender changes residence from another state or territory of the United States or any other place to this state and is not already classified;

(D) Sixty days if the sexual offender is sentenced to a probated or suspended sentence; and

(E) Ninety days if such classification is requested by the court pursuant to a petition filed under Code Section 42-1-19.

(3) The board shall notify the sexual offender by first-class mail of its determination of risk assessment classification and shall send a copy of such classification to the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, the Department of Community Supervision, the sheriff of the county in which the sexual offender is registered, and to counsel for the sexual offender and the sentencing court, if applicable.

(b) If the board determines that a sexual offender should be classified as a Level II risk assessment classification or as a sexually dangerous predator, the sexual offender may petition the board to reevaluate his or her classification. To file a petition for reevaluation, the sexual offender shall be required to submit his or her written petition for reevaluation to the board within 30 days from the date of the letter notifying the sexual offender of his or her classification. The sexual offender shall have 120 days from the date of the notification letter to submit information as provided in subsection (a) of this Code section in support of such sexual offender's petition for reevaluation. If the sexual offender fails to submit the petition or supporting documents within the time limits provided, the

classification shall be final. The board shall notify the sexual offender by first-class mail of its decision on the petition for reevaluation of risk assessment classification and shall send a copy of such notification to the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, the Department of Community Supervision, the sheriff of the county in which the sexual offender is registered, and to counsel for the sexual offender and the sentencing court, if applicable. The sexual offender may request reevaluation after ten years following his or her initial classification and no more than once every five years thereafter.

(c) A sexual offender who is classified by the board as a Level II risk assessment classification or as a sexually dangerous predator may file a petition for judicial review of his or her classification within 30 days of the date of the notification letter or, if the sexual offender has requested reevaluation pursuant to subsection (b) of this Code section, within 30 days of the date of the letter denying the petition for reevaluation. The petition for judicial review shall name the board as defendant, and the petition shall be filed in the superior court of the county in which the offices of the board are located. Within 30 days after service of the appeal on the board, the board shall submit a summary of its findings to the court and mail a copy, by first-class mail, to the sexual offender. The findings of the board shall be considered prima-facie evidence of the classification. The court shall also consider any relevant evidence submitted, and such evidence and documentation shall be mailed to the parties as well as submitted to the court. The court shall hold a hearing to determine the issue of classification. The court may uphold the classification of the board, or, if the court finds by a preponderance of the evidence that the sexual offender is not placed in the appropriate classification level, the court shall place the sexual offender in the appropriate risk assessment classification. The court's determination shall be forwarded by the clerk of the court to the board, the sexual offender, the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, and

the Department of Community Supervision, and the sheriff of the county in which the sexual offender is registered, and counsel for the sexual offender, if applicable.

(d) Any individual who was classified as a sexually violent predator prior to July 1, 2006, shall be classified as a sexually dangerous predator on and after July 1, 2006.

(e) In addition to the requirements of registration for all sexual offenders, a sexually dangerous predator shall report to the sheriff of the county in which such predator resides six months following his or her birth month and update or verify his or her required registration information."

SECTION 5-4.

Said title is further amended in Code Section 42-8-34, relating to sentencing hearings and determinations, presentence investigations, payment of fees, fines, and cost, post-conviction, presentence bond, continuing jurisdiction, and transferal of probation supervision, by revising subsection (b) as follows:

"(b) Prior to the sentencing hearing, the court may refer the case to an officer of the circuit in which the court is located for investigation and recommendation and the court shall refer such case when a life sentence may be imposed because of a previous conviction of a sexual felony, as such term is defined in Code Section 16-6-26. The court, upon such reference, shall direct an officer to make an investigation and to report to the court, in writing at a specified time, upon the circumstances of the offense and the criminal record, social history, and present condition of the defendant, together with the officer's recommendation~~; and it~~ , and when such reference is because of a previous conviction of a sexual felony, the court shall direct the Sexual Offender Risk Review Board to determine the classification level of the defendant in writing and report the board's recommendation to the court. It shall be the duty of such officer to carry out the directive of the court. The officer's and the Sexual Offender Risk Review Board's written findings shall be provided

to the prosecuting attorney and defendant no later than ten days prior to the sentencing hearing, or as otherwise ordered by the court."

SECTION 5-5.

Said title is further amended in Code Section 42-8-37, relating to effect of termination of probated portion of sentence, review of cases of persons receiving probated sentence, and reports, by adding a new subsection to read as follows:

"(e)(1) When a probationer is on probation for life for a sexual felony as defined in Code Section 16-6-26, DCS shall file a petition to terminate his or her probation if, after serving ten years on probation, the probationer has:

(A) Paid all restitution owed;

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

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

(D) Not been classified as a sexually dangerous predator by the Sexual Offender Risk Review Board.

Within 30 days before issuing an order terminating the offender's probation, the court or its clerk must provide written notice to the District Attorney and the State Board of Pardons and Paroles regarding the court's intention to terminate such offender's term of probation. The prosecuting attorney shall be given an opportunity to be heard on the matter during the 30 days before the termination order is issued by the court.

(2) When the court is presented with such petition, it shall take whatever action it determines to be for the best interest of justice and the welfare of society. When such petition is unopposed, the court shall issue an order as soon as possible or otherwise set the matter for a hearing within 90 days of receiving such petition. Such petition shall request an updated classification from the Sexual Offender Risk Review Board. Such

classification shall be requested six months before the petition for removal is filed, and the board shall render such reclassification within five months of the petitioner's request.

(3) This subsection is intended to be retroactive and applied to any probationer under the supervision of DCS.

(4) If such petition is not granted, a petition shall be filed every five years thereafter until the probationer meets the requirements under paragraph (1) of this subsection."

SECTION 5-6.

Said title is further amended in Code Section 42-9-53, relating to preservation of documents, classification of information and documents, divulgence of confidential state secrets, and conduct of hearings, by revising paragraph (2) of subsection (b) as follows:

"(2) The department may make supervision records of the department available to officials employed with the Department of Corrections and the Sexual Offender ~~Registration~~ Risk Review Board, and to the sexual offender as set forth in Code 42-1-14, provided that the same shall remain confidential and not available to any other person or subject to subpoena unless declassified by the commissioner of community supervision."

PART VI

SECTION 6-1.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and the punishment provisions of this Act shall apply to all offenses committed on and after July 1, 2021.

SECTION 6-2.

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