House Bill 188

By: Representatives Sainz of the 180th, Petrea of the 166th, Hitchens of the 161st, Burchett of the 176th, Mainor of the 56th, and others

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 Code Section 17-10-6.2, relating to punishment for sexual offenders, 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 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 revise the definition of "sexual offender" in regards to certain sentencing; to provide for mandatory minimum sentencing; to revise the definition of "dangerous sexual offense"; to provide for procedures; 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 a short title; 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.

This Act shall be known and may be cited as the "Georgia Dangerous Sexual Predator Prevention Act."

PART II

SECTION 2-1.

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 III

SECTION 3-1.

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

(i) Aggravated assault with the intent to rape in violation of subsection (a) of this Code section;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is under 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) Aggravated sodomy in violation of Code Section 16-6-2;

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

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

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

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

(x) Improper sexual contact by employee or agent in the first or second degree or improper sexual contact by a foster parent 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;

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

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

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

(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 paragraph (14) of subsection (a) of Code Section 42-8-35. 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."

SECTION 3-2.

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~~ under 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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(B) Any person having been previously convicted of a sexual felony who is convicted of the offense of kidnapping which involves a victim who is under 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 paragraph (14) of subsection (a) of Code Section 42-8-35;

(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 3-3.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(B) Any person having been previously convicted of a sexual felony who is convicted of the offense of trafficking of persons for 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 paragraph (14) of subsection (a) of Code Section 42-8-35."

SECTION 3-4.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35."

SECTION 3-5.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35."

SECTION 3-6.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35."

SECTION 3-7.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35."

SECTION 3-8.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35.″

SECTION 3-9.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 or second 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 paragraph (14) of subsection (a) of Code Section 42-8-35.″

SECTION 3-10.

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 paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35."

SECTION 3-11.

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:

"(e)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35."

SECTION 3-12.

Said title is further amended in Code Section 16-7-29, 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 3-13.

Said title is further amended by adding new subsections 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 16-5-21.

(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 paragraph (14) of subsection (a) of Code Section 42-8-35.

(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 IV

SECTION 4-1.

Code Section 17-10-6.2 of the Official Code of Georgia Annotated, relating to punishment for sexual offenders, is amended 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 V

SECTION 5-1.

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

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

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

PART VI

SECTION 6-1.

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) and subparagraph (10)(B.4) of subsection (a), by revising paragraphs (1) and (9) of subsection (b), and by revising paragraphs (11) through (13) of subsection (i) as follows:

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

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

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

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

~~(xviii)~~(xix) 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."

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

"(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."

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

~~(13)~~(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."

SECTION 6-2.

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)(1) The board shall acquire, collect, and analyze information, including, but not limited to, criminal history record information, in determining a sexual offender's risk assessment as provided for under Code Section 42-1-14.

(2) The board may employ investigators under the board's administration and supervision to complete the duties provided for under paragraph (1) of this subsection. The Georgia Bureau of Investigation shall maintain at least one position under the bureau's administration and supervision which shall facilitate the provision of summarized criminal history record information to the board from the Georgia Crime Information Center and the National Crime Information Center.

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

SECTION 6-3.

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 in person 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 6-4.

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; provided, however, that 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 16-5-21. 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 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~~; and 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 6-5.

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 16-5-21, 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 6-6.

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 VII

SECTION 7-1.

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, 2023.

SECTION 7-2.

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