

House Bill 1176 (AS PASSED HOUSE AND SENATE)

By: Representatives Golick of the 34<sup>th</sup>, Neal of the 1<sup>st</sup>, Willard of the 49<sup>th</sup>, Lindsey of the 54<sup>th</sup>,  
Oliver of the 83<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal  
2 or certiorari by the state in criminal cases, so as to change provisions relating to the state's  
3 right to appeal; to amend Titles 15, 16, 17, 35, and 42 of the Official Code of Georgia  
4 Annotated, relating to courts, crimes and offenses, criminal procedure, law enforcement  
5 officers and agencies, and penal institutions, respectively, so as to enact provisions  
6 recommended by the 2011 Special Council on Criminal Justice Reform for Georgians and  
7 enact other criminal justice reforms; to change provisions relating to drug and mental health  
8 court divisions; to provide for performance measures and best practices; to provide for  
9 certification; to provide for funding; to provide for oversight by the Judicial Council of  
10 Georgia; to increase the fees for pretrial intervention and diversion programs; to revise  
11 provisions relating to additional criminal penalties for purposes of drug abuse treatment and  
12 education programs; to expand the list of offenses with respect to which such additional  
13 penalties shall be imposed; to provide that funds from such penalties may be used for drug  
14 court division purposes; to substantially revise punishment provisions and the elements of  
15 the crimes of burglary, theft, shoplifting, counterfeit Universal Product Codes, forgery,  
16 deposit account fraud, controlled substances, and marijuana; to provide for and change  
17 definitions; to extend the statute of limitations for the prosecutions of the offenses of cruelty  
18 to children in the first degree, rape, aggravated sodomy, child molestation, aggravated child  
19 molestation, enticing a child for indecent purposes, and incest; to change provisions relating  
20 to recidivist punishment; to amend Code Section 19-7-5 of the Official Code of Georgia  
21 Annotated, relating to reporting of child abuse, so as to expand mandatory reporting  
22 requirements and provide for exceptions; to change provisions relating to inspection,  
23 purging, modifying, or supplementing of criminal records; to provide for definitions; to  
24 provide for time frames within which certain actions must be taken with respect to restricting  
25 access to records or modifying, correcting, supplementing, or amending criminal records; to  
26 provide for procedure; to provide for individuals who have not been convicted to have their  
27 arrest records restricted; to provide for having the arrest records of individuals convicted of  
28 certain misdemeanor offenses restricted under certain circumstances; to provide that the

29 Board of Corrections adopt certain rules and regulations; to change provisions relating to the  
 30 administration of supervision of felony probationers; to provide for the use of graduated  
 31 sanctions in disciplining probationers who violate the terms of their probation; to change  
 32 provisions relating to terms and conditions of probation; to provide for a maximum stay in  
 33 probation detention centers; to clarify provisions relating to probation supervision and  
 34 provide for early termination of a sentence; to amend Titles 5, 15, 16, 17, 31, 36, and 42 of  
 35 the Official Code of Georgia Annotated, relating to appeal and error, courts, crimes and  
 36 offenses, criminal procedure, health, local government, and penal institutions, respectively,  
 37 so as to conform provisions and correct cross-references; to provide for related matters; to  
 38 provide for effective dates and applicability; to repeal conflicting laws; and for other  
 39 purposes.

40 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

41 **PART I**  
 42 **APPEAL BY THE STATE**  
 43 **SECTION 1-1.**

44 Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal or  
 45 certiorari by the state in criminal cases, is amended by revising paragraph (7) of subsection  
 46 (a) of Code Section 5-7-1, relating to orders, decisions, or judgments appealable, as follows:

47 "(7) From an order, decision, or judgment of a superior court granting a motion for new  
 48 trial or an extraordinary motion for new trial;"

49 **SECTION 1-2.**

50 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section  
 51 5-7-2, relating to certification required for immediate review of nonfinal orders, decisions,  
 52 or judgments and exceptions, as follows:

53 "(2) Order, decision, or judgment described in paragraph (1) or (7) of subsection (a) of  
 54 Code Section 5-7-1."

55 **PART II**  
 56 **DRUG AND MENTAL HEALTH COURT DIVISIONS,**  
 57 **DIVERSION PROGRAMS, AND THE COUNTY DRUG**  
 58 **ABUSE TREATMENT AND EDUCATION FUND**  
 59 **SECTION 2-1.**

60 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
61 subsection (a) of Code Section 15-1-15, relating to drug court divisions, as follows:

62 "(a)(1) Any court that has jurisdiction over any criminal case which arises from the use,  
63 sale, possession, delivery, distribution, purchase, or manufacture of a controlled  
64 substance, noncontrolled substance, dangerous drug, or other drug may establish a drug  
65 court division to provide an alternative to the traditional judicial system for disposition  
66 of such cases.

67 (2) In any case which arises from the use, addiction, dependency, sale, possession,  
68 delivery, distribution, purchase, or manufacture of a controlled substance, noncontrolled  
69 substance, dangerous drug, or other drug or is ancillary to such conduct and the defendant  
70 meets the eligibility criteria for the drug court division, the court may assign the case to  
71 the drug court division:

72 (A) Prior to the entry of the sentence, if the prosecuting attorney consents;

73 (B) As part of a sentence in a case; or

74 (C) Upon consideration of a petition to revoke probation.

75 (3) Each drug court division shall establish a planning group to develop a work plan.  
76 The planning group shall include the judges, prosecuting attorneys, public defenders,  
77 probation officers, and persons having expertise in the field of substance abuse. The  
78 work plan shall address the operational, coordination, resource, information management,  
79 and evaluation needs of the drug court division. The work plan shall include ~~eligibility~~  
80 ~~criteria for the drug court division policies and practices related to implementing the~~  
81 ~~standards and practices developed pursuant to paragraph (4) of this subsection. The work~~  
82 ~~plan shall ensure a risk and needs assessment is used to identify the likelihood of~~  
83 ~~recidivating and identify the needs that, when met, reduce recidivism. The work plan~~  
84 ~~shall ensure that drug court division eligibility shall be focused on moderate-risk and~~  
85 ~~high-risk offenders as determined by a risk and needs assessment. The drug court~~  
86 division shall combine judicial supervision, treatment of drug court division participants,  
87 and drug testing.

88 (4)(A) ~~On or before January 1, 2013, the~~ The Judicial Council of Georgia shall adopt  
89 ~~standards for the drug court divisions. Each drug court division shall adopt standards~~  
90 ~~that are consistent with the standards of the Judicial Council of Georgia. The standards~~  
91 ~~are to serve as a flexible framework for developing effective drug court divisions and~~  
92 ~~to provide a structure for conducting research and evaluation for program~~  
93 ~~accountability. The standards are not intended to be a certification or regulatory~~  
94 ~~checklist~~ establish standards and practices for drug court divisions taking into  
95 consideration guidelines and principles based on current research and findings  
96 published by the National Drug Court Institute and the Substance Abuse and Mental

97 Health Services Administration, relating to practices shown to reduce recidivism of  
98 offenders with drug abuse problems. Standards and practices shall include, but shall  
99 not be limited to, the use of a risk and needs assessment to identify the likelihood of  
100 recidivating and identify the needs that, when met, reduce recidivism. The Judicial  
101 Council of Georgia shall update its standards and practices to incorporate research,  
102 findings, and developments in the drug court field. Each drug court division shall adopt  
103 policies and practices that are consistent with the standards and practices published by  
104 the Judicial Council of Georgia.

105 (B) On and after January 1, 2013, the Judicial Council of Georgia shall provide  
106 technical assistance to drug court divisions to assist them with the implementation of  
107 policies and practices, including, but not limited to, guidance on the implementation of  
108 risk and needs assessments in drug court divisions.

109 (C) On or before July 1, 2013, the Judicial Council of Georgia shall create and manage  
110 a certification and peer review process to ensure drug court divisions are adhering to  
111 the Judicial Council of Georgia's standards and practices and shall create a waiver  
112 process for drug court divisions to seek an exception to the Judicial Council of  
113 Georgia's standards and practices. In order to receive state appropriated funds, any drug  
114 court division established on and after July 1, 2013, shall be certified pursuant to this  
115 subparagraph or, for good cause shown to the Judicial Council of Georgia, shall receive  
116 a waiver from the Judicial Council of Georgia.

117 (D) On and after July 1, 2013, the award of any state funds for a drug court division  
118 shall be conditioned upon a drug court division attaining certification or a waiver by the  
119 Judicial Council of Georgia. On or before September 1, the Judicial Council of Georgia  
120 shall publish an annual report listing certified drug court divisions.

121 (E) Pursuant to Code Section 15-5-24, the Administrative Office of the Courts shall  
122 develop and manage an electronic information system for performance measurement  
123 and accept submission of performance data in a consistent format from all drug court  
124 divisions. The Judicial Council of Georgia shall identify elements necessary for  
125 performance measurement, including, but not limited to, recidivism, the number of  
126 moderate-risk and high-risk participants in a drug court division, drug testing results,  
127 drug testing failures, participant employment, the number of participants who  
128 successfully complete the program, and the number of participants who fail to complete  
129 the program.

130 (F) On or before July 1, 2015, and every three years thereafter, the Judicial Council of  
131 Georgia shall conduct a performance peer review of the drug court divisions for the  
132 purpose of improving drug court division policies and practices and the certification  
133 and recertification process.

134 (5) The court instituting the drug court division may request the prosecuting attorney for  
 135 the jurisdiction to designate one or more prosecuting attorneys to serve in the drug court  
 136 division and may request the public defender, if any, to designate one or more assistant  
 137 public defenders to serve in the drug court division.

138 (6) The clerk of the court instituting the drug court division or such clerk's designee shall  
 139 serve as the clerk of the drug court division.

140 (7) The court instituting the drug court division may request probation officers and other  
 141 employees of the court to perform duties for the drug court division. Such employees  
 142 shall perform duties as directed by the judges of the drug court division.

143 (8) The court instituting the drug court division may enter into agreements with other  
 144 courts and agencies for the assignment of personnel from other courts and agencies to the  
 145 drug court division.

146 (9) Expenses for salaries, equipment, services, and supplies incurred in implementing  
 147 this Code section may be paid from state funds, funds of the county or political  
 148 subdivision implementing such drug court division, federal grant funds, and funds from  
 149 private donations.

150 (10) As used in this Code section, the term 'risk and needs assessment' means an actuarial  
 151 tool, approved by the Judicial Council of Georgia and validated on a targeted population,  
 152 scientifically proven to determine a person's risk to recidivate and to identify criminal risk  
 153 factors that, when properly addressed, can reduce that person's likelihood of committing  
 154 future criminal behavior."

155 **SECTION 2-2.**

156 Said title is further amended by revising subsection (b) of Code Section 15-1-16, relating to  
 157 mental health court divisions, as follows:

158 "(b)(1) To achieve a reduction in recidivism and symptoms of mental illness among  
 159 mentally ill offenders in criminal cases and to increase their likelihood of successful  
 160 rehabilitation through early, continuous, and intense judicially supervised treatment, any  
 161 court that has jurisdiction over a criminal case in which a defendant has a mental illness  
 162 or developmental disability, or a co-occurring mental illness and substance abuse  
 163 disorder, may establish a mental health court division to provide an alternative to the  
 164 traditional judicial system for disposition of such cases. A mental health court division  
 165 will bring together mental health professionals, local social programs, and intensive  
 166 judicial monitoring.

167 (2) In any criminal case in which a defendant suffers from a mental illness or  
 168 developmental disability, or a co-occurring mental illness and substance abuse disorder,

169 and the defendant meets the eligibility criteria for the mental health court division, the  
 170 court may refer the case to the mental health court division:

171 (A) Prior to the entry of the sentence, if the prosecuting attorney consents;

172 (B) As part of a sentence in a case; or

173 (C) Upon consideration of a petition to revoke probation.

174 (3) Each mental health court division shall establish a planning group to develop a  
 175 written work plan. The planning group shall include judges, prosecuting attorneys,  
 176 sheriffs or their designees, public defenders, probation officers, and persons having  
 177 expertise in the field of mental health. The work plan shall address the operational,  
 178 coordination, resource, information management, and evaluation needs of the mental  
 179 health court division. The work plan shall include written eligibility criteria for the  
 180 mental health court division policies and practices related to implementing the standards  
 181 and practices developed pursuant to paragraph (4) of this subsection. The work plan shall  
 182 ensure a risk and needs assessment is used to identify the likelihood of recidivating and  
 183 identify the needs that, when met, reduce recidivism. The work plan shall ensure that  
 184 mental health court division eligibility shall be focused on moderate-risk and high-risk  
 185 offenders as determined by a risk and needs assessment. The mental health court division  
 186 shall combine judicial supervision, treatment of mental health court division participants,  
 187 and drug and mental health testing. Defendants charged with murder, armed robbery,  
 188 rape, aggravated sodomy, aggravated sexual battery, aggravated child molestation, or  
 189 child molestation shall not be eligible for entry into the mental health court division,  
 190 except in the case of a separate court supervised reentry program designed to more  
 191 closely monitor mentally ill offenders returning to the community after having served a  
 192 term of incarceration. Any such court supervised community reentry program for  
 193 mentally ill offenders shall be subject to the work plan as provided for in this paragraph.

194 (4)(A) On or before January 1, 2013, the The Judicial Council of Georgia shall adopt  
 195 standards for the mental health court divisions. Each mental health court division shall  
 196 adopt standards that are consistent with the standards of the Judicial Council of  
 197 Georgia. The standards shall serve as a flexible framework for developing effective  
 198 mental health court divisions and provide a structure for conducting research and  
 199 evaluation for division accountability. The standards are not intended to be a  
 200 certification or regulatory checklist establish standards and practices for mental health  
 201 court divisions taking into consideration guidelines and principles based on current  
 202 research and findings published by expert organizations, including, but not limited to,  
 203 the United States Substance Abuse and Mental Health Services Administration, the  
 204 Council of State Governments Consensus Project, and the National GAINS Center,  
 205 relating to practices shown to reduce recidivism of offenders with mental illness or

206 developmental disabilities. Standards and practices shall include, but shall not be  
207 limited to, the use of a risk and needs assessment to identify the likelihood of  
208 recidivating and identify the needs that, when met, reduce recidivism. The Judicial  
209 Council of Georgia shall update its standards and practices to incorporate research,  
210 findings, and developments in the mental health court field. Each mental health court  
211 division shall adopt policies and practices that are consistent with the standards and  
212 practices published by the Judicial Council of Georgia.

213 (B) On and after January 1, 2013, the Judicial Council of Georgia shall provide  
214 technical assistance to mental health court divisions to assist them with the  
215 implementation of policies and practices, including, but not limited to, guidance on the  
216 implementation of risk and needs assessments in mental health court divisions.

217 (C) On or before July 1, 2013, the Judicial Council of Georgia shall create and manage  
218 a certification and peer review process to ensure mental health court divisions are  
219 adhering to the Judicial Council of Georgia's standards and practices and shall create  
220 a waiver process for mental health court divisions to seek an exception to the Judicial  
221 Council of Georgia's standards and practices. In order to receive state appropriated  
222 funds, any mental health court division established on and after July 1, 2013, shall be  
223 certified pursuant to this subparagraph or, for good cause shown to the Judicial Council  
224 of Georgia, shall receive a waiver from the Judicial Council of Georgia.

225 (D) On and after July 1, 2013, the award of any state funds for a mental health court  
226 division shall be conditioned upon a mental health court division attaining certification  
227 or a waiver by the Judicial Council of Georgia. On or before September 1, the Judicial  
228 Council of Georgia shall publish an annual report listing of certified mental health court  
229 divisions.

230 (E) Pursuant to Code Section 15-5-24, the Administrative Office of the Courts shall  
231 develop and manage an electronic information system for performance measurement  
232 and accept submission of performance data in a consistent format from all mental health  
233 court divisions. The Judicial Council of Georgia shall identify elements necessary for  
234 performance measurement, including, but not limited to, recidivism, the number of  
235 moderate-risk and high-risk participants in a mental health court division, drug testing  
236 results, drug testing failures, the number of participants who successfully complete the  
237 program, and the number of participants who fail to complete the program.

238 (F) On or before July 1, 2015, and every three years thereafter, the Judicial Council of  
239 Georgia shall conduct a performance peer review of the mental health court divisions  
240 for the purpose of improving mental health court division policy and practices and the  
241 certification and recertification process.

242 (5) The court instituting the mental health court division may request the district attorney  
 243 for the judicial circuit or solicitor-general for the state court for the jurisdiction to  
 244 designate one or more prosecuting attorneys to serve in the mental health court division  
 245 and may request the circuit public defender, if any, to designate one or more assistant  
 246 public defenders to serve in the mental health court division.

247 (6) The clerk of the court instituting the mental health court division or such clerk's  
 248 designee shall serve as the clerk of the mental health court division.

249 (7) The court instituting the mental health court division may request other employees  
 250 of the court to perform duties for the mental health court division. Such employees shall  
 251 perform duties as directed by the judges of the mental health court division.

252 (8) The court instituting the mental health court division may enter into agreements with  
 253 other courts and agencies for the assignment of personnel from other courts and agencies  
 254 to the mental health court division, including probation supervision.

255 (9) Expenses for salaries, equipment, services, and supplies incurred in implementing  
 256 this Code section may be paid from state funds, funds of the county or political  
 257 subdivision implementing such mental health court division, federal grant funds, and  
 258 funds from private donations.

259 (10) As used in this Code section, the term 'risk and needs assessment' means an actuarial  
 260 tool, approved by the Judicial Council of Georgia and validated on a targeted population,  
 261 scientifically proven to determine a person's risk to recidivate and to identify criminal risk  
 262 factors that, when properly addressed, can reduce that person's likelihood of committing  
 263 future criminal behavior."

264 **SECTION 2-3.**

265 Said title is further amended by revising subsection (f) of Code Section 15-18-80, relating  
 266 to policy and procedure for pretrial intervention and diversion programs, as follows:

267 "(f) The prosecuting attorney shall be authorized to assess and collect from each offender  
 268 who enters the program a fee not to exceed ~~\$300.00~~ \$1,000.00 for the administration of the  
 269 program. Such fee may be waived in part or in whole or made payable in monthly  
 270 increments upon a showing of good cause to the prosecuting attorney. Any fee collected  
 271 under this subsection shall be made payable to the general fund of the political subdivision  
 272 in which the case is being prosecuted."

273 **SECTION 2-4.**

274 Said title is further amended by revising Article 6 of Chapter 21, relating to the County Drug  
 275 Abuse Treatment and Education Fund, as follows:



276

## "ARTICLE 6

277 15-21-100.

278 (a) In every case in which any court shall impose a fine, which shall be construed to  
 279 include costs, for any offense prohibited by Code Section 16-13-30, 16-13-30.1, ~~or~~  
 280 ~~16-13-30.2, 16-13-30.3, 16-13-30.5, 16-13-31, which offenses relate to certain activities~~  
 281 ~~regarding marijuana, controlled substances, and noncontrolled substances~~ 16-13-31.1,  
 282 16-13-32, 16-13-32.1, 16-13-32.2, 16-13-32.3, 16-13-32.4, 16-13-32.5, or 16-13-32.6, there  
 283 shall be imposed as an additional penalty a sum equal to 50 percent of the original fine.  
 284 The additional 50 percent penalty shall also be imposed in every case in which a fine is  
 285 imposed for violation of:

286 (1) Code Section 3-3-23.1;287 (2) Code Section 40-6-391; or288 (3) Code Section 40-6-393 or 40-6-394 if the offender was also charged with a violation  
 289 of Code Section 40-6-391.290 If no fine is provided for in the applicable Code section, and the judge places the defendant  
 291 on probation, the fine authorized by Code Section 17-10-8 shall be applicable.

292 (b) The sums required by subsection (a) of this Code section shall be in addition to the  
 293 amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and  
 294 Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts  
 295 Retirement Fund of Georgia.

296 15-21-101.

297 (a) The sums provided for in Code Section 15-21-100 shall be collected by the clerk or  
 298 court officer charged with the duty of collecting moneys arising from fines and forfeited  
 299 bonds and shall be paid over to the governing authority of the county in which the court is  
 300 located upon receipt of the fine and assessment if paid in full at the time of sentencing or  
 301 upon receipt of the final payment if the fine is paid in installments. Those sums paid over  
 302 to the governing authority shall be deposited thereby into a special account to be known  
 303 as the 'County Drug Abuse Treatment and Education Fund.'

304 (b) Moneys collected pursuant to this article and placed in the 'County Drug Abuse  
 305 Treatment and Education Fund' shall be expended by the governing authority of the county  
 306 for which the fund is established solely and exclusively:

307 (1) For drug abuse treatment and education programs relating to controlled substances,  
 308 alcohol, and marijuana; and309 (2) If a drug court division has been established in the county under Code Section  
 310 15-1-15, for purposes of the drug court division.

311 This article shall not preclude the appropriation or expenditure of other funds by the  
 312 governing authority of any county or by the General Assembly for the purpose of drug  
 313 abuse treatment or education programs or drug court divisions."

314 **PART III**  
 315 **CRIMES AND OFFENSES**  
 316 **SECTION 3-1.**

317 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 318 amended by revising Code Section 16-7-1, relating to burglary, as follows:

319 "16-7-1.

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

321 (1) 'Dwelling' means any building, structure, or portion thereof which is designed or  
 322 intended for occupancy for residential use.

323 (2) 'Railroad car' shall also include trailers on flatcars, containers on flatcars, trailers on  
 324 railroad property, or containers on railroad property.

325 ~~(a)(b)~~ A person commits the offense of burglary in the first degree when, without authority  
 326 and with the intent to commit a felony or theft therein, he or she enters or remains within  
 327 ~~the~~ an occupied, unoccupied, or vacant dwelling house of another or any building, vehicle,  
 328 railroad car, watercraft, aircraft, or other such structure designed for use as the dwelling of  
 329 another ~~or enters or remains within any other building, railroad car, aircraft, or any room~~  
 330 ~~or any part thereof~~. A person ~~convicted of~~ who commits the offense of burglary, ~~for the~~  
 331 ~~first such offense~~ in the first degree shall be guilty of a felony and, upon conviction thereof,  
 332 shall be punished by imprisonment for not less than one nor more than 20 years. ~~For the~~  
 333 ~~purposes of this Code section, the term 'railroad car' shall also include trailers on flatcars,~~  
 334 ~~containers on flatcars, trailers on railroad property, or containers on railroad property.~~ Upon  
 335 the second conviction for burglary in the first degree, the defendant shall be guilty of a  
 336 felony and shall be punished by imprisonment for not less than two nor more that 20 years.  
 337 Upon the third and all subsequent convictions for burglary in the first degree, the defendant  
 338 shall be guilty of a felony and shall be punished by imprisonment for not less than five nor  
 339 more than 25 years.

340 (c) A person commits the offense of burglary in the second degree when, without authority  
 341 and with the intent to commit a felony or theft therein, he or she enters or remains within  
 342 an occupied, unoccupied, or vacant building, structure, vehicle, railroad car, watercraft, or  
 343 aircraft. A person who commits the offense of burglary in the second degree shall be guilty  
 344 of a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
 345 than one nor more than five years. Upon the second and all subsequent convictions for

346 burglary in the second degree, the defendant shall be guilty of a felony and shall be  
 347 punished by imprisonment for not less than one nor more than eight years.  
 348 ~~(b)(d) Upon a second conviction fourth and all subsequent convictions~~ for a crime of  
 349 burglary occurring after the first conviction, a person shall be punished by imprisonment  
 350 for not less than two nor more than 20 years. ~~Upon a third conviction for the crime of~~  
 351 ~~burglary occurring after the first conviction, a person shall be punished by imprisonment~~  
 352 ~~for not less than five nor more than 20 years. Adjudication in any degree, adjudication of~~  
 353 ~~guilt or imposition of sentence shall not be suspended, probated, deferred, or withheld for~~  
 354 ~~any offense punishable under this subsection."~~

### 355 SECTION 3-2.

356 Said title is further amended by revising Code Section 16-8-12, relating to penalties for theft  
 357 in violation of Code Sections 16-8-2 through 16-8-9, as follows:

358 "16-8-12.

359 (a) A person convicted of a violation of Code Sections 16-8-2 through 16-8-9 shall be  
 360 punished as for a misdemeanor except:

361 (1)(A) If the property which was the subject of the theft exceeded \$500.00 \$24,999.99  
 362 in value, by imprisonment for not less than one two nor more than ten 20 years or, in  
 363 the discretion of the trial judge, as for a misdemeanor;

364 (B) If the property which was the subject of the theft was at least \$5,000.00 in value  
 365 but was less than \$25,000.00 in value, by imprisonment for not less than one nor more  
 366 than ten years and, in the discretion of the trial judge, as for a misdemeanor;

367 (C) If the property which was the subject of the theft was at least \$1,500.01 in value  
 368 but was less than \$5,000.00 in value, by imprisonment for not less than one nor more  
 369 than five years and, in the discretion of the trial judge, as for a misdemeanor; and

370 (D) If the defendant has two prior convictions for a violation of Code Sections 16-8-2  
 371 through 16-8-9, upon a third conviction or subsequent conviction, such defendant shall  
 372 be guilty of a felony and shall be punished by imprisonment for not less than one nor  
 373 more than five years and, in the discretion of the trial judge, as for a misdemeanor;

374 (2) If the property was any amount of anhydrous ammonia, as defined in Code Section  
 375 16-11-111, by imprisonment for not less than one nor more than ten years, a fine not to  
 376 exceed the amount provided by Code Section 17-10-8, or both;

377 (3) If the property was taken by a fiduciary in breach of a fiduciary obligation or by an  
 378 officer or employee of a government or a financial institution in breach of his or her  
 379 duties as such officer or employee, by imprisonment for not less than one nor more than  
 380 15 years, a fine not to exceed the amount provided by Code Section 17-10-8, or both;

381 (4) If the crime committed was a violation of Code Section 16-8-2 and if the property  
 382 which was the subject of the theft was a memorial to the dead or any ornamentation,  
 383 flower, tree, or shrub placed on, adjacent to, or within any enclosure of a memorial to the  
 384 dead, by imprisonment for not less than one nor more than three years. Nothing in this  
 385 paragraph shall be construed as to cause action taken by a cemetery, cemetery owner,  
 386 lessee, trustee, church, religious or fraternal organization, corporation, civic organization,  
 387 or club legitimately attempting to clean, maintain, care for, upgrade, or beautify a grave,  
 388 gravesite, tomb, monument, gravestone, or other structure or thing placed or designed for  
 389 a memorial of the dead to be a criminal act;

390 (5)(A) The provisions of paragraph (1) of this subsection notwithstanding, ~~if the~~  
 391 ~~property which was the subject of the theft was a motor vehicle or was a motor vehicle~~  
 392 ~~part or component which exceeded \$100.00 in value~~ or if the theft or unlawful activity  
 393 was committed in violation of subsection (b) of Code Section 10-1-393.5 or in violation  
 394 of subsection (b) of Code Section 10-1-393.6 or while engaged in telemarketing  
 395 conduct in violation of Chapter 5B of Title 10, by imprisonment for not less than one  
 396 nor more than ten years or, in the discretion of the trial judge, as for a misdemeanor;  
 397 provided, however, that any person who is convicted of a second or subsequent offense  
 398 under this paragraph shall be punished by imprisonment for not less than one year nor  
 399 more than 20 years.

400 (B) Subsequent offenses committed under this paragraph, including those which may  
 401 have been committed after prior felony convictions unrelated to this paragraph, shall  
 402 be punished as provided in Code Section 17-10-7;

403 (6)(A) As used in this paragraph, the term:

404 (i) 'Destructive device' means a destructive device as such term is defined by Code  
 405 Section 16-7-80.

406 (ii) 'Explosive' means an explosive as such term is defined by Code Section 16-7-80.

407 (iii) 'Firearm' means any rifle, shotgun, pistol, or similar device which propels a  
 408 projectile or projectiles through the energy of an explosive.

409 (B) If the property which was the subject of the theft offense was a destructive device,  
 410 explosive, or firearm, by imprisonment for not less than one nor more than ten years;

411 (7) If the property which was the subject of the theft is a grave marker, monument, or  
 412 memorial to one or more deceased persons who served in the military service of this state,  
 413 the United States of America or any of the states thereof, or the Confederate States of  
 414 America or any of the states thereof, or a monument, plaque, marker, or memorial which  
 415 is dedicated to, honors, or recounts the military service of any past or present military  
 416 personnel of this state, the United States of America or any of the states thereof, or the  
 417 Confederate States of America or any of the states thereof, and if such grave marker,

418 monument, memorial, plaque, or marker is privately owned or located on privately owned  
 419 land, by imprisonment for not less than one nor more than three years if the value of the  
 420 property which was the subject of the theft is ~~\$300.00~~ \$1,000.00 or less, and by  
 421 imprisonment for not less than three years and not more than five years if the value of the  
 422 property which was the subject of the theft is more than ~~\$300.00~~ \$1,000.00;

423 (8) If the property that was the subject of the theft was a vehicle engaged in commercial  
 424 transportation of cargo or any appurtenance thereto, including, without limitation, any  
 425 such trailer, semitrailer, container, or other associated equipment, or the cargo being  
 426 transported therein or thereon, by imprisonment for not less than three years nor more  
 427 than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if  
 428 applicable, the revocation of the defendant's commercial driver's license in accordance  
 429 with Code Section 40-5-151, or any combination of such penalties. For purposes of this  
 430 paragraph, the term 'vehicle' includes, without limitation, any railcar; or

431 (9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of  
 432 the theft was ferrous metals or regulated metal property, as such terms are defined in  
 433 Code Section 10-1-350, and the sum of the aggregate amount of such property, in its  
 434 original and undamaged condition, plus any reasonable costs which are or would be  
 435 incurred in the repair or the attempt to recover any property damaged in the theft or  
 436 removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less  
 437 than one nor more than five years, a fine of not more than \$5,000.00, or both.

438 (b) Except as otherwise provided in paragraph (5) of subsection (a) of this Code section,  
 439 any person who commits the offense of theft by deception when the property which was  
 440 the subject of the theft exceeded \$500.00 in value and the offense was committed against  
 441 a person who is 65 years of age or older shall, upon conviction thereof, be punished by  
 442 imprisonment for not less than five nor more than ten years.

443 (c) Where a violation of Code Sections 16-8-2 through 16-8-9 involves the theft of a  
 444 growing or otherwise unharvested commercial agricultural product which is being grown  
 445 or produced as a crop, such offense shall be punished by a fine of not less than ~~\$500.00~~  
 446 \$1,000.00 and not more than the maximum fine otherwise authorized by law. This  
 447 minimum fine shall not in any such case be subject to suspension, stay, or probation. This  
 448 minimum fine shall not be required in any case in which a sentence of confinement is  
 449 imposed and such sentence of confinement is not suspended, stayed, or probated; but this  
 450 subsection shall not prohibit imposition of any otherwise authorized fine in such a case."

451 **SECTION 3-3.**

452 Said title is further amended by revising Code Section 16-8-14, relating to theft by  
 453 shoplifting, as follows:

454 "16-8-14.

455 (a) A person commits the offense of theft by shoplifting when ~~he~~ such person alone or in  
 456 concert with another person, with the intent of appropriating merchandise to his or her own  
 457 use without paying for the same or to deprive the owner of possession thereof or of the  
 458 value thereof, in whole or in part, does any of the following:

459 (1) Conceals or takes possession of the goods or merchandise of any store or retail  
 460 establishment;

461 (2) Alters the price tag or other price marking on goods or merchandise of any store or  
 462 retail establishment;

463 (3) Transfers the goods or merchandise of any store or retail establishment from one  
 464 container to another;

465 (4) Interchanges the label or price tag from one item of merchandise with a label or price  
 466 tag for another item of merchandise; or

467 (5) Wrongfully causes the amount paid to be less than the merchant's stated price for the  
 468 merchandise.

469 (b)(1) A person convicted of the offense of theft by shoplifting, as provided in subsection  
 470 (a) of this Code section, when the property which was the subject of the theft is ~~\$300.00~~  
 471 \$500.00 or less in value shall be punished as for a misdemeanor; provided, however, that:

472 (A) Upon conviction of a second offense for shoplifting, where the first offense is  
 473 either a felony or a misdemeanor, as defined by this Code section, in addition to or in  
 474 lieu of any imprisonment which might be imposed, the defendant shall be fined not less  
 475 than ~~\$250.00~~ \$500.00, and the fine shall not be suspended or probated;

476 (B) Upon conviction of a third offense for shoplifting, where the first two offenses are  
 477 either felonies or misdemeanors, or a combination of a felony and a misdemeanor, as  
 478 defined by this Code section, in addition to or in lieu of any fine which might be  
 479 imposed, the defendant shall be punished by imprisonment for not less than 30 days or  
 480 confinement in a 'special alternative incarceration-probation boot camp,' probation  
 481 detention center, diversion center, or other community correctional facility of the  
 482 Department of Corrections for a period of 120 days or shall be sentenced to monitored  
 483 house arrest for a period of 120 days and, in addition to either such types of  
 484 confinement, may be required to undergo psychological evaluation and treatment to be  
 485 paid for by the defendant; and such sentence of imprisonment or confinement shall not  
 486 be suspended, probated, deferred, or withheld; and

487 (C) Upon conviction of a fourth or subsequent offense for shoplifting, where the prior  
 488 convictions are either felonies or misdemeanors, or any combination of felonies and  
 489 misdemeanors, as defined by this Code section, the defendant commits a felony and

490 shall be punished by imprisonment for not less than one nor more than ten years; and  
 491 the first year of such sentence shall not be suspended, probated, deferred, or withheld.

492 (2) A person convicted of the offense of theft by shoplifting, as provided in subsection  
 493 (a) of this Code section, when the property which was the subject of the theft exceeds  
 494 ~~\$300.00~~ \$500.00 in value commits a felony and shall be punished by imprisonment for  
 495 not less than one nor more than ten years.

496 (3) A person convicted of the offense of theft by shoplifting, as provided in subsection  
 497 (a) of this Code section, when the property which was the subject of the theft is taken  
 498 from three separate stores or retail establishments within one county during a period of  
 499 seven days or less and when the aggregate value of the property which was the subject  
 500 of each theft exceeds ~~\$100.00~~ \$500.00 in value, commits a felony and shall be punished  
 501 by imprisonment for not less than one nor more than ten years.

502 (4) A person convicted of the offense of theft by shoplifting, as provided in subsection  
 503 (a) of this Code section, when the property which was the subject of the theft is taken  
 504 during a period of 180 days and when the aggregate value of the property which was the  
 505 subject of each theft exceeds \$500.00 in value, commits a felony and shall be punished  
 506 by imprisonment for not less than one nor more than ten years.

507 (c) In all cases involving theft by shoplifting, the term 'value' means the actual retail price  
 508 of the property at the time and place of the offense. The unaltered price tag or other  
 509 marking on property, or duly identified photographs thereof, shall be prima-facie evidence  
 510 of value and ownership of the property.

511 (d) Subsection (b) of this Code section shall in no way affect the authority of a sentencing  
 512 judge to provide for a sentence to be served on weekends or during the nonworking hours  
 513 of the defendant as provided in Code Section 17-10-3, relative to punishment for  
 514 misdemeanors."

515 **SECTION 3-4.**

516 Said title is further amended by revising Code Section 16-8-17, relating to counterfeit  
 517 Universal Product Codes, as follows:

518 "16-8-17.

519 (a)(1) Except as provided in paragraph (2) of this subsection, a person who, with intent  
 520 to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits,  
 521 or reproduces a retail sales receipt or a Universal Product Code label which results in a  
 522 theft of property which exceeds ~~\$300.00~~ \$500.00 in value commits a felony and shall be  
 523 punished by imprisonment for not less than one nor more than three years or by a fine or  
 524 both.

525 (2) A person convicted of a violation of paragraph (1) of this subsection, when the  
 526 property which was the subject of the theft resulting from the unlawful use of retail sales  
 527 receipts or Universal Product Code labels is taken from three separate stores or retail  
 528 establishments within one county during a period of seven days or less and when the  
 529 aggregate value of the property which was the subject of each theft exceeds ~~\$100.00~~  
 530 \$500.00 in value, commits a felony and shall be punished by imprisonment for not less  
 531 than one nor more than ten years.

532 (b) A person who, with intent to cheat or defraud a retailer, possesses 15 or more  
 533 fraudulent retail sales receipts or Universal Product Code labels or possesses a device the  
 534 purpose of which is to manufacture fraudulent retail sales receipts or Universal Product  
 535 Code labels ~~will~~ shall be guilty of a felony and punished by imprisonment for not less than  
 536 one nor more than ten years."

537 **SECTION 3-5.**

538 Said title is further amended by revising Code Sections 16-9-1, 16-9-2, and 16-9-3, relating  
 539 to forgery in the first degree, forgery in the second degree, and "writing" defined,  
 540 respectively, as follows:

541 "16-9-1.

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

543 (1) 'Bank' means incorporated banks, savings banks, banking companies, trust  
 544 companies, credit unions, and other corporations doing a banking business.

545 (2) 'Check' means any instrument for the payment or transmission of money payable on  
 546 demand and drawn on a bank.

547 (3) 'Writing' includes, but shall not be limited to, printing or any other method of  
 548 recording information, money, coins, tokens, stamps, seals, credit cards, badges,  
 549 trademarks, and other symbols of value, right, privilege, or identification.

550 (b) A person commits the offense of forgery in the first degree when with the intent to  
 551 defraud he or she knowingly makes, alters, or possesses any writing, other than a check,  
 552 in a fictitious name or in such manner that the writing as made or altered purports to have  
 553 been made by another person, at another time, with different provisions, or by authority of  
 554 one who did not give such authority and utters or delivers such writing.

555 ~~(b) A person convicted of the offense of forgery in the first degree shall be punished by~~  
 556 ~~imprisonment for not less than one nor more than ten years.~~

557 (c) A person commits the offense of forgery in the second degree when with the intent to  
 558 defraud he or she knowingly makes, alters, or possesses any writing, other than a check,  
 559 in a fictitious name or in such manner that the writing as made or altered purports to have



560 been made by another person, at another time, with different provisions, or by authority of  
 561 one who did not give such authority.

562 (d) A person commits the offense of forgery in the third degree when with the intent to  
 563 defraud he or she knowingly:

564 (1) Makes, alters, possesses, utters, or delivers any check written in the amount of  
 565 \$1,500.00 or more in a fictitious name or in such manner that the check as made or  
 566 altered purports to have been made by another person, at another time, with different  
 567 provisions, or by authority of one who did not give such authority; or

568 (2) Possesses ten or more checks written without a specified amount in a fictitious name  
 569 or in such manner that the checks as made or altered purport to have been made by  
 570 another person, at another time, with different provisions, or by authority of one who did  
 571 not give such authority.

572 (e) A person commits the offense of forgery in the fourth degree when with the intent to  
 573 defraud he or she knowingly:

574 (1) Makes, alters, possesses, utters, or delivers any check written in the amount of less  
 575 than \$1,500.00 in a fictitious name or in such manner that the check as made or altered  
 576 purports to have been made by another person, at another time, with different provisions,  
 577 or by authority of one who did not give such authority; or

578 (2) Possesses less than ten checks written without a specified amount in a fictitious name  
 579 or in such manner that the checks as made or altered purport to have been made by  
 580 another person, at another time, with different provisions, or by authority of one who did  
 581 not give such authority.

582 16-9-2.

583 (a) A person who commits the offense of forgery in the first degree shall be guilty of a  
 584 felony and, upon conviction thereof, shall be punished by imprisonment for not less than  
 585 one nor more than 15 years. ~~A person commits the offense of forgery in the second degree~~  
 586 ~~when with the intent to defraud he knowingly makes, alters, or possesses any writing in a~~  
 587 ~~fictitious name or in such manner that the writing as made or altered purports to have been~~  
 588 ~~made by another person, at another time, with different provisions, or by authority of one~~  
 589 ~~who did not give such authority.~~

590 ~~(b) A person convicted of~~ who commits the offense of forgery in the second degree shall  
 591 be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for  
 592 not less than one nor more than five years.

593 (c) A person who commits the offense of forgery in the third degree shall be guilty of a  
 594 felony and, upon conviction thereof, shall be punished by imprisonment for not less than  
 595 one nor more than five years.

596 (d) A person who commits the offense of forgery in the fourth degree shall be guilty of a  
 597 misdemeanor; provided, however, that upon the third and all subsequent convictions for  
 598 such offense, the defendant shall be guilty of a felony and shall be punished by  
 599 imprisonment for not less than one nor more than five years.

600 16-9-3.

601 ~~For purposes of Code Sections 16-9-1 and 16-9-2, the word 'writing' includes, but is not~~  
 602 ~~limited to, printing or any other method of recording information, money, coins, tokens,~~  
 603 ~~stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege,~~  
 604 ~~or identification. Reserved."~~

605 **SECTION 3-6.**

606 Said title is further amended by revising subsection (b) of Code Section 16-9-20, relating to  
 607 deposit account fraud, as follows:

608 "(b)(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (c)  
 609 of this Code section, a person convicted of the offense of deposit account fraud shall be  
 610 guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows:

611 (A) When the instrument is for less than ~~\$100.00~~ \$500.00, a fine of not more than  
 612 \$500.00 or imprisonment not to exceed 12 months, or both;

613 (B) When the instrument is for ~~\$100.00~~ \$500.00 or more but less than ~~\$300.00~~  
 614 \$1,000.00, a fine of not more than \$1,000.00 or imprisonment not to exceed 12 months,  
 615 or both; or

616 (C) When more than one instrument is involved and such instruments were drawn  
 617 within 90 days of one another and each is in an amount less than ~~\$100.00~~ \$500.00, the  
 618 amounts of such separate instruments may be added together to arrive at and be  
 619 punishable under subparagraph (B) of this paragraph.

620 (2) Except as provided in paragraph (3) of this subsection and subsection (c) of this Code  
 621 section, a person convicted of the offense of deposit account fraud, when the instrument  
 622 is for an amount of not less than ~~\$300.00~~ \$1,000.00 nor more than ~~\$499.99~~ \$1,499.99,  
 623 shall be guilty of a misdemeanor of a high and aggravated nature. When more than one  
 624 instrument is involved and such instruments were given to the same entity within a 15  
 625 day period and the cumulative total of such instruments is not less than ~~\$300.00~~  
 626 \$1,000.00 nor more than ~~\$499.99~~ \$1,499.00, the person drawing and giving such  
 627 instruments shall upon conviction be guilty of a misdemeanor of a high and aggravated  
 628 nature.

629 (3) Except as provided in subsection (c) of this Code section, a person convicted of the  
 630 offense of deposit account fraud, when the instrument is for ~~\$500.00~~ \$1,500.00 or more,

631 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not  
 632 less than \$500.00 nor more than \$5,000.00 or by imprisonment for not more than three  
 633 years, or both.

634 (4) Upon conviction of a first or any subsequent offense under this subsection or  
 635 subsection (c) of this Code section, in addition to any other punishment provided by this  
 636 Code section, the defendant shall be required to make restitution of the amount of the  
 637 instrument, together with all costs of bringing a complaint under this Code section. The  
 638 court may require the defendant to pay as interest a monthly payment equal to 1 percent  
 639 of the amount of the instrument. Such amount shall be paid each month in addition to  
 640 any payments on the principal until the entire balance, including the principal and any  
 641 unpaid interest payments, is paid in full. Such amount shall be paid without regard to any  
 642 reduction in the principal balance owed. Costs shall be determined by the court from  
 643 competent evidence of costs provided by the party causing the criminal warrant or  
 644 citation to issue; provided, however, that the minimum costs shall not be less than \$25.00.  
 645 Restitution may be made while the defendant is serving a probated or suspended  
 646 sentence."

647 **SECTION 3-7A.**

648 Said title is further amended by revising Code Section 16-13-30, relating to purchase,  
 649 possession, manufacture, distribution, or sale of controlled substances or marijuana and  
 650 penalties, as follows:

651 "16-13-30.

652 (a) Except as authorized by this article, it is unlawful for any person to purchase, possess,  
 653 or have under his or her control any controlled substance.

654 (b) Except as authorized by this article, it is unlawful for any person to manufacture,  
 655 deliver, distribute, dispense, administer, sell, or possess with intent to distribute any  
 656 controlled substance.

657 (c) Except as otherwise provided, any person who violates subsection (a) of this Code  
 658 section with respect to a controlled substance in Schedule I or a narcotic drug in  
 659 Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by  
 660 imprisonment for not less than ~~two years~~ one year nor more than 15 years. ~~Upon~~  
 661 ~~conviction of a second or subsequent offense, he shall be imprisoned for not less than five~~  
 662 ~~years nor more than 30 years.~~

663 (d) Except as otherwise provided, any person who violates subsection (b) of this Code  
 664 section with respect to a controlled substance in Schedule I or Schedule II shall be guilty  
 665 of a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
 666 than five years nor more than 30 years. Upon conviction of a second or subsequent

667 offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or  
 668 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not  
 669 apply to a sentence imposed for a second such offense; provided, however, that the  
 670 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

671 (e) Any person who violates subsection (a) of this Code section with respect to a  
 672 controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony  
 673 and, upon conviction thereof, shall be punished by imprisonment for not less than ~~two~~  
 674 years one year nor more than 15 years. ~~Upon conviction of a second or subsequent offense,~~  
 675 ~~he shall be punished by imprisonment for not less than five years nor more than 30 years.~~

676 (f) Reserved.

677 (g) Except as provided in subsection (l) of this Code section, any ~~Any~~ person who violates  
 678 subsection (a) of this Code section with respect to a controlled substance in Schedule III,  
 679 IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by  
 680 imprisonment for not less than one year nor more than ~~five~~ three years. Upon conviction  
 681 of a ~~second~~ third or subsequent offense, he or she shall be imprisoned for not less than one  
 682 year nor more than ~~ten~~ five years.

683 (h) Any person who violates subsection (b) of this Code section with respect to a  
 684 controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon  
 685 conviction thereof, shall be punished by imprisonment for not less than one year nor more  
 686 than ten years.

687 (i)~~(1)~~ Except as authorized by this article, it is unlawful for any person to possess; or  
 688 have under his or her control, ~~manufacture, deliver, distribute, dispense, administer,~~  
 689 ~~purchase, sell, or possess with intent to distribute~~ a counterfeit substance. Any person  
 690 who violates this ~~subsection~~ paragraph shall be guilty of a felony and, upon conviction  
 691 thereof, shall be punished by imprisonment for not less than one year nor more than ~~ten~~  
 692 two years.

693 (2) Except as authorized by this article, it is unlawful for any person to manufacture,  
 694 deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute  
 695 a counterfeit substance. Any person who violates this paragraph shall be guilty of a  
 696 felony and, upon conviction thereof, shall be punished by imprisonment for not less than  
 697 one year nor more than ten years.

698 (j)(1) It is ~~shall be~~ unlawful for any person to possess, have under his or her control,  
 699 manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with  
 700 intent to distribute marijuana.

701 (2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code  
 702 Section 16-13-2, any person who violates this subsection shall be guilty of a felony and,

703 upon conviction thereof, shall be punished by imprisonment for not less than one year nor  
704 more than ten years.

705 (k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under  
706 the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or  
707 dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or  
708 marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by  
709 law. Any person who violates this subsection shall be guilty of a felony and, upon  
710 conviction thereof, shall be punished by imprisonment for not less than five years nor more  
711 than 20 years or by a fine not to exceed \$20,000.00, or both.

712 (l)(1) Any person who violates subsection (a) of this Code section with respect to  
713 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
714 conviction thereof, shall be punished by imprisonment for not less than ~~two years~~ one  
715 year nor more than 15 years. ~~Upon conviction of a second or subsequent offense, such~~  
716 ~~person shall be punished by imprisonment for not less than five years nor more than 30~~  
717 ~~years.~~

718 (2) Any person who violates subsection (b) of this Code section with respect to  
719 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
720 conviction thereof, shall be punished by imprisonment for not less than five years nor  
721 more than 30 years. Upon conviction of a second or subsequent offense, such person  
722 shall be punished by imprisonment for not less than ten years nor more than 40 years or  
723 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not  
724 apply to a sentence imposed for a second such offense, but that subsection and the  
725 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense."

726 **SECTION 3-7B.**

727 Said title is further amended by revising Code Section 16-13-30, relating to purchase,  
728 possession, manufacture, distribution, or sale of controlled substances or marijuana and  
729 penalties, as follows:

730 "16-13-30.

731 (a) Except as authorized by this article, it is unlawful for any person to purchase, possess,  
732 or have under his or her control any controlled substance.

733 (b) Except as authorized by this article, it is unlawful for any person to manufacture,  
734 deliver, distribute, dispense, administer, sell, or possess with intent to distribute any  
735 controlled substance.

736 (c) Except as otherwise provided, any person who violates subsection (a) of this Code  
737 section with respect to a controlled substance in Schedule I or a narcotic drug in  
738 Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by

739 ~~imprisonment for not less than two years nor more than 15 years. Upon conviction of a~~  
 740 ~~second or subsequent offense, he shall be imprisoned for not less than five years nor more~~  
 741 ~~than 30 years as follows:~~

742 (1) If the aggregate weight, including any mixture, is less than one gram of a solid  
 743 substance, less than one milliliter of a liquid substance, or if the substance is placed onto  
 744 a secondary medium with a combined weight of less than one gram, by imprisonment for  
 745 not less than one nor more than three years;

746 (2) If the aggregate weight, including any mixture, is at least one gram but less than four  
 747 grams of a solid substance, at least one milliliter but less than four milliliters of a liquid  
 748 substance, or if the substance is placed onto a secondary medium with a combined weight  
 749 of at least one gram but less than four grams, by imprisonment for not less than one nor  
 750 more than eight years; and

751 (3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate  
 752 weight, including any mixture, is at least four grams but less than 28 grams of a solid  
 753 substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if  
 754 the substance is placed onto a secondary medium with a combined weight of at least  
 755 four grams but less than 28 grams, by imprisonment for not less than one nor more than  
 756 15 years.

757 (B) This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer,  
 758 or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these  
 759 substances.

760 (d) Except as otherwise provided, any person who violates subsection (b) of this Code  
 761 section with respect to a controlled substance in Schedule I or Schedule II shall be guilty  
 762 of a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
 763 than five years nor more than 30 years. Upon conviction of a second or subsequent  
 764 offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or  
 765 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not  
 766 apply to a sentence imposed for a second such offense; provided, however, that the  
 767 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

768 (e) Any person who violates subsection (a) of this Code section with respect to a  
 769 controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony  
 770 and, upon conviction thereof, shall be punished ~~by imprisonment for not less than two~~  
 771 ~~years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall~~  
 772 ~~be punished by imprisonment for not less than five years nor more than 30 years as~~  
 773 ~~follows:~~

774 (1) If the aggregate weight, including any mixture, is less than two grams of a solid  
 775 substance, less than two milliliters of a liquid substance, or if the substance is placed onto

776 a secondary medium with a combined weight of less than two grams, by imprisonment  
 777 for not less than one nor more than three years;

778 (2) If the aggregate weight, including any mixture, is at least two grams but less than  
 779 four grams of a solid substance, at least two milliliters but less than four milliliters of a  
 780 liquid substance, or if the substance is placed onto a secondary medium with a combined  
 781 weight of at least two grams but less than four grams, by imprisonment for not less than  
 782 one nor more than eight years; and

783 (3) If the aggregate weight, including any mixture, is at least four grams but less than 28  
 784 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid  
 785 substance, or if the substance is placed onto a secondary medium with a combined weight  
 786 of at least four grams but less than 28 grams, by imprisonment for not less than one nor  
 787 more than 15 years.

788 (f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code  
 789 section with respect to a controlled substance in Schedule I or II or subsection (i) of this  
 790 Code section, such person shall be punished by imprisonment for a term not to exceed  
 791 twice the length of the sentence applicable to the particular crime. Reserved.

792 (g) Except as provided in subsection (l) of this Code section, any ~~Any~~ person who violates  
 793 subsection (a) of this Code section with respect to a controlled substance in Schedule III,  
 794 IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by  
 795 imprisonment for not less than one year nor more than ~~five~~ three years. Upon conviction  
 796 of a ~~second~~ third or subsequent offense, he or she shall be imprisoned for not less than one  
 797 year nor more than ~~ten~~ five years.

798 (h) Any person who violates subsection (b) of this Code section with respect to a  
 799 controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon  
 800 conviction thereof, shall be punished by imprisonment for not less than one year nor more  
 801 than ten years.

802 (i)(1) Except as authorized by this article, it is unlawful for any person to possess; or  
 803 have under his or her control; manufacture, deliver, distribute, dispense, administer;  
 804 purchase, sell, or possess with intent to distribute a counterfeit substance. Any person  
 805 who violates this subsection paragraph shall be guilty of a felony and, upon conviction  
 806 thereof, shall be punished by imprisonment for not less than one year nor more than ten  
 807 two years.

808 (2) Except as authorized by this article, it is unlawful for any person to manufacture,  
 809 deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute  
 810 a counterfeit substance. Any person who violates this paragraph shall be guilty of a  
 811 felony and, upon conviction thereof, shall be punished by imprisonment for not less than  
 812 one year nor more than ten years.

813 (j)(1) It ~~is~~ shall be unlawful for any person to possess, have under his or her control,  
 814 manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with  
 815 intent to distribute marijuana.

816 (2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code  
 817 Section 16-13-2, any person who violates this subsection shall be guilty of a felony and,  
 818 upon conviction thereof, shall be punished by imprisonment for not less than one year nor  
 819 more than ten years.

820 (k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under  
 821 the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or  
 822 dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or  
 823 marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by  
 824 law. Any person who violates this subsection shall be guilty of a felony and, upon  
 825 conviction thereof, shall be punished by imprisonment for not less than five years nor more  
 826 than 20 years or by a fine not to exceed \$20,000.00, or both.

827 (l)(1) Any person who violates subsection (a) of this Code section with respect to  
 828 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
 829 conviction thereof, shall be punished by imprisonment for not less than ~~two years~~ one  
 830 year nor more than 15 years. ~~Upon conviction of a second or subsequent offense, such~~  
 831 ~~person shall be punished by imprisonment for not less than five years nor more than 30~~  
 832 ~~years.~~

833 (2) Any person who violates subsection (b) of this Code section with respect to  
 834 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
 835 conviction thereof, shall be punished by imprisonment for not less than five years nor  
 836 more than 30 years. Upon conviction of a second or subsequent offense, such person  
 837 shall be punished by imprisonment for not less than ten years nor more than 40 years or  
 838 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not  
 839 apply to a sentence imposed for a second such offense, but that subsection and the  
 840 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

841 (m) As used in this Code section, the term 'solid substance' means tablets, pills, capsules,  
 842 caplets, or any variant of such items."

843 **SECTION 3-7C.**

844 Said title is further amended by revising Code Section 16-13-30, relating to purchase,  
 845 possession, manufacture, distribution, or sale of controlled substances or marijuana and  
 846 penalties, as follows:



847 "16-13-30.

848 (a) Except as authorized by this article, it is unlawful for any person to purchase, possess,  
849 or have under his or her control any controlled substance.

850 (b) Except as authorized by this article, it is unlawful for any person to manufacture,  
851 deliver, distribute, dispense, administer, sell, or possess with intent to distribute any  
852 controlled substance.

853 (c) Except as otherwise provided, any person who violates subsection (a) of this Code  
854 section with respect to a controlled substance in Schedule I or a narcotic drug in  
855 Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by  
856 ~~imprisonment for not less than two years nor more than 15 years. Upon conviction of a~~  
857 ~~second or subsequent offense, he shall be imprisoned for not less than five years nor more~~  
858 ~~than 30 years~~ as follows:

859 (1) If the aggregate weight, including any mixture, is less than one gram of a solid  
860 substance, less than one milliliter of a liquid substance, or if the substance is placed onto  
861 a secondary medium with a combined weight of less than one gram, by imprisonment for  
862 not less than one nor more than three years;

863 (2) If the aggregate weight, including any mixture, is at least one gram but less than four  
864 grams of a solid substance, at least one milliliter but less than four milliliters of a liquid  
865 substance, or if the substance is placed onto a secondary medium with a combined weight  
866 of at least one gram but less than four grams, by imprisonment for not less than one nor  
867 more than eight years; and

868 (3)(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate  
869 weight, including any mixture, is at least four grams but less than 28 grams of a solid  
870 substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if  
871 the substance is placed onto a secondary medium with a combined weight of at least  
872 four grams but less than 28 grams, by imprisonment for not less than one nor more than  
873 15 years.

874 (B) This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer,  
875 or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these  
876 substances.

877 (d) Except as otherwise provided, any person who violates subsection (b) of this Code  
878 section with respect to a controlled substance in Schedule I or Schedule II shall be guilty  
879 of a felony and, upon conviction thereof, shall be punished by imprisonment for not less  
880 than five years nor more than 30 years. Upon conviction of a second or subsequent  
881 offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or  
882 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not

883 apply to a sentence imposed for a second such offense; provided, however, that the  
884 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

885 (e) Any person who violates subsection (a) of this Code section with respect to a  
886 controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony  
887 and, upon conviction thereof, shall be punished ~~by imprisonment for not less than two~~  
888 ~~years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall~~  
889 ~~be punished by imprisonment for not less than five years nor more than 30 years as~~  
890 follows:

891 (1) If the aggregate weight, including any mixture, is less than two grams of a solid  
892 substance, less than two milliliters of a liquid substance, or if the substance is placed onto  
893 a secondary medium with a combined weight of less than two grams, by imprisonment  
894 for not less than one nor more than three years;

895 (2) If the aggregate weight, including any mixture, is at least two grams but less than  
896 four grams of a solid substance, at least two milliliters but less than four milliliters of a  
897 liquid substance, or if the substance is placed onto a secondary medium with a combined  
898 weight of at least two grams but less than four grams, by imprisonment for not less than  
899 one nor more than eight years; and

900 (3) If the aggregate weight, including any mixture, is at least four grams but less than 28  
901 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid  
902 substance, or if the substance is placed onto a secondary medium with a combined weight  
903 of at least four grams but less than 28 grams, by imprisonment for not less than one nor  
904 more than 15 years.

905 (f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code  
906 section with respect to a controlled substance in Schedule I or II or subsection (i) of this  
907 Code section, such person shall be punished by imprisonment for a term not to exceed  
908 twice the length of the sentence applicable to the particular crime. Reserved.

909 (g) Except as provided in subsection (l) of this Code section, any Any person who violates  
910 subsection (a) of this Code section with respect to a controlled substance in Schedule III,  
911 IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by  
912 imprisonment for not less than one year nor more than ~~five~~ three years. Upon conviction  
913 of a ~~second~~ third or subsequent offense, he or she shall be imprisoned for not less than one  
914 year nor more than ~~ten~~ five years.

915 (h) Any person who violates subsection (b) of this Code section with respect to a  
916 controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon  
917 conviction thereof, shall be punished by imprisonment for not less than one year nor more  
918 than ten years.

919 (i)(1) Except as authorized by this article, it is unlawful for any person to possess; or  
 920 have under his or her control; ~~manufacture, deliver, distribute, dispense, administer,~~  
 921 ~~purchase, sell, or possess with intent to distribute~~ a counterfeit substance. Any person  
 922 who violates this ~~subsection paragraph~~ shall be guilty of a felony and, upon conviction  
 923 thereof, shall be punished by imprisonment for not less than one year nor more than ~~ten~~  
 924 two years.

925 (2) Except as authorized by this article, it is unlawful for any person to manufacture,  
 926 deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute  
 927 a counterfeit substance. Any person who violates this paragraph shall be guilty of a  
 928 felony and, upon conviction thereof, shall be punished by imprisonment for not less than  
 929 one year nor more than ten years.

930 (j)(1) It is ~~is~~ shall be unlawful for any person to possess, have under his or her control,  
 931 manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with  
 932 intent to distribute marijuana.

933 (2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code  
 934 Section 16-13-2, any person who violates this subsection shall be guilty of a felony and,  
 935 upon conviction thereof, shall be punished by imprisonment for not less than one year nor  
 936 more than ten years.

937 (k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under  
 938 the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or  
 939 dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or  
 940 marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by  
 941 law. Any person who violates this subsection shall be guilty of a felony and, upon  
 942 conviction thereof, shall be punished by imprisonment for not less than five years nor more  
 943 than 20 years or by a fine not to exceed \$20,000.00, or both.

944 (l)(1) Any person who violates subsection (a) of this Code section with respect to  
 945 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
 946 conviction thereof, shall be punished by ~~imprisonment for not less than two years nor~~  
 947 ~~more than 15 years. Upon conviction of a second or subsequent offense, such person~~  
 948 ~~shall be punished by imprisonment for not less than five years nor more than 30 years as~~  
 949 follows:

950 (A) If the aggregate weight, including any mixture, is less than two grams of a solid  
 951 substance of flunitrazepam, less than two milliliters of liquid flunitrazepam, or if  
 952 flunitrazepam is placed onto a secondary medium with a combined weight of less than  
 953 two grams, by imprisonment for not less than one nor more than three years;

954 (B) If the aggregate weight, including any mixture, is at least two grams but less than  
 955 four grams of a solid substance of flunitrazepam, at least two milliliters but less than

956 four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a  
 957 secondary medium with a combined weight of at least two grams but less than four  
 958 grams, by imprisonment for not less than one nor more than eight years; and

959 (C) If the aggregate weight, including any mixture, is at least four grams of a solid  
 960 substance of flunitrazepam, at least four milliliters of liquid flunitrazepam, or if the  
 961 flunitrazepam is placed onto a secondary medium with a combined weight of at least  
 962 four grams, by imprisonment for not less than one nor more than 15 years.

963 (2) Any person who violates subsection (b) of this Code section with respect to  
 964 flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon  
 965 conviction thereof, shall be punished by imprisonment for not less than five years nor  
 966 more than 30 years. Upon conviction of a second or subsequent offense, such person  
 967 shall be punished by imprisonment for not less than ten years nor more than 40 years or  
 968 life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not  
 969 apply to a sentence imposed for a second such offense, but that subsection and the  
 970 remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

971 (m) As used in this Code section, the term 'solid substance' means tablets, pills, capsules,  
 972 caplets, or any variant of such items."

973 **SECTION 3-8.**

974 Said title is further amended by revising subsection (h) of Code Section 16-13-31, relating  
 975 to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine and penalties, as  
 976 follows:

977 "(h) Any person who violates any provision of this Code section in regard to trafficking  
 978 in cocaine, illegal drugs, marijuana, or methamphetamine shall be punished by  
 979 imprisonment for not less than five years nor as provided for in the applicable mandatory  
 980 minimum punishment and for not more than 30 years of imprisonment and by a fine not  
 981 to exceed \$1 million."

982 **PART IV**

983 **CRIMINAL PROCEDURE**

984 **SECTION 4-1.**

985 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
 986 amended by revising Code Section 17-3-1, relating to limitation on prosecutions generally,  
 987 as follows:

988 "17-3-1.

989 (a) A prosecution for murder may be commenced at any time.

990 (b) ~~Except as otherwise provided in Code Section 17-3-2.1, prosecution~~ **Prosecution** for  
 991 other crimes punishable by death or life imprisonment ~~must~~ shall be commenced within  
 992 seven years after the commission of the crime except as provided by subsection ~~(c.1)~~ (d)  
 993 of this Code section; provided, however, that prosecution for the crime of forcible rape  
 994 ~~must~~ shall be commenced within 15 years after the commission of the crime.

995 (c) ~~Except as otherwise provided in Code Section 17-3-2.1, prosecution~~ **Prosecution** for  
 996 felonies other than those specified in subsections (a), (b), and ~~(c.1)~~ (d) of this Code section  
 997 ~~must~~ shall be commenced within four years after the commission of the crime, provided  
 998 that prosecution for felonies committed against victims who are at the time of the  
 999 commission of the offense under the age of 18 years ~~must~~ shall be commenced within  
 1000 seven years after the commission of the crime.

1001 ~~(c.1)~~(d) A prosecution for the following offenses may be commenced at any time when  
 1002 deoxyribonucleic acid (DNA) evidence is used to establish the identity of the accused:

- 1003 (1) Armed robbery, as defined in Code Section 16-8-41;
- 1004 (2) Kidnapping, as defined in Code Section 16-5-40;
- 1005 (3) Rape, as defined in Code Section 16-6-1;
- 1006 (4) Aggravated child molestation, as defined in Code Section 16-6-4;
- 1007 (5) Aggravated sodomy, as defined in Code Section 16-6-2; or
- 1008 (6) Aggravated sexual battery, as defined in Code Section 16-6-22.2;

1009 provided, however, that a sufficient portion of the physical evidence tested for DNA is  
 1010 preserved and available for testing by the accused and provided, further, that; if the DNA  
 1011 evidence does not establish the identity of the accused, the limitation on prosecution shall  
 1012 be as provided in subsections (b) and (c) of this Code section.

1013 ~~(d)~~(e) Prosecution for misdemeanors ~~must~~ shall be commenced within two years after the  
 1014 commission of the crime."

#### 1015 SECTION 4-2.

1016 Said title is further amended by revising Code Section 17-3-2.1, relating to limitation on  
 1017 prosecution of certain offenses involving a victim under 16 years of age, as follows:

1018 "17-3-2.1.

1019 (a) For crimes committed during the period beginning on July 1, 1992, and ending on June  
 1020 30, 2012, if ~~if~~ the victim of a violation of:

- 1021 (1) Cruelty to children, as defined in Code Section 16-5-70, ~~relating to cruelty to~~  
 1022 ~~children;~~
- 1023 (2) Rape, as defined in Code Section 16-6-1, ~~relating to rape;~~
- 1024 (3) Sodomy or aggravated sodomy, as defined in Code Section 16-6-2, ~~relating to~~  
 1025 ~~sodomy and aggravated sodomy;~~

1026 (4) Statutory rape, as defined in Code Section 16-6-3, relating to statutory rape;  
 1027 (5) Child molestation or aggravated child molestation, as defined in Code Section  
 1028 16-6-4, relating to child molestation and aggravated child molestation;  
 1029 (6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, relating  
 1030 to enticing a child for indecent purposes; or  
 1031 (7) Incest, as defined in Code Section 16-6-22, relating to incest,  
 1032 is under 16 years of age on the date of the violation, the applicable period within which a  
 1033 prosecution ~~must~~ shall be commenced under Code Section 17-3-1 or other applicable  
 1034 statute shall not begin to run until the victim has reached the age of 16 or the violation is  
 1035 reported to a law enforcement agency, prosecuting attorney, or other governmental agency,  
 1036 whichever occurs earlier. Such law enforcement agency or other governmental agency  
 1037 shall promptly report such allegation to the appropriate prosecuting attorney.

1038 (b) For crimes committed on and after July 1, 2012, if the victim of a violation of:  
 1039 (1) Trafficking a person for sexual servitude, as defined in Code Section 16-5-46;  
 1040 (2) Cruelty to children in the first degree, as defined in Code Section 16-5-70;  
 1041 (3) Rape, as defined in Code Section 16-6-1;  
 1042 (4) Aggravated sodomy, as defined in Code Section 16-6-2;  
 1043 (5) Child molestation or aggravated child molestation, as defined in Code Section  
 1044 16-6-4;  
 1045 (6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5; or  
 1046 (7) Incest, as defined in Code Section 16-6-22,  
 1047 is under 16 years of age on the date of the violation and the violation is not subject to  
 1048 punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4,  
 1049 paragraph (2) of subsection (d) of Code Section 16-6-4, or subsection (c) of Code Section  
 1050 16-6-5, a prosecution may be commenced at any time. This Code section shall apply to  
 1051 any offense designated in paragraphs (1) through (7) of subsection (a) of this Code section  
 1052 occurring on or after July 1, 1992."

### 1053 SECTION 4-3.

1054 Said title is further amended by revising paragraphs (2) and (5) of subsection (a) of Code  
 1055 Section 17-10-1, relating to fixing of sentence, as follows:

1056 "(2) Active probation ~~Probation~~ supervision shall terminate in all cases no later than two  
 1057 years from the commencement of active probation supervision unless specially extended  
 1058 or reinstated by the sentencing court upon notice and hearing and for good cause shown;  
 1059 provided, however, that in those cases involving the collection of fines, restitution, or  
 1060 other funds, the period of active probation supervision shall remain in effect for so long  
 1061 as any such obligation is outstanding, or until termination of the sentence, whichever first

1062 occurs, and for those cases involving a conviction under the 'Georgia Street Gang  
 1063 Terrorism and Prevention Act,' the period of active probation supervision shall remain  
 1064 in effect until the termination of the sentence, but shall not exceed five years unless as  
 1065 otherwise provided in this paragraph. Active probation ~~Probation~~ supervision shall not  
 1066 be required for defendants sentenced to probation while the defendant is in the legal  
 1067 custody of the Department of Corrections or the State Board of Pardons and Paroles. As  
 1068 used in this paragraph, the term 'active probation supervision' shall have the same  
 1069 meaning as the term 'active supervision' as set forth in Code Section 42-1-1."

1070 "(5)(A) Where a defendant has been sentenced to probation, the court shall retain  
 1071 jurisdiction throughout the period of the probated sentence as provided for in subsection  
 1072 (g) of Code Section 42-8-34. Without limiting the generality of the foregoing, the court  
 1073 may shorten the period of active probation supervision or administrative probation  
 1074 supervision on motion of the defendant or on its own motion, or upon the request of a  
 1075 probation supervisor, if the court determines that probation is no longer necessary or  
 1076 appropriate for the ends of justice, the protection of society, and the rehabilitation of  
 1077 the defendant. Prior to entering any order for shortening a period of probation, the  
 1078 court shall afford notice to the victim or victims of all sex related offenses or violent  
 1079 offenses resulting in serious bodily injury or death; and, upon request of the victim or  
 1080 victims so notified, shall afford notice and an opportunity for hearing to the defendant  
 1081 and the prosecuting attorney.

1082 (B) The Department of Corrections shall establish a form document which shall  
 1083 include the elements set forth in this Code section concerning notification of victims  
 1084 and shall make copies of such form available to prosecuting attorneys in ~~the~~ this state.  
 1085 When requested by the victim, the form document shall be provided to the victim by  
 1086 the prosecuting attorney. The form shall include the address of the probation office  
 1087 having jurisdiction over the case and contain a statement that the victim must maintain  
 1088 a copy of his or her address with the probation office and must notify the office of any  
 1089 change of address in order to maintain eligibility for notification by the Department of  
 1090 Corrections as required in this Code section.

1091 (C) As used in this paragraph, the terms 'active probation supervision' and  
 1092 'administrative probation supervision' shall have the same meanings as the terms 'active  
 1093 supervision' and 'administrative supervision,' respectively, as set forth in Code Section  
 1094 42-1-1."

1095 **SECTION 4-4.**

1096 Said title is further amended by revising subsections (a) and (c) of Code Section 17-10-7,  
 1097 relating to punishment of repeat offenders, and by adding a new subsection (b.1) to read as  
 1098 follows:

1099 "(a) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any  
 1100 person who, after having been convicted of a felony offense in this state or having been  
 1101 convicted under the laws of any other state or of the United States of a crime which if  
 1102 committed within this state would be a felony and sentenced to confinement in a penal  
 1103 institution, ~~who shall afterwards commit~~ commits a felony punishable by confinement in  
 1104 a penal institution; shall be sentenced to undergo the longest period of time prescribed for  
 1105 the punishment of the subsequent offense of which he or she stands convicted, provided  
 1106 that, unless otherwise provided by law, the trial judge may, in his or her discretion, probate  
 1107 or suspend the maximum sentence prescribed for the offense."

1108 "(b.1) Subsections (a) and (c) of this Code section shall not apply to a second or any  
 1109 subsequent conviction for any violation of subsection (a), paragraph (1) of subsection (i),  
 1110 or subsection (j) of Code Section 16-13-30.

1111 (c) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any person  
 1112 who, after having been convicted under the laws of this state for three felonies or having  
 1113 been convicted under the laws of any other state or of the United States of three crimes  
 1114 which if committed within this state would be felonies, commits a felony within this state  
 1115 shall, upon conviction for such fourth offense or for subsequent offenses, serve the  
 1116 maximum time provided in the sentence of the judge based upon such conviction and shall  
 1117 not be eligible for parole until the maximum sentence has been served."

## 1118 PART V

### 1119 MANDATORY REPORTING OF CHILD ABUSE

#### 1120 SECTION 5-1.

1121 Code Section 19-7-5 of the Official Code of Georgia Annotated, relating to reporting of child  
 1122 abuse, is amended by revising subsections (b), (c), (e), and (g) as follows:

1123 "(b) As used in this Code section, the term:

1124 (1) 'Abortion' shall have the same meaning as set forth in Code Section 15-11-111.

1125 ~~(1)~~(2) 'Abused' means subjected to child abuse.

1126 ~~(2)~~(3) 'Child' means any person under 18 years of age.

1127 ~~(3)~~(4) 'Child abuse' means:

1128 (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by  
 1129 other than accidental means; provided, however, that physical forms of discipline may  
 1130 be used as long as there is no physical injury to the child;



1131 (B) Neglect or exploitation of a child by a parent or caretaker thereof;

1132 (C) Sexual abuse of a child; or

1133 (D) Sexual exploitation of a child.

1134 However, no child who in good faith is being treated solely by spiritual means through  
1135 prayer in accordance with the tenets and practices of a recognized church or religious  
1136 denomination by a duly accredited practitioner thereof shall, for that reason alone, be  
1137 considered to be an 'abused' child.

1138 (5) 'Child service organization personnel' means persons employed by or volunteering  
1139 at a business or an organization, whether public, private, for profit, not for profit, or  
1140 voluntary, that provides care, treatment, education, training, supervision, coaching,  
1141 counseling, recreational programs, or shelter to children.

1142 (6) 'Clergy' means ministers, priests, rabbis, imams, or similar functionaries, by whatever  
1143 name called, of a bona fide religious organization.

1144 (7) 'Pregnancy resource center' means an organization or facility that:

1145 (A) Provides pregnancy counseling or information as its primary purpose, either for a  
1146 fee or as a free service;

1147 (B) Does not provide or refer for abortions;

1148 (C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

1149 (D) Is not licensed or certified by the state or federal government to provide medical  
1150 or health care services and is not otherwise bound to follow federal Health Insurance  
1151 Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws  
1152 relating to patient confidentiality.

1153 (8) 'Reproductive health care facility' means any office, clinic, or any other physical  
1154 location that provides abortions, abortion counseling, abortion referrals, or gynecological  
1155 care and services.

1156 (9) 'School' means any public or private pre-kindergarten, elementary school, secondary  
1157 school, technical school, vocational school, college, university, or institution of  
1158 postsecondary education.

1159 ~~(3.1)~~(10) 'Sexual abuse' means a person's employing, using, persuading, inducing,  
1160 enticing, or coercing any minor who is not that person's spouse to engage in any act  
1161 which involves:

1162 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,  
1163 whether between persons of the same or opposite sex;

1164 (B) Bestiality;

1165 (C) Masturbation;

1166 (D) Lewd exhibition of the genitals or pubic area of any person;

1167 (E) Flagellation or torture by or upon a person who is nude;

- 1168 (F) Condition of being fettered, bound, or otherwise physically restrained on the part  
 1169 of a person who is nude;
- 1170 (G) Physical contact in an act of apparent sexual stimulation or gratification with any  
 1171 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed  
 1172 or unclothed breasts;
- 1173 (H) Defecation or urination for the purpose of sexual stimulation; or
- 1174 (I) Penetration of the vagina or rectum by any object except when done as part of a  
 1175 recognized medical procedure.
- 1176 'Sexual abuse' shall not include consensual sex acts involving persons of the opposite sex  
 1177 when the sex acts are between minors or between a minor and an adult who is not more  
 1178 than five years older than the minor. This provision shall not be deemed or construed to  
 1179 repeal any law concerning the age or capacity to consent.
- 1180 ~~(4)~~(11) 'Sexual exploitation' means conduct by any person who allows, permits,  
 1181 encourages, or requires that child to engage in:
- 1182 (A) Prostitution, as defined in Code Section 16-6-9; or
- 1183 (B) Sexually explicit conduct for the purpose of producing any visual or print medium  
 1184 depicting such conduct, as defined in Code Section 16-12-100.
- 1185 (c)(1) The following persons having reasonable cause to believe that a child has been  
 1186 abused shall report or cause reports of that abuse to be made as provided in this Code  
 1187 section:
- 1188 (A) Physicians licensed to practice medicine, interns, or residents;
- 1189 (B) Hospital or medical personnel;
- 1190 (C) Dentists;
- 1191 (D) Licensed psychologists and persons participating in internships to obtain licensing  
 1192 pursuant to Chapter 39 of Title 43;
- 1193 (E) Podiatrists;
- 1194 (F) Registered professional nurses or licensed practical nurses licensed pursuant to  
 1195 Chapter 24 of Title 43 or nurse's aides;
- 1196 (G) Professional counselors, social workers, or marriage and family therapists licensed  
 1197 pursuant to Chapter 10A of Title 43;
- 1198 (H) School teachers;
- 1199 (I) School administrators;
- 1200 (J) School guidance counselors, visiting teachers, school social workers, or school  
 1201 psychologists certified pursuant to Chapter 2 of Title 20;
- 1202 (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section  
 1203 49-5-12;
- 1204 (L) Child-counseling personnel;

1205 (M) Child service organization personnel; ~~or~~  
 1206 (N) Law enforcement personnel; or  
 1207 (O) Reproductive health care facility or pregnancy resource center personnel and  
 1208 volunteers.

1209 (2) If a person is required to report child abuse pursuant to this subsection because that  
 1210 person attends to a child pursuant to such person's duties as ~~a member of the staff of an~~  
 1211 employee of or volunteer at a hospital, school, social agency, or similar facility, that  
 1212 person shall notify the person in charge of the facility, or the designated delegate thereof,  
 1213 and the person so notified shall report or cause a report to be made in accordance with this  
 1214 Code section. ~~A staff member~~ An employee or volunteer who makes a report to the  
 1215 person designated pursuant to this paragraph shall be deemed to have fully complied with  
 1216 this subsection. Under no circumstances shall any person in charge of such hospital,  
 1217 school, agency, or facility, or the designated delegate thereof, to whom such notification  
 1218 has been made exercise any control, restraint, modification, or make other change to the  
 1219 information provided by the reporter, although each of the aforementioned persons may  
 1220 be consulted prior to the making of a report and may provide any additional, relevant, and  
 1221 necessary information when making the report."

1222 "(e) An oral report shall be made immediately, but in no case later than 24 hours from the  
 1223 time there is reasonable cause to believe a child has been abused, by telephone or otherwise  
 1224 and followed by a report in writing, if requested, to a child welfare agency providing  
 1225 protective services, as designated by the Department of Human Services, or, in the absence  
 1226 of such agency, to an appropriate police authority or district attorney. If a report of child  
 1227 abuse is made to the child welfare agency or independently discovered by the agency, and  
 1228 the agency has reasonable cause to believe such report is true or the report contains any  
 1229 allegation or evidence of child abuse, then the agency shall immediately notify the  
 1230 appropriate police authority or district attorney. Such reports shall contain the names and  
 1231 addresses of the child and the child's parents or caretakers, if known, the child's age, the  
 1232 nature and extent of the child's injuries, including any evidence of previous injuries, and  
 1233 any other information that the reporting person believes might be helpful in establishing  
 1234 the cause of the injuries and the identity of the perpetrator. Photographs of the child's  
 1235 injuries to be used as documentation in support of allegations by hospital ~~staff~~ employees  
 1236 or volunteers, physicians, law enforcement personnel, school officials, or ~~staff~~ employees  
 1237 or volunteers of legally mandated public or private child protective agencies may be taken  
 1238 without the permission of the child's parent or guardian. Such ~~photograph~~ photographs  
 1239 shall be made available as soon as possible to the chief welfare agency providing protective  
 1240 services and to the appropriate police authority."

1241 "(g) Suspected child abuse which is required to be reported by any person pursuant to this  
 1242 Code section shall be reported notwithstanding that the reasonable cause to believe such  
 1243 abuse has occurred or is occurring is based in whole or in part upon any communication to  
 1244 that person which is otherwise made privileged or confidential by law; provided, however,  
 1245 that a member of the clergy shall not be required to report child abuse reported solely  
 1246 within the context of confession or other similar communication required to be kept  
 1247 confidential under church doctrine or practice. When a clergy member receives  
 1248 information about child abuse from any other source, the clergy member shall comply with  
 1249 the reporting requirements of this Code section, even though the clergy member may have  
 1250 also received a report of child abuse from the confession of the perpetrator."

## 1251 PART VI

### 1252 RESTRICTING RECORDS

#### 1253 SECTION 6-1.

1254 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and  
 1255 agencies, is amended by revising paragraph (1) of subsection (a) of Code Section 35-3-34,  
 1256 relating to disclosure and dissemination of criminal records to private persons and businesses,  
 1257 by deleting "and" at the end of subparagraph (B), by replacing "or" with "and" at the end of  
 1258 subparagraph (C), and by adding a new subparagraph to read as follows:

1259 "(D) The center shall not provide records of arrests, charges, or dispositions when  
 1260 access has been restricted pursuant to Code Section 35-3-37; or"

#### 1261 SECTION 6-2.

1262 Said title is further amended by repealing Code Section 35-3-37, relating to inspection,  
 1263 purging, modifying, or supplementing of criminal records, and enacting a new Code  
 1264 Section 35-3-37 to read as follows:

1265 "35-3-37.

1266 (a) As used in this Code section, the term:

1267 (1) 'Drug court treatment program' means a treatment program operated by a drug court  
 1268 division in accordance with the provisions of Code Section 15-1-15.

1269 (2) 'Entity' means the arresting law enforcement agency, including county and municipal  
 1270 jails and detention centers.

1271 (3) 'Mental health treatment program' means a treatment program operated by a mental  
 1272 health court division in accordance with the provisions of Code Section 15-1-16.

1273 (4) 'Nonserious traffic offense' means any offense in violation of Title 40 which is not  
 1274 prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the

1275 laws of a state which would not be considered a serious traffic offense under the laws of  
1276 this state if committed in this state.

1277 (5) 'Prosecuting attorney' means the Attorney General, a district attorney, or the  
1278 solicitor-general who had jurisdiction where the criminal history record information is  
1279 sought to be modified, corrected, supplemented, amended, or restricted. If the offense  
1280 was a violation of a criminal law of this state which, by general law, may be tried by a  
1281 municipal, magistrate, probate, or other court that is not a court of record, the term  
1282 'prosecuting attorney' shall include the prosecuting officer of such court or, in the absence  
1283 of such prosecuting attorney, the district attorney of the judicial circuit in which such  
1284 court is located.

1285 (6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record information  
1286 of an individual relating to a particular charge shall be available only to judicial officials  
1287 and criminal justice agencies for law enforcement or criminal investigative purposes or  
1288 to criminal justice agencies for purposes of employment in accordance with procedures  
1289 established by the center and shall not be disclosed or otherwise made available to any  
1290 private persons or businesses pursuant to Code Section 35-3-34.

1291 (7) 'Serious violent felony' shall have the same meaning as set forth in Code Section  
1292 17-10-6.1.

1293 (8) 'State' includes any state, the United States or any district, commonwealth, territory,  
1294 or insular possession of the United States, and the Trust Territory of the Pacific Islands.

1295 (9) 'Youthful offender' means any offender who was less than 21 years of age at the time  
1296 of his or her conviction.

1297 (b) Nothing in this article shall be construed so as to authorize any person, agency,  
1298 corporation, or other legal entity of this state to invade the privacy of any citizen as defined  
1299 by the General Assembly or as defined by the courts other than to the extent provided in  
1300 this article.

1301 (c) The center shall make an individual's criminal history record information available for  
1302 review by such individual or his or her designee upon written application to the center.

1303 (d) If an individual believes his or her criminal history record information to be inaccurate,  
1304 incomplete, or misleading, he or she may request a criminal history record information  
1305 inspection at the center. The center at which criminal history record information is sought  
1306 to be inspected may prescribe reasonable hours and places of inspection and may impose  
1307 such additional procedures or restrictions, including fingerprinting, as are reasonably  
1308 necessary to assure the security of the criminal history record information, to verify the  
1309 identities of those who seek to inspect such information, and to maintain an orderly and  
1310 efficient mechanism for inspection of criminal history record information. The fee for

1311 inspection of criminal history record information shall not exceed \$15.00, which shall not  
1312 include the cost of the fingerprinting.

1313 (e) If the criminal history record information is believed to be inaccurate, incomplete, or  
1314 misleading, the individual may request that the entity having custody or control of the  
1315 challenged information modify, correct, supplement, or amend the information and notify  
1316 the center of such changes within 60 days of such request. In the case of county and  
1317 municipal jails and detention centers, such notice to the center shall not be required. If the  
1318 entity declines to act within 60 days of such request or if the individual believes the entity's  
1319 decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the  
1320 issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the  
1321 right to appeal to the court with original jurisdiction of the criminal charges in the county  
1322 where the entity is located.

1323 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order  
1324 from the court with original jurisdiction of the criminal charges that the subject information  
1325 be modified, corrected, supplemented, or amended by the entity with custody of such  
1326 information. Notice of the appeal shall be provided to the entity and the prosecuting  
1327 attorney. A notice sent by registered or certified mail or statutory overnight delivery shall  
1328 be sufficient service on the entity having custody or control of the disputed criminal history  
1329 record information. The court shall conduct a de novo review and, if requested by a party,  
1330 the proceedings shall be recorded.

1331 (g)(1) Should the court find by a preponderance of the evidence that the criminal history  
1332 record information in question is inaccurate, incomplete, or misleading, the court shall  
1333 order such information to be appropriately modified, corrected, supplemented, or  
1334 amended as the court deems appropriate. Any entity with custody, possession, or control  
1335 of any such criminal history record information shall cause each and every copy thereof  
1336 in its custody, possession, or control to be altered in accordance with the court's order  
1337 within 60 days of the entry of the order.

1338 (2) To the extent that it is known by the requesting individual that an entity has  
1339 previously disseminated inaccurate, incomplete, or misleading criminal history record  
1340 information, he or she shall, by written request, provide to the entity the name of the  
1341 individual, agency, or company to which such information was disseminated. Within 60  
1342 days of the written request, the entity shall disseminate the modification, correction,  
1343 supplement, or amendment to the individual's criminal history record information to such  
1344 individual, agency, or company to which the information in question has been previously  
1345 communicated, as well as to the individual whose information has been ordered so  
1346 altered.

1347 (h) Access to an individual's criminal history record information, including any  
 1348 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be  
 1349 restricted by the center for the following types of dispositions:

1350 (1) Prior to indictment, accusation, or other charging instrument:

1351 (A) The case was never referred for further prosecution to the proper prosecuting  
 1352 attorney by the arresting law enforcement agency and:

1353 (i) The offense against such individual is closed by the arresting law enforcement  
 1354 agency. It shall be the duty of the head of the arresting law enforcement agency to  
 1355 notify the center whenever a record is to be restricted pursuant to this division. A  
 1356 copy of the notice shall be sent to the accused and the accused's attorney, if any, by  
 1357 mailing the same by first-class mail; or

1358 (ii) The center does not receive notice from the arresting law enforcement agency that  
 1359 the offense has been referred to the prosecuting attorney or transferred to another law  
 1360 enforcement or prosecutorial agency of this state, any other state or a foreign nation,  
 1361 or any political subdivision thereof for prosecution and the following period of time  
 1362 has elapsed from the date of the arrest of such individual:

1363 (I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated  
 1364 nature, two years;

1365 (II) If the offense is a felony, other than a serious violent felony or a felony sexual  
 1366 offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age,  
 1367 four years; or

1368 (III) If the offense is a serious violent felony or a felony sexual offense specified  
 1369 in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

1370 If the center receives notice of the filing of an indictment subsequent to the restriction  
 1371 of a record pursuant to this division, the center shall make such record available in  
 1372 accordance with Code Section 35-3-34.

1373 (B) The case was referred to the prosecuting attorney but was later dismissed; or

1374 (C) The grand jury returned two no bills; and

1375 (2) After indictment or accusation:

1376 (A) Except as provided in subsection (i) of this Code section, all charges were  
 1377 dismissed or nolle prossed;

1378 (B) The individual pleaded guilty to or was found guilty of possession of a narcotic  
 1379 drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in  
 1380 accordance with the provisions of Code Section 16-13-2, and the individual successfully  
 1381 completed the terms and conditions of his or her probation;

1382 (C) The individual successfully completed a drug court treatment program or mental  
 1383 health treatment program, the individual's case has been dismissed or nolle prossed, and

1384 he or she has not been arrested for at least five years, excluding any arrest for a  
 1385 nonserious traffic offense; or

1386 (D) The individual was acquitted of all of the charges by a judge or jury unless, within  
 1387 ten days of the verdict, the prosecuting attorney demonstrates to the trial court through  
 1388 clear and convincing evidence that the harm otherwise resulting to the individual is  
 1389 clearly outweighed by the public interest in the criminal history record information  
 1390 being publicly available because either:

1391 (i) The prosecuting attorney was barred from introducing material evidence against  
 1392 the individual on legal grounds, including, without limitation, the granting of a motion  
 1393 to suppress or motion in limine; or

1394 (ii) The individual has been formally charged with the same or similar offense within  
 1395 the previous five years.

1396 (i) After the filing of an indictment or accusation, an individual's criminal history record  
 1397 information shall not be restricted if:

1398 (1) The charges were nolle prossed or otherwise dismissed because:

1399 (A) Of a plea agreement resulting in a conviction of the individual for an offense  
 1400 arising out of the same underlying transaction or occurrence as the conviction;

1401 (B) The prosecuting attorney was barred from introducing material evidence against  
 1402 the individual on legal grounds, including, without limitation, the granting of a motion  
 1403 to suppress or motion in limine;

1404 (C) The conduct which resulted in the arrest of the individual was part of a pattern of  
 1405 criminal activity which was prosecuted in another court of the state or a foreign nation;  
 1406 or

1407 (D) The individual had diplomatic, consular, or similar immunity or inviolability from  
 1408 arrest or prosecution;

1409 (2) The charges were tried and some but not all of the charges resulted in an acquittal;  
 1410 or

1411 (3) The individual was acquitted of all charges but it is later determined that the acquittal  
 1412 was the result of jury tampering or judicial misconduct.

1413 (j)(1) When an individual had felony charges dismissed or nolle prossed or was found  
 1414 not guilty of felony charges but was convicted of a misdemeanor offense or offenses  
 1415 arising out of the same underlying transaction or occurrence, such individual may petition  
 1416 the superior court in the county where the arrest occurred to restrict access to criminal  
 1417 history record information for such felony charges within four years of the arrest. Such  
 1418 court shall maintain jurisdiction over the case for this limited purpose and duration. Such  
 1419 petition shall be served on the arresting law enforcement agency and the prosecuting  
 1420 attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing



1421 of the petition. The court shall hear evidence and shall grant an order restricting such  
1422 criminal history record information if the court determines the charges in question did not  
1423 arise out of the same underlying transaction or occurrence.

1424 (2) When an individual was convicted of an offense and was sentenced to punishment  
1425 other than the death penalty, but such conviction was vacated by the trial court or  
1426 reversed by an appellate court or other post-conviction court, the decision of which has  
1427 become final by the completion of the appellate process, and the prosecuting attorney has  
1428 not retried the case within two years of the date the order vacating or reversing the  
1429 conviction became final, such individual may petition the superior court in the county  
1430 where the conviction occurred to restrict access to criminal history record information for  
1431 such offense. Such court shall maintain jurisdiction over the case for this limited purpose  
1432 and duration. Such petition shall be served on the prosecuting attorney. If a hearing is  
1433 requested, such hearing shall be held within 90 days of the filing of the petition. The  
1434 court shall hear evidence and shall determine whether granting an order restricting such  
1435 criminal history record information is appropriate, giving due consideration to the reason  
1436 the judgment was reversed or vacated, the reason the prosecuting attorney has not retried  
1437 the case, and the public's interest in the criminal history record information being publicly  
1438 available.

1439 (3) When an individual's case has remained on the dead docket for more than 12 months,  
1440 such individual may petition the superior court in the county where the case is pending  
1441 to restrict access to criminal history record information for such offense. Such petition  
1442 shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall  
1443 be held within 90 days of the filing of the petition. The court shall hear evidence and  
1444 shall determine whether granting an order restricting such criminal history record  
1445 information is appropriate, giving due consideration to the reason the case was placed on  
1446 the dead docket; provided, however, that the court shall not grant such motion if an active  
1447 warrant is pending for such individual

1448 (4)(A) When an individual was convicted in this state of a misdemeanor or a series of  
1449 misdemeanors arising from a single incident, and at the time of such conviction such  
1450 individual was a youthful offender, provided that such individual successfully  
1451 completed the terms of his or her sentence and, since completing the terms of his or her  
1452 sentence, has not been arrested for at least five years, excluding any arrest for a  
1453 nonserious traffic offense, and provided, further, that he or she was not convicted in this  
1454 state of a misdemeanor violation or under any other state's law with similar provisions  
1455 of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she  
1456 may petition the superior court in the county where the conviction occurred to restrict  
1457 access to criminal history record information. Such court shall maintain jurisdiction

1458 over the case for this limited purpose and duration. Such petition shall be served on the  
 1459 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90  
 1460 days of the filing of the petition. The court shall hear evidence and shall determine  
 1461 whether granting an order restricting such criminal history record information is  
 1462 appropriate, giving due consideration to the individual's conduct and the public's  
 1463 interest in the criminal history record information being publicly available.

1464 (B) Record restriction shall not be appropriate if the individual was convicted of:

1465 (i) Child molestation in violation of Code Section 16-6-4;

1466 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

1467 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation  
 1468 of Code Section 16-6-5.1;

1469 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;

1470 (v) Pimping in violation of Code Section 16-6-11;

1471 (vi) Pandering by compulsion in violation of Code Section 16-6-14;

1472 (vii) Masturbation for hire in violation of Code Section 16-6-16;

1473 (viii) Giving massages in a place used for lewdness, prostitution, assignation, or  
 1474 masturbation for hire in violation of Code Section 16-6-17;

1475 (ix) Sexual battery in violation of Code Section 16-6-22.1;

1476 (x) Any offense related to minors generally in violation of Part 2 of Article 3 of  
 1477 Chapter 12 of Title 16;

1478 (xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such  
 1479 prohibition shall not apply to a misdemeanor conviction of shoplifting in violation of  
 1480 Code Section 16-8-14; or

1481 (xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

1482 (5) Any party may file an appeal of an order entered pursuant to this subsection as  
 1483 provided in Code Section 5-6-34.

1484 (k)(1) The center shall notify the arresting law enforcement agency of any criminal  
 1485 history record information, access to which has been restricted pursuant to this Code  
 1486 section, within 30 days of the date access to such information is restricted. Upon receipt  
 1487 of notice from the center that access to criminal history record information has been  
 1488 restricted, the arresting law enforcement agency or other law enforcement agency shall,  
 1489 within 30 days, restrict access to all such information maintained by such arresting law  
 1490 enforcement agency or other law enforcement agency for such individual's charge.

1491 (2) An individual who has had criminal history record information restricted pursuant to  
 1492 this Code section may submit a written request to the appropriate county or municipal jail  
 1493 or detention center to have all records for such individual's charge maintained by the  
 1494 appropriate county or municipal jail or detention center restricted. Within 30 days of such

1495 request, the appropriate county or municipal jail or detention center shall restrict access  
 1496 to all such criminal history record information maintained by such appropriate county or  
 1497 municipal jail or detention center for such individual's charge.

1498 (3) The center shall be authorized to unrestrict criminal history record information based  
 1499 on the receipt of a disposition report showing that the individual was convicted of an  
 1500 offense arising out of an arrest of which the information was restricted pursuant to this  
 1501 Code section.

1502 (l) If criminal history record information is restricted pursuant to this Code section and if  
 1503 the entity declines to restrict access to such information, the individual may file a civil  
 1504 action in the superior court where the entity is located. A copy of the civil action shall be  
 1505 served on the entity and prosecuting attorney for the jurisdiction where the civil action is  
 1506 filed, and they may become parties to the action. A decision of the entity shall be upheld  
 1507 only if it is determined by clear and convincing evidence that the individual did not meet  
 1508 the criteria set forth in subsection (h) or (j) of this Code section.

1509 (m)(1) For criminal history record information maintained by the clerk of court, an  
 1510 individual who has a record restricted pursuant to this Code section may petition the court  
 1511 with original jurisdiction over the charges in the county where the clerk of court is located  
 1512 for an order to seal all criminal history record information maintained by the clerk of  
 1513 court for such individual's charge. Notice of such petition shall be sent to the clerk of  
 1514 court and the prosecuting attorney. A notice sent by registered or certified mail or  
 1515 statutory overnight delivery shall be sufficient notice.

1516 (2) The court shall order all criminal history record information in the custody of the  
 1517 clerk of court, including within any index, to be restricted and unavailable to the public  
 1518 if the court finds by a preponderance of the evidence that:

1519 (A) The criminal history record information has been restricted pursuant to this Code  
 1520 section; and

1521 (B) The harm otherwise resulting to the privacy of the individual clearly outweighs the  
 1522 public interest in the criminal history record information being publicly available.

1523 (3) Within 60 days of the court's order, the clerk of court shall cause every document,  
 1524 physical or electronic, in its custody, possession, or control to be restricted.

1525 (4) The person who is the subject of such sealed criminal history record information may  
 1526 petition the court for inspection of the criminal history record information included in the  
 1527 court order. Such information shall always be available for inspection, copying, and use  
 1528 by criminal justice agencies and the Judicial Qualifications Commission.

1529 (n)(1) As to arrests occurring before July 1, 2013, an individual may, in writing, request  
 1530 the arresting law enforcement agency to restrict the criminal history record information  
 1531 of an arrest, including any fingerprints or photographs taken in conjunction with such

1532 arrest. Reasonable fees shall be charged by the arresting law enforcement agency and the  
1533 center for the actual costs of restricting such records, provided that such fee shall not  
1534 exceed \$50.00.

1535 (2) Within 30 days of receipt of such written request, the arresting law enforcement  
1536 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days  
1537 of receiving the request, the prosecuting attorney shall review the request to determine  
1538 if he or she agrees to record restriction, and the prosecuting attorney shall notify the  
1539 arresting law enforcement agency of his or her decision within such 90 day period. The  
1540 arresting law enforcement agency shall inform the individual of the prosecuting attorney's  
1541 decision, and, if record restriction is approved by the prosecuting attorney, the arresting  
1542 law enforcement agency shall restrict the criminal history record information within 30  
1543 days of receipt of the prosecuting attorney's decision.

1544 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal  
1545 history record information, such individual may file a civil action in the superior court  
1546 where the entity is located. A copy of the civil action shall be served on the entity and  
1547 prosecuting attorney for the jurisdiction where the civil action is filed, and they may  
1548 become parties to the action. A decision of the prosecuting attorney shall not be upheld  
1549 if it is determined by clear and convincing evidence that the harm otherwise resulting to  
1550 the privacy of the individual clearly outweighs the public interest in the criminal history  
1551 record information being publicly available.

1552 (4) To restrict criminal history record information at the center, an individual shall  
1553 submit a prosecuting attorney's approved record restriction request or a court order issued  
1554 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access  
1555 to such criminal history record information within 30 days from receiving such  
1556 information.

1557 (o) Nothing in this Code section shall give rise to any right which may be asserted as a  
1558 defense to a criminal prosecution or serve as the basis for any motion that may be filed in  
1559 any criminal proceeding. The modification, correction, supplementation, amendment, or  
1560 restriction of criminal history record information shall not abate or serve as the basis for  
1561 the reversal of any criminal conviction.

1562 (p) Any application to the center for access to or restriction of criminal history record  
1563 information made pursuant to this Code section shall be made in writing on a form  
1564 approved by the center. The center shall be authorized to develop and publish such  
1565 procedures as may be necessary to carry out the provisions of this Code section. In  
1566 adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the 'Georgia  
1567 Administrative Procedure Act,' shall not apply.

1568 (q) It shall be the duty of the entity to take such action as may be reasonable to prevent  
 1569 disclosure of information to the public which would identify any individual whose criminal  
 1570 history record information is restricted pursuant to this Code section.

1571 (r) If the center has notified a firearms dealer that an individual is prohibited from  
 1572 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title  
 1573 16 and if the prohibition is the result of such individual being involuntarily hospitalized  
 1574 within the immediately preceding five years, upon such individual or his or her attorney  
 1575 making an application to inspect his or her records, the center shall provide the record of  
 1576 involuntary hospitalization and also inform the individual or attorney of his or her right to  
 1577 a hearing before the judge of the probate court or superior court relative to such individual's  
 1578 eligibility to possess or transport a handgun."

1579 **PART VII**

1580 **PENAL INSTITUTIONS**

1581 **SECTION 7-1.**

1582 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
 1583 by revising Code Section 42-1-1, relating to giving information to or receiving money from  
 1584 an inmate in a penal institution, as follows:

1585 "42-1-1.

1586 Except as specifically provided otherwise, as used in this title, the term:

1587 (1) 'Active supervision' means the period of a probated sentence in which a probationer  
 1588 actively reports to his or her probation supervisor or is otherwise under the direct  
 1589 supervision of a probation supervisor.

1590 (2) 'Administrative supervision' means the period of probation supervision that has  
 1591 reduced supervision and reporting requirements commensurate with and that follows  
 1592 active supervision but that is prior to the termination of a sentence.

1593 (3) 'Board' means the Board of Corrections.

1594 (4) 'Case plan' means an individualized accountability and behavior change strategy for  
 1595 a probationer, as applicable.

1596 (5) 'Commissioner' means the commissioner of corrections.

1597 (6) 'Criminal risk factors' means characteristics and behaviors that affect a person's risk  
 1598 for committing future crimes and include, but are not limited to, antisocial behavior,  
 1599 antisocial personality, criminal thinking, criminal associates, having a dysfunctional  
 1600 family, having low levels of employment or education, poor use of leisure and recreation  
 1601 time, and substance abuse.

1602 (7) 'Department' means the Department of Corrections.

- 1603 (8) 'Graduated sanctions' means:  
 1604 (A) Verbal and written warnings;  
 1605 (B) Increased restrictions and reporting requirements;  
 1606 (C) Community service or work crews;  
 1607 (D) Referral to substance abuse or mental health treatment or counseling programs in  
 1608 the community;  
 1609 (E) Increased substance abuse screening and monitoring;  
 1610 (F) Electronic monitoring, as such term is defined in Code Section 42-8-151; and  
 1611 (G) An intensive supervision program.  
 1612 (9) 'Risk and needs assessment' means an actuarial tool, approved by the board and  
 1613 validated on a targeted population, scientifically proven to determine a person's risk to  
 1614 recidivate and to identify criminal risk factors that, when properly addressed, can reduce  
 1615 that person's likelihood of committing future criminal behavior.  
 1616 ~~(a) No employee of a penal institution may give advice to an inmate regarding the name~~  
 1617 ~~or the employment of an attorney at law in any case where the inmate is confined in a penal~~  
 1618 ~~institution or receive any sum of money paid as fees or otherwise to attorneys at law in a~~  
 1619 ~~criminal case or cases against any inmate with which they may be connected in any~~  
 1620 ~~capacity.~~  
 1621 ~~(b) Any person who violates this Code section shall be guilty of a misdemeanor."~~

#### 1622 SECTION 7-2.

1623 Said title is further amended by adding a new Code section to read as follows:

1624 "42-1-11.2.

- 1625 (a) No employee of a penal institution shall give advice to an inmate regarding the name  
 1626 or the employment of an attorney at law in any case where the inmate is confined in a penal  
 1627 institution or receive any sum of money paid as fees or otherwise to attorneys at law in a  
 1628 criminal case or cases against any inmate with which they may be connected in any  
 1629 capacity.  
 1630 (b) Any person who violates this Code section shall be guilty of a misdemeanor."

#### 1631 SECTION 7-3.

1632 Said title is further amended by revising Code Section 42-2-1, relating to definitions, as  
 1633 follows:

1634 "42-2-1.

1635 ~~As used in this chapter, the term:~~

- 1636 ~~(1) 'Board' means the Board of Corrections.~~  
 1637 ~~(2) 'Commissioner' means the commissioner of corrections.~~

1638 ~~(3) 'Department' means~~ There is created the Department of Corrections."

1639

**SECTION 7-4.**

1640 Said title is further amended by revising subsection (c) of Code Section 42-2-11, relating to  
1641 the powers and duties of the Board of Corrections, as follows:

1642 "(c)(1) The board shall adopt rules governing the assignment, housing, working, feeding,  
1643 clothing, treatment, discipline, rehabilitation, training, and hospitalization of all inmates  
1644 coming under its custody.

1645 (2)(A) As used in this paragraph, the term:

1646 (i) 'Evidence based practices' means supervision policies, procedures, programs, and  
1647 practices that scientific research demonstrates reduce recidivism among individuals  
1648 who are under some form of correctional supervision.

1649 (ii) 'Recidivism' means returning to prison or jail within three years of being placed  
1650 on probation or being discharged or released from a department or jail facility.

1651 (B) The board shall adopt rules and regulations governing the management and  
1652 treatment of inmates and probationers to ensure that evidence based practices, including  
1653 the use of a risk and needs assessment and any other method the board deems  
1654 appropriate, guide decisions related to preparing inmates for release into the community  
1655 and managing probationers in the community. The board shall require the department  
1656 to collect and analyze data and performance outcomes relevant to the level and type of  
1657 treatment given to an inmate or probationer and the outcome of the treatment on his or  
1658 her recidivism and prepare an annual report regarding such information which shall be  
1659 submitted to the Governor, the Lieutenant Governor, the Speaker of the House of  
1660 Representatives, and the chairpersons of the House Committee on State Institutions and  
1661 Property and the Senate State Institutions and Property Committee."

1662

**SECTION 7-5.**

1663 Said title is further amended by revising subsection (a) of Code Section 42-5-50, relating to  
1664 the transmittal of information on convicted persons, as follows:

1665 "(a) The clerk of the court shall notify the commissioner of a sentence within 30 working  
1666 days following the receipt of the sentence and send other documents set forth in this Code  
1667 section. Such notice shall be ~~mailed within such time period by first-class mail and shall~~  
1668 ~~be accompanied by two complete and certified sentence packages containing~~ submitted  
1669 electronically and shall contain the following documents:

1670 (1) A certified copy of the sentence;

1671 (2) A complete history of the convicted person, including a certified copy of the  
 1672 indictment, accusation, or both and such other information as the commissioner may  
 1673 require;

1674 (3) An affidavit of the custodian of such person indicating the total number of days the  
 1675 convicted person was incarcerated prior to the imposition of the sentence. It shall be the  
 1676 duty of the custodian of such person to transmit the affidavit provided for in this  
 1677 paragraph to the clerk of the superior court within ten days following the date on which  
 1678 the sentence is imposed;

1679 (4) Order of probation revocation or tolling of probation; and

1680 (5) A copy of the sentencing information report is required in all jurisdictions with an  
 1681 options system day reporting center certified by the ~~Department of Corrections~~  
 1682 department. The failure to provide the sentencing information report shall not cause an  
 1683 increase in the 15 day time period for the department to assign the inmate to a  
 1684 correctional institution as set forth in subsection (b) of this Code Section.

1685 All of the aforementioned documents ~~will~~ shall be submitted on forms provided by the  
 1686 commissioner. The commissioner shall file one copy of each such document with the State  
 1687 Board of Pardons and Paroles within 30 working days of receipt of such documents from  
 1688 the clerk of the court. Except where the clerk is on a salary, the clerk shall receive from  
 1689 funds of the county the fee prescribed in Code Section 15-6-77 for such service."

#### 1690 SECTION 7-6.

1691 Said title is further amended by revising Code Section 42-8-21, relating to definitions for the  
 1692 state-wide probation system, as follows:

1693 "42-8-21.

1694 ~~As used in this article, the term:~~

1695 (1) ~~'Board' means the Board of Corrections.~~

1696 (2) ~~'Commissioner' means the commissioner of corrections.~~

1697 (3) ~~'Department' means the Department of Corrections~~ Reserved."

#### 1698 SECTION 7-7.

1699 Said title is further amended by revising Code Section 42-8-23, relating to the administration  
 1700 of supervision of probationers by the Department of Corrections, as follows:

1701 "42-8-23.

1702 (a) As used in this Code section, the term 'chief probation officer' means the highest  
 1703 ranking field probation officer in each judicial circuit who does not have direct supervision  
 1704 of the probationer who is the subject of the hearing.

1705 (b) The department shall administer the supervision of felony probationers.



1706 (c) If graduated sanctions have been made a condition of probation by the court and if a  
 1707 probationer violates the conditions of his or her probation, other than for the commission  
 1708 of a new offense, the department may impose graduated sanctions as an alternative to  
 1709 judicial modification or revocation of probation, provided that such graduated sanctions are  
 1710 approved by a chief probation officer.

1711 (d) The failure of a probationer to comply with the graduated sanction or sanctions  
 1712 imposed by the department shall constitute a violation of probation.

1713 (e) A probationer may at any time voluntarily accept the graduated sanctions proposed by  
 1714 the department.

1715 (f)(1) The department's decision shall be final unless the probationer files an appeal in  
 1716 the sentencing court. Such appeal shall be filed within 30 days of the issuance of the  
 1717 decision by the department.

1718 (2) Such appeal shall first be reviewed by the judge upon the record. At the judge's  
 1719 discretion, a de novo hearing may be held on the decision. The filing of the appeal shall  
 1720 not stay the department's decision.

1721 (3) When the sentencing judge does not act on the appeal within 30 days of the date of  
 1722 the filing of the appeal, the department's decision shall be affirmed by operation of law.

1723 (g) Nothing contained in this Code section shall alter the relationship between judges and  
 1724 probation supervisors prescribed in this article nor be construed as repealing any power  
 1725 given to any court of this state to place offenders on probation or to supervise offenders."

1726 **SECTION 7-8.**

1727 Said title is further amended by revising Code Section 42-8-35, relating to terms and  
 1728 conditions of probation, as follows:

1729 "42-8-35.

1730 (a) The court shall determine the terms and conditions of probation and may provide that  
 1731 the probationer shall:

1732 (1) Avoid injurious and vicious habits;

1733 (2) Avoid persons or places of disreputable or harmful character;

1734 (3) Report to the probation supervisor as directed;

1735 (4) Permit the supervisor to visit the probationer at the probationer's home or elsewhere;

1736 (5) Work faithfully at suitable employment insofar as may be possible;

1737 (6) Remain within a specified location; provided, however, that the court shall not banish  
 1738 a probationer to any area within the state:

1739 (A) That does not consist of at least one entire judicial circuit as described by Code  
 1740 Section 15-6-1; or

- 1741 (B) In which any service or program in which the probationer must participate as a  
 1742 condition of probation is not available;
- 1743 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused  
 1744 by the probationer's offense, in an amount to be determined by the court. Unless  
 1745 otherwise provided by law, no reparation or restitution to any aggrieved person for the  
 1746 damage or loss caused by the probationer's offense shall be made if the amount is in  
 1747 dispute unless the same has been adjudicated;
- 1748 (8) Make reparation or restitution as reimbursement to a municipality or county for the  
 1749 payment for medical care furnished the person while incarcerated pursuant to the  
 1750 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local  
 1751 governmental unit for the provision of medical care shall be made if the amount is in  
 1752 dispute unless the same has been adjudicated;
- 1753 (9) Repay the costs incurred by any municipality or county for wrongful actions by an  
 1754 inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section  
 1755 42-4-71;
- 1756 (10) Support the probationer's legal dependents to the best of the probationer's ability;
- 1757 (11) Violate no local, state, or federal laws and be of general good behavior;
- 1758 (12) If permitted to move or travel to another state, agree to waive extradition from any  
 1759 jurisdiction where the probationer may be found and not contest any effort by any  
 1760 jurisdiction to return the probationer to this state; ~~and~~
- 1761 (13) Submit to evaluations and testing relating to rehabilitation and participate in and  
 1762 successfully complete rehabilitative programming as directed by the department;
- 1763 (14) Wear a device capable of tracking the location of the probationer by means  
 1764 including electronic surveillance or global positioning satellite systems. The department  
 1765 shall assess and collect fees from the probationer for such monitoring at levels set by  
 1766 regulation by the department;
- 1767 (15) Complete a residential or nonresidential program for substance abuse or mental  
 1768 health treatment as indicated by a risk and needs assessment; and
- 1769 (16) Agree to the imposition of graduated sanctions when, in the discretion of the  
 1770 probation supervisor, the probationer's behavior warrants a graduated sanction.
- 1771 (b) In determining the terms and conditions of probation for a probationer who has been  
 1772 convicted of a criminal offense against a victim who is a minor or dangerous sexual offense  
 1773 as those terms are defined in Code Section 42-1-12, the court may provide that the  
 1774 probationer shall be:
- 1775 (1) Prohibited from entering or remaining present at a victim's school, place of  
 1776 employment, place of residence, or other specified place at times when a victim is present

1777 or from loitering in areas where minors congregate, child care facilities, churches, or  
 1778 schools as those terms are defined in Code Section 42-1-12;

1779 ~~(2) Required to wear a device capable of tracking the location of the probationer by~~  
 1780 ~~means including electronic surveillance or global positioning systems. The department~~  
 1781 ~~shall assess and collect fees from the probationer for such monitoring at levels set by~~  
 1782 ~~regulation by the department;~~

1783 ~~(3)~~(2) Required, either in person or through remote monitoring, to allow viewing and  
 1784 recording of the probationer's incoming and outgoing e-mail, history of websites visited  
 1785 and content accessed, and other Internet based communication;

1786 ~~(4)~~(3) Required to have periodic unannounced inspections of the contents of the  
 1787 probationer's computer or any other device with Internet access, including the retrieval  
 1788 and copying of all data from the computer or device and any internal or external storage  
 1789 or portable media and the removal of such information, computer, device, or medium; and

1790 ~~(5)~~(4) Prohibited from seeking election to a local board of education.

1791 (c) The supervision provided for under subsection (b) of this Code section shall be  
 1792 conducted by a probation officer, law enforcement officer, or computer information  
 1793 technology specialist working under the supervision of a probation officer or law  
 1794 enforcement agency."

#### 1795 SECTION 7-9.

1796 Said title is further amended by revising subsection (a) of Code Section 42-8-35.4, relating  
 1797 to confinement in probation detention centers, as follows:

1798 "(a) In addition to any other terms and conditions of probation provided for in this article,  
 1799 the trial judge may require that a defendant convicted of a felony and sentenced to a period  
 1800 of not less than one year on probation or a defendant who has been previously sentenced  
 1801 to probation for a forcible misdemeanor as defined in paragraph (7) of Code Section 16-1-3  
 1802 or a misdemeanor of a high and aggravated nature and has violated probation or other  
 1803 probation alternatives and is subsequently sentenced to a period of not less than one year  
 1804 on probation shall complete satisfactorily, as a condition of that probation, a program of  
 1805 confinement, not to exceed 180 days, in a probation detention center. Probationers so  
 1806 sentenced ~~will~~ shall be required to serve the period of confinement, not to exceed 180 days,  
 1807 specified in the court order."

#### 1808 SECTION 7-10.

1809 Said title is further amended by revising Code Section 42-8-37, relating to the effect of  
 1810 termination of the period of probation, as follows:

1811 "42-8-37.

1812 (a) Upon the termination of the ~~period of probation~~ probated portion of a sentence, the  
 1813 probationer shall be released from probation and shall not be liable to sentence for the  
 1814 crime for which probation was allowed; provided, however, that the foregoing shall not be  
 1815 construed to prohibit the conviction and sentencing of the probationer for the subsequent  
 1816 commission of the same or a similar offense or for the subsequent continuation of the  
 1817 offense for which he or she was previously sentenced.

1818 (b) The court may at any time cause the probationer to appear before it to be admonished  
 1819 or commended and, when satisfied that its action would be for the best interests of justice  
 1820 and the welfare of society, may discharge the probationer from further supervision.

1821 ~~(b)(c) The Upon the request of the chief judge of the court from which said person was~~  
 1822 ~~sentenced, the~~ case of each person receiving a probated sentence of more than two years  
 1823 shall be reviewed by the probation supervisor responsible for that case after service of two  
 1824 years on probation, and a written report of the probationer's progress shall be submitted to  
 1825 the sentencing court along with the supervisor's recommendation as to early termination.  
 1826 ~~Upon the request of the chief judge of the court from which said person was sentenced,~~  
 1827 ~~each~~ Each such case shall be reviewed and a written report submitted annually thereafter;  
 1828 ~~or more often if required,~~ until the termination, expiration, or other disposition of the case."

1829

### SECTION 7-11.

1830 Said title is further amended by revising subsection (a) of Code Section 42-8-38, relating to  
 1831 the arrest of the probationer for a violation of the terms of probation, as follows:

1832 "(a) Whenever, within the period of probation, a probation supervisor believes that a  
 1833 probationer under his or her supervision has violated his or her probation in a material  
 1834 respect, ~~he~~ if graduated sanctions have been made a condition of probation by the court, the  
 1835 probation supervisor may impose graduated sanctions as set forth in Code Section 42-8-23  
 1836 to address the specific conduct leading to such violation or, if the circumstances warrant,  
 1837 may arrest the probationer without warrant, wherever found, and return ~~him~~ the probationer  
 1838 to the court granting the probation or, if under supervision in a county or judicial circuit  
 1839 other than that of conviction, to a court of equivalent original criminal jurisdiction within  
 1840 the county wherein the probationer resides for purposes of supervision. Any officer  
 1841 authorized by law to issue warrants may issue a warrant for the arrest of the probationer  
 1842 upon the affidavit of one having knowledge of the alleged violation, returnable forthwith  
 1843 before the court in which revocation proceedings are being brought."

1844

## PART VIII

1845

### CROSS-REFERENCES

1846

#### SECTION 8-1.

1847 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended  
 1848 in subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed directly  
 1849 appealable, by deleting "and" at the end of paragraph (10), by replacing the period with ";  
 1850 and" at the end of paragraph (11), and by adding a new paragraph to read as follows:

1851 "(12) All judgments or orders entered pursuant to Code Section 35-3-37."

1852 **SECTION 8-2.**

1853 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
 1854 Code Section 15-10-260, relating to jurisdiction for magistrate courts, as follows:

1855 "15-10-260.

1856 (a) This article governs trials of misdemeanor violations of Code Sections 16-13-30 and  
 1857 16-13-2, relating to possession of less than one ounce of marijuana; Code Section 16-8-14,  
 1858 relating to misdemeanor theft by shoplifting ~~of \$300.00 or less~~; Code Section 3-3-23,  
 1859 relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic  
 1860 beverages by, a person under 21 years of age; and Code Section 16-7-21, relating to  
 1861 criminal trespass.

1862 (b) Magistrate courts are authorized to conduct trials and impose sentences for violations  
 1863 of misdemeanors specified in subsection (a) of this Code section; provided, however, that  
 1864 the violation must have occurred in the unincorporated area of the county.

1865 (c) A person convicted of violation of a misdemeanor specified in subsection (a) of this  
 1866 Code section shall be punished as provided in paragraphs (1) through (4) of this subsection  
 1867 as follows:

1868 (1) For possession of less than one ounce of marijuana, as provided in subsection (b) of  
 1869 Code Section 16-13-2;

1870 (2) For misdemeanor theft by shoplifting, as provided in paragraph (1) of subsection (b)  
 1871 of Code Section 16-8-14;

1872 (3) For furnishing alcoholic beverages to, and purchase and possession of alcoholic  
 1873 beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and

1874 (4) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.

1875 (d) The jurisdiction of magistrate courts to try and dispose of the misdemeanor violations  
 1876 enumerated in subsection (a) of this Code section shall be concurrent with the jurisdiction  
 1877 of any other courts having jurisdiction to try and dispose of such cases."

1878 **SECTION 8-3.**

1879 Said title is further amended by revising subsection (a) of Code Section 15-11-30.3, relating  
 1880 to commission of designated felony act of burglary by a child 15 years of age or older, as  
 1881 follows:

1882 "(a) After a petition has been filed alleging that a child 15 years of age or older has  
 1883 committed a designated felony act, the court shall follow the procedure specified in this  
 1884 Code section if the designated felony act alleged to have been committed would have  
 1885 constituted the crime of burglary in any degree if done by an adult and the child has been  
 1886 found at separate court appearances to have committed acts which would have constituted  
 1887 the crime of burglary in any degree if done by an adult on three or more previous  
 1888 occasions."

#### 1889 SECTION 8-4.

1890 Said title is further amended by revising subsection (e) of Code Section 15-11-83, relating  
 1891 to when a child may be fingerprinted or photographed and confidentiality of information, as  
 1892 follows:

1893 "(e) Upon application of the child, fingerprints and photographs of a child shall be removed  
 1894 from the file and destroyed if a petition alleging delinquency is not filed or the proceedings  
 1895 are dismissed after either a petition is filed or the case is transferred to the juvenile court  
 1896 as provided in Code Section 15-11-30.4 or the child is adjudicated not to be a delinquent  
 1897 child. The court shall notify the deputy director of the Georgia Crime Information Center  
 1898 when fingerprints and photographs are destroyed pursuant to this subsection, and the  
 1899 Georgia Bureau of Investigation shall treat such records in the same manner as ~~expunged~~  
 1900 ~~records~~ criminal history record information restricted pursuant to ~~subsection (e)~~ of Code  
 1901 Section 35-3-37."

#### 1902 SECTION 8-5

1903 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 1904 amended by revising subsection (e) of Code Section 16-11-131, relating to possession of  
 1905 firearms by convicted felons and first offender probationers, as follows:

1906 "(e) As used in this Code section, the term 'forcible felony' means any felony which  
 1907 involves the use or threat of physical force or violence against any person and further  
 1908 includes, without limitation, murder; felony murder; burglary in any degree; robbery;  
 1909 armed robbery; kidnapping; hijacking of an aircraft or motor vehicle; aggravated stalking;  
 1910 rape; aggravated child molestation; aggravated sexual battery; arson in the first degree; the  
 1911 manufacturing, transporting, distribution, or possession of explosives with intent to kill,  
 1912 injure, or intimidate individuals or destroy a public building; terroristic threats; or acts of  
 1913 treason or insurrection."

#### 1914 SECTION 8-6.

1915 Said title is further amended by revising division (9)(A)(viii) of Code Section 16-14-3,  
 1916 relating to definitions for the "Georgia RICO (Racketeer Influenced and Corrupt  
 1917 Organizations) Act," as follows:

1918 "(viii) Code Section 16-9-1, relating to forgery in ~~the first~~ any degree;"

1919 **SECTION 8-7.**

1920 Said title is further amended by revising Code Section 16-16-1, relating to definitions  
 1921 regarding forfeiture of property used in burglary or armed robbery, as follows:

1922 "16-16-1.

1923 As used in this chapter, the term:

1924 (1) 'Armed robbery' means the offense defined in subsection (a) of Code Section 16-8-41.

1925 (2) 'Burglary' means the offense defined in ~~subsection (a)~~ of Code Section 16-7-1 in any  
 1926 degree."

1927 **SECTION 8-8.**

1928 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
 1929 amended by revising paragraph (11) of subsection (a) of Code Section 17-6-1, relating to  
 1930 where offenses bailable, procedure, schedule of bails, and appeal bonds, as follows:

1931 "(11) Kidnapping, arson, aggravated assault, or burglary in any degree if the person, at  
 1932 the time of the alleged kidnapping, arson, aggravated assault, or burglary in any degree,  
 1933 had previously been convicted of, was on probation or parole with respect to, or was on  
 1934 bail for kidnapping, arson, aggravated assault, burglary in any degree, or one or more of  
 1935 the offenses listed in paragraphs (1) through (10) of this subsection;"

1936 **SECTION 8-9.**

1937 Said title is further amended by revising paragraph (1) of subsection (a) of Code Section  
 1938 17-7-70.1, relating to trial upon accusations in certain felony and misdemeanor cases, as  
 1939 follows:

1940 "(1) In felony cases involving violations of the following:

1941 (A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, ~~16-9-2~~, 16-9-20, 16-9-31,  
 1942 16-9-33, 16-9-37, 16-10-52, and 40-5-58;

1943 (B) Article 1 of Chapter 8 of Title 16, relating to theft;

1944 (C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;

1945 (D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to  
 1946 confinement; or

1947 (E) Code Section 16-11-131, relating to possession of a firearm by a convicted felon  
 1948 or first offender probationer,  
 1949 in which defendants have either been bound over to the superior court based on a finding  
 1950 of probable cause pursuant to a commitment hearing under Article 2 of this chapter or  
 1951 have expressly or by operation of law waived a commitment hearing, the district attorney  
 1952 shall have authority to prefer accusations, and the defendants shall be tried on such  
 1953 accusations according to the same rules of substantive and procedural laws relating to  
 1954 defendants who have been indicted by a grand jury."

1955 **SECTION 8-10.**

1956 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section  
 1957 17-10-9.1, relating to voluntary surrender to county jail or correctional institution, as follows:  
 1958 "(10) Kidnapping, arson, or burglary in any degree if the person, at the time such person  
 1959 was charged, has previously been convicted of, was on probation or parole with respect  
 1960 to, or was on bail for kidnapping, arson, aggravated assault, burglary in any degree, or  
 1961 one or more of the offenses listed in paragraphs (1) through (9) of this subsection;"

1962 **SECTION 8-11.**

1963 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section  
 1964 17-10-30, relating to procedure for imposition of the death penalty generally, as follows:  
 1965 "(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the  
 1966 offender was engaged in the commission of another capital felony or aggravated battery,  
 1967 or the offense of murder was committed while the offender was engaged in the  
 1968 commission of burglary in any degree or arson in the first degree;"

1969 **SECTION 8-12.**

1970 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
 1971 subparagraph (G) of paragraph (2) of Code Section 31-7-250, relating to definitions for  
 1972 personal care home licensing and employee record checks, as follows:  
 1973 "(G) A felony violation of Code Section 16-9-1 ~~or 16-9-2, relating to forgery in the first~~  
 1974 ~~and second degree, respectively;~~"

1975 **SECTION 8-13.**

1976 Said title is further amended by revising subparagraph (K) of paragraph (2) of Code Section  
 1977 31-7-350, relating to definitions for nursing home employee record checks, as follows:  
 1978 "(K) A felony violation of Code Section 16-9-1, ~~relating to forgery in the first degree;~~  
 1979 ~~a violation of Code Section 16-9-2, relating to forgery in the second degree;~~"



**SECTION 8-14.**

1980

1981 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
 1982 by revising Code Section 36-32-9, relating to the jurisdiction of shoplifting of \$300.00 in  
 1983 municipal courts, as follows:

1984 "36-32-9.

1985 (a) The municipal court is granted jurisdiction to try and dispose of cases in which a person  
 1986 is charged with a ~~first, second, or third offense of~~ misdemeanor theft by shoplifting ~~when~~  
 1987 ~~the property which was the subject of the theft was valued at \$300.00 or less~~; if the offense  
 1988 occurred within the corporate limits of the municipality. The jurisdiction of such court  
 1989 shall be concurrent with the jurisdiction of any other courts within the county having  
 1990 jurisdiction to try and dispose of such cases.

1991 (b) Any ~~defendant person~~ charged in a municipal court with a ~~first, second, or third offense~~  
 1992 ~~of~~ misdemeanor theft by shoplifting ~~property valued at \$300.00 or less~~ shall be entitled  
 1993 upon request to have the case against him or her transferred to the court having general  
 1994 misdemeanor jurisdiction in the county in which the alleged offense occurred.

1995 (c) A person convicted in a municipal court of a ~~first, second, or third offense of~~  
 1996 misdemeanor theft by shoplifting ~~property valued at \$300.00 or less~~ shall be punished as  
 1997 provided in paragraph (1) of subsection (b) of Code Section 16-8-14, provided that nothing  
 1998 in this Code section or Code Section 16-8-14 shall be construed to give any municipality  
 1999 the right to impose a fine or punishment by imprisonment in excess of the limits as set forth  
 2000 in the municipality's charter.

2001 (d) Any fines and forfeitures arising from the prosecution of such cases in such municipal  
 2002 court shall be retained by the municipality and shall be paid into the treasury of such  
 2003 municipality.

2004 (e) It shall be the duty of the appropriate agencies of the municipality in which an offense  
 2005 under subsection (a) of this Code section is charged to make any reports to the Georgia  
 2006 Crime Information Center required under Article 2 of Chapter 3 of Title 35."

**SECTION 8-15.**

2007

2008 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
 2009 by revising paragraph (2) of subsection (a) of Code Section 42-5-85, relating to delegation  
 2010 of authority to issue limited leave privileges, as follows:

2011 "(2) The murder was committed while the offender was engaged in the commission of  
 2012 another capital felony, aggravated battery, burglary in any degree, or arson in the first  
 2013 degree;"

2014 **PART IX**

2015 **EFFECTIVE DATE, APPLICABILITY, AND REPEALER**

2016 **SECTION 9-1.**

2017 (a) Except as provided in subsections (b) and (c) of this section, this Act shall become  
 2018 effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any  
 2019 offense occurring before July 1, 2012, shall be governed by the statute in effect at the time  
 2020 of such offense and shall be considered a prior conviction for the purpose of imposing a  
 2021 sentence that provides for a different penalty for a subsequent conviction for the same type  
 2022 of offense, of whatever degree or level, pursuant to this Act.

2023 (b)(1) Section 3-7B of this Act shall become effective on July 1, 2013, at which time,  
 2024 Section 3-7A of this Act shall be superceded and repealed in its entirety, and Section  
 2025 3-7B of this Act shall apply to offenses which occur on or after July 1, 2013. Any offense  
 2026 occurring before July 1, 2013, shall be governed by the statute in effect at the time of such  
 2027 offense and shall be considered a prior conviction for the purpose of imposing a sentence  
 2028 that provides for a different penalty for a subsequent conviction for the same type of  
 2029 offense, of whatever degree or level, pursuant to this Act.

2030 (2) Section 3-7C of this Act shall become effective on July 1, 2014, at which time,  
 2031 Section 3-7B of this Act shall be superceded and repealed in its entirety, and Section 3-7C  
 2032 of this Act shall apply to offenses which occur on or after July 1, 2014. Any offense  
 2033 occurring before July 1, 2014, shall be governed by the statute in effect at the time of such  
 2034 offense and shall be considered a prior conviction for the purpose of imposing a sentence  
 2035 that provides for a different penalty for a subsequent conviction for the same type of  
 2036 offense, of whatever degree or level, pursuant to this Act.

2037 (c) Part VI and Sections 8-1 and 8-4 of this Act shall become fully effective on July 1, 2013;  
 2038 provided, however, that for the purpose of preparing for implementation of Part VI of this  
 2039 Act, said part shall become effective on July 1, 2012.

2040 **SECTION 9-2.**

2041 All laws and parts of laws in conflict with this Act are repealed.