

House Bill 565

By: Representatives Kennard of the 102nd, Marin of the 96th, McLaurin of the 51st, Carter of the 92nd, McClain of the 100th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to procedure for sentencing and imposition of punishment, so as to enact the
3 "Georgia Back to Life, Back to Work Act"; to provide a short title; to provide that no court
4 shall impose a period of probation that exceeds 24 months; to provide for conforming
5 changes; to revise requirements for active probation supervision; to eliminate probation for
6 life for persons convicted of certain serious violent felonies; to amend Article 2 of Chapter
7 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia Crime
8 Information Center, so as to define "law enforcement officer"; to provide for the restriction
9 of criminal history records for convictions of certain misdemeanors and felonies after the
10 completion of the sentence and payment of any restitution; to revise the handling of
11 arrest-only criminal history record information; to provide for the automatic restriction of an
12 individual's criminal history record information upon arrest; to provide that such criminal
13 history record information shall be made publicly available only upon the issuance of an
14 indictment, accusation, or other charging instrument; to amend Chapter 8 of Title 42 of the
15 Official Code of Georgia Annotated, relating to probation, so as to eliminate certain special
16 terms of probation; to revise certain probation requirements; to provide for related matters;
17 to provide for applicability; to provide for related matters; to repeal conflicting laws; and for
18 other purposes.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **PART I**
21 **SECTION 1-1.**

22 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
23 procedure for sentencing and imposition of punishment, is amended by revising
24 subsection (a) of Code Section 17-10-1, relating to fixing of sentence, suspension or
25 probation of sentence, change in sentence, eligibility for parole, prohibited modifications,
26 and exceptions, as follows:

27 "(a)(1)(A) Except in cases in which life imprisonment, life without parole, or the death
28 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
29 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
30 shall prescribe a determinate sentence for a specific number of months or years which
31 shall be within the minimum and maximum sentences prescribed by law as the
32 punishment for the crime. The judge imposing the sentence is granted power and
33 authority to suspend or probate all or any part of the entire sentence under such rules
34 and regulations as the judge deems proper, including service of a probated sentence in
35 the sentencing options system, as provided by Article 6 of Chapter 3 of Title 42, and
36 including the authority to revoke the suspension or probation when the defendant has
37 violated any of the rules and regulations prescribed by the court, even before the
38 probationary period has begun, subject to the conditions set out in this subsection and
39 Code Section 17-10-1.5; provided, however, that such action shall be subject to the
40 provisions of Code Sections 17-10-6.1 and 17-10-6.2.

41 (B) When a defendant with no prior felony conviction is convicted of felony offenses
42 or is charged with felony offenses and is sentenced pursuant to subsection (a) or (c) of
43 Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42, and the court imposes a

44 sentence of probation or not more than 12 months of imprisonment followed by a term
45 of probation, the court shall include a behavioral incentive date in its sentencing order
46 that does not exceed three years from the date such sentence is imposed. Within 60
47 days of the expiration of such incentive date, if the defendant has not been arrested for
48 anything other than a nonserious traffic offense as defined in Code Section 35-3-37, has
49 been compliant with the general and special conditions of probation imposed, and has
50 paid all restitution owed, the Department of Community Supervision shall notify the
51 prosecuting attorney and the court of such facts. The Department of Community
52 Supervision shall provide the court with an order to terminate such defendant's
53 probation which the court shall execute unless the court or the prosecuting attorney
54 requests a hearing on such matter within 30 days of the receipt of such order. The court
55 shall take whatever action it determines would be for the best interest of justice and the
56 welfare of society.

57 ~~(2)(A) Active probation supervision shall terminate in all cases no later than two years~~
58 ~~from the commencement of active probation supervision unless specially extended or~~
59 ~~reinstated by the sentencing court upon notice and hearing and for good cause shown;~~
60 ~~provided, however, that in those cases involving:~~

61 ~~(i) The collection of restitution, the period of active probation supervision shall~~
62 ~~remain in effect for so long as any such obligation is outstanding, or until termination~~
63 ~~of the sentence, whichever first occurs;~~

64 ~~(ii) A conviction under Chapter 15 of Title 16, the 'Georgia Street Gang Terrorism~~
65 ~~and Prevention Act,' the period of active probation supervision shall remain in effect~~
66 ~~until the termination of the sentence, but shall not exceed five years unless as~~
67 ~~otherwise provided in this paragraph; or~~

68 ~~(iii) A conviction that requires the defendant to register on the state sexual offender~~
69 ~~registry pursuant to Code Section 42-1-12, the period of active probation supervision~~

70 ~~shall remain in effect until the court orders unsupervised probation, or until~~
71 ~~termination of the sentence, whichever first occurs.~~

72 (B)(2) Probation supervision shall not be required for defendants sentenced to probation
73 while the defendant is in the legal custody of the Department of Corrections or the State
74 Board of Pardons and Paroles.

75 (3)(A) Any part of a sentence of probation revoked for a violation other than a
76 subsequent commission of any felony, a violation of a special condition, or a
77 misdemeanor offense involving physical violence resulting in bodily injury to an
78 innocent victim which in the opinion of the trial court constitutes a danger to the
79 community or a serious infraction occurring while the defendant is assigned to an
80 alternative probation confinement facility shall be served in a probation detention
81 center, probation boot camp, weekend lock up, or confinement in a local jail or
82 detention facility, or other community correctional alternatives available to the court
83 or provided by the Department of Corrections.

84 (B) A parolee or probationer charged with a misdemeanor involving physical injury
85 or an attempt to commit physical injury or terroristic threats or with a new felony shall
86 not be entitled to bond pending a hearing on the revocation of his or her parole or
87 probation, except by order of a judge of the superior, state, or magistrate court wherein
88 the alleged new offense occurred after a hearing and upon determination of the
89 superior, state, or magistrate court that the parolee or probationer does not constitute
90 a threat to the community; provided, however, that this subparagraph does not authorize
91 state or magistrate court judges to grant bail for a person charged with any offense
92 listed in subsection (a) of Code Section 17-6-1.

93 (4) In cases of imprisonment followed by probation, the sentence shall specifically
94 provide that the period of probation shall not begin until the defendant has completed
95 service of the confinement portion of the sentence. No revocation of any part of a

96 probated sentence shall be effective while a defendant is in the legal custody of the State
97 Board of Pardons and Paroles.

98 (5)(A) When a defendant has been sentenced to probation, the court shall retain
99 jurisdiction throughout the period of the probated sentence as provided for in
100 subsection (g) of Code Section 42-8-34. Without limiting the generality of the
101 foregoing, the court may shorten the period of active probation supervision or
102 unsupervised probation on motion of the defendant or on its own motion, or upon the
103 request of a community supervision officer, if the court determines that probation is no
104 longer necessary or appropriate for the ends of justice, the protection of society, and the
105 rehabilitation of the defendant. Prior to entering any order for shortening a period of
106 probation, the court shall afford notice to the victim or victims of all sex related
107 offenses or violent offenses resulting in serious bodily injury or death and, upon request
108 of the victim or victims so notified, shall afford notice and an opportunity for hearing
109 to the defendant and the prosecuting attorney.

110 (B) The Department of Community Supervision shall establish a form document which
111 shall include the elements set forth in this Code section concerning notification of
112 victims and shall make copies of such form available to prosecuting attorneys in this
113 state. When requested by the victim, the form document shall be provided to the victim
114 by the prosecuting attorney. The form shall include the address of the community
115 supervision office having jurisdiction over the case and contain a statement that the
116 victim must maintain a copy of his or her address with the community supervision
117 office and must notify the office of any change of address in order to maintain
118 eligibility for notification by the Department of Community Supervision as required in
119 this Code section.

120 (6)(A) Except as otherwise authorized by law, no court shall modify, suspend, probate,
121 or alter a previously imposed sentence so as to reduce or eliminate a period of
122 incarceration or probation and impose a financial payment which:

- 123 (i) Exceeds the statutorily specified maximum fine, plus all penalties, fees,
 124 surcharges, and restitution permitted or authorized by law; or
- 125 (ii) Is to be made to an entity which is not authorized by law to receive fines,
 126 penalties, fees, surcharges, or restitution.
- 127 (B) The prohibitions contained in this paragraph shall apply regardless of whether a
 128 defendant consents to the modification, suspension, probation, or alteration of such
 129 defendant's sentence and the imposition of such payment.
- 130 (C) Nothing in this paragraph shall prohibit or prevent a court from requiring, as a
 131 condition of suspension, modification, or probation of a sentence in a criminal case
 132 involving child abandonment, that the defendant pay all or a portion of child support
 133 which is owed to the custodial parent of a child which is the subject of such case.
- 134 (7) As used in this subsection, the term:
- 135 (A) 'Active probation supervision' means the period of a probated sentence in which
 136 a probationer actively reports to his or her community supervision officer or is
 137 otherwise under the direct supervision of a community supervision officer.
- 138 (B) 'Unsupervised probation' means the period of a probated sentence that follows
 139 active probation supervision in which:
- 140 (i) All of the conditions and limitations imposed by the court remain intact;
- 141 (ii) A probationer may have reduced reporting requirements; and
- 142 (iii) A community supervision officer shall not actively supervise such probationer."

143 **SECTION 1-2.**

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

145 "17-10-1.5.

146 (a) This Code section shall be known and may be cited as the 'Georgia Back to Life, Back
 147 to Work Act.'

148 (b) No court shall impose a period of probation that exceeds 24 months."

149 **SECTION 1-3.**

150 Said article is further amended by revising paragraph (2) of subsection (b) of Code
151 Section 17-10-6.1, relating to punishment for serious violent offenders and authorization for
152 reduction in mandatory minimum sentencing, as follows:

153 "(2) Except as provided in subsection (e) of this Code section, the sentence of any person
154 convicted of the serious violent felony of:

155 (A) Kidnapping involving a victim who is less than 14 years of age;

156 (B) Rape;

157 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
158 unless subject to the provisions of paragraph (2) of subsection (d) of Code
159 Section 16-6-4;

160 (D) Aggravated sodomy, as defined in Code Section 16-6-2; or

161 (E) Aggravated sexual battery, as defined in Code Section 16-6-22.2

162 shall, unless sentenced to life imprisonment, be a split sentence which shall include a
163 mandatory minimum term of imprisonment of 25 years, followed by probation ~~for life~~,
164 and no portion of the mandatory minimum sentence imposed shall be suspended, stayed,
165 probated, deferred, or withheld by the sentencing court."

166 **PART II**167 **SECTION 2-1.**

168 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
169 Georgia Crime Information Center, is amended by adding a new paragraph in subsection (a)
170 of, by revising subsection (h) of, by revising paragraphs (4) and (7) of subsection (j) of, and
171 by adding a new subsection to Code Section 35-3-37, relating to review of individual's
172 criminal history record information, definitions, privacy considerations, written application
173 requesting review, and inspection, to read as follows:

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174 "(2.1) 'Law enforcement officer' means:

175 (A) A peace officer as such term is defined in paragraph (8) of Code Section 35-8-2;

176 (B) A law enforcement officer of the United States government;

177 (C) An individual employed as a campus police officer or school security officer;

178 (D) A conservation ranger; or

179 (E) A jail officer employed at a county or municipal jail."

180 "(g.1)(1) Access to an individual's criminal history record information, including any
181 fingerprints or photographs of the individual taken in conjunction with the arrest, shall
182 be restricted by the center unless the case is referred for further prosecution to the proper
183 prosecuting attorney by the arresting law enforcement agency and such prosecuting
184 attorney issues or secures an indictment, accusation, or other charging instrument relating
185 to such case. No criminal history record information shall be made publicly available
186 until the center has received notice from the prosecuting attorney of such indictment,
187 accusation, or other charging instrument or, for criminal history record information which
188 was obtained in conjunction with an arrest on or before June 30, 2021, the center has
189 sufficient basis in such criminal history record information to believe that an indictment,
190 accusation, or other charging instrument has been issued or secured.

191 (2) For criminal history record information obtained on and after July 1, 2021, a copy of
192 the notice provided for under paragraph (1) of this subsection shall be sent by the
193 prosecuting attorney to the accused or the accused's attorney, if represented, by mailing
194 such copy of the notice by first-class mail within seven days of notifying the center.

195 (h) Access to an individual's criminal history record information, including any
196 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be
197 restricted by the center ~~for the following types of dispositions~~ when, after an indictment,
198 accusation, or other charging instrument:

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

200 ~~(A) The offense was never referred for further prosecution to the proper prosecuting~~
201 ~~attorney by the arresting law enforcement agency and:~~

202 ~~(i) The offense against such individual is closed by the arresting law enforcement~~
203 ~~agency. It shall be the duty of the head of the arresting law enforcement agency to~~
204 ~~notify the center whenever a record is to be restricted pursuant to this division within~~
205 ~~30 days of such decision. A copy of the notice shall be sent to the accused and the~~
206 ~~accused's attorney, if any, by mailing the same by first-class mail within seven days~~
207 ~~of notifying the center; or~~

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

213 ~~(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated~~
214 ~~nature, two years;~~

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

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

220 ~~If the center receives notice of the filing of an indictment subsequent to the restriction~~
221 ~~of a record pursuant to this division, the center shall make such record available in~~
222 ~~accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive~~
223 ~~notice of a charging instrument within 30 days of the applicable time periods set forth~~
224 ~~in this division, such record shall be restricted by the center for noncriminal justice~~
225 ~~purposes;~~

226 ~~(B) The offense was referred to the prosecuting attorney but was later dismissed;~~

227 ~~(C) The grand jury returned two no bills; or~~
228 ~~(D) The grand jury returned one no bill and the applicable time period set forth in~~
229 ~~division (ii) of subparagraph (A) of this paragraph has expired; and~~
230 ~~(2) After indictment or accusation:~~
231 ~~(A)(1) Except as provided in subsection (i) of this Code section, all charged offenses~~
232 ~~were dismissed, nolle prossed, or reduced to a violation of a local ordinance;~~
233 ~~(B)(2) The individual was sentenced in accordance with the provisions of subsection (a)~~
234 ~~or subsection (c) of Code Section 16-13-2, and either the court ordered restriction upon~~
235 ~~sentencing as permitted in Code Section 16-13-2, or the individual successfully~~
236 ~~completed the terms and conditions of his or her probation;~~
237 ~~(C)(3) The individual pleaded guilty to or was found guilty of a violation of~~
238 ~~paragraph (2) or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in~~
239 ~~accordance with the provisions of subsection (c) of Code Section 3-3-23.1, and either the~~
240 ~~court ordered restriction upon sentencing as permitted in Code Section 3-3-23.1, or the~~
241 ~~individual successfully completed the terms and conditions of his or her probation;~~
242 ~~(D)(4) The individual successfully completed a drug court treatment program, mental~~
243 ~~health treatment program, or veterans treatment program, the individual's offense has~~
244 ~~been dismissed or nolle prossed, and he or she has not been arrested during such program,~~
245 ~~excluding any arrest for a nonserious traffic offense; or~~
246 ~~(E)(5) The individual was acquitted of all of the charged offenses by a judge or jury~~
247 ~~unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial~~
248 ~~court through clear and convincing evidence that the harm otherwise resulting to the~~
249 ~~individual is clearly outweighed by the public interest in the criminal history record~~
250 ~~information being publicly available because either:~~
251 ~~(i)(A) The prosecuting attorney was barred from introducing material evidence against~~
252 ~~the individual on legal grounds, including, without limitation, the granting of a motion~~
253 ~~to suppress or motion in limine; or~~

254 ~~(ii)(B)~~ The individual has been formally charged with the same or similar offense
255 within the previous five years."

256 "(4)(A) When an individual was convicted in this state of a misdemeanor or a series of
257 misdemeanors arising from a single incident, provided that such conviction was not for
258 any offense listed in subparagraph (B) of this paragraph, and such individual has
259 completed the terms of his or her sentence and ~~has not been convicted of any crime in~~
260 ~~any jurisdiction for at least four years prior to filing a petition under this subparagraph,~~
261 ~~excluding any conviction for a nonserious traffic offense, and provided, further, that he~~
262 ~~or she has no pending charged offenses, he or she may petition the court in which the~~
263 ~~conviction occurred to restrict access to criminal history record information. Such court~~
264 ~~shall maintain jurisdiction over the case for this limited purpose and duration. Such~~
265 ~~petition shall be served on the prosecuting attorney. If a hearing is requested, such~~
266 ~~hearing shall be held within 90 days of the filing of the petition. The court shall hear~~
267 ~~evidence and shall grant an order restricting such criminal history record information~~
268 ~~if it determines that the harm otherwise resulting to the individual clearly outweighs the~~
269 ~~public's interest in the criminal history record information being publicly available~~ paid
270 any restitution imposed by the convicting court, and was not convicted of one or more
271 of the offenses listed in subparagraph (B) of this paragraph, access to the criminal
272 history record of such convictions shall be restricted.

273 (B) Record restriction under this subsection shall not be appropriate if the individual
274 was convicted of:

275 (i) Family violence simple assault in violation of subsection (d) of Code
276 Section 16-5-20, unless the individual was a youthful offender;

277 (ii) Family violence simple battery in violation of subsection (f) of Code
278 Section 16-5-23, unless the individual was a youthful offender;

279 (iii) Family violence battery in violation of subsection (f) of Code Section 16-5-23.1,
280 unless the individual was a youthful offender;

- 281 (iv) Family violence stalking in violation of Code Section 16-5-90;
- 282 (v) Violating a family violence order in violation of Code Section 16-5-95;
- 283 ~~(vi) Child molestation in violation of Code Section 16-6-4;~~
- 284 ~~(vii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;~~
- 285 ~~(viii) Improper sexual contact by employee or agent and improper sexual contact by~~
- 286 ~~a foster parent in violation of Code Section 16-6-5.1;~~
- 287 ~~(ix) Public indecency in violation of subsection (b) of Code Section 16-6-8;~~
- 288 ~~(x) Keeping a place of prostitution in violation of Code Section 16-6-10;~~
- 289 ~~(xi) Pimping in violation of Code Section 16-6-11;~~
- 290 ~~(xii) Pandering by compulsion in violation of Code Section 16-6-12;~~
- 291 ~~(xiii) Sexual battery in violation of Code Section 16-6-22.1;~~
- 292 ~~(xiv) Obstructing or hindering persons making emergency telephone call in violation~~
- 293 ~~of Code Section 16-10-24.3;~~
- 294 ~~(xv) Peeping Toms in violation of Code Section 16-11-61;~~
- 295 ~~(xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of~~
- 296 ~~Chapter 12 of Title 16;~~
- 297 ~~(xvii) Theft in violation of Chapter 8 of Title 16; provided, however, that such~~
- 298 ~~prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud~~
- 299 ~~in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or~~
- 300 ~~(xviii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.~~
- 301 (vi) A serious violent felony as such term is defined in Code Section 17-10-6.1;
- 302 (vii) A sexual offense as such term is defined in Code Section 17-10-6.2;
- 303 (viii) Trafficking of persons for labor or sexual servitude as prohibited by Code
- 304 Section 16-5-46;
- 305 (ix) Neglecting disabled adults, elder persons, or residents as prohibited by Code
- 306 Section 16-5-101;

307 (x) Exploitation and intimidation of disabled adults, elder persons, and residents as
308 prohibited by Code Section 16-5-102;
309 (xi) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;
310 (xii) Electronically furnishing obscene material to a minor as prohibited by Code
311 Section 16-12-100.1;
312 (xiii) Computer pornography and child exploitation as prohibited by Code
313 Section 16-12-100.2;
314 (xiv) Driving under the influence as prohibited by Code Section 40-6-391; or
315 (xv) Any of the following offenses when such offense is committed against a law
316 enforcement officer while such officer is engaged in the performance of his or her
317 official duties:

318 (I) Aggravated assault in violation of Code Section 16-5-21;
319 (II) Aggravated battery in violation of Code Section 16-5-24; or
320 (III) Obstruction of a law enforcement officer in violation of subsection (b) of Code
321 Section 16-10-24, if such violation results in serious physical harm or injury to such
322 officer.

323 ~~(C) An individual shall be limited to filing a petition under this paragraph to a lifetime~~
324 ~~maximum of requesting record restriction on two convictions for a misdemeanor or a~~
325 ~~series of misdemeanors arising from a single incident. For the purposes of this~~
326 ~~subparagraph, the conviction of two or more offenses charged in separate counts of one~~
327 ~~or more accusations consolidated for trial shall be deemed to be one conviction. If a~~
328 ~~petition under this subsection has been denied, an individual may file a subsequent~~
329 ~~petition on the same conviction for a misdemeanor or series of misdemeanors arising~~
330 ~~from a single incident after the expiration of two years from the date of the final order~~
331 ~~from the previous petition. The restriction provided in subparagraph (A) of this~~
332 ~~paragraph shall not prevent the disclosure of the criminal history record of an individual~~
333 ~~who has applied for employment with:~~

334 (i) A public school, private school, child welfare agency, or a person or entity that
 335 provides day care for minor children or after-school care for minor children and the
 336 individual was convicted for a violation of Title 16 in Article 5 of Chapter 5,
 337 Chapter 6, or Part 2 or 3 of Article 3 of Chapter 12;

338 (ii) A long-term care facility as defined in Code Section 31-8-51 or with a person or
 339 entity that offers day care for elderly persons and the individual who is the subject of
 340 the inquiry was prosecuted for a violation of Title 16 in Article 5 or 8 of Chapter 5;

341 or

342 (iii) A facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to
 343 individuals who are mentally ill as defined in Code Section 37-1-1 or developmentally
 344 disabled as defined in Code Section 37-1-1 and the individual who is the subject of
 345 the inquiry was prosecuted for a violation of Title 16 in Article 8 of Chapter 5 or
 346 Chapter 6."

347 ~~“(7) When an individual was convicted in this state of an offense for which that~~
 348 ~~individual has been granted a pardon from the State Board of Pardons and Paroles as~~
 349 ~~provided in the Constitution and Code Section 42-9-42, provided that the offense was not~~
 350 ~~a serious violent felony as such term is defined in Code Section 17-10-6.1 or a sexual~~
 351 ~~offense as such term is defined in Code Section 17-10-6.2, and provided, further, that~~
 352 ~~such individual has not been convicted of any crime in any jurisdiction, excluding any~~
 353 ~~conviction for a nonserious traffic offense, since the pardon was granted, and provided,~~
 354 ~~further, that he or she has no pending charged offenses, he or she may petition the court~~
 355 ~~in which the conviction occurred to restrict access to criminal history record information.~~
 356 ~~Such court shall maintain jurisdiction over the case for this limited purpose and duration.~~
 357 ~~Such petition shall be served on the prosecuting attorney. If a hearing is requested, such~~
 358 ~~hearing shall be held within 90 days of the filing of the petition. The court shall hear~~
 359 ~~evidence and shall grant an order restricting such criminal history record information if~~

360 ~~it determines that the harm otherwise resulting to the individual clearly outweighs the~~
361 ~~public's interest in the criminal history record information being publicly available.~~

362 (7)(A) When an individual was convicted in this state of felony charges or a series of
363 felonies arising from a single incident, provided that such individual successfully
364 completed the terms of his or her sentence and paid any restitution imposed by the
365 convicting court, and provided that he or she was not convicted of one or more of the
366 offenses listed in subparagraph (B) of this paragraph, access to the criminal history
367 record of such convictions shall be restricted.

368 (B) The record restrictions provided in subparagraph (A) of this paragraph shall not be
369 available if the individual was convicted of any of the following offenses:

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

371 (ii) A sexual offense as such term is defined in Code Section 17-10-6.2;

372 (iii) Trafficking of persons for labor or sexual servitude as prohibited by Code
373 Section 16-5-46;

374 (iv) Neglecting disabled adults, elder persons, or residents as prohibited by Code
375 Section 16-5-101;

376 (v) Exploitation and intimidation of disabled adults, elder persons, and residents as
377 prohibited by Code Section 16-5-102;

378 (vi) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;

379 (vii) Electronically furnishing obscene material to a minor as prohibited by Code
380 Section 16-12-100.1;

381 (viii) Computer pornography and child exploitation as prohibited by Code
382 Section 16-12-100.2;

383 (ix) Driving under the influence as prohibited by Code Section 40-6-391; or

384 (x) Any of the following offenses when such offense is committed against a law
385 enforcement officer while such officer is engaged in the performance of his or her
386 official duties:

- 387 (I) Aggravated assault in violation of Code Section 16-5-21;
388 (II) Aggravated battery in violation of Code Section 16-5-24; or
389 (III) Obstruction of a law enforcement officer in violation of subsection (b) of Code
390 Section 16-10-24, if such violation results in serious physical harm or injury to such
391 officer.
- 392 (C) The restriction provided in subparagraph (A) of this paragraph shall not prevent the
393 disclosure of the criminal history record of an individual who has applied for
394 employment with:
- 395 (i) A public school, private school, child welfare agency, or a person or entity that
396 provides day care for minor children or after-school care for minor children and the
397 individual was convicted for a violation of Title 16 in Article 5 of Chapter 5,
398 Chapter 6, or Part 2 or 3 of Article 3 of Chapter 12;
- 399 (ii) A long-term care facility as defined in Code Section 31-8-51 or with a person or
400 entity that offers day care for elderly persons and the individual who is the subject of
401 the inquiry was prosecuted for a violation of Title 16 in Article 5 or 8 of Chapter 5;
402 or
- 403 (iii) A facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to
404 individuals who are mentally ill as defined in Code Section 37-1-1 or developmentally
405 disabled as defined in Code Section 37-1-1 and the individual who is the subject of
406 the inquiry was prosecuted for a violation of Title 16 in Article 8 of Chapter 5 or
407 Chapter 6."

408 **PART III**

409 **SECTION 3-1.**

410 Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is
411 amended by revising subsection (c) of Code Section 42-8-34, relating to sentencing hearings

412 and determinations, presentence investigations, payment of fees, fines, and costs,
413 post-conviction, presentence bond, continuing jurisdiction, and transferal of probation
414 supervision, as follows:

415 "(c) Subject to the provisions of subsection (a) of Code Section 17-10-1, Code
416 Section 17-10-1.5, and subsection (f) of Code Section 17-10-3, if it appears to the court
417 upon a hearing of the matter that the defendant is not likely to engage in a criminal course
418 of conduct and that the ends of justice and the welfare of society do not require that the
419 defendant shall presently suffer the penalty imposed by law, the court in its discretion shall
420 impose sentence upon the defendant but may stay and suspend the execution of the
421 sentence or any portion thereof or may place him or her on probation under the supervision
422 and control of the officer ~~for the duration of the sentence~~. The period of probation or
423 suspension shall not exceed the maximum sentence of confinement which could be
424 imposed on the defendant."

425 **SECTION 3-2.**

426 Said chapter is further amended by repealing subsection (g) of Code Section 42-8-34.1,
427 relating to revocation of probated or suspended sentence, alternative sentencing, burden of
428 proof, and length of probation supervision.

429 **SECTION 3-3.**

430 Said chapter is further amended by revising Code Section 42-8-35.2, relating to special term
431 of probation, when imposed, revocation, and suspension, as follows:

432 "42-8-35.2.

433 ~~(a) Notwithstanding any other provisions of law, the court, when imposing a sentence of~~
434 ~~imprisonment after a conviction of a violation of subsection (b) or (d) of Code Section~~
435 ~~16-13-30 or after a conviction of a violation of Code Section 16-13-31, shall impose a~~
436 ~~special term of probation of three years in addition to such term of imprisonment; provided,~~

437 ~~however, that upon a second or subsequent conviction of a violation of the provisions of~~
438 ~~such Code sections, the special term of probation shall be six years in addition to any term~~
439 ~~of imprisonment.~~

440 ~~(b) A special term of probation imposed under this Code section may be revoked if the~~
441 ~~terms and conditions of probation are violated. In such circumstances the original term of~~
442 ~~imprisonment shall be increased by the period of the special term of probation and the~~
443 ~~resulting new term of imprisonment shall not be diminished by the time which was spent~~
444 ~~on special probation. A person whose special term of probation has been revoked may be~~
445 ~~required to serve all or part of the remainder of the new term of imprisonment. A special~~
446 ~~term of probation provided for in this Code section shall be in addition to, and not in lieu~~
447 ~~of, any other probation provided for by law and shall be supervised in the same manner as~~
448 ~~other probations as provided in this chapter.~~

449 ~~(c) Upon written application by the probationer to the trial court, the court may, in its~~
450 ~~discretion, suspend the balance of any special term of probation, provided that at least~~
451 ~~one-half of such special term of probation has been completed and all fines associated with~~
452 ~~the original sentence have been paid and all other terms of the original sentence and the~~
453 ~~terms of the special probation have been met by the probationer Reserved.~~

454 **SECTION 3-4.**

455 Said chapter is further amended by revising Code Section 42-8-37, relating to effect of
456 termination of probated portion of sentence, review of cases of persons receiving probated
457 sentence, and reports, as follows:

458 "42-8-37.

459 (a) Upon the termination of the probated portion of a sentence, the probationer shall be
460 released from probation and shall not be liable to sentence for the crime for which
461 probation was allowed; provided, however, that the foregoing shall not be construed to
462 prohibit the conviction and sentencing of the probationer for the subsequent commission

463 of the same or a similar offense or for the subsequent continuation of the offense for which
464 he or she was previously sentenced.

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

468 ~~(c)(1) The case of each person receiving a probated sentence of three years or more shall~~
469 ~~be reviewed by the officer responsible for such case after service of three years on~~
470 ~~probation, and a written report of the probationer's progress shall be submitted to the~~
471 ~~sentencing court along with the officer's recommendation as to early termination. The~~
472 ~~report shall specifically state whether the probationer has been arrested for anything other~~
473 ~~than a nonserious traffic offense as defined in Code Section 35-3-37, whether the~~
474 ~~probationer has been compliant with the general and special conditions of probation~~
475 ~~imposed, and the status of the probationer's payments toward restitution or any fines and~~
476 ~~fees imposed. Each such case shall be reviewed and a written report submitted annually~~
477 ~~thereafter until the termination, expiration, or other disposition of the case.~~

478 ~~(2) This subsection is intended to be retroactive and applied to any case when a person~~
479 ~~received a probated sentence of three years or more.~~

480 ~~(d)(1) When a probationer is on probation for a qualified offense, DCS shall file a~~
481 ~~petition to terminate his or her probation if, after serving three years on probation, the~~
482 ~~probationer has:~~

483 ~~(A) Paid all restitution owed;~~

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

485 ~~(C) Not been arrested for anything other than a nonserious traffic offense as defined~~
486 ~~in Code Section 35-3-37.~~

487 ~~(2) When the court is presented with such petition, it shall take whatever action it~~
488 ~~determines would be for the best interest of justice and the welfare of society. When such~~

489 ~~petition is unopposed, the court shall issue an order as soon as possible or otherwise set~~
490 ~~the matter for a hearing within 90 days of receiving such petition.~~
491 ~~(3) This subsection is intended to be retroactive and applied to any probationer under the~~
492 ~~supervision of DCS."~~

493 **SECTION 3-5.**

494 Said chapter is further amended by revising subsection (b) of Code Section 42-8-102, relating
495 to probation and supervision, determination of fees, fines, and restitution, converting moneys
496 owed to community service or educational advancement, continuing jurisdiction, revocation,
497 and transfer, as follows:

498 "(b) If it appears to the court upon a hearing of the matter that the defendant is not likely
499 to engage in an unlawful course of conduct and that the ends of justice and the welfare of
500 society do not require that the defendant shall presently suffer the penalty imposed by law,
501 the court in its discretion may place the defendant on probation under the supervision and
502 control of a probation officer or private probation officer for all or a portion of the sentence
503 or may impose a sentence upon the defendant but stay and suspend the execution of such
504 sentence or any portion thereof. Subject to Code Section 17-10-1.5, the ~~The~~ period of
505 probation or suspension shall not exceed the maximum sentence of confinement which
506 could be imposed on the defendant; provided, however, that nothing in this chapter shall
507 be construed to limit the ability of a court to toll a sentence as provided in this article."

508

PART VI

509

SECTION 4-1.

510 Part I and Part III of this Act shall apply to sentencing that occurs on or after July 1, 2021.

511

SECTION 4-2.

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