

Senate Bill 174

By: Senators Kennedy of the 18th, Miller of the 49th, Martin of the 9th, Walker III of the 20th, Shafer of the 48th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To provide for reform for individuals supervised under accountability courts, the Department
 2 of Community Supervision, and the State Board of Pardons and Paroles and enact reforms
 3 recommended by the Georgia Council on Criminal Justice Reform; to amend Title 15 and
 4 Code Section 49-3-6 of the Official Code of Georgia Annotated, relating to courts and
 5 functions of a county or district department of family and children services, respectively, so
 6 as to require veterans court divisions to adhere to the same policies, procedures, and
 7 standards as other accountability courts; to change provisions relating to family treatment
 8 court divisions; to provide for protocols involving family treatment court divisions; to amend
 9 Article 1 of Chapter 10 of Title 17, Title 42, and Code Section 51-1-54 of the Official Code
 10 of Georgia Annotated, relating to the procedure for sentencing and the imposition of
 11 punishment, penal institutions, and the Program and Treatment Completion Certificate,
 12 respectively, so as to provide for a behavioral incentive date under certain circumstances; to
 13 change provisions relating to active probation supervision; to provide for the use of updated
 14 evaluation tools; to provide for matters related to probation; to provide for the Board of
 15 Community Supervision to issue Program and Treatment Completion Certificates; to create
 16 certain rebuttable presumptions pertinent to individuals issued such certificates; to modify
 17 provisions relating to the confidentiality of records and information held by the State Board
 18 of Pardons and Paroles under certain circumstances; to allow community supervision officers
 19 to provide supervision to defendants in certain accountability courts under certain
 20 circumstances; to provide for definitions; to allow the prosecuting attorney and victim of a
 21 crime to submit information to the State Board of Pardons and Paroles relative to its
 22 consideration of the parole or conditional release of an inmate; to require that conditions of
 23 probation be imposed as conditions of parole when a defendant is serving a split sentence;
 24 to provide for notice of certain hearings; to clarify provisions relating to commutation; to
 25 provide for related matters; to repeal conflicting laws; and for other purposes.

26 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

27 **PART I**

S. B. 174

28

SECTION 1-1.

29 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
30 paragraph (4) of subsection (b) of Code Section 15-1-17, relating to veterans court divisions,
31 as follows:

32 ~~"(4)(A) The Council of Accountability Court Judges of Georgia shall adopt standards~~
33 ~~and practices for veterans court divisions, taking into consideration guidelines and~~
34 ~~principles based on available current research and findings published by experts on~~
35 ~~veterans' health needs and treatment options, including, but not limited to, the VA and~~
36 ~~the Georgia Department of Veterans Service. The Council of Accountability Court~~
37 ~~Judges of Georgia shall update its standards and practices to incorporate research,~~
38 ~~findings, and developments in the veterans court field if any such research, findings, or~~
39 ~~developments are created. Each veterans court division shall adopt policies and~~
40 ~~practices that will be consistent with any standards and practices published by the~~
41 ~~Council of Accountability Court Judges of Georgia. Such standards and practices shall~~
42 ~~serve as a flexible framework for developing effective veterans court divisions and~~
43 ~~provide a structure for conducting research and evaluation for accountability. Such~~
44 ~~standards and practices are not intended to be a certification or regulatory checklist.~~

45 (B) The Council of Accountability Court Judges of Georgia shall provide technical
46 assistance to veterans court divisions to assist them with the implementation of policies
47 and practices, including, but not limited to, guidance on the implementation of risk and
48 needs assessments in veterans court divisions.

49 (C) The Council of Accountability Court Judges of Georgia shall create and manage
50 a certification and peer review process to ensure veterans court divisions are adhering
51 to the Council of Accountability Court Judges of Georgia's standards and practices and
52 shall create a waiver process for veterans court divisions to seek an exception to the
53 Council of Accountability Court Judges of Georgia's standards and practices. In order
54 to receive state appropriated funds, any veterans court division established on and after
55 July 1, 2017, shall be certified pursuant to this subparagraph or, for good cause shown
56 to the Council of Accountability Court Judges of Georgia, shall receive a waiver from
57 the Council of Accountability Court Judges of Georgia.

58 (D) On and after July 1, 2017, the award of any state funds for a veterans court division
59 shall be conditioned upon a veterans court division attaining certification or a waiver
60 by the Council of Accountability Court Judges of Georgia. On or before September 1,
61 the Council of Accountability Court Judges of Georgia shall publish an annual report
62 listing certified veterans court divisions.

63 (E) The Council of Accountability Court Judges of Georgia and the Georgia Council
 64 on Criminal Justice Reform shall develop and manage an electronic information system
 65 for performance measurement and accept submission of performance data in a
 66 consistent format from all veterans court divisions. The Council of Accountability
 67 Court Judges of Georgia shall identify elements necessary for performance
 68 measurement, including, but not limited to, recidivism, the number of moderate-risk
 69 and high-risk participants in a veterans court division, drug testing results, drug testing
 70 failures, participant employment, the number of participants who successfully complete
 71 the program, and the number of participants who fail to complete the program.
 72 (F) On or before July 1, 2018, and every three years thereafter, the Council of
 73 Accountability Court Judges of Georgia shall conduct a performance peer review of the
 74 veterans court divisions for the purpose of improving veterans court division policies
 75 and practices and the certification and recertification process."

76 **SECTION 1-2.**

77 Said title is further amended by revising paragraph (4) of subsection (a) and subparagraph
 78 (a)(5)(C) of Code Section 15-11-70, relating to the establishment of family treatment court
 79 divisions, as follows:

80 "(4) Each family treatment court division shall establish a planning group to develop a
 81 work plan. The planning group shall include the judges, prosecuting attorneys, special
 82 assistant attorneys general, public defenders, attorneys who represent children and
 83 parents, law enforcement officials, probation officers, community supervision officers,
 84 court appointed special advocates, guardians ad litem, DFCS employees, and other
 85 individuals having expertise in services available to families in dependency proceedings.
 86 The work plan shall address the operational, coordination, resource, information
 87 management, and evaluation needs of the family treatment court division. The work plan
 88 shall include family treatment court division policies and practices related to
 89 implementing the standards and practices developed pursuant to paragraph (5) of this
 90 subsection. The work plan shall ensure a risk and needs assessment is used to identify
 91 the likelihood of recidivating and identify the needs that, when met, reduce recidivism.
 92 The work plan shall include eligibility criteria for the family treatment court division.
 93 The family treatment court division shall combine judicial supervision, treatment of
 94 family treatment court division participants, drug testing, and mental health treatment."

95 "(C) The Council of Accountability Court Judges of Georgia shall create and manage
 96 a certification and peer review process to ensure family treatment court divisions are
 97 adhering to the Council of Accountability Court Judges of Georgia's standards and
 98 practices and shall create a waiver process for family treatment court divisions to seek

99 an exception to the Council of Accountability Court Judges of Georgia's standards and
 100 practices. The Council of Accountability Court Judges of Georgia shall create a
 101 certification process to allow a court to demonstrate its need for additional state grant
 102 funds, as authorized by Code Section 15-11-52, for one or more part-time judges to
 103 operate a family treatment court division. In order to receive state appropriated funds,
 104 any family treatment court division established on and after July 1, 2017, shall be
 105 certified pursuant to this subparagraph or, for good cause shown to the Council of
 106 Accountability Court Judges of Georgia, shall receive a waiver from the Council of
 107 Accountability Court Judges of Georgia."

108 SECTION 1-3.

109 Said title is further amended in subsection (a) of Code Section 15-11-70, relating to the
 110 establishment of family treatment court divisions, by adding a new paragraph to read as
 111 follows:

112 "(11) A court instituting a family treatment court division shall comply with the periodic
 113 review process as required by Code Section 15-11-216."

114 SECTION 1-4.

115 Said title is further amended by revising subsection (f) of Code Section 15-11-212, relating
 116 to the disposition of a dependent child, as follows:

117 "(f) If a child is adjudicated as a dependent child and the dependency is found to have been
 118 the result of substance abuse by his or her parent, guardian, or legal custodian and the court
 119 orders transfer of temporary legal custody of such child, the court shall be authorized to
 120 further order that legal custody of such child may not be transferred back to his or her
 121 parent, guardian, or legal custodian unless such parent, guardian, or legal custodian
 122 ~~undergoes:~~

123 (1) Undergoes substance abuse treatment and random substance abuse screenings and
 124 those screenings remain negative for a period of no less than ~~six~~ 12 consecutive months;

125 or

126 (2) Successfully completes programming through a family treatment court division."

127 SECTION 1-5.

128 Code Section 49-3-6 of the Official Code of Georgia Annotated, relating to the functions of
 129 a county or district department of family and children services, is amended by revising
 130 subsection (a) as follows:

131 "(a) The primary purpose of county departments shall be to protect children. To achieve
 132 this primary purpose, the county departments shall, in accordance with rules and
 133 regulations of the Division of Family and Children Services of the department:

- 134 (1) Investigate reports of abuse ~~and~~ or neglect;
- 135 (2) Assess, promote, and support the safety of a child in a safe and stable family or other
 136 appropriate placement in response to allegations of abuse or neglect;
- 137 (3) Work cooperatively with law enforcement regarding reports that include criminal
 138 conduct allegations; ~~and~~
- 139 (4) In collaboration with the family treatment court division planning group, if one
 140 exists, establish a written protocol to assess cases involving substantiated reports of abuse
 141 or neglect for possible referral to a family treatment court division. Such protocol shall
 142 be consistent with the Council of Accountability Courts of Georgia's certification
 143 requirements and include sufficient criteria to determine the need for substance abuse
 144 treatment; and
- 145 ~~(4)~~(5) Without compromising child safety, coordinate services to achieve and maintain
 146 permanency on behalf of the child, strengthen the family, and provide prevention,
 147 intervention, and treatment services pursuant to this title."

148 **PART II**

149 **SECTION 2-1.**

150 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
 151 procedure for sentencing and the imposition of punishment, is amended by revising
 152 paragraphs (1) and (2) of subsection (a) and subsection (d) of Code Section 17-10-1, relating
 153 to fixing of sentence, as follows:

154 "(a)(1)(A) Except in cases in which life imprisonment, life without parole, or the death
 155 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
 156 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
 157 shall prescribe a determinate sentence for a specific number of months or years which
 158 shall be within the minimum and maximum sentences prescribed by law as the
 159 punishment for the crime. The judge imposing the sentence is granted power and
 160 authority to suspend or probate all or any part of the entire sentence under such rules
 161 and regulations as the judge deems proper, including service of a probated sentence in
 162 the sentencing options system, as provided by Article ~~9~~6 of Chapter ~~8~~3 of Title 42, and
 163 including the authority to revoke the suspension or probation when the defendant has
 164 violated any of the rules and regulations prescribed by the court, even before the
 165 probationary period has begun, subject to the conditions set out in this subsection;

166 provided, however, that such action shall be subject to the provisions of Code Sections
 167 17-10-6.1 and 17-10-6.2.

168 (B) When a defendant is convicted of felony offenses, has no prior felony conviction,
 169 and the court imposes a sentence of probation, not to include a split sentence, the court
 170 shall include a behavioral incentive date in its sentencing order that does not exceed
 171 three years from the date such sentence is imposed. Within 60 days of the expiration
 172 of such incentive date, if the defendant has not been arrested for anything other than a
 173 nonserious traffic offense as defined in Code Section 35-3-37, has been compliant with
 174 the general and special conditions of probation imposed, and has paid all restitution
 175 owed, the Department of Community Supervision shall notify the prosecuting attorney
 176 and the court of such facts. The Department of Community Supervision shall provide
 177 the court with an order to terminate such defendant's probation which the court shall
 178 execute unless the court or the prosecuting attorney requests a hearing on such matter
 179 within 30 days of the receipt of such order. The court shall take whatever action it
 180 determines would be for the best interest of justice and the welfare of society.

181 (2) Active probation supervision shall terminate in all cases no later than two years from
 182 the commencement of active probation supervision unless specially extended or
 183 reinstated by the sentencing court upon notice and hearing and for good cause shown;
 184 provided, however, that in those cases involving the collection of ~~fin~~es, restitution, ~~or~~
 185 ~~other funds~~, the period of active probation supervision shall remain in effect for so long
 186 as any such obligation is outstanding, or until termination of the sentence, whichever first
 187 occurs, and for those cases involving a conviction under Chapter 15 of Title 16, the
 188 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation
 189 supervision shall remain in effect until the termination of the sentence, but shall not
 190 exceed five years unless as otherwise provided in this paragraph. Supervision shall not
 191 be required for defendants sentenced to probation while the defendant is in the legal
 192 custody of the Department of Corrections or the State Board of Pardons and Paroles."

193 "(d) In any case involving a misdemeanor or a felony in which the defendant has been
 194 punished in whole or in part by a fine, the sentencing judge shall be authorized to allow the
 195 defendant to satisfy such fine through community service as defined in Code Section
 196 42-3-50. One hour of community service shall equal the dollar amount of one hour of paid
 197 labor at the minimum wage under the federal Fair Labor Standards Act of 1938, ~~as now or~~
 198 ~~hereafter amended~~ in effect on January 1, 2017, unless otherwise specified by the
 199 sentencing judge. A defendant shall be required to serve the number of hours in
 200 community service which equals the number derived by dividing the amount of the fine by
 201 the federal minimum hourly wage or by the amount specified by the sentencing judge.
 202 Prior to or subsequent to sentencing, a defendant, or subsequent to sentencing, a

203 community supervision officer, may request that the court ~~that~~ make all or any portion of
 204 a fine ~~may~~ be satisfied under this subsection."

205 **SECTION 2-2.**

206 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 207 by revising subsection (c) of Code Section 42-2-11, relating to the powers and duties of the
 208 Board of Corrections, as follows:

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

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

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

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

218 (B) The board shall adopt rules and regulations governing the management and
 219 treatment of inmates coming under its custody to ensure that evidence based practices,
 220 including the use of a risk and needs assessment and any other method the board deems
 221 appropriate, guide decisions related to preparing inmates for release into the
 222 community. Any risk and needs assessment instrument shall be revalidated by
 223 January 1, 2019, and every five years thereafter. The board shall require the department
 224 to collect and analyze data and performance outcomes relevant to the level and type of
 225 treatment given to an inmate and the outcome of the treatment on his or her recidivism
 226 and prepare an annual report regarding such information which shall be submitted to
 227 the Governor, the Lieutenant Governor, the Speaker of the House of Representatives,
 228 and the chairpersons of the House Committee on ~~State Properties~~ Judiciary and the
 229 Senate ~~State Institutions and Property~~ Judiciary Committee.

230 (C) Using evidence based practices, the board shall evaluate the quality of the
 231 programming utilized at all department facilities, except state prisons, by January 1,
 232 2019, and every five years thereafter, and shall publicly publish its report."

233 **SECTION 2-3.**

234 Said title is further amended by revising subsections (g) through (j) of and adding a new
 235 subsection to Code Section 42-3-2, relating to the creation of the Board of Community
 236 Supervision and its duties, to read as follows:

237 "(g)(1) As used in this subsection, the term:

238 (A) 'Evidence based practices' means supervision policies, procedures, programs, and
 239 practices that scientific research demonstrates reduce recidivism among individuals
 240 who are under some form of correctional supervision.

241 (B) 'Recidivism' means returning to prison or jail within three years of being placed on
 242 probation or being discharged or released from a ~~Department of Corrections~~ department
 243 or jail facility.

244 (2) The board shall adopt rules and regulations governing the management and treatment
 245 of probationers and parolees to ensure that evidence based practices, including the use of
 246 a risk and needs assessment and any other method the board deems appropriate, guide
 247 decisions related to managing probationers and parolees in the community. Any risk and
 248 needs assessment instrument shall be revalidated by January 1, 2019, and every five years
 249 thereafter. The board shall require DCS to collect and analyze data and performance
 250 outcomes relevant to the level and type of treatment given to a probationer or parolee and
 251 the outcome of the treatment on his or her recidivism and prepare an annual report
 252 regarding such information which shall be submitted to the Governor, the Lieutenant
 253 Governor, the Speaker of the House of Representatives, and the chairpersons of the
 254 House Committee on ~~State Properties~~ Judiciary and the Senate ~~State Institutions and~~
 255 ~~Property~~ Judiciary Committee.

256 (3) Using evidence based practices, the board shall evaluate the quality of the
 257 programming utilized at day reporting centers by January 1, 2019, and every five years
 258 thereafter, and shall publicly publish its report.

259 (h)(1) The board, acting alone or in cooperation with the State Board of the Technical
 260 College System of Georgia or other relevant educational organizations and agencies, may
 261 provide educational programs for probationers and shall exercise program approval
 262 authority. The board may enter into written agreements with other educational
 263 organizations and agencies in order to provide probationers with such education and
 264 employment skills most likely to encourage gainful employment and discourage return
 265 to criminal activity. The board may also enter into agreements with other educational
 266 organizations and agencies to attain program certification for its vocational and technical
 267 education programs.

268 (2) The board shall create a Program and Treatment Completion Certificate that may be
 269 issued to probationers under the rules and regulations of the board. Such certificate shall
 270 symbolize a probationer's achievements toward successful reentry into society. The
 271 board's rules and regulations relating to the issuance of such certificate shall take into
 272 account a probationer's violations of the terms of his or her probation and any other factor
 273 the board deems relevant to an individual's qualification for such certificate. The board's

274 rules and regulations shall specify eligibility considerations and requirements for
 275 completion of such certificate.

276 (3) Nothing in this subsection shall be construed to constitute a waiver of the sovereign
 277 immunity of the state, and no action shall be maintained against the state or any agency
 278 or department thereof for issuance of or failure to issue any Program and Treatment
 279 Completion Certificate.

280 ~~(h)~~(i) The board shall adopt rules and regulations and such rules and regulations shall be
 281 adopted, established, promulgated, amended, repealed, filed, and published in accordance
 282 with the applicable provisions and procedure as set forth in Chapter 13 of Title 50, the
 283 'Georgia Administrative Procedure Act.' The courts shall take judicial notice of any such
 284 rules or regulations.

285 ~~(i)~~(j) As used in this Code section, the term 'rules and regulations' shall have the same
 286 meaning as the word 'rule' as defined in paragraph (6) of Code Section 50-13-2.

287 ~~(j)~~(k) The board shall perform duties required of it by law and shall, in addition thereto,
 288 be responsible for promulgation of all rules and regulations not in conflict with this chapter
 289 that may be necessary and appropriate to the administration of DCS, to the accomplishment
 290 of the purposes of this chapter and Chapters 8 and 9 of this title, and to the performance of
 291 the duties and functions of DCS as set forth in this chapter and Chapters 8 and 9 of this
 292 title."

293 SECTION 2-4.

294 Said title is further amended by revising subsection (c) of Code Section 42-5-36, relating to
 295 confidentiality of information supplied by inmates, penalties for breach, classified nature of
 296 department investigation reports, confidentiality of certain identifying information, and
 297 custodians of records, as follows:

298 "(c)(1) As used in this subsection, the term:

299 (A) 'Serious offense' shall have the same meaning as set forth in Code Section 42-9-42.

300 (B) 'Serious violent felony' shall have the same meaning as set forth in Code Section
 301 17-10-6.1.

302 (2) All institutional inmate files and central office inmate files of the department shall
 303 be classified as confidential state secrets and privileged under law, unless declassified in
 304 writing by the commissioner; provided, however, that these records shall be subject to
 305 subpoena by a court of competent jurisdiction of this state and provided, further, that the
 306 commissioner shall prepare a report of the conduct of record of any inmate serving a
 307 sentence for a serious violent felony. When the report includes conduct which would
 308 constitute a serious offense, reasonably related information connected to such offense

309 shall be included in the report. Such report shall be subject to disclosure under paragraph
 310 (2) of subsection (a) of Code Section 42-9-43."

311 **SECTION 2-5.**

312 Said title is further amended by adding a new paragraph to Code Section 42-8-21, relating
 313 to definitions for the state-wide probation system, to read as follows:

314 "(3) 'Qualified offense' means a felony offense of:

315 (A) Burglary in the second degree in violation of Code Section 16-7-1;

316 (B) Possession of tools for the commission of crime in violation of Code Section
 317 16-7-20;

318 (C) Criminal damage to property in the second degree in violation of Code Section
 319 16-7-23;

320 (D) Interference with government property in violation of Code Section 16-7-24;

321 (E) Arson in the third degree in violation of Code Section 16-7-62;

322 (F) Burning of woodlands, brush, fields, or other lands in violation of Code Section
 323 16-7-63 when the punishment is as set forth in paragraph (2) of subsection (c) of Code
 324 Section 16-7-63;

325 (G) Theft in violation of Code Sections 16-8-2 through 16-8-9 when the punishment
 326 is as set forth in subparagraph (a)(1)(B) or (a)(1)(C) of Code Section 16-8-12;

327 (H) Theft by shoplifting in violation of Code Section 16-8-14;

328 (I) Refund fraud in violation of Code Section 16-8-14.1;

329 (J) Conversion of payments for real property improvements in violation of Code
 330 Section 16-8-15;

331 (K) Entering an automobile or other motor vehicle with intent to commit theft or felony
 332 in violation of Code Section 16-8-18;

333 (L) Livestock theft in violation of Code Section 16-8-20;

334 (M) Forgery in violation of Code Section 16-9-1;

335 (N) Printing, executing, or negotiating checks, drafts, orders, or debit card sales drafts
 336 knowing information thereon to be in error, fictitious, or assigned to another account
 337 holder in violation of Code Section 16-9-21;

338 (O) Financial transaction card offenses in violation of Code Section 16-9-31, 16-9-32,
 339 16-9-33, 16-9-34, 16-9-35, 16-9-36.1, or 16-9-37, provided that the aggregate value of
 340 the loss does not exceed \$25,000.00;

341 (P) Failing to pay for natural products or chattels in violation of Code Section 16-9-58;

342 (Q) Purchasing, possessing, manufacturing, delivering, distributing, administering,
 343 selling, or possessing with the intent to distribute controlled substances, marijuana,
 344 counterfeit substances, or flunitrazepam in violation of Code Section 16-13-30;

345 (R) Unlawfully manufacturing, delivering, distributing, selling, or possessing with the
 346 intent to distribute noncontrolled substances in violation of Code Section 16-13-30.1;
 347 (S) Possession of substances containing ephedrine or pseudoephedrine or sales of
 348 products containing those ingredients in violation of Code Section 16-13-30.3 when the
 349 punishment is as set forth in paragraph (3) of subsection (b) of Code Section
 350 16-13-30.3; and
 351 (T) Violation of Article 3 of Chapter 13 of Title 16 when the punishment is as set forth
 352 in subsection (b) of Code Section 16-13-79."

353 **SECTION 2-6.**

354 Said title is further amended by revising Code Section 42-8-27, relating to the duties of
 355 community supervision officers, as follows:

356 "42-8-27.

357 An officer shall supervise and counsel probationers and parolees in the judicial circuit to
 358 which he or she is assigned. Each officer shall perform the duties prescribed in this chapter
 359 and other duties as are prescribed by DCS and shall make and keep any records and files
 360 and make such reports as are required of him or her by DCS, the State Board of Pardons
 361 and Paroles, or a court. Officers shall be authorized to provide supervision of defendants
 362 who are participants in a drug court division, mental health court division, or veterans court
 363 division operated by a superior court, provided that sufficient staff and resources exist for
 364 such supervision."

365 **SECTION 2-7.**

366 Said title is further amended by revising subsection (e) of Code Section 42-8-34, relating to
 367 sentencing hearings and determinations, as follows:

368 "(e)(1) The court may, in its discretion, require the payment of a fine or costs, or both,
 369 fees, or restitution as a condition of probation. Chapter 14 of Title 17 shall control when
 370 determining the amount of restitution. When probation supervision is required, the court
 371 may require the payment of a probation supervision fee as a condition of probation. In
 372 determining the financial obligations, other than restitution, to impose on the defendant,
 373 the court may consider:

374 (A) The defendant's financial resources and other assets, including whether any such
 375 asset is jointly controlled;

376 (B) The defendant's earnings and other income;

377 (C) The defendant's financial obligations, including obligations to dependents;

378 (D) The period of time during which the probation order will be in effect;

379 (E) The goal of the punishment being imposed; and

380 (F) Any other factor the court deems appropriate.

381 (2) The court may convert fines, statutory surcharges, and probation supervision fees to
 382 community service on the same basis as it allows a defendant to pay a fine through
 383 community service as set forth in subsection (d) of Code Section 17-10-1.

384 (3)(A) As used in this subsection, the term:

385 (i) 'Developmental disability' shall have the same meaning as set forth in Code
 386 Section 37-1-1.

387 (ii) 'Indigent' means an individual who earns less than 100 percent of the federal
 388 poverty guidelines unless there is evidence that the individual has other resources that
 389 might reasonably be used without undue hardship for such individual or his or her
 390 dependents.

391 (iii) 'Significant financial hardship' means a reasonable probability that an individual
 392 will be unable to satisfy his or her financial obligations for two or more consecutive
 393 months.

394 (iv) 'Totally and permanently disabled' shall have the same meaning as set forth in
 395 Code Section 49-4-80.

396 (B) The court shall waive, modify, or convert fines, statutory surcharges, probation
 397 supervision fees, and any other moneys assessed by the court or a provider of probation
 398 services upon a determination by the court prior to or subsequent to sentencing that a
 399 defendant has a significant financial hardship or inability to pay or that there are any
 400 other extenuating factors which prohibit payment or collection; provided, however, that
 401 the imposition of sanctions for failure to pay such sums shall be within the discretion
 402 of the court through judicial process or hearings.

403 (C) Unless rebutted by a preponderance of the evidence that a defendant will be able
 404 to satisfy his or her financial obligations without undue hardship to the defendant or his
 405 or her dependents, a defendant shall be presumed to have a significant financial
 406 hardship if he or she:

407 (i) Has a developmental disability;

408 (ii) Is totally and permanently disabled;

409 (iii) Is indigent; or

410 (iv) Has been released from confinement within the preceding 12 months and was
 411 incarcerated for more than 30 days before his or her release."

412 **SECTION 2-8.**

413 Said title is further amended by revising Code Section 42-8-37, relating to the effect of the
 414 termination of the probated portion of a sentence and the review of cases of persons receiving
 415 probated sentences, as follows:

416 "42-8-37.

417 (a) Upon the termination of the probated portion of a sentence, the probationer shall be
 418 released from probation and shall not be liable to sentence for the crime for which
 419 probation was allowed; provided, however, that the foregoing shall not be construed to
 420 prohibit the conviction and sentencing of the probationer for the subsequent commission
 421 of the same or a similar offense or for the subsequent continuation of the offense for which
 422 he or she was previously sentenced.

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

426 (c)(1) ~~The case of each person receiving a probated sentence of more than two years~~
 427 three years or more shall be reviewed by the officer responsible for such case after
 428 service of ~~two~~ three years on probation, and a written report of the probationer's progress
 429 shall be submitted to the sentencing court along with the officer's recommendation as to
 430 early termination. The report shall specifically state whether the probationer has been
 431 arrested for anything other than a nonserious traffic offense as defined in Code Section
 432 35-3-37, whether the probationer has been compliant with the general and special
 433 conditions of probation imposed, and the status of the probationer's payments toward
 434 restitution or any fines and fees imposed. Each such case shall be reviewed and a written
 435 report submitted annually thereafter until the termination, expiration, or other disposition
 436 of the case.

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

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

442 (A) Paid all restitution owed;

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

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

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

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

450 **SECTION 2-9.**

451 Said title is further amended by revising subsection (b) of Code Section 42-9-41, relating to
 452 the duty of the State Board of Pardons and Paroles to obtain and place in records information
 453 respecting persons subject to relief or placed on probation, investigations, and rules, as
 454 follows:

455 "(b) The board in its discretion may also obtain and place in its permanent records similar
 456 information on each person who may be placed on probation. The board shall immediately
 457 examine such records and any other records obtained and make such other investigation
 458 as it may deem necessary. It shall be the duty of the court and of all community
 459 supervision officers and other appropriate officers to furnish to the board, upon its request,
 460 such information as may be in their possession or under their control. The Department of
 461 Behavioral Health and Developmental Disabilities and all other state, county, and city
 462 agencies, all sheriffs and their deputies, and all peace officers shall cooperate with the
 463 board and shall aid and assist it in the performance of its duties. The board may make such
 464 rules as to the privacy or privilege of such information and as to its use by persons other
 465 than the board and its staff as may be deemed expedient in the performance of its duties,
 466 provided that such rules do not conflict with Code Section 42-9-61."

467 **SECTION 2-10.**

468 Said title is further amended by revising subsections (c), (d), and (e) of Code Section
 469 42-9-42, relating to the procedure for granting relief from sentence, conditions and
 470 prerequisites, public access to information, and violation of parole, as follows:

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

483 (d)(1) Any person who is paroled shall be released on such terms and conditions as the
 484 board shall prescribe, and if he or she is serving a split sentence, the board's conditions
 485 shall include all of the terms of probation imposed by the sentencing court. The board

486 shall diligently see that no peonage is allowed in the guise of parole relationship or
 487 supervision. The parolee shall remain in the legal custody of the board until the
 488 expiration of the maximum term specified in his or her sentence, ~~or until he or she is~~
 489 ~~pardoned by the board, or his or her supervision is terminated as provided in Code~~
 490 Section 42-9-52.

491 (2) The board may require the payment of a parole supervision fee of at least \$10.00 per
 492 month as a condition of parole or ~~other~~ conditional release. The monthly amount shall
 493 be set by rule of the board and shall be uniform state wide. ~~The board may require or the~~
 494 ~~parolee or person under conditional release may request that up to 24 months of the~~
 495 ~~supervision fee be paid in advance of the time to be spent on parole or conditional~~
 496 ~~release. In such cases, any advance payments are nonreimbursable in the event of parole~~
 497 ~~or conditional release revocation or if parole or conditional release is otherwise~~
 498 ~~terminated prior to the expiration of the sentence being served on parole or conditional~~
 499 ~~release.~~ Such fees shall be collected by the department to be paid into the general fund
 500 of the state treasury.

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

509 SECTION 2-11.

510 Said title is further amended by revising Code Section 42-9-43, relating to information to be
 511 considered by board generally, conduct of investigation and examination, and determination
 512 as to grant of relief, as follows:

513 "42-9-43.

514 (a) The board, in considering any case within its power, shall cause to be brought before
 515 it all pertinent information on the person in question. Included therein shall be:

516 (1) A report by the superintendent, warden, or jailer of the jail or state or county
 517 correctional institution in which the person has been confined upon the conduct of record
 518 of the person while in such jail or state or county correctional institution;

519 (2) A report of the conduct of record of the person serving a sentence for a serious
 520 violent felony, as such term is defined in Code Section 17-10-6.1, who is in the custody
 521 of the Department of Corrections;

- 522 ~~(2)~~(3) The results of such physical and mental examinations as may have been made of
 523 the person;
- 524 ~~(3)~~(4) The extent to which the person appears to have responded to the efforts made to
 525 improve his or her social attitude;
- 526 ~~(4)~~(5) The industrial record of the person while confined, the nature of his or her
 527 occupations while so confined, and a recommendation as to the kind of work he or she
 528 is best fitted to perform and at which he or she is most likely to succeed when and if he
 529 or she is released;
- 530 ~~(5)~~(6) The educational programs in which the person has participated and the level of
 531 education which the person has attained based on standardized reading tests;
- 532 ~~(6)~~(7) The written statements or oral testimony, if any, of the district attorney of the
 533 circuit in which the person was sentenced expressing views and making any
 534 recommendation as to parole, conditional release, a pardon for a serious offense, as such
 535 term is defined in Code Section 42-9-42, or commutation of a death sentence;
- 536 ~~(7)~~(8) The written, oral, audiotaped, or videotaped testimony of the victim, the victim's
 537 family, or a witness having personal knowledge of the victim's personal characteristics,
 538 including any information prepared by the victim or any individual offering or preparing
 539 information on behalf of the victim, for the purpose of the board's consideration of a
 540 parole, conditional release, pardon, or commutation of a death sentence if the victim has
 541 provided such information to the board; and
- 542 ~~(8)~~(9) If the person is or was required to register pursuant to Code Section 42-1-12, any
 543 court order issued releasing the person from registration requirements or residency or
 544 employment restrictions.
- 545 (b)(1) As used in this subsection, the term:
- 546 (A) 'Debilitating terminal illness' means a disease that cannot be cured or adequately
 547 treated and that is reasonably expected to result in death within 12 months.
- 548 (B) 'Entirely incapacitated' means an offender who:
- 549 (i) Requires assistance in order to perform two or more necessary daily life functions
 550 or who is completely immobile; and
- 551 (ii) Has such limited physical or mental ability, strength, or capacity that he or she
 552 poses an extremely low risk of physical threat to others or to the community.
- 553 (C) 'Necessary daily life function' means eating, breathing, dressing, grooming,
 554 toileting, walking, or bathing.
- 555 (2) The board may issue a medical reprieve to an entirely incapacitated person suffering
 556 a progressively debilitating terminal illness in accordance with Article IV, Section II,
 557 Paragraph II of the Constitution.

558 (c)(1) The board shall give at least 30 days' advance written notification to the district
 559 attorney of the circuit in which the person was sentenced whenever it considers making
 560 a final decision on a pardon for a serious offense, as such term is defined in Code Section
 561 42-9-42, and at least 90 days' advance written notification to such district attorney prior
 562 to making a final decision on parole or conditional release for a person sentenced for a
 563 serious violent felony, as such term is defined in Code Section 17-10-6.1, and shall
 564 provide the district attorney an opportunity to submit information and file a written
 565 objection to such ~~action~~ actions and shall also provide the person being considered for
 566 parole or conditional release an opportunity to submit information.

567 (2) Within 72 hours of receiving a request to commute a death sentence, the board shall
 568 provide written notification to the district attorney of the circuit in which the person was
 569 sentenced of the date set for hearing such request and shall provide the district attorney
 570 an opportunity to submit information and file a written response to such request.

571 (3) The board may also make such other investigation as it may deem necessary in order
 572 to be fully informed about the person.

573 (d)(1) Before releasing any person on parole or conditional release, granting a pardon,
 574 or commuting a death sentence, the board may have the person appear before it and may
 575 personally examine him or her and consider any information it deems relevant or
 576 necessary. When objections to relief have been tendered, the board may hold a hearing
 577 and consider oral testimony. If the board holds a hearing, it shall provide the district
 578 attorney of the circuit in which the person was sentenced 30 days' notice via e-mail of
 579 such hearing date and the district attorney or his or her designee may attend such hearing
 580 and present evidence to the board and shall also provide the person being considered 30
 581 days' notice of such hearing date and he or she may present evidence to the board. Upon
 582 consideration of the reports, files, records, papers, documents information, and oral
 583 testimony submitted, the board shall make its findings and determine whether or not such
 584 person shall be granted a pardon, parole, or other relief within the power of the board and
 585 determine the terms and conditions thereof, and if such person is serving a split sentence,
 586 the board's conditions shall include all of the terms of probation imposed by the
 587 sentencing court.

588 (2) Notice of the board's determination shall be given to the person being considered, the
 589 correctional official having him or her in custody, if applicable, the district attorney who
 590 submitted any information or objection, and the victim ~~in accordance with Code Section~~
 591 17-17-13 if the victim has expressed a desire for such notification and has provided the
 592 board with a current mailing or e-mail address and telephone number.

593 (e) If a person in custody is granted a pardon, ~~or a parole,~~ or conditional release, the
 594 correctional official having such person in custody, upon notification thereof, shall inform

595 him or her of the terms and conditions thereof and shall, in strict accordance therewith,
596 release the person."

597 **SECTION 2-12.**

598 Said title is further amended by revising Code Section 42-9-44, relating to the terms and
599 conditions of parole, adoption of general and special rules, violation of parole, and certain
600 parolees to obtain high school diploma or general educational development (GED) diploma,
601 as follows:

602 "42-9-44.

603 (a) The board, upon placing a person on parole or conditional release, shall specify in
604 writing the terms and conditions thereof, and if such person is serving a split sentence, the
605 board's conditions shall include all of the terms of probation imposed by the sentencing
606 court. A certified copy of the conditions shall be given to the parolee or conditional
607 releasee. Thereafter, a copy shall be sent to the clerk of the court in which the person was
608 convicted. The board shall adopt general rules concerning the terms and conditions of
609 parole or conditional release and concerning what shall constitute a violation thereof and
610 shall make special rules to govern particular cases. The rules, both general and special,
611 may include, among other things, a requirement that the parolee or conditional releasee
612 shall not leave this state or any definite area in this state without the consent of the board;
613 that the parolee or conditional releasee shall contribute to the support of his or her
614 dependents to the best of the parolee's or conditional releasee's ability; that the parolee or
615 conditional releasee shall make reparation or restitution for his or her crime; that the
616 parolee or conditional releasee shall abandon evil associates and ways; and that the parolee
617 or conditional releasee shall carry out the instructions of his or her community supervision
618 officer, and, in general, so comport himself or herself as the ~~parolee's~~ community
619 supervision officer shall determine. A violation of the terms of parole or conditional
620 release may render the parolee or conditional releasee liable to arrest and a return to a penal
621 institution to serve out the term for which the parolee or conditional releasee was
622 sentenced.

623 (b) Each parolee or conditional releasee who does not have a high school diploma or a
624 general educational development (GED) diploma shall be required as a condition of parole
625 or conditional release to obtain a high school diploma or general educational development
626 (GED) diploma or to pursue a trade at a vocational or technical school. Any such parolee
627 or conditional releasee who demonstrates to the satisfaction of the board an existing ability
628 or skill which does in fact actually furnish the parolee or conditional releasee a reliable,
629 regular, and sufficient income shall not be subject to this ~~provision~~ subsection. Any
630 parolee or conditional releasee who is determined by the department or the board to be

631 incapable of completing such requirements shall only be required to attempt to improve his
 632 or her basic educational skills. Failure of any parolee or conditional releasee subject to this
 633 requirement to attend the necessary schools or courses or to make reasonable progress
 634 toward fulfillment of such requirement shall be grounds for revocation of parole or
 635 conditional release. The board shall establish regulations regarding reasonable progress
 636 as required by this subsection. ~~This subsection shall apply to paroles granted on or after~~
 637 ~~July 1, 1995."~~

638 **SECTION 2-13.**

639 Said title is further amended by revising Code Section 42-9-46, relating to cases in which
 640 inmate has failed to serve time required for automatic initial consideration, as follows:

641 "42-9-46.

642 When the board considers a ~~Notwithstanding any other provisions of law to the contrary,~~
 643 ~~if the board is to consider any~~ case in which an inmate has ~~failed to serve~~ not served the
 644 time required by law Code Section 42-9-45 for automatic initial parole consideration, the
 645 board shall notify in writing, at least ten days prior to such early consideration, the
 646 sentencing judge, the district attorney of the ~~county~~ circuit in which the ~~person~~ inmate was
 647 sentenced, and any victim of ~~crimes against the person~~ a violation of Chapter 5 of Title 16
 648 or, if such victim is deceased, the spouse, children, or parents of the deceased victim if such
 649 person's contact information ~~is provided pursuant to Code Section 17-17-13~~ has been
 650 provided to the board with a current mailing or e-mail address and telephone number. Such
 651 notice shall provide a time frame in which such individuals may file an objection to early
 652 parole consideration. The sentencing judge, district attorney, or victim or, if such victim
 653 is deceased, the spouse, children, or parents of the deceased victim shall be given notice
 654 of a hearing date if a hearing will be held and, in order to express their views and make
 655 their recommendation as to whether the inmate should be granted early parole, may appear
 656 at a such hearing held by the board or may make a written statement to the board
 657 ~~expressing their views and making their recommendation as to whether the person should~~
 658 ~~be paroled. If an objection was filed and the board grants early parole, it shall issue a~~
 659 statement explaining its reasoning for granting such parole and such statement shall be
 660 served on any party who filed an objection."

661 **SECTION 2-14.**

662 Said title is further amended by revising Code Section 42-9-52, relating to discharge from
 663 parole, earned-time allowance, granting of pardons, commutations, and remissions of fines,
 664 forfeitures, or penalties, as follows:

665 "42-9-52.

666 (a) No person who has been placed on parole shall be discharged therefrom by the board
 667 prior to the expiration of the term for which he or she was sentenced or until he or she shall
 668 have been duly pardoned or otherwise released as provided in this Code section or as
 669 otherwise provided by law.

670 (b) The board may adopt rules and regulations, policies, and procedures for the granting
 671 of earned time to persons while serving their sentences on parole or other conditional
 672 release to the same extent and in the same amount as if such person were serving the
 673 sentence in custody. The board shall also be authorized to withhold or to forfeit, in whole
 674 or in part, any such earned-time allowance.

675 (c) When a parolee or conditional releasee is serving a split sentence for a qualified
 676 offense, as such term is defined in Code Section 42-8-21, the board shall review such case
 677 after such parolee or conditional releasee has successfully completed 12 consecutive
 678 months of parole supervision to consider commutation of such sentence. The board may
 679 relieve a ~~person on parole or other conditional release~~ parolee or conditional releasee from
 680 making further reports and may permit ~~the~~ such person to leave the state or county if
 681 satisfied that this is for the parolee's or conditional releasee's best interest and for the best
 682 interest of society. When a parolee or ~~other~~ conditional releasee has, in the opinion of the
 683 board, so conducted himself or herself as to deserve a pardon or a commutation of sentence
 684 or the remission in whole or in part of any fine, forfeiture, or penalty, the board may grant
 685 such relief in cases within its power. The board may take into consideration whether or not
 686 a person is serving a split sentence in its determination of granting any relief."

687 **SECTION 2-15.**

688 Said title is further amended by revising Code Section 42-9-53, relating to the preservation
 689 of documents, classification of information and documents, divulgence of confidential state
 690 secrets, and conduct of hearings, as follows:

691 "42-9-53.

692 (a) Subject to other laws, the board shall preserve on file all documents on which it has
 693 acted in the granting of pardons, paroles, conditional releases, and other relief.

694 (b)(1) All information, both oral and written, received by the members of the board in
 695 the performance of their duties under this chapter and all ~~records, papers, and documents~~
 696 reports, files, records, and information coming into their possession by reason of the
 697 performance of their duties under this chapter shall be classified as confidential state
 698 secrets until declassified by the board; provided, however, that the board shall be
 699 authorized to:

700 (A) To disclose to an alleged violator of parole or conditional release the evidence
 701 introduced against him or her at a final hearing on the matter of revocation of parole or
 702 conditional release; and

703 (B) To disclose information as provided in Code Section 42-9-61.

704 (2) The department may make supervision records of the department available to
 705 officials employed with the Department of Corrections and the Sexual Offender
 706 Registration Review Board, provided that the same shall remain confidential and not
 707 available to any other person or subject to subpoena unless declassified by the
 708 commissioner of community supervision.

709 (c) No person shall divulge or cause to be divulged in any manner any confidential state
 710 secret. Any person violating this Code section or any person who causes or procures a
 711 violation of this Code section or conspires to violate this Code section shall, upon
 712 conviction, be guilty of a misdemeanor.

713 (d) All hearings required to be held by this chapter shall be public, and the transcript
 714 thereof shall be exempt from subsection (b) of this Code section. All records and
 715 documents which were public records at the time they were received by the board ~~are~~ shall
 716 be exempt from subsection (b) of this Code section. All information, reports, and
 717 documents required by law to be made available to the General Assembly, the Governor,
 718 or the state auditor ~~are~~ shall be exempt from subsection (b) of this Code section."

719 **SECTION 2-16.**

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

721 "42-9-61.

722 (a) After the board provides the notice of making a final decision on parole or conditional
 723 release as required by subsection (c) of Code Section 42-9-43, both the prosecuting
 724 attorney and the person being considered for such relief may make a written request to the
 725 board for the report set forth in paragraph (2) of subsection (a) of Code Section 42-9-43
 726 and the board shall promptly provide such report as well as any other information the board
 727 has declassified.

728 (b) The disclosure of the report set forth in paragraph (2) of subsection (a) of Code Section
 729 42-9-43 pursuant to this Code section shall not vitiate the confidential nature of such report
 730 and such report shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50."

731 **SECTION 2-17.**

732 Code Section 51-1-54 of the Official Code of Georgia Annotated, relating to the Program and
 733 Treatment Completion Certificate, is amended by revising subsections (a) and (b) as follows:

734 "(a) As used in this Code section, the term 'Program and Treatment Completion Certificate'
735 means the certificate issued pursuant to Code Section 42-2-5.2 or Code Section 42-3-2.

736 (b) Issuance of a Program and Treatment Completion Certificate by the ~~Department~~ Board
737 of Corrections or the Board of Community Supervision or the granting of a pardon from
738 the State Board of Pardons and Paroles as provided in the Constitution and Code Section
739 42-9-42 shall create a presumption of due care in hiring, retaining, licensing, leasing to,
740 admitting to a school or program, or otherwise engaging in activity with the individual to
741 whom the Program and Treatment Completion Certificate was issued or the pardon was
742 granted. Such presumption may be rebutted by relevant evidence which extends beyond
743 the scope of the Program and Treatment Completion Certificate or pardon and which was
744 known or should have been known by the person against whom negligence is asserted."

745

PART III

746

SECTION 3-1.

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