

Senate Bill 367

By: Senators Kennedy of the 18th, Miller of the 49th, Dugan of the 30th, Jones of the 25th, Kirk of the 13th and others

A BILL TO BE ENTITLED
AN ACT

1 To provide for comprehensive reform for offenders entering, proceeding through, and
2 leaving the criminal justice system so as to promote an offender's successful reentry into
3 society, benefit the public, and enact reforms recommended by the Georgia Council on
4 Criminal Justice Reform; to amend Title 15 of the Official Code of Georgia Annotated,
5 relating to courts, so as to create operating under the influence court divisions and family
6 treatment court divisions; to provide for assignment of cases, planning groups, work plans,
7 standards and practices, staffing and expenses, records, fees, grants, and donations; to
8 provide for oversight by the Council of Accountability Court Judges of Georgia; to change
9 the composition of the Council of Accountability Court Judges of Georgia; to provide for
10 record restriction in accountability courts under certain circumstances; to provide for
11 considerations relative to the detention of children under the age of 14; to authorize a state
12 or local governing authority to contract for services for Pretrial Intervention and Diversion
13 Programs; to provide for the collection of fees for and expenditures of funds from the County
14 Drug Abuse Treatment Education Fund relative to operating under the influence and family
15 treatment court divisions; to amend Titles 20, 42, and 49 of the Official Code of Georgia
16 Annotated, relating to education, penal institutions, and social services, respectively, so as
17 to provide for students incarcerated in Department of Corrections facilities or incarcerated
18 or committed to Department of Juvenile Justice facilities to receive educational services
19 through a state charter school; to provide for state funding for the education of such students
20 in the same manner as for other students enrolled in the state charter school; to amend Title
21 20 of the Official Code of Georgia Annotated, relating to education, so to provide for matters
22 relating to school discipline and disrupting the operation of public schools; to amend Chapter
23 5 of Title 40 of the Official Code of Georgia Annotated, relating to drivers' licenses, so as
24 to create better opportunities for defendants to regain driving privileges; to provide for a
25 pauper's affidavit for a partial waiver of driver's license reinstatement and restoration fees;
26 to provide for concurrent driver's license suspensions and revocations under certain
27 circumstances; to change provisions relating to determining the length of certain driver's
28 license revocations; to limit eligibility for indefinitely renewable limited driving permits; to

29 provide for certain drivers' licenses to be automatically reinstated; to provide for procedure;
30 to allow operating under the influence court divisions to restore or suspend an operating
31 under the influence court division participant's driver's license or issue a participant a limited
32 driving permit or ignition interlock device limited driving permit under certain
33 circumstances; to amend Title 42 of the Official Code of Georgia Annotated, relating to
34 penal institutions, so as to clarify responsibilities of the Board of Community Supervision
35 and the Department of Community Supervision; to provide for an offender transition and
36 reentry unit and misdemeanor probation unit within the Department of Community
37 Supervision; to amend Chapter 8 of Title 42, Article 2 of Chapter 7 of Title 17, and Article
38 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to probation,
39 commitment hearings, and the Georgia Crime Information Center, respectively, so as to
40 clarify first offender status and provide duties, obligations, and responsibilities for the clerk
41 of court, the Department of Community Supervision, probation officers serving pursuant to
42 Article 6 of Chapter 8 of Title 42, and the Department of Corrections; to specify entities to
43 whom first offender information shall be provided; to change provisions relating to first
44 offender dispositions and the release of records thereof; to provide for the reporting of cases
45 dismissed prior to filing an accusation or indictment; to provide for procedure; to enact
46 reforms relating to criminal record keeping and dissemination; to clarify duties and
47 responsibilities for criminal record keeping and dissemination; to clarify provisions relating
48 to record restriction; to allow record restriction for certain first offenders who were under 21
49 years of age and accused of certain alcohol related violations; to amend Title 42 of the
50 Official Code of Georgia Annotated, relating to penal institutions, so as to change provisions
51 relating to agreements for probation services; to provide for preliminary requirements for
52 revocations based solely on failure to pay fines, statutory surcharges, or probation
53 supervision fees or solely on failure to report; to provide for procedure; to provide for early
54 termination of probation and review of certain misdemeanor probation cases under certain
55 circumstances; to change provisions relating to parole eligibility for certain offenders; to
56 repeal obsolete references to pretrial diversion programs that are no longer operated by the
57 Department of Corrections or the Department of Community Supervision; to amend Chapter
58 1 of Title 43 of the Official Code of Georgia Annotated, relating to general provisions
59 applicable to professions and businesses, so as to require professional licensing boards to
60 consider certain factors relating to felonies before denying a license to an applicant or
61 revoking a license and to provide for probationary licenses for participants in accountability
62 courts; to amend Code Section 49-4A-2 of the Official Code of Georgia Annotated, relating
63 to the creation of the Board of Juvenile Justice, so as to provide for rules and regulations
64 governing the transfer of probation supervision of certain juvenile offenders; to amend the
65 Official Code of Georgia Annotated so as to conform provisions and correct cross-references;

66 to provide for an effective date and applicability; to repeal conflicting laws; and for other
67 purposes.

68 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

69 PART I
70 EXPANDING ACCOUNTABILITY COURTS AND
71 PRETRIAL INTERVENTION AND DIVERSION PROGRAMS;
72 DETENTION OF YOUTH
73 SECTION 1-1.

74 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
75 paragraph (1) of subsection (a) of Code Section 15-1-18, relating to the Council of
76 Accountability Court Judges of Georgia, as follows:

77 "(1) 'Accountability court' means a superior, state, or juvenile court that has a drug court
78 division, mental health court division, or veterans court division, or operating under the
79 influence court division or a juvenile court that has a family treatment court division."

80 SECTION 1-2.

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

82 "15-1-19.

83 (a)(1) As used in this subsection, the term 'risk and needs assessment' means an actuarial
84 tool, approved by the Council of Accountability Court Judges of Georgia and validated
85 on a targeted population, scientifically proven to determine an individual's risk to
86 recidivate and to identify criminal risk factors that, when properly addressed, can reduce
87 such individual's likelihood of committing future criminal behavior.

88 (2) Any superior, state, or juvenile court that has jurisdiction over a violation of Code
89 Section 40-6-391 or 52-7-12 may establish an operating under the influence court
90 division to provide an alternative to the traditional judicial system for disposition of such
91 cases.

92 (3) In any case which arises from a violation of Code Section 40-6-391 or 52-7-12 or is
93 ancillary to such conduct and the defendant meets the eligibility criteria for the operating
94 under the influence court division, the court may assign the case to the operating under
95 the influence court division:

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

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

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

99 (4) Each operating under the influence court division shall establish a planning group to
100 develop a work plan. The planning group shall include the judges, prosecuting attorneys,
101 public defenders, community supervision officers, probation officers serving pursuant to
102 Article 6 of Chapter 8 of Title 42, and persons having expertise in the field of substance
103 abuse. The work plan shall address the operational, coordination, resource, information
104 management, and evaluation needs of the operating under the influence court division.
105 The work plan shall include operating under the influence court division policies and
106 practices related to implementing the standards and practices developed pursuant to
107 paragraph (5) of this subsection. The work plan shall ensure a risk and needs assessment
108 is used to identify the likelihood of recidivating and identify the needs that, when met,
109 reduce recidivism. The work plan also shall ensure that operating under the influence
110 court division eligibility shall be focused on moderate-risk and high-risk offenders as
111 determined by a risk and needs assessment. The operating under the influence court
112 division shall combine judicial supervision, treatment of operating under the influence
113 court division participants, and drug testing.

114 (5)(A) The Council of Accountability Court Judges of Georgia shall establish standards
115 and practices for operating under the influence court divisions, taking into consideration
116 guidelines and principles based on current research and findings that are published by
117 the National Drug Court Institute, the National Center for DWI Courts, and the
118 Substance Abuse and Mental Health Services Administration and related to practices
119 shown to reduce recidivism of offenders with alcohol or drug abuse problems.
120 Standards and practices shall include, but shall not be limited to, the use of a risk and
121 needs assessment to identify the likelihood of recidivating and identify the needs that,
122 when met, reduce recidivism. The Council of Accountability Court Judges of Georgia
123 shall update its standards and practices to incorporate research, findings, and
124 developments in the operating under the influence court field. Each operating under the
125 influence court division shall adopt policies and practices that are consistent with the
126 standards and practices published by the Council of Accountability Court Judges of
127 Georgia.

128 (B) The Council of Accountability Court Judges of Georgia shall provide technical
129 assistance to operating under the influence court divisions to assist them with the
130 implementation of policies and practices, including, but not limited to, guidance on the
131 implementation of risk and needs assessments in operating under the influence court
132 divisions.

133 (C) The Council of Accountability Court Judges of Georgia shall create and manage
134 a certification and peer review process to ensure operating under the influence court
135 divisions are adhering to the Council of Accountability Court Judges of Georgia's

136 standards and practices and shall create a waiver process for operating under the
137 influence court divisions to seek an exception to the Council of Accountability Court
138 Judges of Georgia's standards and practices. In order to receive state appropriated
139 funds, any operating under the influence court division established on and after July 1,
140 2017, shall be certified pursuant to this subparagraph or, for good cause shown to the
141 Council of Accountability Court Judges of Georgia, shall receive a waiver from the
142 Council of Accountability Court Judges of Georgia.

143 (D) On and after July 1, 2017, the award of any state funds for an operating under the
144 influence court division shall be conditioned upon an operating under the influence
145 court division attaining certification or a waiver by the Council of Accountability Court
146 Judges of Georgia. On or before September 1, the Council of Accountability Court
147 Judges of Georgia shall publish an annual report listing certified operating under the
148 influence court divisions.

149 (E) The Council of Accountability Court Judges of Georgia shall develop and manage
150 an electronic information system for performance measurement and accept submission
151 of performance data in a consistent format from all operating under the influence court
152 divisions. The Council of Accountability Court Judges of Georgia shall identify
153 elements necessary for performance measurement, including, but not limited to,
154 recidivism, the number of moderate-risk and high-risk participants in an operating
155 under the influence court division, drug testing results, drug testing failures, participant
156 employment, the number of participants who successfully complete the program, and
157 the number of participants who fail to complete the program.

158 (F) On or before July 1, 2017, and every three years thereafter, the Council of
159 Accountability Court Judges of Georgia shall conduct a performance peer review of the
160 operating under the influence court divisions for the purpose of improving operating
161 under the influence court division policies and practices and the certification and
162 recertification process.

163 (6) A court instituting the operating under the influence court division may request the
164 prosecuting attorney for the jurisdiction to designate one or more prosecuting attorneys
165 to serve in the operating under the influence court division and may request the public
166 defender, if any, to designate one or more assistant public defenders to serve in the
167 operating under the influence court division.

168 (7) The clerk of court for the court that is instituting the operating under the influence
169 court division or such clerk's designee shall serve as the clerk of the operating under the
170 influence court division.

171 (8) The court instituting the operating under the influence court division may request
172 community supervision officers, probation officers serving pursuant to Article 6 of

173 Chapter 8 of Title 42, and other employees of the court to perform duties for the
174 operating under the influence court division. Such individuals shall perform duties as
175 directed by the judges of the operating under the influence court division.

176 (9) The court instituting the operating under the influence court division may enter into
177 agreements with other courts, agencies, and private corporations, private enterprises,
178 private agencies, or private entities providing services pursuant to Article 6 of Chapter
179 8 of Title 42 for the assignment of personnel from such other entities to the operating
180 under the influence court division.

181 (10) Expenses for salaries, equipment, services, and supplies incurred in implementing
182 this Code section may be paid from state funds, funds of the county or political
183 subdivision implementing such operating under the influence court division, federal grant
184 funds, and funds from private donations.

185 (b)(1) Each operating under the influence court division shall establish criteria which
186 define the successful completion of the operating under the influence court division
187 program.

188 (2) If the operating under the influence court division participant successfully completes
189 the operating under the influence court division program as part of a sentence imposed
190 by the court:

191 (A) A judge presiding in such court division shall not order the dismissal of any
192 offense involving or arising from a violation of Code Section 40-6-391 or 52-7-12; and

193 (B) A judge presiding in such court division shall not order the restriction or vacation
194 of a conviction of any offense involving or arising from a violation of Code Section
195 40-6-391 or 52-7-12.

196 (3) If the operating under the influence court division participant successfully completes
197 the operating under the influence court division program as part of a sentence imposed
198 by the court, the sentence of the operating under the influence court division participant
199 may be reduced or modified.

200 (4) Any plea of guilty or nolo contendere entered pursuant to this Code section shall not
201 be withdrawn without the consent of the court.

202 (c) Any statement made by an operating under the influence court division participant as
203 part of participation in such court division, or any report made by the staff of such court
204 division or program connected to such court division, regarding a participant's substance
205 usage shall not be admissible as evidence against the participant in any legal proceeding
206 or prosecution; provided, however, that, if the participant violates the conditions of his or
207 her participation in the program or is terminated from the operating under the influence
208 court division, the reasons for the violation or termination may be considered in
209 sanctioning, sentencing, or otherwise disposing of the participant's case.

210 (d) Notwithstanding any provision of law to the contrary, operating under the influence
 211 court division staff shall be provided, upon request, with access to all records relevant to
 212 the treatment of the operating under the influence court division participant from any state
 213 or local government agency. All such records and the contents thereof shall be treated as
 214 confidential, shall not be disclosed to any person outside of the operating under the
 215 influence court division, and shall not be subject to Article 4 of Chapter 18 of Title 50,
 216 relating to open records, or subject to subpoena, discovery, or introduction into evidence
 217 in any civil or criminal proceeding. Such records and the contents thereof shall be
 218 maintained by the operating under the influence court division and originating court in a
 219 confidential file not available to the public.

220 (e) Any fees received by an operating under the influence court division from an operating
 221 under the influence court division participant as payment for substance abuse treatment and
 222 services shall not be considered as court costs or a fine.

223 (f) The court may have the authority to accept grants, donations, and other proceeds from
 224 outside sources for the purpose of supporting the operating under the influence court
 225 division. Any such grants, donations, or proceeds shall be retained by the operating under
 226 the influence court division for expenses."

227 **SECTION 1-3.**

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

229 "15-1-20.

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

231 (1) 'Accountability court' means a superior or state court that has a drug court division,
 232 mental health court division, or veterans court division or a juvenile court that has a
 233 family treatment court division.

234 (2) 'Criminal history record information' shall have the same meaning as set forth in
 235 Code Section 35-3-30.

236 (3) 'Criminal justice agencies' shall have the same meaning as set forth in Code Section
 237 35-3-30.

238 (4) 'Restrict,' 'restricted,' or 'restriction' means that criminal history record information
 239 shall not be disclosed or otherwise made available to any private persons or businesses
 240 pursuant to Code Section 35-3-34 or to governmental agencies or licensing and regulating
 241 agencies pursuant to Code Section 35-3-35.

242 (b) When a case is assigned to an accountability court and the defendant is required to
 243 complete a drug court division program, mental health court division program, veterans
 244 court division program, or family treatment court division program, as applicable, prior to
 245 the entry of the judgment, in contemplation that the defendant's case will be dismissed or

246 nolle prossed, the court may, in its discretion, restrict the dissemination of the defendant's
 247 criminal history record information by the Georgia Crime Information Center for the
 248 prosecution of the case assigned to such court. The court shall specify the date such
 249 restriction shall take effect. The court may revoke such order at any time.

250 (c)(1) Criminal history record information restricted pursuant to this Code section shall
 251 always be available for inspection, copying, and use:

252 (A) To criminal justice agencies for law enforcement or criminal investigative
 253 purposes or for purposes of criminal justice agency employment;

254 (B) To judicial officials;

255 (C) By the Judicial Qualifications Commission;

256 (D) By a prosecuting attorney or public defender who submits a sworn affidavit to the
 257 clerk of court that attests that such information is relevant to a criminal proceeding;

258 (E) Pursuant to a court order; and

259 (F) By an individual who is the subject of restricted criminal history record information
 260 upon court order.

261 (2) The confidentiality of such information shall be maintained insofar as practical."

262 **SECTION 1-4.**

263 Said title is further amended by revising Code Section 15-11-11, relating to concurrent
 264 jurisdiction, as follows:

265 "15-11-11.

266 The juvenile court shall have concurrent jurisdiction to hear:

267 (1) Any legitimation petition filed pursuant to Code Section 19-7-22 concerning a child
 268 alleged to be dependent;

269 (2) Any legitimation petition transferred to the court by proper order of the superior
 270 court;

271 (3) The issue of custody and support when the issue is transferred by proper order of the
 272 superior court; provided, however, that if a demand for a jury trial as to support has been
 273 properly filed by either parent, then the case shall be transferred to superior court for the
 274 jury trial; ~~and~~

275 (4) Any petition for the establishment or termination of a temporary guardianship
 276 transferred to the court by proper order of the probate court; and

277 (5) Any criminal case transferred to the court pursuant to subsection (d) of Code Section
 278 15-11-15."

279 **SECTION 1-5.**

280 Said title is further amended by revising Code Section 15-11-15, relating to transfers from
 281 superior court, as follows:

282 "15-11-15.

283 (a) In handling divorce, alimony, habeas corpus, or other cases involving the custody of
 284 a child, a superior court may transfer the question of the determination of custody, support,
 285 or custody and support to the juvenile court either for investigation and a report back to the
 286 superior court or for investigation and determination.

287 (b) If the referral is for investigation and determination, then the juvenile court shall
 288 proceed to handle the matter in the same manner as though the action originated under this
 289 chapter in compliance with the order of the superior court, except that the parties shall not
 290 be entitled to obtain an appointed attorney through the juvenile court.

291 (c) At any time prior to the determination of any ~~such~~ question regarding custody, support,
 292 or custody and support, the juvenile court may transfer the jurisdiction of the question back
 293 to the referring superior court.

294 (d) In handling criminal cases involving an accused who is in jeopardy of having his or her
 295 parental rights terminated due to criminal charges, a superior court may transfer a criminal
 296 case to a family treatment court division of a juvenile court for treatment and a report back
 297 to the superior court so long as the prosecuting attorney and accused agree to such transfer;
 298 provided, however, that such juvenile court may transfer such case back to the referring
 299 superior court at any time."

300 **SECTION 1-6.**

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

302 "15-11-70.

303 (a)(1) As used in this subsection, the term 'risk and needs assessment' means an actuarial
 304 tool, approved by the Council of Accountability Court Judges of Georgia and validated
 305 on a targeted population, scientifically proven to determine an individual's risk to
 306 recidivate and to identify criminal risk factors that, when properly addressed, can reduce
 307 such individual's likelihood of committing future criminal behavior.

308 (2) Any juvenile court may establish a family treatment court division to provide an
 309 alternative to the traditional judicial system for the disposition of dependency cases and
 310 for assisting superior courts with criminal cases referred to such division under Code
 311 Section 15-11-15. The goal of a family treatment court division is to:

312 (A) Reduce alcohol or drug abuse and addiction for respondents in dependency
 313 proceedings;

314 (B) Improve permanency outcomes for families when dependency is based in part on
315 alcohol or drug use and addiction;

316 (C) Increase the personal, familial, and societal accountability of respondents in
317 dependency proceedings; and

318 (D) Promote effective intervention and use of resources among child welfare
319 personnel, law enforcement agencies, treatment providers, community agencies, and
320 the courts.

321 (3) In any criminal case transferred pursuant to Code Section 15-11-15, when the
322 defendant meets the eligibility criteria for the family treatment court division, such case
323 may be assigned to the family treatment court division:

324 (A) Prior to the entry of the sentence, if the prosecuting attorney consents;
325 (B) As part of a sentence in a case; or
326 (C) Upon consideration of a petition to revoke probation.

327 (4) Each family treatment court division shall establish a planning group to develop a
328 work plan. The planning group shall include the judges, prosecuting attorneys, special
329 assistant attorneys general, public defenders, attorneys who represent children and
330 parents, law enforcement officials, probation officers, community supervision officers,
331 court appointed special advocates, guardians ad litem, and other individuals having
332 expertise in services available to families in dependency proceedings. The work plan
333 shall address the operational, coordination, resource, information management, and
334 evaluation needs of the family treatment court division. The work plan shall include
335 family treatment court division policies and practices related to implementing the
336 standards and practices developed pursuant to paragraph (5) of this subsection. The work
337 plan shall ensure a risk and needs assessment is used to identify the likelihood of
338 recidivating and identify the needs that, when met, reduce recidivism. The work plan
339 shall include eligibility criteria for the family treatment court division. The family
340 treatment court division shall combine judicial supervision, treatment of family treatment
341 court division participants, drug testing, and mental health treatment.

342 (5)(A) The Council of Accountability Court Judges of Georgia shall establish standards
343 and practices for family treatment court divisions, taking into consideration guidelines
344 and principles based on current research and findings that are published by experts on
345 family treatment health needs and treatment options in a dependency setting. Standards
346 and practices shall include, but shall not be limited to, the use of a risk and needs
347 assessment to identify the likelihood of recidivating and identify the needs that, when
348 met, reduce recidivism. The Council of Accountability Court Judges of Georgia shall
349 update its standards and practices to incorporate research, findings, and developments
350 in the family treatment court field. Each family treatment court division shall adopt

351 policies and practices that are consistent with the standards and practices published by
352 the Council of Accountability Court Judges of Georgia.

353 (B) The Council of Accountability Court Judges of Georgia shall provide technical
354 assistance to family treatment court divisions to assist them with the implementation
355 of policies and practices, including, but not limited to, guidance on the implementation
356 of risk and needs assessments in family treatment court divisions.

357 (C) The Council of Accountability Court Judges of Georgia shall create and manage
358 a certification and peer review process to ensure family treatment court divisions are
359 adhering to the Council of Accountability Court Judges of Georgia's standards and
360 practices and shall create a waiver process for family treatment court divisions to seek
361 an exception to the Council of Accountability Court Judges of Georgia's standards and
362 practices. In order to receive state appropriated funds, any family treatment court
363 division established on and after July 1, 2017, shall be certified pursuant to this
364 subparagraph or, for good cause shown to the Council of Accountability Court Judges
365 of Georgia, shall receive a waiver from the Council of Accountability Court Judges of
366 Georgia.

367 (D) On and after July 1, 2017, the award of any state funds for a family treatment court
368 division shall be conditioned upon a family treatment court division attaining
369 certification or a waiver by the Council of Accountability Court Judges of Georgia. On
370 or before September 1, the Council of Accountability Court Judges of Georgia shall
371 publish an annual report listing certified family treatment court divisions.

372 (E) The Council of Accountability Court Judges of Georgia shall develop and manage
373 an electronic information system for performance measurement and accept submission
374 of performance data in a consistent format from all family treatment court divisions.
375 The Council of Accountability Court Judges of Georgia shall identify elements
376 necessary for performance measurement, including, but not limited to, the number of
377 children reunited with participants in a family treatment court division, drug testing
378 results, drug testing failures, participant employment, the number of participants who
379 successfully complete the program, and the number of participants who fail to complete
380 the program.

381 (F) On or before July 1, 2017, and every three years thereafter, the Council of
382 Accountability Court Judges of Georgia shall conduct a performance peer review of the
383 family treatment court divisions for the purpose of improving family treatment court
384 division policies and practices and the certification and recertification process.

385 (6) A court instituting the family treatment court division may request any of the
386 following individuals to serve in the family treatment court division:

387 (A) One or more prosecuting attorneys designated by the prosecuting attorney for the
388 jurisdiction;
389 (B) A special assistant attorney general; or
390 (C) One or more assistant public defenders designated by the public defender, if any.
391 (7) The clerk of the juvenile court that is instituting the family treatment court division
392 or such clerk's designee shall serve as the clerk of the family treatment court division.
393 (8) The court instituting the family treatment court division may request community
394 supervision officers, probation officers, and other employees of the court to perform
395 duties for the family treatment court division. Such individuals shall perform duties as
396 directed by the judges of the family treatment court division.
397 (9) The court instituting the family treatment court division may enter into agreements
398 with other courts and agencies for the assignment of personnel and probation supervision
399 from other courts and agencies to the family treatment court division.
400 (10) Expenses for salaries, equipment, services, and supplies incurred in implementing
401 this Code section may be paid from state funds, funds of the county or political
402 subdivision implementing such family treatment court division, federal grant funds, and
403 funds from private donations.
404 (b) Each family treatment court division shall establish criteria which define the successful
405 completion of the family treatment court division program. If the family treatment court
406 division participant who was referred to the family treatment court division on a criminal
407 charge by a superior court successfully completes the family treatment court division
408 program, a report of such completion shall be communicated to the referring superior court
409 judge.
410 (c) Any statement made by a family treatment court division participant as part of
411 participation in such court division, or any report made by the staff of such court division
412 or program connected to such court division, regarding a participant's substance usage shall
413 not be admissible as evidence against the participant in any legal proceeding or
414 prosecution; provided, however, that, if the participant violates the conditions of his or her
415 participation in the program or is terminated from the family treatment court division, the
416 reasons for the violation or termination may be considered in sanctioning, sentencing, or
417 otherwise disposing of the participant's case.
418 (d) Notwithstanding any provision of law to the contrary, family treatment court division
419 staff shall be provided, upon request, with access to all records relevant to the treatment of
420 the family treatment court division participant from any state or local government agency.
421 All such records and the contents thereof shall be treated as confidential, shall not be
422 disclosed to any person outside of the family treatment court division, and shall not be
423 subject to Article 4 of Chapter 18 of Title 50, relating to open records, or subject to

424 subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.
 425 Such records and the contents thereof shall be maintained by the family treatment court
 426 division and originating court in a confidential file not available to the public.

427 (e) Any fees received by a family treatment court division from a family treatment court
 428 division participant as payment for substance abuse treatment and services shall not be
 429 considered as court costs or a fine.

430 (f) The court may have the authority to accept grants, donations, and other proceeds from
 431 outside sources for the purpose of supporting the family treatment court division. Any such
 432 grants, donations, or proceeds shall be retained by the family treatment court division for
 433 expenses."

434 **SECTION 1-7.**

435 Said title is further amended by revising Code Section 15-11-505, relating to the use of
 436 detention assessments to determine if detention is warranted, as follows:

437 "15-11-505.

438 (a) If an alleged delinquent child is brought before the court, or delivered to a secure
 439 residential facility or nonsecure residential facility or foster care facility designated by the
 440 court, or otherwise taken into custody, the juvenile court intake officer shall immediately
 441 administer a detention assessment and determine if such child should be detained and
 442 release such child, taking into account subsection (b) of this Code section. Such child shall
 443 be released unless it appears that his or her detention is warranted.

444 (b)(1) As used in this subsection, the term 'serious delinquent act' means to commit,
 445 attempt to commit, conspiracy to commit, or solicitation of another to commit a
 446 delinquent act which if committed by an adult would constitute:

447 (A) Aggravated assault;

448 (B) Aggravated battery;

449 (C) Aggravated child molestation;

450 (D) Aggravated cruelty to animals;

451 (E) Aggravated sexual battery;

452 (F) Aggravated sodomy;

453 (G) Armed robbery involving a firearm;

454 (H) Arson in the first degree;

455 (I) Burglary in the first degree;

456 (J) Child molestation;

457 (K) Escape;

458 (L) Hijacking a motor vehicle;

459 (M) Home invasion in the first or second degree;

460 (N) Involuntary manslaughter;
 461 (O) Murder;
 462 (P) Participating in criminal gang activity, as defined in subparagraphs (A) through (G)
 463 and (J) of paragraph (1) of Code Section 16-15-3, in violation of Code Section 16-15-4;
 464 (Q) Rape;
 465 (R) Robbery;
 466 (S) Sexual exploitation of children;
 467 (T) Smash and grab burglary;
 468 (U) Trafficking of substances in violation of Code Section 16-13-31 or 16-13-31.1;
 469 (V) Vehicular homicide; or
 470 (W) Voluntary manslaughter.
 471 (2) When a child who is 13 years of age or younger is taken into custody as provided in
 472 subsection (a) of this Code section for any delinquent act other than a serious delinquent
 473 act, there shall be a presumption that such child should not be detained."

474 **SECTION 1-8.**

475 Said title is further amended by revising subsection (b) of Code Section 15-11-710, relating
 476 to exchange of information, as follows:

477 "(b) Governmental entities and state, county, municipal, or consolidated government
 478 departments, boards, or agencies shall exchange with each other all information not held
 479 as confidential pursuant to federal law and relating to a child which may aid a
 480 governmental entity in the assessment, treatment, intervention, or rehabilitation of a child,
 481 notwithstanding Code Section 15-1-15, 15-1-19, 15-11-40, 15-11-70, 15-11-105,
 482 15-11-170, 15-11-264, 15-11-541, 15-11-542, 15-11-603, 15-11-708, 15-11-709,
 483 15-11-744, 20-2-751.2, 20-14-40, 24-12-10, 24-12-11, 24-12-20, 26-4-5, 26-4-80, 26-5-17,
 484 31-5-5, 31-33-6, 37-1-53, 37-2-9.1, 42-5-36, 42-8-40, 42-8-109.2, 49-5-40, 49-5-41,
 485 49-5-41.1, 49-5-44, 49-5-45, 49-5-183, 49-5-184, 49-5-185, or 49-5-186, in order to serve
 486 the best interests of such child. Information which is shared pursuant to this subsection
 487 shall not be utilized to assist in the prosecution of a child in juvenile, superior, or state court
 488 or utilized to the detriment of such child."

489 **SECTION 1-9.**

490 Said title is further amended by revising subsection (a) of Code Section 15-18-80, relating
 491 to policy and procedure for Pretrial Intervention and Diversion Programs, as follows:

492 "(a) The prosecuting attorneys for each judicial circuit of this state shall be authorized to
 493 create and administer a Pretrial Intervention and Diversion Program. The prosecuting
 494 attorney for state courts, probate courts, magistrate courts, municipal courts, and any other

495 court that hears cases involving a violation of the criminal laws of this state or ordinance
 496 violations shall also be authorized to create and administer a Pretrial Intervention and
 497 Diversion Program for offenses within the jurisdiction of such courts. Upon the request
 498 of the district attorney or solicitor and with the advice and express written consent of such
 499 attorney, the state or local governing authority may enter into a written contract with any
 500 entity or individual for the purpose of monitoring program participants' compliance with
 501 a Pretrial Intervention and Diversion Program."

502 **SECTION 1-10.**

503 Said title is further amended by revising subsection (a) of Code Section 15-21-100, relating
 504 to imposition of additional penalty for certain offenses, as follows:

505 "(a)(1) In every case in which any court shall impose a fine, which shall be construed to
 506 include costs, for any offense prohibited by Code Section 16-13-30, 16-13-30.1,
 507 16-13-30.2, 16-13-30.3, 16-13-30.5, 16-13-31, 16-13-31.1, 16-13-32, 16-13-32.1,
 508 16-13-32.2, 16-13-32.3, 16-13-32.4, 16-13-32.5, or 16-13-32.6, there shall be imposed
 509 as an additional penalty a sum equal to 50 percent of the original fine. The additional 50
 510 percent penalty shall also be imposed in every case in which a fine is imposed for
 511 violation of:

512 ~~(1)(A)~~ Code Section 3-3-23.1;

513 ~~(2)(B)~~ Code Section 40-6-391; ~~or~~

514 ~~(3)(C)~~ Code Section 40-6-393 or 40-6-394 if the offender was also charged with a
 515 violation of Code Section 40-6-391; or

516 (D) Code Section 52-7-12.

517 (2) If no fine is provided for in the applicable Code section, and the judge places the
 518 defendant on probation, the fine authorized by Code Section 17-10-8 shall be applicable."

519 **SECTION 1-11.**

520 Said title is further amended by revising subsection (b) of Code Section 15-21-101, relating
 521 to collection of fines and authorized expenditures of funds from County Drug Abuse
 522 Treatment and Education Fund, as follows:

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

526 (1) For drug abuse treatment and education programs relating to controlled substances,
 527 alcohol, and marijuana; ~~and~~

528 (2) If a drug court division has been established in the county under Code Section
 529 15-1-15, for purposes of the drug court division;

530 (3) If an operating under the influence court division has been established in the county
 531 under Code Section 15-1-19, for the purposes of the operating under the influence court
 532 division; and
 533 (4) If a family treatment court division has been established in the county under Code
 534 Section 15-11-70, for the purposes of the family treatment court division.
 535 (c) This article shall not preclude the appropriation or expenditure of other funds by the
 536 governing authority of any county or by the General Assembly for the purpose of drug
 537 abuse treatment or education programs, ~~or drug court divisions, operating under the~~
 538 influence court divisions, or family treatment court divisions."

539 PART II

540 CHARTER SCHOOLS IN DEPARTMENT OF CORRECTIONS AND
 541 DEPARTMENT OF JUVENILE JUSTICE FACILITIES

542 SECTION 2-1.

543 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 544 revising paragraphs (1) and (8) of subsection (b) of Code Section 20-2-133, relating to free
 545 public instruction for elementary and secondary education, as follows:

546 "(b)(1) Any child, except a child in a secure residential facility as defined in Code
 547 Section 15-11-2, as specifically provided in this paragraph, who is in the physical or legal
 548 custody of the Department of Juvenile Justice or the Department of Human Services; in
 549 a placement operated by the Department of Human Services or the Department of
 550 Behavioral Health and Developmental Disabilities; or in a facility or placement paid for
 551 by the Department of Juvenile Justice, the Department of Human Services or any of its
 552 divisions, or the Department of Behavioral Health and Developmental Disabilities and
 553 who is physically present within the geographical area served by a local unit of
 554 administration for any length of time is eligible for enrollment in the educational
 555 programs of that local unit of administration; provided, however, that the child meets the
 556 age eligibility requirements established by this article. ~~The~~ Except for children who are
 557 committed to the Department of Juvenile Justice and receiving education services under
 558 Code Section 20-2-2084.1, the local unit of administration of the school district in which
 559 such child is present shall be responsible for the provision of all educational programs,
 560 including special education and related services, at no charge so long as the child is
 561 physically present in the school district. A child shall be considered in the physical or
 562 legal custody of the Department of Juvenile Justice or the Department of Human Services
 563 or any of its divisions if custody has been awarded either temporarily or permanently by
 564 court order or by voluntary agreement, or if the child has been admitted or placed

565 according to an individualized treatment or service plan of the Department of Human
 566 Services. A child shall be considered in a facility or placement paid for or operated by
 567 the Department of Behavioral Health and Developmental Disabilities if the child has been
 568 admitted or placed according to an individualized treatment or service plan of the
 569 Department of Behavioral Health and Developmental Disabilities. No child in a secure
 570 residential facility as defined in Code Section 15-11-2, regardless of his or her custody
 571 status, shall be eligible for enrollment in the educational programs of the local unit of
 572 administration of the school district in which such facility is located. No child or youth
 573 in the custody of the Department of Corrections or the Department of Juvenile Justice and
 574 confined in a facility as a result of a sentence imposed by a court shall be eligible for
 575 enrollment in the educational programs of the local unit of administration of the school
 576 district where such child or youth is being held; provided, however, that such child or
 577 youth may be eligible for enrollment in a state charter school pursuant to Code Section
 578 20-2-2084.1."

579 "(8) The Department of Education, the State Charter Schools Commission, the
 580 Department of Human Services, the Department of Juvenile Justice, the Department of
 581 Behavioral Health and Developmental Disabilities, and the local units of administration
 582 where Department of Education, State Charter Schools Commission, Department of
 583 Juvenile Justice, Department of Behavioral Health and Developmental Disabilities, or
 584 Department of Human Services placements, facilities, or contract facilities are located
 585 shall jointly develop procedures binding on all agencies implementing the provisions of
 586 this Code section applicable to children and youth in the physical or legal custody of the
 587 Department of Juvenile Justice, under the care or physical or legal custody of the
 588 Department of Human Services, or under the physical custody of the Department of
 589 Behavioral Health and Developmental Disabilities."

590 **SECTION 2-2.**

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

592 "20-2-2084.1.

593 A state charter school shall be authorized, upon the approval of the commission, to enter
 594 into a contract with the Department of Juvenile Justice or the Department of Corrections
 595 to operate a school and deliver education services to school age children or youth
 596 incarcerated within any facility of the Department of Corrections or incarcerated within or
 597 committed to the Department of Juvenile Justice. Any children or youth receiving
 598 education services through a state charter school in such manner shall be considered
 599 students enrolled in and attending the state charter school for purposes of funding pursuant
 600 to Code Section 20-2-2089."

601 **SECTION 2-3.**

602 Said title is further amended by revising Code Section 20-2-2090, relating to collaborative
 603 efforts on matters related to authorization of state charter schools and administration, as
 604 follows:

605 "20-2-2090.

606 The commission shall work in collaboration with the department on all matters related to
 607 authorizing state charter schools and shall be assigned to the department for administrative
 608 purposes only, as prescribed in Code Section 50-4-3. For administrative purposes,
 609 including data reporting, student enrollment counting procedures, student achievement
 610 reporting, funding allocations, and related purposes as defined by the State Board of
 611 Education, each state charter school, including any students receiving education services
 612 through a state charter school pursuant to Code Section 20-2-2084.1, shall, consistent with
 613 department rules and regulations, be treated as a single local education agency."

614 **SECTION 2-4.**

615 Said title is further amended by revising subsection (d) of Code Section 20-2-2114, relating
 616 to qualifications for the scholarship program for special needs students, as follows:

617 "(d) Students enrolled in a school operated by the Department of Juvenile Justice or
 618 operated by a state charter school on behalf of the Department of Juvenile Justice pursuant
 619 to Code Section 20-2-2084.1 are not eligible for the scholarship."

620 **SECTION 2-5.**

621 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 622 by revising Code Section 42-2-5.1, relating to the Department of Corrections as a special
 623 school district for school age youth, as follows:

624 "42-2-5.1.

625 (a) In order to provide education for any school age ~~youths~~ youth incarcerated within any
 626 facility of the department, the department shall be considered a special school district
 627 which shall be given the same funding consideration for federal funds that school districts
 628 within ~~the~~ this state are given. The special school district under the department shall have
 629 the powers, privileges, and authority exercised or capable of exercise by any other school
 630 district. The schools within the special school district shall be under the control of the
 631 commissioner, who shall serve as the superintendent of schools for such district, except as
 632 otherwise provided in subsection (b) of this Code section. The board shall serve as the
 633 board of education for such district. The board, acting alone or in cooperation with the
 634 State Board of Education, shall establish education standards for the district. As far as is

635 practicable, such standards shall adhere to the standards adopted by the State Board of
636 Education for the education of school age youth, while taking into account:

637 (1) The overriding security needs of correctional institutions and other restrictions
638 inherent to the nature of correctional facilities;

639 (2) The effect of limited funding on the capability of the department to meet certain
640 school standards; and

641 (3) Existing juvenile education standards of the Correctional Education Association and
642 the American Correctional Association, which shall be given primary consideration
643 where any conflicts arise.

644 (b) Any school within the department that is operated by a state charter school pursuant
645 to a contract entered into in accordance with Code Section 20-2-2084.1 shall be under the
646 control of the State Charter Schools Commission and the governing board of the state
647 charter school, subject to any conditions in the contract. Any such school shall not be
648 considered a part of the special school district established pursuant to this Code section.

649 ~~(b)(c)~~ The effect of subsection (a) of this Code section shall not be to provide state funds
650 to the special school district under the department through Part 4 of Article 6 of Chapter
651 2 of Title 20, except as otherwise provided in Code Section 20-2-2084.1."

652 **SECTION 2-6.**

653 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended
654 by revising Code Section 49-4A-12, relating to the Department of Juvenile Justice as a
655 special school district, as follows:

656 "49-4A-12.

657 (a) The Department of Juvenile Justice shall be a special school district which shall be
658 given the same funding consideration for federal funds that school districts within ~~the~~ this
659 state are given.

660 ~~(b)(1) Except as otherwise provided in paragraph (2) of this subsection, the~~ The schools
661 within the department shall be under the control of the commissioner who shall serve as
662 the superintendent of schools for such district. The Board of Juvenile Justice shall serve
663 as the board of education for such district.

664 (2) Any school within the department that is operated by a state charter school pursuant
665 to a contract entered into in accordance with Code Section 20-2-2084.1 shall be under the
666 control of the State Charter Schools Commission and the governing board of the state
667 charter school, subject to any conditions in the contract. Any such school shall not be
668 considered a part of the special school district established pursuant to this Code section.

669 (c)(1) The schools shall meet the requirements of the law for public schools and rules
670 and regulations of the State Board of Education. It is the intent of this Code section to

671 fund educational services and programs in this special school district so that youth served
 672 therein shall receive the same quality and content of educational services as provided to
 673 youth in school districts within ~~the~~ this state.

674 (2) The State School Superintendent may grant waivers for such provisions of the laws
 675 and regulations with which the schools cannot comply because of their functioning on an
 676 annual basis and in response to the commissioner or the commissioner's designee's
 677 written request and justification. Such exceptions shall be in writing.

678 (d)(1) Each teacher in the special school district shall receive annual compensation at the
 679 rate specified for the type of certificate held by such teacher based on the appropriate
 680 teacher salary schedules established pursuant to Code Section 20-2-212.

681 (2) This provision shall not act to reduce the compensation currently paid any teacher in
 682 the special school district.

683 (3) To the extent such resources are available, federal funding resources shall be utilized
 684 to meet increased costs resulting from implementation of this subsection.

685 (e) The commissioner shall develop and implement a plan whereby there shall be
 686 sufficient substitute teachers available for temporary service as needed for each school
 687 composing the special school district.

688 (f)(1) Nothing in the language of this Code section shall be construed as prohibiting any
 689 local school district from issuing a diploma to a youth in the custody of the department,
 690 upon certification of the principal of a departmental school.

691 (2) School records of any juvenile in the department's programs who is issued a diploma
 692 by a local school district shall be maintained by such local school district, provided that
 693 all references to the juvenile's commitment to and treatment by the department are
 694 expunged.

695 (g) The special school district under the department shall have the powers, privileges, and
 696 authority exercised or capable of exercise by any other school district.

697 (h) The effect of this Code section shall not be to provide state funds to the special school
 698 district under the department through Part 4 of Article 6 of Chapter 2 of Title 20, except
 699 as otherwise provided in Code Section 20-2-2084.1."

700 PART III
 701 SCHOOL DISCIPLINE
 702 SECTION 3-1.

703 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 704 revising Code Section 20-2-759, which was previously reserved, as follows:

705 "20-2-759.
 706 The State Board of Education shall promulgate rules and regulations to require minimum
 707 qualifications for hearing officers, disciplinary hearing officers, tribunals, and panels that
 708 are tasked with hearing matters in this subpart. The State Board of Education shall
 709 promulgate rules and regulations to ensure that such individuals have initial training prior
 710 to serving as a hearing officer or disciplinary hearing officer or on a tribunal or panel,
 711 undergo continuing education so as to continue to serve in such capacity, and function as
 712 independent, neutral arbiters. Reserved."

713 SECTION 3-2.

714 Said title is further amended by revising Code Section 20-2-1181, relating to disruption or
 715 interference with operation of public schools, as follows:

716 "20-2-1181.

717 (a) It shall be unlawful for any person to knowingly, intentionally, or recklessly disrupt or
 718 interfere with the operation of any public school, public school bus, or public school bus
 719 stop as designated by local school boards of education. Any Except as provided in
 720 subsection (b) of this Code section, a person convicted of violating this Code section shall
 721 be guilty of a misdemeanor of a high and aggravated nature.

722 (b)(1) As used in this subsection, the term 'complaint' shall have the same meaning as set
 723 forth in Code Section 15-11-2.

724 (2) A local board of education shall develop a system of progressive discipline that may
 725 be imposed on a child accused of violating this Code section before initiating a
 726 complaint.

727 (3) When a complaint is filed involving a violation of this Code section by a child not
 728 included in paragraph (4) of this subsection, it shall include information showing that the
 729 local board of education sought to:

730 (A) Resolve the expressed problem through available educational approaches; and
 731 (B) Engage the child's parent, guardian, or legal custodian to resolve the expressed
 732 problem and that such individual has been unable or unwilling to resolve the expressed
 733 problem, that the expressed problem remains, and that court intervention is necessary.

734 (4) When a complaint is filed involving a violation of this Code section by a child who
 735 is eligible for or suspected to be eligible for services under the federal Individuals with
 736 Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973, it
 737 shall include information showing that the local board of education:

738 (A) Has determined that such child is eligible or suspected to be eligible for services
 739 under the federal Individuals with Disabilities Education Act or Section 504 of the
 740 federal Rehabilitation Act of 1973;

741 (B) Has reviewed for appropriateness such child's current Individualized Education
 742 Program (IEP) and placement and has made modifications where appropriate;
 743 (C) Sought to resolve the expressed problem through available educational approaches;
 744 and
 745 (D) Sought to engage the child's parent, guardian, or legal custodian to resolve the
 746 expressed problem and that such individual has been unable or unwilling to resolve the
 747 expressed problem, that the expressed problem remains, and that court intervention is
 748 necessary."

749 **SECTION 3-3.**

750 Said title is further amended by revising Code Section 20-2-1183, which was previously
 751 reserved, as follows:

752 "20-2-1183.

753 When a local school system assigns or employs law enforcement officers in schools, the
 754 local board of education shall have a collaborative written agreement with law enforcement
 755 officials to establish the role of law enforcement and school employees in school
 756 disciplinary matters and ensure coordination and cooperation among officials, agencies,
 757 and programs involved in school discipline and public protection. Reserved."

758 **PART IV**

759 **DRIVING PRIVILEGES**

760 **SECTION 4-1.**

761 Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to drivers' licenses,
 762 is amended by adding a new Code section to read as follows:

763 "40-5-9.

764 (a) A pauper's affidavit may be filed in lieu of paying the driver's license reinstatement or
 765 restoration fee otherwise required by this chapter. An individual filing a pauper's affidavit
 766 shall under oath affirm his or her poverty and his or her resulting inability to pay the
 767 driver's license reinstatement or restoration fee otherwise required by this chapter. The
 768 form of the affidavit shall be prescribed by the commissioner and shall indicate on its face
 769 that such individual has neither the income nor the assets to pay the fee otherwise required.
 770 The following warning shall be printed on the affidavit form prepared by the
 771 commissioner, to wit: 'WARNING: Any person knowingly making any false statement on
 772 this affidavit commits the offense of false swearing and shall be guilty of a felony.'

773 (b) Upon the submission of a pauper's affidavit, the driver's license reinstatement or
 774 restoration fee shall be 50 percent of the fee required by law."

775 **SECTION 4-2.**

776 Said chapter is further amended by revising Code Section 40-5-22.1, relating to reinstatement
 777 of license of child under 16 years convicted of driving under the influence of alcohol or
 778 drugs, as follows:

779 "40-5-22.1.

780 Notwithstanding any other provision of law, if a child under 16 years of age is adjudicated
 781 delinquent of driving under the influence of alcohol or drugs ~~or of possession of marijuana~~
 782 ~~or a controlled substance in violation of Code Section 16-13-30 or of the unlawful~~
 783 ~~possession of a dangerous drug in violation of Code Section 16-13-72~~ or convicted in any
 784 other court of such offenses, the court shall order that the privilege of such child to apply
 785 for and be issued a driver's license or learner's permit shall be suspended and delayed until
 786 such child is 17 years of age for a first conviction and until such child is 18 years of age for
 787 a second or subsequent such conviction. Upon reaching the required age, such license
 788 privilege shall be reinstated if the child submits proof of completion of a DUI Alcohol or
 789 Drug Use Risk Reduction Program or an assessment and intervention program approved
 790 by the juvenile court and pays a reinstatement fee to the Department of Driver Services.
 791 The reinstatement fee for a first such conviction shall be \$210.00 or \$200.00 if paid by
 792 mail. The reinstatement fee for a second such conviction shall be \$310.00 or \$300.00 if
 793 paid by mail. The reinstatement fee for a third or subsequent such conviction shall be
 794 \$410.00 or \$400.00 if paid by mail. The court shall notify the department of its order
 795 delaying the issuance of such child's license within 15 days of the date of such order. The
 796 department shall not issue a driver's license or learner's permit to any person contrary to a
 797 court order issued pursuant to this Code section."

798 **SECTION 4-3.**

799 Said chapter is further amended by revising subsection (e) of Code Section 40-5-61, relating
 800 to surrender and return of license, and by adding a new subsection to read as follows:

801 "(e)(1) For the purpose of making any determination under this Code section relating to
 802 the return of revoked or suspended licenses to drivers, the period of revocation or
 803 suspension shall begin on the date the license is surrendered to the department or a court
 804 of competent jurisdiction under any provision of this chapter or on the date that the
 805 department processes the citation or conviction, whichever date shall first occur.

806 (2) If the license is lost, or for any other reason surrender to the department is
 807 impossible, the period of revocation or suspension may begin on the date set forth in a
 808 sworn affidavit setting forth the date and reasons for such impossibility, if the department
 809 shall have sufficient evidence to believe that the date set forth in such affidavit is true; in

810 the absence of such evidence, the date of receipt of such affidavit by the department shall
811 be controlling.

812 (3) Notwithstanding paragraphs (1) and (2) of this subsection, a period of revocation or
813 suspension may begin on the date a person is sentenced for an offense that also results in
814 the revocation or suspension of his or her driver's license or driving privileges.

815 (f) When a person serving a sentence has his or her driver's license or driving privileges
816 concurrently revoked or suspended with the imposition of his or her sentence, the
817 department shall credit the time served under such sentence toward the fulfillment of the
818 period of revocation or suspension."

819 **SECTION 4-4.**

820 Said chapter is further amended by revising Code Section 40-5-62, relating to periods of
821 revocation and conditions to restoration of license or issuance of new license, as follows:

822 "40-5-62.

823 (a) Unless the revocation was for a cause which has been removed, any person whose
824 license or privilege to drive a motor vehicle on the public highways has been revoked shall
825 not be eligible to apply for a new license nor restoration of his or her nonresident's
826 operating privilege until the earlier of:

827 (1) Five years from the date on which the revoked license was surrendered to and
828 received by the department pursuant to a person's having been declared a habitual violator
829 under Code Section 40-5-58 ~~or~~;

830 (2) Five years from the date on which a person is sentenced for the offense that resulted
831 in his or her driver's license or driving privileges being revoked;

832 (3) Five years from the date on which the department processed the citation or
833 conviction, reduced by a period of time equal to that period of time which elapses
834 between the date the person surrenders his or her driver's license to the court after
835 conviction for the offense for which the person is declared a habitual violator and the date
836 the department receives such license from the court; or

837 ~~(2)~~(4) Such time as any cause for revocation under subsection (b) of Code Section
838 40-5-59 has been removed.

839 (b) When a person serving a sentence has his or her driver's license or driving privileges
840 concurrently revoked with the imposition of his or her sentence, the department shall credit
841 the time served under such sentence toward the fulfillment of the period of revocation.

842 ~~(b)~~(c) The department shall not issue a new license nor restore a person's suspended
843 license or nonresident's operating privilege unless and until it is satisfied after investigation
844 of the character, habits, and driving ability of such person that it will be safe to grant the
845 privilege of driving a motor vehicle on the public highways. Notwithstanding

846 subsection (a) of this Code section or any other provision of this title, the department shall
 847 not issue a new license to any person whose license was revoked as a habitual violator for
 848 three violations of Code Section 40-6-391 within a five-year period unless and until such
 849 person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction
 850 Program. The department may issue rules and regulations providing for reinstatement
 851 hearings. In the case of a revocation pursuant to Code Section 40-5-58, the department
 852 shall charge a fee of \$410.00 or \$400.00 if processed by mail in addition to the fee
 853 prescribed by Code Section 40-5-25 to issue a new driver's license to a person whose
 854 driver's license has been revoked."

855 **SECTION 4-5.**

856 Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section
 857 40-5-63, relating to periods of suspension, as follows:

858 "(3) Upon the third conviction of any such offense within five years, as measured from
 859 the dates of previous arrests for which convictions were obtained to the date of the
 860 current arrest for which a conviction is obtained, such person shall be considered a
 861 habitual violator, and ~~said such~~ license shall be revoked as provided for in ~~paragraph (1)~~
 862 paragraphs (1) through (3) of subsection (a) of Code Section 40-5-62. For purposes of
 863 this paragraph, a plea of nolo contendere and all previous accepted pleas of nolo
 864 contendere to an offense listed in Code Section 40-5-54 within such five-year period shall
 865 constitute a conviction. For the purposes of this paragraph, a plea of nolo contendere and
 866 all prior accepted pleas of nolo contendere to a charge of violating Code Section 40-6-391
 867 within five years, as measured from the dates of previous arrests for which convictions
 868 were obtained or pleas of nolo contendere were accepted to the date of the current arrest
 869 for which a plea of nolo contendere is accepted, shall be considered and counted as
 870 convictions."

871 **SECTION 4-6.**

872 Said chapter is further amended by revising subsections (c), (c.1), and (e) of Code Section
 873 40-5-64, relating to limited driving permits for certain offenders, as follows:

874 "(c) **Standards for approval.** The department shall issue a limited driving permit if the
 875 application indicates that refusal to issue such permit would cause extreme hardship to the
 876 applicant. Except as otherwise provided by subsection (c.1) of this Code section, for the
 877 purposes of this Code section, the term 'extreme hardship' means that the applicant cannot
 878 reasonably obtain other transportation, and therefore the applicant would be prohibited
 879 from:

- 880 (1) Going to his or her place of employment or performing the normal duties of his or
 881 her occupation;
- 882 (2) Receiving scheduled medical care or obtaining prescription drugs;
- 883 (3) Attending a college or school at which he or she is regularly enrolled as a student;
- 884 (4) Attending regularly scheduled sessions or meetings of support organizations for
 885 persons who have addiction or abuse problems related to alcohol or other drugs, which
 886 organizations are recognized by the commissioner;
- 887 (5) Attending under court order any driver education or improvement school or alcohol
 888 or drug program or course approved by the court which entered the judgment of
 889 conviction resulting in suspension of his or her driver's license or by the commissioner;
- 890 (6) Attending court, reporting to a community supervision, juvenile probation, or
 891 Article 6 of Chapter 8 of Title 42 probation office, ~~or~~ reporting to a community
 892 supervision officer, county or Department of Juvenile Justice juvenile probation officer,
 893 or probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or performing
 894 community service; ~~or~~
- 895 (7) Transporting an immediate family member who does not hold a valid driver's license
 896 for work, to obtain medical care; or prescriptions, or to school; or
- 897 (8) Attending any program, event, treatment, or activity ordered by a judge presiding in
 898 an accountability court, as such term is defined in Code Section 15-1-18.

899 **(c.1) Exception to standards for approval.**

- 900 (1) The provisions of paragraphs (2), (3), (4), and (5) of subsection (c) of this Code
 901 section shall not apply and shall not be considered for purposes of granting a limited
 902 driving permit or imposing conditions thereon under this Code section in the case of a
 903 driver's license suspension under paragraph (2) of subsection (a.1) of Code Section
 904 40-5-22.
- 905 (2) An ignition interlock device limited driving permit shall be restricted to allow the
 906 holder thereof to drive solely for the following purposes:
- 907 (A) Going to his or her place of employment or performing the normal duties of his or
 908 her occupation;
- 909 (B) Receiving scheduled medical care or obtaining prescription drugs;
- 910 ~~(B)(C)~~ Attending a college or school at which he or she is regularly enrolled as a
 911 student;
- 912 ~~(C)(D)~~ Attending regularly scheduled sessions or meetings of treatment support
 913 organizations for persons who have addiction or abuse problems related to alcohol or
 914 other drugs, which organizations are recognized by the commissioner; ~~and~~

915 (E) Attending under court order any driver education or improvement school or alcohol
 916 or drug program or course approved by the court which entered the judgment of
 917 conviction resulting in suspension of his or her driver's license or by the commissioner;
 918 (F) Attending court, reporting to a community supervision, juvenile probation, or
 919 Article 6 of Chapter 8 of Title 42 probation office, reporting to a community
 920 supervision officer, county or Department of Juvenile Justice juvenile probation officer,
 921 or probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or
 922 performing community service;
 923 (G) Transporting an immediate family member who does not hold a valid driver's
 924 license for work, to obtain medical care or prescriptions, or to school;
 925 (H) Attending any program, event, treatment, or activity ordered by a judge presiding
 926 in an accountability court, as such term is defined in Code Section 15-1-18; or
 927 ~~(D)~~(I) Going for monthly monitoring visits with the permit holder's ignition interlock
 928 device service provider."

929 **"(e) Fees, duration, renewal, and replacement of permit.**

930 (1) A limited driving permit issued pursuant to this Code section shall be \$25.00 and
 931 shall become invalid upon the driver's eighteenth birthday in the case of a suspension
 932 under paragraph (2) of subsection (a.1) of Code Section 40-5-22, upon the expiration of
 933 one year following issuance thereof in the case of a suspension for an offense listed in
 934 Code Section 40-5-54 or a suspension under Code Section 40-5-57 or a suspension in
 935 accordance with paragraph (1) of subsection (a) of Code Section 40-5-63 for a violation
 936 of Code Section 40-6-391, or upon the expiration of 30 days in the case of an
 937 administrative license suspension in accordance with paragraph (1) of subsection (a) of
 938 Code Section 40-5-67.2; except that such limited driving permit shall expire upon any
 939 earlier reinstatement of the driver's license. A person may apply to the department for
 940 a limited driving permit immediately following such conviction if he or she has
 941 surrendered his or her driver's license to the court in which the conviction was adjudged
 942 or to the department if the department has processed the citation or conviction. Upon the
 943 applicant's execution of an affidavit attesting to such facts and to the fact that the court
 944 had not imposed a suspension or revocation of his or her driver's license or driving
 945 privileges inconsistent with the driving privileges to be conferred by the limited driving
 946 permit applied for, the department may issue such person a limited driving permit.
 947 ~~Permits~~ Limited driving permits issued pursuant to this Code section are renewable upon
 948 payment of a renewal fee of \$5.00. ~~Permits~~ Such permits may be renewed until one time
 949 after the person has his or her license reinstated is eligible to reinstate his or her driver's
 950 license for the violation that was the basis of the issuance of the permit. Upon payment
 951 of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of

952 a Class C driver's license, a person may be issued a replacement for a lost or destroyed
953 limited driving permit issued to him or her.

954 (2) An ignition interlock device limited driving permit shall be valid for a period of one
955 year. Upon successful completion of one year of monitoring of such ignition interlock
956 device, the restriction for maintaining and using such ignition interlock device shall be
957 removed, and ~~the such~~ permit may be renewed for additional periods of two months as
958 provided in paragraph (1) of this subsection upon payment of a renewal fee of \$5.00, but
959 it may only be renewed one time after such person is eligible to reinstate his or her
960 driver's license."

961 **SECTION 4-7.**

962 Said chapter is further amended by revising Code Section 40-5-75, relating to suspension of
963 licenses by operation of law, as follows:

964 "40-5-75.

965 (a) The driver's license of any person convicted of driving or being in actual physical
966 control of any moving vehicle while under the influence of a controlled substance or
967 marijuana in violation of paragraph (2), (4), or (6) of subsection (a) of Code Section
968 40-6-391, or the equivalent law of any other jurisdiction, shall by operation of law be
969 suspended, and such suspension shall be subject to the following terms and conditions:

970 (1) Upon the first conviction of any such offense, with no arrest and conviction of and
971 no plea of nolo contendere accepted to such offense within the previous five years, as
972 measured from the dates of previous arrests for which convictions were obtained to the
973 date of the current arrest for which a conviction is obtained, the period of suspension shall
974 be for not less than 180 days. At the end of 180 days, the person may apply to the
975 department for reinstatement of his or her driver's license. Such license shall be
976 reinstated only if the person submits proof of completion of a DUI Alcohol or Drug Use
977 Risk Reduction Program and pays to the department a restoration fee of \$210.00 or
978 \$200.00 when such reinstatement is processed by mail;

979 (2) Upon the second conviction of any such offense within five years, as measured from
980 the dates of previous arrests for which convictions were obtained to the date of the
981 current arrest for which a conviction is obtained, the period of suspension shall be for
982 three years, provided that after one year from the date of the conviction, the person may
983 apply to the department for reinstatement of his or her driver's license by submitting proof
984 of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the
985 department a restoration fee of \$310.00 or \$300.00 when such reinstatement is processed
986 by mail; and

987 (3) Upon the third or subsequent conviction of any such offense within five years, as
 988 measured from the dates of previous arrests for which convictions were obtained to the
 989 date of the current arrest for which a conviction is obtained, such person's license shall
 990 be suspended for a period of five years. A driver's license suspension imposed under this
 991 paragraph shall run concurrently with and shall be counted toward the fulfillment of any
 992 period of revocation imposed under Code Sections 40-5-58 and 40-5-62, provided that
 993 such revocation arose from the same act for which the suspension was imposed. At the
 994 end of two years, the person may apply to the department for a three-year driving permit
 995 upon compliance with the following conditions:

996 (A) Such person has not been convicted or pleaded nolo contendere to any drug related
 997 offense, including driving under the influence, for a period of two years immediately
 998 preceding the application for such permit;

999 (B) Such person submits proof of completion of a licensed drug treatment program.
 1000 Such proof shall be submitted within two years of the license suspension and prior to
 1001 the issuance of the three-year driving permit. Such licensed drug treatment program
 1002 shall be paid for by the offender. The offender shall pay a permit fee of \$25.00 to the
 1003 department;

1004 (C) Such person submits proof of financial responsibility as provided in Chapter 9 of
 1005 this title; and

1006 (D) Refusal to issue such permit would cause extreme hardship to the applicant. For
 1007 the purposes of this subparagraph, the term 'extreme hardship' means that the applicant
 1008 cannot reasonably obtain other transportation, and, therefore, the applicant would be
 1009 prohibited from:

1010 (i) Going to his or her place of employment or performing the normal duties of his
 1011 or her occupation;

1012 (ii) Receiving scheduled medical care or obtaining prescription drugs;

1013 (iii) Attending a college or school at which he or she is regularly enrolled as a
 1014 student; or

1015 (iv) Attending regularly scheduled sessions or meetings of support organizations for
 1016 persons who have addiction or abuse problems related to alcohol or other drugs,
 1017 which organizations are recognized by the commissioner.

1018 Any three-year driving permittee who is convicted of violating any state law or local
 1019 ordinance relating to the movement of vehicles or any such permittee who is convicted
 1020 of violating the conditions endorsed on his or her three-year driving permit shall have his
 1021 or her permit revoked by the department. Any court in which such conviction is had shall
 1022 require the permittee to surrender the three-year driving permit to the court, and the court
 1023 shall forward it to the department within ten days after the conviction, with a copy of the

1024 conviction. Any person whose ~~limited~~ three-year driving permit has been revoked shall
1025 not be eligible to apply for a driver's license until six months from the date such permit
1026 was surrendered to the department. At the end of five years from the date on which the
1027 license was suspended, the person may apply to the department for reinstatement of his
1028 or her driver's license by submitting proof of completion of a DUI Alcohol or Drug Use
1029 Risk Reduction Program and paying to the department a restoration fee of \$410.00 or
1030 \$400.00 when such reinstatement is processed by mail. The restoration fee paid to
1031 reinstate a driver's license that was suspended under this paragraph shall be counted
1032 toward the fulfillment of the restoration fee required by subsection (c) of Code Section
1033 40-5-62, provided that such revocation arose from the same act for which the suspension
1034 was imposed.

1035 (b) Except as provided in Code Section 40-5-76, whenever a person is convicted of driving
1036 or being in actual physical control of any moving vehicle while under the influence of a
1037 controlled substance or marijuana in violation of paragraph (2), (4), or (6) of subsection (a)
1038 of Code Section 40-6-391, or the equivalent law of any other jurisdiction, the court in
1039 which such conviction is had shall require the surrender to it of any driver's license then
1040 held by the person so convicted, and the court shall thereupon forward such license and a
1041 copy of its order to the department within ten days after the conviction. The periods of
1042 suspension provided for in this Code section shall ~~begin on the date of surrender of the~~
1043 ~~driver's license or on the date that the department processes the conviction or citation,~~
1044 ~~whichever shall first occur~~ be governed by subsection (e) of Code Section 40-5-61.

1045 (c) Application for reinstatement of a driver's license under paragraph (1), ~~or (2), or (3)~~ of
1046 subsection (a) of this Code section shall be made on such forms as the commissioner may
1047 prescribe and shall be accompanied by proof of completion of a DUI Alcohol or Drug Use
1048 Risk Reduction Program and a restoration fee of \$210.00 or \$200.00 when such
1049 reinstatement is processed by mail. Application for a three-year driving permit under
1050 paragraph (3) of subsection (a) of this Code section shall be made on such form as the
1051 commissioner may prescribe and shall be accompanied by proof of completion of an
1052 approved residential drug treatment program and a fee of \$25.00 for such permit.

1053 (d) Notwithstanding any other provision of this Code section or any other provision of this
1054 chapter, any person whose license is suspended pursuant to this Code section shall not be
1055 eligible for early reinstatement of his or her license and shall not be eligible for a limited
1056 driving permit, but such person's license shall be reinstated only as provided in this Code
1057 section or Code Section 40-5-76.

1058 (e) Except as provided in subsection (a) of this Code section, it shall be unlawful for any
1059 person to operate any motor vehicle in this state after such person's license has been
1060 suspended pursuant to this Code section if such person has not thereafter obtained a valid

1061 license. Any person who is convicted of operating a motor vehicle before the department
 1062 has reinstated such person's license or issued such person a three-year driving permit shall
 1063 be punished by a fine of not less than \$750.00 nor more than \$5,000.00 or by imprisonment
 1064 in the penitentiary for not more than 12 months, or both.

1065 (f) Licensed drivers who are 16 years of age who are adjudicated in a juvenile court
 1066 pursuant to this Code section may, at their option, complete a DUI Alcohol or Drug Use
 1067 Risk Reduction Program or an assessment and intervention program approved by the
 1068 juvenile court.

1069 (g)(1) Upon the effective date of this subsection, the department shall be authorized to
 1070 reinstate, instantter, a driver's license that was suspended pursuant to this Code section for
 1071 a violation of Article 2 of Chapter 13 of Title 16, or the equivalent law of any other
 1072 jurisdiction, that occurred prior to July 1, 2015, provided that the driver's license has not
 1073 been previously reinstated. The provisions of this paragraph shall not apply to a
 1074 suspension imposed pursuant to this Code section for a violation of paragraph (2), (4), or
 1075 (6) of subsection (a) of Code Section 40-6-391, or the equivalent law of any jurisdiction,
 1076 that occurred prior to July 1, 2015, unless ordered by a judge presiding in a drug court
 1077 division, mental health court division, veterans court division, or operating under the
 1078 influence court division in accordance with subsection (a) of Code Section 40-5-76.
 1079 ~~Notwithstanding any other provision of this chapter to the contrary, the suspension~~
 1080 ~~imposed pursuant to this Code section shall be in addition to and run consecutively to any~~
 1081 ~~other suspension imposed by the department at the time of the conviction that results in~~
 1082 ~~said suspension. If the person has never been issued a driver's license in the State of~~
 1083 ~~Georgia or holds a driver's license issued by another state, the person shall not be eligible~~
 1084 ~~for a driver's license for the applicable period of suspension following his or her~~
 1085 ~~submission of an application for issuance thereof.~~

1086 (2) The department shall make a notation of a suspended driver's license that is reinstated
 1087 pursuant to paragraph (1) of this subsection on a person's driving record, and such
 1088 information shall be made available in accordance with Code Section 40-5-2.

1089 (3) The driver's license or driving privileges of any person who has a driver's license
 1090 reinstated in accordance with paragraph (1) of this subsection shall remain subject to any
 1091 and all applicable disqualifications specified in Article 7 of this chapter.

1092 (4) The department may promulgate rules and regulations as are necessary to implement
 1093 this subsection."

1094 **SECTION 4-8.**

1095 Said chapter is further amended by revising Code Section 40-5-76, relating to restoration or
 1096 suspension of defendant's driver's license or issuance of limited driving permit, as follows:

1097 "40-5-76.

1098 (a) A judge presiding in a drug court division, mental health court division, ~~or veterans~~
 1099 ~~court division, or operating under the influence court division~~ may order the department
 1100 to ~~restore~~ reinstate a defendant's driver's license that has been or should be suspended
 1101 pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited
 1102 driving permit ~~or ignition interlock device limited driving permit~~ in accordance with the
 1103 provisions set forth in subsections (c), (c.1), and (d) of Code Section 40-5-64 or with
 1104 whatever conditions the court determines to be appropriate under the circumstances as a
 1105 reward or sanction to the defendant's behavior in such court division. The court shall
 1106 determine what fees, if any, shall be paid to the department for such reward or sanction,
 1107 provided that such fee shall not be greater than the fee normally imposed for such services.

1108 (b) A judge presiding in any court, other than the court divisions specified in subsection (a)
 1109 of this Code section, may order the department to ~~restore~~ reinstate a defendant's driver's
 1110 license that has been or should be suspended pursuant to Code Section 40-5-75 or issue a
 1111 defendant a limited driving permit ~~or ignition interlock device limited driving permit~~ in
 1112 accordance with the provisions set forth in subsections (c), (c.1), and (d) of Code Section
 1113 40-5-64 if the offense for which the defendant was convicted did not directly relate to the
 1114 operation of a motor vehicle. The court shall determine what fees, if any, shall be paid to
 1115 the department for the ~~restoration~~ reinstatement of such driver's license or issuance of such
 1116 limited driving permit ~~or ignition interlock device limited driving permit~~, provided that
 1117 such fee shall not be greater than the fee normally imposed for such services. Such judge
 1118 may also order the department to suspend a defendant's driver's license that could have
 1119 been suspended pursuant to Code Section 40-5-75 as a consequence of the defendant's
 1120 violation of the terms of his or her probation.

1121 (c)(1) The department shall make a notation on a person's driving record when his or her
 1122 driver's license was reinstated or suspended or he or she was issued a limited driving
 1123 permit or ignition interlock device limited driving permit under this Code section, and
 1124 such information shall be made available in accordance with Code Section 40-5-2.

1125 (2) The driver's license of any person who has a driver's license reinstated or suspended
 1126 in accordance with this Code section shall remain subject to any applicable
 1127 disqualifications specified in Article 7 of this chapter.

1128 (d) The department shall credit any time during which a defendant was issued a limited
 1129 driving permit or ignition interlock device limited driving permit under subsection (a) of
 1130 this Code section toward the fulfillment of the period of a driver's license suspension for
 1131 which such permit was issued."

1132 **SECTION 4-9.**

1133 Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section
1134 40-5-121, relating to driving while license is suspended or revoked, as follows:

1135 "(b)(1) The department, upon receiving a record of the conviction of any person under
1136 this Code section upon a charge of driving a vehicle while the license of such person was
1137 suspended, disqualified, or revoked, including suspensions under subsection (e) of Code
1138 Section 40-5-75, shall ~~extend the period of~~ impose an additional suspension or
1139 disqualification ~~by~~ of six months. Upon the expiration of six months ~~from the date on~~
1140 ~~which the suspension or disqualification is extended and payment of the applicable~~
1141 ~~reinstatement fee~~, the department shall reinstate the license. The reinstatement fee for a
1142 first such conviction within a five-year period shall be \$210.00 or \$200.00 if paid by
1143 mail. The reinstatement fee for a second such conviction within a five-year period shall
1144 be \$310.00 or \$300.00 if paid by mail. The reinstatement fee for a third or subsequent
1145 such conviction within a five-year period shall be \$410.00 or \$400.00 if paid by mail."

1146 **PART V**

1147 **REORGANIZATION WITHIN THE BOARD**

1148 **AND DEPARTMENT OF COMMUNITY SUPERVISION**

1149 **SECTION 5-1.**

1150 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
1151 by revising subsections (a), (b), and (j) of Code Section 42-3-2, relating to the creation of the
1152 Board of Community Supervision, as follows:

1153 "(a) There is created the Board of Community Supervision which shall establish the
1154 general policy to be followed by the Department of Community Supervision ~~and the~~
1155 ~~Governor's Office of Transition, Support, and Reentry~~. The powers, functions, and duties
1156 of the Board of Corrections as they exist on June 30, 2015, with regard to the probation
1157 division of the Department of Corrections and supervision of probationers unless otherwise
1158 provided in this chapter are transferred to the Board of Community Supervision effective
1159 July 1, 2015. The powers, functions, and duties of the State Board of Pardons and Paroles
1160 as they exist on June 30, 2015, with regard to the supervision of parolees, unless otherwise
1161 provided in this chapter are transferred to the Board of Community Supervision effective
1162 July 1, 2015. The powers, functions, and duties of the Board of Juvenile Justice and the
1163 Department of Juvenile Justice as they exist on June 30, 2016, with regard to the probation
1164 supervision of children and reentry services for children who have been released from
1165 restrictive custody and who were adjudicated for a Class A designated felony act or Class
1166 B designated felony act, as such terms are defined in Code Section 15-11-2, are transferred

1167 to the Board of Community Supervision effective July 1, 2016, except as otherwise
 1168 provided by the rules and regulations of the Board of Juvenile Justice governing such
 1169 supervision. The powers, functions, and duties of the County and Municipal Probation
 1170 Advisory Council as they exist on June 30, 2015, are transferred to the Board of
 1171 Community Supervision effective July 1, 2015. The powers, functions, and duties of the
 1172 Governor's Office of Transition, Support, and Reentry as they exist on June 30, 2016, with
 1173 regard to reentry services are transferred to the board and DCS effective July 1, 2016. The
 1174 powers, functions, and duties of the board that were transferred from the former County
 1175 and Municipal Probation Advisory Council as it existed on June 30, 2015, to the board are
 1176 transferred to DCS effective July 1, 2016; provided, however, that the power to set policy
 1177 and promulgate rules and regulations for DCS shall be retained by the board.

1178 (b) The board shall consist of ~~nine~~ 11 members. The commissioner of corrections,
 1179 commissioner of juvenile justice, chairperson and vice chairperson of the State Board of
 1180 Pardons and Paroles, director of the Division of Family and Children Services of the
 1181 Department of Human Services, and commissioner of behavioral health and developmental
 1182 disabilities shall be members of the board and shall serve on the board so long as they
 1183 remain in their appointed positions. The Governor shall appoint:

1184 (1) A sheriff who shall serve an initial term ending June 30, 2019, each subsequent term
 1185 being four years;

1186 (2) A mayor or city manager who shall serve an initial term ending June 30, 2018, each
 1187 subsequent term being four years; ~~and~~

1188 (3) A county commissioner or county manager who shall serve an initial term ending
 1189 June 30, 2017, each subsequent term being four years;

1190 (4) An individual who owns or is employed by a private corporation, private enterprise,
 1191 private agency, or other private entity that is providing probation supervision services
 1192 pursuant to Article 6 of Chapter 8 of this title who shall serve an initial term ending June
 1193 30, 2019, each subsequent term being four years; and

1194 (5) An individual who is employed by a governing authority of a county, municipality,
 1195 or consolidated government that is providing probation supervision services pursuant to
 1196 Article 6 of Chapter 8 of this title who shall serve an initial term ending June 30, 2018,
 1197 each subsequent term being four years."

1198 "(j) The board shall perform duties required of it by law and shall, in addition thereto, be
 1199 responsible for promulgation of all rules and regulations not in conflict with this chapter
 1200 that may be necessary and appropriate to the administration of DCS ~~and the Governor's~~
 1201 ~~Office of Transition, Support, and Reentry,~~ to the accomplishment of the purposes of this
 1202 chapter and Chapters 8 and 9 of this title, and to the performance of the duties and

1203 functions of DCS ~~and the Governor's Office of Transition, Support, and Reentry~~ as set forth
 1204 in this chapter and Chapters 8 and 9 of this title."

1205 **SECTION 5-2.**

1206 Said title is further amended by revising subsection (a) of Code Section 42-3-3, relating to
 1207 the creation of the Department of Community Supervision, as follows:

1208 "(a) There is created the Department of Community Supervision. DCS shall be the agency
 1209 primarily responsible for:

- 1210 (1) Supervision of all defendants who receive a felony sentence of straight probation;
 1211 (2) Supervision of all defendants who receive a split sentence;
 1212 (3) Supervision of all defendants placed on parole or other conditional release from
 1213 imprisonment by the State Board of Pardons and Paroles;
 1214 (4) Supervision of juvenile offenders ~~when such offender had been placed in~~ released
 1215 from restrictive custody due to an adjudication for a Class A designated felony act or
 1216 Class B designated felony act, as such terms are defined in Code Section 15-11-2, ~~and is~~
 1217 released from such custody except as otherwise provided by the rules and regulations of
 1218 the Board of Juvenile Justice governing such supervision;
 1219 (5) Administration of laws, rules, and regulations relating to probation and parole
 1220 supervision, as provided for by law;
 1221 (6) Enforcement of laws, rules, and regulations relating to probation and parole
 1222 supervision, as provided for by law; ~~and~~
 1223 (7) Administration of laws as provided in this chapter and Chapters 8 and 9 of this title;
 1224 (8) Regulating entities and individuals that provide probation supervision services
 1225 pursuant to Article 6 of Chapter 8 of this title;
 1226 (9) Reviewing the uniform professional standards for private probation officers and
 1227 uniform contract standards for private probation contracts established in Code Section
 1228 42-8-107 and submit a report with its recommendations to the board. DCS shall submit
 1229 its initial report on or before January 1, 2018, and shall continue such reviews every two
 1230 years thereafter. Such report shall provide information which will allow the board to
 1231 review the effectiveness of the uniform professional standards and uniform contract
 1232 standards and, if necessary, to revise such standards;
 1233 (10) Producing an annual summary report;
 1234 (11) Administering laws, rules, and regulations relating to misdemeanor probation
 1235 supervision pursuant to Article 6 of Chapter 8 of this title, including, but not limited to,
 1236 authority over service provider contracts, registration of governing authorities and
 1237 entities, and discipline, suspension, revocation, and imposition of monetary and

1238 nonmonetary sanctions of entities and individuals involved in providing probation
 1239 supervision services pursuant to Article 6 of Chapter 8 of this title; and
 1240 (12) Imposing administrative fees, in an amount as approved by the board, for the
 1241 purpose of enforcing the provisions of Article 6 of Chapter 8 of this title."

1242 **SECTION 5-3.**

1243 Said title is further amended by revising subsection (a) of Code Section 42-3-5, relating to
 1244 the administrative functions of the Department of Community Supervision, as follows:

1245 "(a) The commissioner, with the approval of the board, may establish units within DCS as
 1246 he or she deems proper for its administration and shall designate persons to be assistant
 1247 commissioners of each unit and to exercise authority as he or she may delegate to them in
 1248 writing. The commissioner shall establish an offender transition and reentry unit within
 1249 DCS to coordinate successful offender reentry in this state, reduce recidivism, enhance
 1250 public safety through collaboration among stakeholders, and assist in ensuring the
 1251 appropriate and responsible use of cost savings realized by justice reforms through
 1252 reinvestment in evidence based, community centered services. The commissioner shall
 1253 establish a misdemeanor probation unit within DCS to coordinate and oversee services
 1254 provided under Article 6 of Chapter 8 of this title. The commissioner shall establish a
 1255 victim services unit within DCS to coordinate:

- 1256 (1) Payment of court ordered restitution; and
 1257 (2) Victim services, including, but not limited to, payments available to victims as
 1258 provided by law and assisting victims with support services."

1259 **SECTION 5-4.**

1260 Said title is further amended by revising subsection (e) of Code Section 42-3-6, relating to
 1261 rules and regulations, as follows:

1262 "(e) The following rules and regulations shall remain in full force and effect as rules and
 1263 regulations of DCS until amended, repealed, or superseded by rules or regulations adopted
 1264 by the board:

- 1265 (1) All rules and regulations previously adopted by the Advisory Council for Probation
 1266 which relate to functions transferred under this chapter from the state-wide probation
 1267 system to DCS;
 1268 (2) All rules and regulations previously adopted by the Department of Corrections or the
 1269 Board of Corrections which relate to functions transferred under this chapter from the
 1270 Department of Corrections to DCS;

1271 (3) All rules and regulations previously adopted by the State Board of Pardons and
 1272 Paroles which relate to functions transferred under this chapter from the State Board of
 1273 Pardons and Paroles to DCS;

1274 (4) All rules and regulations previously adopted by the Department of Juvenile Justice
 1275 or the Board of Juvenile Justice which relate to functions transferred under this chapter
 1276 from the Department of Juvenile Justice to DCS; ~~and~~

1277 (5) All rules and regulations previously adopted by the County and Municipal Probation
 1278 Advisory Council which relate to functions transferred under this chapter from the
 1279 County and Municipal Probation Advisory Council to DCS; and

1280 (6) All rules and regulations previously adopted by the Governor's Office of Transition,
 1281 Support, and Reentry which relate to functions transferred under this chapter from the
 1282 Governor's Office of Transition, Support, and Reentry to DCS."

1283 **SECTION 5-5.**

1284 Said title is further amended by revising subsection (a) of Code Section 42-3-7, relating to
 1285 transfer of prior appropriations, personnel, equipment, and facilities, as follows:

1286 "(a) Appropriations to the Department of Corrections, the Department of Juvenile Justice,
 1287 the County and Municipal Probation Advisory Council, ~~and~~ the State Board of Pardons and
 1288 Paroles, and the Governor's Office of Transition, Support, and Reentry for functions
 1289 transferred to DCS pursuant to this chapter shall be transferred to DCS as provided for in
 1290 Code Section 45-12-90. Personnel, equipment, and facilities previously employed by the
 1291 Department of Corrections, the Department of Juvenile Justice, the County and Municipal
 1292 Probation Advisory Council, ~~and~~ the State Board of Pardons and Paroles, and the
 1293 Governor's Office of Transition, Support, and Reentry for functions transferred to DCS
 1294 pursuant to this chapter shall likewise be transferred to DCS. Any disagreement as to any
 1295 of such transfers shall be resolved by the Governor. Any individual who is employed by
 1296 the Department of Corrections as a probation officer or probation supervisor or by the State
 1297 Board of Pardons and Paroles as a parole officer on or before July 1, 2016, and who is
 1298 required by the terms of his or her employment to comply with the requirements of Chapter
 1299 8 of Title 35, the 'Georgia Peace Officer Standards and Training Act,' may remain in the
 1300 employment of the employing agency but shall be transferred for administrative purposes
 1301 only to DCS on July 1, 2015."

1302 **SECTION 5-6.**

1303 Said is further amended by adding a new Code section to read as follows:

1304 "42-3-10.

1305 (a) In order to appeal a sanction imposed by the board, a person shall remit a request for
 1306 a hearing, in writing by certified mail or statutory overnight delivery, return receipt
 1307 requested, to the board within 30 days from the date of personal notice or receipt of the
 1308 notice of the sanction; otherwise, the right to such hearing shall be deemed waived. The
 1309 board shall hold a hearing as provided in Chapter 13 of Title 50, the 'Georgia
 1310 Administrative Procedure Act.' If the sanction is sustained, the person who received the
 1311 sanction shall have a right to file for a judicial review of the final decision, as provided for
 1312 in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; while such appeal
 1313 is pending, the order of the board shall not be stayed. A petition for judicial review shall
 1314 name the board as defendant, shall be served by certified mail or statutory overnight
 1315 delivery, return receipt requested, and shall be filed in the superior court of the county
 1316 where the offices of the board are located.

1317 (b) Actions at law and in equity against the board or any of its members predicated upon
 1318 omissions or acts done in a member's official capacity or under color thereof shall be
 1319 brought in the superior court of the county where the offices of the board are located;
 1320 provided, however, that nothing in this Code section shall be construed as waiving the
 1321 immunity of the state to be sued without its consent."

1322 **SECTION 5-7.**

1323 Said title is further amended by repealing in its entirety Article 2 of Chapter 3, relating to
 1324 successful transition and reentry of offender, and designating said article as reserved.

1325 **PART VI**

1326 **FIRST OFFENDER TREATMENT,**

1327 **RECORD RESTRICTION, AND CROSS-REFERENCES**

1328 **PART VIA**

1329 **SECTION 6A-1.**

1330 Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is
 1331 amended by revising Article 3, relating to probation of first offenders, as follows:

1332 **"ARTICLE 3**

1333 42-8-60.

1334 (a) ~~When a defendant Upon a verdict or plea of guilty or a plea of nolo contendere, but~~
 1335 ~~before an adjudication of guilt, in the case of a defendant who has not been previously~~

1336 convicted of a felony, the court may, upon a guilty verdict or plea of guilty or nolo
 1337 contendere and before an adjudication of guilt, without entering a judgment of guilt and
 1338 with the consent of the defendant, defer further proceedings and:

1339 (1) ~~Place Defer further proceeding and place~~ the defendant on probation as provided by
 1340 law; or

1341 (2) Sentence the defendant to a term of confinement as provided by law.

1342 ~~(b) Upon violation by the defendant of the terms of probation, upon a conviction for~~
 1343 ~~another crime during the period of probation, or upon the court determining that the~~
 1344 ~~defendant is or was not eligible for sentencing under this article, the court may enter an~~
 1345 ~~adjudication of guilt and proceed as otherwise provided by law. No person may avail~~
 1346 ~~himself or herself of this article on more than one occasion.~~

1347 ~~(c)(b)~~ The court shall not sentence a defendant under the provisions of this article ~~and, if~~
 1348 ~~sentenced under the provisions of this article, shall not discharge the defendant upon~~
 1349 ~~completion of the sentence~~ unless the court has reviewed the defendant's criminal record
 1350 as such is on file with the Georgia Crime Information Center.

1351 (c) When a court imposes a sentence pursuant to this article, it:

1352 (1) Shall state in its sentencing order the prospective effective date of the defendant
 1353 being exonerated of guilt and discharged as a matter of law, assuming the defendant
 1354 successfully complies with its sentencing order, provided that such date may not have
 1355 taken into account the awarding of credit for time served in custody; and

1356 (2) May limit access to certain information as provided in subsection (b) of Code Section
 1357 42-8-62.1.

1358 (d) The court may enter an adjudication of guilt and proceed to sentence the defendant as
 1359 otherwise provided by law when the:

1360 (1) Defendant violates the terms of his or her first offender probation;

1361 (2) Defendant is convicted for another crime during the period of his or her first offender
 1362 sentence; or

1363 (3) Court determines that the defendant is or was not eligible for first offender sentencing
 1364 under this article.

1365 (e) A defendant sentenced pursuant to this article shall be exonerated of guilt and shall
 1366 stand discharged as a matter of law as soon as the defendant:

1367 (1) Completes the terms of his or her probation, which shall include the expiration of the
 1368 sentence by virtue of the time frame of the sentence passing, provided that such sentence
 1369 has not otherwise been tolled or suspended;

1370 (2) Is released by the court under Code Section 42-8-37, 42-8-103, or 42-8-103.1 prior
 1371 to the termination of the period of his or her probation; or

1372 (3) Is released from confinement and parole, provided that the defendant is not serving
1373 a split sentence.

1374 (f)(1) If the defendant is serving a first offender probated sentence, under active
1375 probation supervision or without supervision, within 30 days of such defendant
1376 completing active probation supervision, it shall be the duty of the Department of
1377 Community Supervision to notify, in writing, the clerk of court for the jurisdiction of the
1378 court which imposed the first offender sentence of such completion.

1379 (2) If the defendant is serving a first offender probated sentence, under active probation
1380 supervision or without supervision, within 30 days of such defendant completing the term
1381 of probation or being released by the court prior to the termination of the period of
1382 probation, it shall be the duty of the Department of Community Supervision or entity or
1383 governing authority that is providing probation supervision services pursuant to Article
1384 6 of this chapter, as applicable, to notify, in writing, the clerk of court for the jurisdiction
1385 of the court which imposed the first offender sentence of such completion or release.

1386 (3) If the defendant is serving a first offender probated sentence pursuant to Article 6 of
1387 this chapter, under active probation supervision or without supervision, within 30 days
1388 of such defendant completing the term of probation or being released by the court prior
1389 to the termination of the period of probation, it shall be the duty of the entity or governing
1390 authority that is providing probation supervision services pursuant to Article 6 of this
1391 chapter to notify, in writing, the clerk of court for the jurisdiction of the court which
1392 imposed the first offender sentence of such completion or release.

1393 (4) If the defendant is not serving a first offender split sentence but is under parole
1394 supervision, within 30 days of such defendant completing the term of parole, it shall be
1395 the duty of the Department of Community Supervision to notify, in writing, the clerk of
1396 court for the jurisdiction of the court which imposed the first offender sentence of such
1397 completion.

1398 (5) If the defendant was sentenced only to imprisonment as a first offender and not
1399 granted parole, within 30 days of such defendant being released from confinement, it
1400 shall be the duty of the Department of Corrections to notify, in writing, the clerk of court
1401 for the jurisdiction of the court which imposed the first offender sentence of such release.

1402 (g) If the Department of Community Supervision fails to notify the clerk of court as
1403 provided in paragraph (2) or (4) of subsection (f) of this Code section, the entity or
1404 governing authority that is providing probation supervision services pursuant to Article 6
1405 of this chapter fails to notify the clerk of court as provided in paragraph (2) or (3) of
1406 subsection (f) of this Code section, the Department of Corrections fails to notify the clerk
1407 of court as provided in paragraph (5) of subsection (f) of this Code section, or the state does
1408 not seek to have a first offender adjudicated guilty during the term of the first offender's

1409 sentence and the first offender's sentence has not otherwise been tolled or suspended, then
 1410 the defendant shall be exonerated of guilt and shall stand discharged as a matter of law.

1411 (h)(1) When the clerk of court receives for filing an order of exoneration of guilt and
 1412 discharge or is notified by the Georgia Crime Information Center that a defendant has
 1413 completed his or her first offender sentence or was discharged pursuant to subsection (g)
 1414 of this Code section, it shall be the duty of the clerk of court to enter on the criminal
 1415 docket, accusation or indictment, sentencing order, and any subsequent order modifying
 1416 the original first offender sentencing order within 30 days of the receipt of such order or
 1417 notification the following:

1418 'Discharge filed completely exonerates the defendant of any criminal purpose and shall
 1419 not affect any of his or her civil rights or liberties, except for registration requirements
 1420 under the state sexual offender registry and except with regard to employment as
 1421 specified in Code Section 42-8-63.1; and the defendant shall not be considered to have
 1422 a criminal conviction. O.C.G.A. 42-8-60.'

1423 (2) The entry required by paragraph (1) of this subsection shall be written or stamped in
 1424 red ink, dated, and signed by the individual making such entry; provided, however, that,
 1425 if the criminal docket or court records are maintained electronically or using computer
 1426 printouts, microfilm, or similar means, such entry shall be underscored, boldface, or made
 1427 in a similar conspicuous manner, shall be dated, and shall include the name of the
 1428 individual making such entry on the criminal docket, accusation or indictment, sentencing
 1429 order, and any subsequent order modifying the original first offender sentencing order.

1430 (i) Except for the registration requirements under the state sexual offender registry and
 1431 except as otherwise provided in Code Section 42-8-63.1, the first offender exoneration of
 1432 guilt and discharge shall completely exonerate the defendant of any criminal purpose and
 1433 shall not affect any of his or her civil rights or liberties, and the defendant shall not be
 1434 considered to have a criminal conviction.

1435 ~~(d)~~(j) The court shall not sentence a defendant under the provisions of this article who has
 1436 been found guilty of or entered a plea of guilty or a plea of nolo contendere for:

1437 (1) A serious violent felony as such term is defined in Code Section 17-10-6.1;

1438 (2) A sexual offense as such term is defined in Code Section 17-10-6.2;

1439 (3) Trafficking of persons for labor or sexual servitude as prohibited by Code Section
 1440 16-5-46;

1441 (4) Neglecting disabled adults, elder persons, or residents as prohibited by Code Section
 1442 16-5-101;

1443 (5) Exploitation and intimidation of disabled adults, elder persons, and residents as
 1444 prohibited by Code Section 16-5-102;

1445 ~~(3)~~(6) Sexual exploitation of a minor as ~~defined in~~ prohibited by Code Section
 1446 16-12-100;

1447 ~~(4)~~(7) Electronically furnishing obscene material to a minor as ~~defined in~~ prohibited by
 1448 Code Section 16-12-100.1;

1449 ~~(5)~~(8) Computer pornography and child exploitation, ~~as defined in~~ as prohibited by Code
 1450 Section 16-12-100.2; ~~or~~

1451 ~~(6)~~(9)(A) Any of the following offenses when such offense is committed against a law
 1452 enforcement officer while such officer is engaged in the performance of his or her
 1453 official duties:

1454 (i) Aggravated assault in violation of Code Section 16-5-21;

1455 (ii) Aggravated battery in violation of Code Section 16-5-24; or

1456 (iii) Obstruction of a law enforcement officer in violation of subsection (b) of Code
 1457 Section 16-10-24, if such violation results in serious physical harm or injury to such
 1458 officer.

1459 (B) As used in this paragraph, the term 'law enforcement officer' means:

1460 (i) A 'peace officer' as such term is defined in paragraph (8) of Code Section 35-8-2;

1461 (ii) A law enforcement officer of the United States government;

1462 (iii) An individual ~~A person~~ employed as a campus police officer or school security
 1463 officer;

1464 (iv) A conservation ranger; and

1465 (v) A jail officer employed at a county or municipal jail; or

1466 (10) Driving under the influence as prohibited by Code Section 40-6-391.

1467 (k) When a defendant has not been previously convicted of a felony, the court may, after
 1468 an adjudication of guilt, sentence the defendant pursuant to this article as provided in Code
 1469 Section 42-8-66 or modify a sentence as provided in subsection (f) of Code Section
 1470 17-10-1 so as to allow a sentence pursuant to this article.

1471 (l) A defendant shall not avail himself or herself of this article on more than one occasion.

1472 42-8-61.

1473 When a defendant is represented by an attorney, his or her attorney shall be responsible for
 1474 informing the defendant as to his or her eligibility for sentencing as a first offender. When
 1475 a defendant is pro se, the court shall inquire as to the defendant's interest in entering a plea
 1476 pursuant to the terms of this article. If the defendant expresses a desire to be sentenced as
 1477 a first offender, the court shall ask the prosecuting attorney or probation official if the
 1478 defendant is eligible for sentencing as a first offender. When imposing a sentence, the
 1479 court shall ensure that, if a defendant is sentenced as a first offender, he or she is made

1480 aware of the consequences of entering a first offender plea pursuant to the terms of this
1481 article.

1482 42-8-62.

1483 ~~(a) Upon fulfillment of the terms of probation, upon release by the court prior to the~~
1484 ~~termination of the period thereof, or upon release from confinement, the defendant shall~~
1485 ~~be discharged without court adjudication of guilt. Except for the registration requirements~~
1486 ~~under the state sexual offender registry and except as otherwise provided in Code Section~~
1487 ~~42-8-63.1, the discharge shall completely exonerate the defendant of any criminal purpose~~
1488 ~~and shall not affect any of his or her civil rights or liberties; and the defendant shall not be~~
1489 ~~considered to have a criminal conviction. It shall be the duty of the clerk of court to enter~~
1490 ~~on the criminal docket and all other records of the court pertaining thereto the following:~~

1491 ~~'Discharge filed completely exonerates the defendant of any criminal purpose and shall~~
1492 ~~not affect any of his or her civil rights or liberties, except for registration requirements~~
1493 ~~under the state sexual offender registry and except with regard to employment providing~~
1494 ~~care for minor children or elderly persons as specified in Code Section 42-8-63.1; and the~~
1495 ~~defendant shall not be considered to have a criminal conviction. O.C.G.A. 42-8-62.'~~

1496 ~~Such entry shall be written or stamped in red ink, dated, and signed by the person making~~
1497 ~~such entry or, if the docket or record is maintained using computer print-outs, microfilm,~~
1498 ~~or similar means, such entry shall be underscored, boldface, or made in a similar~~
1499 ~~conspicuous manner and shall be dated and include the name of the person making such~~
1500 ~~entry. The criminal file, docket books, criminal minutes and final record, and all other~~
1501 ~~records of the court relating to the offense of a defendant who has been discharged without~~
1502 ~~court adjudication of guilt pursuant to this subsection shall not be altered as a result of that~~
1503 ~~discharge, except for the entry of discharge thereon required by this subsection, nor shall~~
1504 ~~the contents thereof be expunged or destroyed as a result of that discharge.~~

1505 ~~(b) Should a person be~~ When an individual is placed under on probation or in confinement
1506 under this article, within 30 days of the filing of such sentence, the clerk of court shall
1507 transmit a record of the same shall be forwarded first offender sentence to the Georgia
1508 Crime Information Center. ~~Without request of the defendant a record of discharge and~~
1509 ~~exoneration, as provided in this Code section, shall in every case be forwarded to the~~
1510 ~~Georgia Crime Information Center. In every case in which the record of probation or~~
1511 ~~confinement shall have been previously forwarded to the Department of Corrections, to the~~
1512 ~~Georgia Crime Information Center, and to the Identification Division of the Federal Bureau~~
1513 ~~of Investigation and a record of a subsequent discharge and exoneration of the defendant~~
1514 ~~has not been forwarded as provided in this Code section, upon request of the defendant or~~
1515 ~~his attorney or representative, the record of the same shall be forwarded by the clerk of~~

1516 ~~court so as to reflect the discharge and exoneration.~~ The clerk shall also transmit any
 1517 subsequent order or notification regarding a first offender's sentence, including, but not
 1518 limited to, notification that the defendant completed active probation supervision, was
 1519 released early from probation supervision, or completed the term of probation, notification
 1520 that the defendant completed the term of prison or parole, an order revoking a first offender
 1521 sentence, an order of exoneration of guilt and discharge, and tolling orders, to the Georgia
 1522 Crime Information Center within 30 days of receiving such order for filing or notification.

1523 42-8-62.1.

1524 (a) As used in this Code section, the term:

1525 (1) 'Criminal history record information' shall have the same meaning as set forth in
 1526 Code Section 35-3-30.

1527 (2) 'Prosecuting attorney' shall have the same meaning as set forth in Code Section
 1528 35-3-37.

1529 (3) 'Restrict,' 'restricted,' or 'restriction' shall have the same meaning as set forth in Code
 1530 Section 35-3-37.

1531 (b)(1) At the time of sentencing, the defendant may seek to limit public access to his or
 1532 her first offender sentencing information, and the court may, in its discretion, order any
 1533 of the following:

1534 (A) Restrict dissemination of the defendant's first offender records;

1535 (B) The criminal file, docket books, criminal minutes, final record, all other records of
 1536 the court, and the defendant's criminal history record information in the custody of the
 1537 clerk of court, including within any index, be sealed and unavailable to the public; and

1538 (C) Law enforcement agencies, jails, or detention centers to restrict the defendant's
 1539 criminal history record information of arrest, including any fingerprints or photographs
 1540 taken in conjunction with such arrest.

1541 (2) When considering the defendant's request under this subsection, the court shall weigh
 1542 the public's interest in the defendant's criminal history record information being publicly
 1543 available and the harm to the defendant's privacy and issue written findings of fact
 1544 thereupon.

1545 (3) The court shall specify the date that such prohibited dissemination, sealing, and
 1546 restrictions will take effect.

1547 (c) An individual who has been exonerated of guilt and discharged pursuant to this article,
 1548 including those individuals exonerated of guilt and discharged prior to July 1, 2016, may
 1549 petition the court that granted such discharge for an order to seal and make unavailable to
 1550 the public the criminal file, docket books, criminal minutes, final record, all other records
 1551 of the court, and the defendant's criminal history record information in the custody of the

1552 clerk of court, including within any index. Notice of such petition shall be sent to the clerk
 1553 of court and the prosecuting attorney. A notice sent by registered or certified mail or
 1554 statutory overnight delivery shall be sufficient notice.

1555 (d) Within 90 days of the filing of a petition pursuant to subsection (c) of this Code
 1556 section, the court shall order the criminal file, docket books, criminal minutes, final record,
 1557 all other records of the court, and the defendant's criminal history record information in the
 1558 custody of the clerk of court, including within any index, to be sealed and made unavailable
 1559 to the public if the court finds by a preponderance of the evidence that:

1560 (1) An exoneration of guilt and discharge has been granted pursuant to this article; and

1561 (2) The harm otherwise resulting to the privacy of the individual outweighs the public
 1562 interest in the criminal history record information being publicly available.

1563 (e) Within 60 days of the filing of the court's order under subsection (d) of this Code
 1564 section, the clerk of court shall cause every document in connection with such individual's
 1565 case, physical or electronic, in its custody, possession, or control to be sealed.

1566 (f) When a court orders sealing of court records under subsection (d) of this Code section,
 1567 the court may also order that records maintained by law enforcement agencies, jails, and
 1568 detention centers be restricted and unavailable to the public. Such entities shall comply
 1569 with such restriction within 30 days of receiving a copy of such order.

1570 (g)(1) Information sealed or restricted pursuant to this Code section shall always be
 1571 available for inspection, copying, and use:

1572 (A) As provided in subsection (c) of Code Section 42-8-65;

1573 (B) By the Judicial Qualifications Commission;

1574 (C) By a prosecuting attorney or public defender who submits a sworn affidavit to the
 1575 clerk of court that attests that such information is relevant to a criminal proceeding;

1576 (D) Pursuant to a court order; and

1577 (E) By an individual who is the subject of sealed court files or restricted criminal
 1578 history record information upon court order.

1579 (2) The confidentiality of such information shall be maintained insofar as practical.

1580 42-8-63.

1581 Except as ~~otherwise~~ provided in ~~this article~~ Code Section 42-8-63.1, a discharge under this
 1582 article is not a conviction of a crime under the laws of this state and ~~may~~ shall not be used
 1583 to disqualify ~~a person~~ an individual in any application for employment or appointment to
 1584 office in either the public or private sector.

1585 42-8-63.1.

1586 (a) A discharge under this article may be used to disqualify ~~a person~~ an individual for
1587 employment if:

1588 ~~(1) The offender~~ the individual was discharged under this article ~~on or after~~ between July
1589 1, 2004; ~~and either,~~ and June 30, 2016, and:

1590 ~~(2)~~(1) The employment is with a public school, private school, child welfare agency, or
1591 a person or entity that provides day care for minor children or after school care for minor
1592 children and the ~~defendant was discharged under this article after prosecution~~ individual
1593 who is the subject of the inquiry was prosecuted for the offense of child molestation,
1594 sexual battery, enticing a child for indecent purposes, sexual exploitation of a child,
1595 pimping, pandering, or incest;

1596 ~~(3)~~(2) The employment is with a long-term care facility as defined in Code Section
1597 31-8-51 or a person or entity that offers day care for elderly persons and the ~~defendant~~
1598 ~~was discharged under this article after prosecution~~ individual who is the subject of the
1599 inquiry was prosecuted for the offense of sexual battery, incest, pimping, or pandering;
1600 or a violation of Article 8 of Chapter 5 of Title 16; or

1601 ~~(4)~~(3) The request for information is an inquiry about ~~a person~~ an individual who has
1602 applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that
1603 provides services to ~~persons~~ individuals who are mentally ill as defined in Code Section
1604 37-1-1 or developmentally disabled as defined in Code Section 37-1-1; and the ~~person~~
1605 individual who is the subject of the inquiry ~~to the center~~ was prosecuted for the offense
1606 of sexual battery, incest, pimping, or pandering.

1607 (b) A discharge under this article may be used to disqualify an individual for employment
1608 if the individual was discharged under this article on or after July 1, 2016, and:

1609 (1) The employment is with a public school, private school, child welfare agency, or a
1610 person or entity that provides day care for minor children or after school care for minor
1611 children and the individual who is the subject of the inquiry was prosecuted for a
1612 violation of Title 16 in Article 5 of Chapter 5, Chapter 6, or Part 2 or 3 of Article 3 of
1613 Chapter 12;

1614 (2) The employment is with a long-term care facility as defined in Code Section 31-8-51
1615 or with a person or entity that offers day care for elderly persons and the individual who
1616 is the subject of the inquiry was prosecuted for a violation of Title 16 in Article 5 or 8 of
1617 Chapter 5; or

1618 (3) The request for information is an inquiry about an individual who has applied for
1619 employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides
1620 services to individuals who are mentally ill as defined in Code Section 37-1-1 or
1621 developmentally disabled as defined in Code Section 37-1-1 and the individual who is

1622 the subject of the inquiry was prosecuted for a violation of Title 16 in Article 8 of
 1623 Chapter 5 or Chapter 6.

1624 ~~(b)(c)~~ Any discharge under this article may be used to disqualify ~~a person~~ an individual
 1625 from acquiring or maintaining a peace officer certification as provided for in Chapter 8 of
 1626 ~~Article 35 and also Title 35,~~ may disqualify ~~a person~~ an individual from employment in a
 1627 certified position with a law enforcement unit, and may disqualify an individual from
 1628 employment with the Georgia Peace Officer Standards and Training Council when ~~where~~
 1629 the discharge under this article pertained to a felony offense or a crime involving moral
 1630 turpitude.

1631 42-8-64.

1632 A defendant sentenced pursuant to this article shall have the right to appeal in the same
 1633 manner and with the same scope and same effect as if a judgment of conviction had been
 1634 entered and appealed from.

1635 42-8-65.

1636 (a) If otherwise allowable by law, ~~in any~~ a subsequent prosecution of the defendant for ~~any~~
 1637 ~~other~~ another offense, ~~a~~ when a defendant has not been exonerated of guilt and discharged,
 1638 the prior finding of guilt may be pleaded and proven as if an adjudication of guilt had been
 1639 entered and relief had not been granted pursuant to this article.

1640 (b) The records of the Georgia Crime Information Center ~~shall be modified, without a~~
 1641 ~~court order, to show a conviction in lieu of treatment as a first offender under this article~~
 1642 ~~whenever the conviction of a person for another crime during the term of probation is~~
 1643 ~~reported to the Georgia Crime Information Center. If a report is made showing that such~~
 1644 ~~person has been afforded first offender treatment under this article on more than one~~
 1645 ~~occasion, the Georgia Crime Information Center may report information on first offender~~
 1646 ~~treatments subsequent to the first such first offender treatment as if they were convictions.~~
 1647 ~~Such records may be disseminated by the Georgia Crime Information Center in the same~~
 1648 ~~manner and subject to the same restrictions as any other records of convictions~~ showing
 1649 treatment as a first offender shall be modified only when a court of competent jurisdiction
 1650 enters:

1651 (1) An adjudication of guilt for the offense for which the offender has been sentenced as
 1652 a first offender;

1653 (2) An order modifying the sentence originally imposed; or

1654 (3) An order correcting an exoneration of guilt and discharge entered pursuant to
 1655 subsection (g) of Code Section 42-8-60.

1656 ~~(c)(1) Any individual~~ Notwithstanding any other provision of this article, any person
 1657 who is sentenced to a term of confinement pursuant to paragraph (2) of subsection (a)
 1658 or (k) of Code Section 42-8-60 shall not be deemed to have been convicted of the offense
 1659 during such term of confinement for all purposes except that records thereof shall be
 1660 treated as any other records of first offenders under this article and except that such
 1661 presumption shall not continue after completion of such person's confinement sentence.
 1662 Upon completion of the confinement sentence, such person shall be treated in the same
 1663 manner and the procedures to be followed by the court shall be the same as in the case
 1664 of a person placed on probation under this article during such sentence, and records
 1665 thereof shall only be disseminated by the Georgia Crime Information Center:

1666 (A) To criminal justice agencies, as such term is defined in Code Section 35-3-30;

1667 (B) As authorized by subsection (c) of Code Section 35-3-37; and

1668 (C) As authorized by subparagraph (a)(1)(B) of Code Sections 35-3-34 and 35-3-35.

1669 (2) If a court of competent jurisdiction adjudicates the defendant guilty while such
 1670 defendant is serving a first offender sentence, such records may be disseminated by the
 1671 Georgia Crime Information Center as provided in Code Sections 35-3-34 and 35-3-35.

1672 42-8-66.

1673 (a) An individual who qualified for sentencing pursuant to this article but who was not
 1674 informed of his or her eligibility for first offender treatment may, with the consent of the
 1675 prosecuting attorney, petition the superior court in the county in which he or she was
 1676 convicted for ~~discharge and exoneration of guilt and discharge~~ pursuant to this article.

1677 (b) The court shall hold a hearing on the petition if requested by the petitioner or
 1678 prosecuting attorney or desired by the court.

1679 (c) In considering a petition pursuant to this Code section, the court may consider any:

1680 (1) Evidence introduced by the petitioner;

1681 (2) Evidence introduced by the prosecuting attorney; and

1682 (3) Other relevant evidence.

1683 (d) The court may issue an order retroactively granting first offender treatment and
 1684 discharge the defendant pursuant to this article if the court finds by a preponderance of the
 1685 evidence that the defendant was eligible for sentencing under the terms of this article at the
 1686 time he or she was originally sentenced and the ends of justice and the welfare of society
 1687 are served by granting such petition.

1688 (e) The court shall send a copy of any order issued pursuant to this Code section to the
 1689 petitioner, the prosecuting attorney, ~~and the Georgia Bureau of Investigation~~ Crime
 1690 Information Center, and the Department of Driver Services. The Georgia ~~Bureau of~~

1691 ~~Investigation~~ Crime Information Center and the Department of Driver Services shall
 1692 modify ~~its~~ their records accordingly.
 1693 (f) This Code section shall not apply to a sentence that may be modified pursuant to
 1694 subsection (f) of Code Section 17-10-1."

1695 **PART VIB**

1696 **SECTION 6B-1.**

1697 Article 2 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to
 1698 commitment hearings, is amended by revising Code Section 17-7-32, relating to the
 1699 disposition of commitment form, warrant, and other papers, as follows:

1700 "17-7-32.

1701 (a) The commitment form shall be delivered to the officer in whose charge the accused
 1702 person is placed, and the officer shall deliver it with the accused person to the sheriff or the
 1703 other person in charge of the jail. A memorandum of the commitment shall be entered on
 1704 the warrant by the judicial officer.

1705 (b)(1) The warrant and all other papers shall be forwarded to the clerk of the ~~appropriate~~
 1706 court having jurisdiction over the offense for delivery to the prosecuting attorney. After
 1707 such delivery, if the prosecuting attorney decides to dismiss the case prior to filing an
 1708 accusation or without seeking an indictment, he or she shall file a notice of such fact with
 1709 the clerk of the court having jurisdiction over the offense. Such notice shall include the
 1710 warrant number, if any, and any other identifying number assigned to the case by the
 1711 Georgia Crime Information Center. Within 30 days of receiving such notice, the clerk
 1712 of court shall transmit a copy of such notice to the Georgia Crime Information Center.

1713 (2) Nothing in this subsection shall prevent a prosecuting attorney who has probable
 1714 cause from seeking charges against an accused within the applicable statute of
 1715 limitations."

1716 **SECTION 6B-2.**

1717 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
 1718 Georgia Crime Information Center, is amended in subsection (a) of Code Section 35-3-33,
 1719 relating to the powers and duties of the center generally, by revising paragraph (10), by
 1720 deleting "and" at the end of paragraph (15), by replacing the period with "; and" at the end
 1721 of paragraph (16), and by adding a new paragraph (17) to read as follows:

1722 "(10) Make available, upon request, to all local and state criminal justice agencies, all
 1723 federal criminal justice agencies, and criminal justice agencies in other states any
 1724 information in the files of the center which will aid these agencies in the performance of

1725 their official duties, including but not limited to final disposition of offenses; sentencing
 1726 information and conditions; orders modifying an earlier disposition; orders relating to
 1727 probation, including modification, tolling, completion of active probation supervision,
 1728 termination, revocation, or completion of orders entered pursuant to Article 3 of Chapter
 1729 8 of Title 42; and orders relating to parole, including modification, tolling, termination,
 1730 and revocation. For this purpose the center shall operate on a 24 hour basis, seven days
 1731 a week. Such information when authorized by the council may also be made available
 1732 to any other agency of the state or political subdivision of the state and to any other
 1733 federal agency upon assurance by the agency concerned that the information is to be used
 1734 for official purposes only in the prevention or detection of crime or the apprehension of
 1735 criminal offenders;"

1736 "(17) Notify the appropriate clerk of court that a defendant has completed his or her first
 1737 offender sentence or was exonerated of guilt and discharged pursuant to subsection (g)
 1738 of Code Section 42-8-60 within five days of such completion or exoneration."

1739 SECTION 6B-3.

1740 Said article is further amended by revising subparagraphs (a)(1)(B) and (a)(1)(D) of Code
 1741 Section 35-3-34, relating to disclosure and dissemination of criminal records to private
 1742 persons and businesses, as follows:

1743 "(B)(i) The center ~~may~~ shall not provide records of arrests, charges, ~~and or~~ sentences
 1744 for crimes relating to first offenders when an individual has been sentenced pursuant
 1745 to Article 3 of Chapter 8 of Title 42 in cases where offenders have and has been
 1746 exonerated and discharged without court adjudications adjudication of guilt as a
 1747 matter of law or pursuant to a court order, including records relating to such
 1748 defendant's bench warrants, failure to appear, and probation for such offense, except
 1749 as specifically authorized by Code Section 35-3-34.1 or other law 42-8-63.1. The
 1750 center shall not provide records of arrests, charges, or sentences when an individual
 1751 has been sentenced as provided in Code Section 15-1-20, including records relating
 1752 to such defendant's bench warrants, failure to appear, and probation for such offense,
 1753 except as specifically authorized by Code Section 42-8-63.1.

1754 (ii) During the period of time after a defendant, who has been sentenced pursuant to
 1755 Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without
 1756 court adjudication of guilt as a matter of law or pursuant to a court order, has
 1757 completed active probation supervision through the remainder of such sentence, the
 1758 center shall not provide records of arrests, charges, or sentences except as specifically
 1759 authorized by Code Section 42-8-63.1.

1760 (iii) The center may provide records of arrests, charges, or sentences when an
 1761 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has
 1762 not been exonerated and discharged without court adjudication of guilt as a matter of
 1763 law or pursuant to a court order, as specifically authorized by Code Section 42-8-63.1,
 1764 while a defendant is under active probation supervision for such offense, or as
 1765 provided in a court order;"

1766 "(D) The center shall not provide records of arrests, charges, or dispositions when
 1767 access has been restricted pursuant to Code Section 15-1-20, 35-3-37, or 42-8-62.1; or"

1768 **SECTION 6B-4.**

1769 Said article is further amended by revising Code Section 35-3-34.1, relating to circumstances
 1770 when exonerated first offender's criminal record may be disclosed, as follows:

1771 "35-3-34.1.

1772 ~~(a) Where an offender~~ When a defendant has been exonerated and discharged without
 1773 court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is
 1774 authorized to provide the first offender's record of arrests, charges, or sentences ~~if the~~
 1775 ~~offender was exonerated and discharged without a court adjudication of guilt on or after~~
 1776 ~~July 1, 2004, and either:~~ to the employers and entities and under the conditions set forth in
 1777 Code Section 42-8-63.1.

1778 ~~(1) The request for information is an inquiry about a person who has applied for~~
 1779 ~~employment with a public school, private school, child welfare agency, or a person or~~
 1780 ~~entity that provides day care for minor children or after school care for minor children~~
 1781 ~~and the person who is the subject of the inquiry to the center was prosecuted for the~~
 1782 ~~offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual~~
 1783 ~~exploitation of a child, pimping, pandering, or incest;~~

1784 ~~(2) The request for information is an inquiry about a person who has applied for~~
 1785 ~~employment with a long-term care facility as defined in Code Section 31-8-51 or a person~~
 1786 ~~or entity that offers day care for elderly persons and the person who is the subject of the~~
 1787 ~~inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping,~~
 1788 ~~pandering, or a violation of Article 8 of Chapter 5 of Title 16; or~~

1789 ~~(3) The request for information is an inquiry about a person who has applied for~~
 1790 ~~employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides~~
 1791 ~~services to persons who are mentally ill as defined in Code Section 37-1-1 or~~
 1792 ~~developmentally disabled as defined in Code Section 37-1-1, and the person who is the~~
 1793 ~~subject of the inquiry to the center was prosecuted for the offense of sexual battery,~~
 1794 ~~incest, pimping, or pandering.~~

1795 ~~(b) First offender records including records of arrests, charges, or sentences may be~~
 1796 ~~released to any law enforcement unit and the Georgia Peace Officer Standards and Training~~
 1797 ~~Council where the request for information is an inquiry about a person who has applied for~~
 1798 ~~employment in a certified position or a person who is an applicant, candidate, or peace~~
 1799 ~~officer as defined in Code Section 35-8-2."~~

1800 SECTION 6B-5.

1801 Said article is further amended in Code Section 35-3-35, relating to disclosure and
 1802 dissemination of criminal records to public agencies and political subdivisions, by revising
 1803 subparagraphs (a)(1)(B) and (a)(1)(C) and by adding a new subparagraph to paragraph (1)
 1804 of subsection (a) to read as follows:

1805 "(B)(i) The center ~~may~~ shall not provide records of arrests, charges, or sentences for
 1806 crimes relating to first offenders when an individual has been sentenced pursuant to
 1807 Article 3 of Chapter 8 of Title 42 in cases where offenders have and has been
 1808 exonerated and discharged without court adjudications adjudication of guilt as a
 1809 matter of law or pursuant to a court order, including records relating to such
 1810 defendant's bench warrants, failure to appear, and probation for such offense, except
 1811 as specifically authorized by Code Section 35-3-34.1 or other law, and 42-8-63.1.
 1812 The center shall not provide records of arrests, charges, or sentences when an
 1813 individual has been sentenced as provided in Code Section 15-1-20, including records
 1814 relating to such defendant's bench warrants, failure to appear, and probation for such
 1815 offense, except as specifically authorized by Code Section 42-8-63.1.

1816 (ii) During the period of time after a defendant, who has been sentenced pursuant to
 1817 Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without
 1818 court adjudication of guilt as a matter of law or pursuant to a court order, has
 1819 completed active probation supervision through the remainder of such sentence, the
 1820 center shall not provide records of arrests, charges, or sentences except as specifically
 1821 authorized by Code Section 42-8-63.1.

1822 (iii) The center may provide records of arrests, charges, or sentences when an
 1823 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has
 1824 not been exonerated and discharged without court adjudication of guilt as a matter of
 1825 law or pursuant to a court order, as specifically authorized by Code Section 42-8-63.1,
 1826 while a defendant is under active probation supervision for such offense, or as
 1827 provided in a court order;

1828 (C) When the identifying information provided is sufficient to identify persons whose
 1829 records are requested electronically, the center may disseminate electronically criminal
 1830 history records of in-state felony convictions, pleas, and sentences without:

- 1831 (i) Fingerprint comparison; or
 1832 (ii) Consent of the person whose records are requested; and
 1833 (D) The center shall not provide records of arrests, charges, or dispositions when
 1834 access has been restricted pursuant to Code Section 15-1-20, 35-3-37, or 42-8-62.1;"

1835 **SECTION 6B-6.**

1836 Said article is further amended by revising subsections (b), (c), and (g) of Code Section
 1837 35-3-36, relating to the duties of state criminal agencies as to submission of fingerprints,
 1838 photographs, or other identifying data to the center, as follows:

1839 "(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts,
 1840 judges, clerks of court, community supervision officers, county or ~~department~~ Department
 1841 of Juvenile Justice juvenile probation officers, probation officers and private probation
 1842 officers serving pursuant to Article 6 of Chapter 8 of Title 42, wardens; or other persons
 1843 in charge of penal and correctional institutions in this state, the Georgia Superior Court
 1844 Clerks' Cooperative Authority, and the State Board of Pardons and Paroles to furnish the
 1845 center with any other data deemed necessary by the center to carry out its responsibilities
 1846 under this article.

1847 (c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained
 1848 fingerprints in accordance with the fingerprint system of identification established by the
 1849 director of the Federal Bureau of Investigation, full-face and profile photographs if photo
 1850 equipment is available, and other available identifying data of each person arrested or taken
 1851 into custody for an offense of a type designated in paragraph (1) of subsection (a) of Code
 1852 Section 35-3-33, of all persons arrested or taken into custody as fugitives from justice, and
 1853 of all unidentified human corpses in their jurisdictions; but photographs need not be taken
 1854 if it is known that photographs of the type listed taken within the previous year are on file.
 1855 Fingerprints and other identifying data of persons arrested or taken into custody for
 1856 offenses other than those designated may be taken at the discretion of the law enforcement
 1857 agency concerned. Any person arrested or taken into custody and subsequently released
 1858 without charge or cleared of the offense through court proceedings shall have any
 1859 fingerprint record taken in connection therewith returned ~~if required by statute~~ or deleted,
 1860 as applicable, if the fingerprint record was taken in error or upon court order, and ~~any~~ such
 1861 dispositions ~~must also~~ shall be reported to the center."

1862 "(g) All persons in charge of law enforcement agencies, ~~all~~ clerks of court or the Georgia
 1863 Superior Court Clerks' Cooperative Authority as applicable, ~~all~~ municipal judges ~~where~~
 1864 ~~they have no clerks~~ when such judges do not have a clerk, ~~all~~ magistrates, ~~and all~~ persons
 1865 in charge of community supervision, juvenile probation, or Article 6 of Chapter 8 of Title
 1866 42 probation offices, and the State Board of Pardons and Paroles shall ~~supply~~ transmit to

1867 the center ~~with~~ the information described in Code Section 35-3-33 within 30 days of the
 1868 creation or receipt of such information, except as provided in subsection (d) of this Code
 1869 section, on the basis of the forms and instructions to be ~~supplied~~ provided by the center."

1870

SECTION 6B-7.

1871 Said article is further amended by revising paragraph (6) of subsection (a), subsection (h),
 1872 and paragraph (5) of subsection (j) of Code Section 35-3-37, relating to review of individual's
 1873 criminal history record information, as follows:

1874 "(6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record
 1875 information of an individual relating to a particular charge shall be available only to
 1876 judicial officials and criminal justice agencies for law enforcement or criminal
 1877 investigative purposes or to criminal justice agencies for purposes of employment in
 1878 accordance with procedures established by the center and shall not be disclosed or
 1879 otherwise made available to any private persons or businesses pursuant to Code Section
 1880 35-3-34 or to governmental agencies or licensing and regulating agencies pursuant to
 1881 Code Section 35-3-35."

1882 "(h) Access to an individual's criminal history record information, including any
 1883 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be
 1884 restricted by the center for the following types of dispositions:

1885 (1) Prior to indictment, accusation, or other charging instrument:

1886 (A) The case was never referred for further prosecution to the proper prosecuting
 1887 attorney by the arresting law enforcement agency and:

1888 (i) The offense against such individual is closed by the arresting law enforcement
 1889 agency. It shall be the duty of the head of the arresting law enforcement agency to
 1890 notify the center whenever a record is to be restricted pursuant to this division within
 1891 30 days of such decision. A copy of the notice shall be sent to the accused and the
 1892 accused's attorney, if any, by mailing the same by first-class mail within seven days
 1893 of notifying the center; or

1894 (ii) The center does not receive notice from the arresting law enforcement agency that
 1895 the offense has been referred to the prosecuting attorney or transferred to another law
 1896 enforcement or prosecutorial agency of this state, any other state or a foreign nation,
 1897 or any political subdivision thereof for prosecution and the following period of time
 1898 has elapsed from the date of the arrest of such individual:

1899 (I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated
 1900 nature, two years;

1901 (II) If the offense is a felony, other than a serious violent felony or a felony sexual
 1902 offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age,
 1903 four years; or

1904 (III) If the offense is a serious violent felony or a felony sexual offense specified
 1905 in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

1906 If the center receives notice of the filing of an indictment subsequent to the restriction
 1907 of a record pursuant to this division, the center shall make such record available in
 1908 accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive
 1909 notice of a charging instrument within 30 days of the applicable time periods set forth
 1910 in this division, such record shall be restricted by the center for noncriminal justice
 1911 purposes and shall be considered sealed.

1912 (B) The case was referred to the prosecuting attorney but was later dismissed; ~~or~~

1913 (C) The grand jury returned two no bills; ~~and~~ or

1914 (D) The grand jury returned one no bill and the applicable time period set forth in
 1915 division (ii) of subparagraph (A) of this paragraph has expired; and

1916 (2) After indictment or accusation:

1917 (A) Except as provided in subsection (i) of this Code section, all charges were
 1918 dismissed or nolle prossed;

1919 (B) The individual ~~pleaded guilty to or was found guilty of possession of a narcotic~~
 1920 ~~drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in~~
 1921 ~~accordance with the provisions of subsection (a) or (c) of Code Section 16-13-2, and~~
 1922 ~~the individual successfully completed the terms and conditions of his or her probation;~~

1923 (C) The individual pleaded guilty to or was found guilty of a violation of paragraph (2)
 1924 or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in accordance with
 1925 the provisions of subsection (c) of Code Section 3-3-23.1, and the individual
 1926 successfully completed the terms and conditions of his or her probation;

1927 ~~(C)~~(D) The individual successfully completed a drug court treatment program, mental
 1928 health treatment program, or veterans treatment program, the individual's case has been
 1929 dismissed or nolle prossed, and he or she has not been arrested ~~for at least five years~~
 1930 during such program, excluding any arrest for a nonserious traffic offense; or

1931 ~~(D)~~(E) The individual was acquitted of all of the charges by a judge or jury unless,
 1932 within ten days of the verdict, the prosecuting attorney demonstrates to the trial court
 1933 through clear and convincing evidence that the harm otherwise resulting to the
 1934 individual is clearly outweighed by the public interest in the criminal history record
 1935 information being publicly available because either:

1936 (i) The prosecuting attorney was barred from introducing material evidence against
 1937 the individual on legal grounds, including, without limitation, the granting of a motion
 1938 to suppress or motion in limine; or

1939 (ii) The individual has been formally charged with the same or similar offense within
 1940 the previous five years."

1941 ~~"(5) Any party may file an appeal of an order entered pursuant to this subsection as~~
 1942 ~~provided in Code Section 5-6-34. When an individual was arrested on a fugitive from~~
 1943 ~~justice warrant as provided in Code Section 17-13-4, such individual may petition the~~
 1944 ~~superior court in the county where the arrest occurred to restrict access to criminal history~~
 1945 ~~record information for such warrant. Such court shall maintain jurisdiction over the case~~
 1946 ~~for this limited purpose and duration. Such petition shall be served on the arresting law~~
 1947 ~~enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing~~
 1948 ~~shall be held within 90 days of the filing of the petition. The court shall hear evidence~~
 1949 ~~and shall grant an order restricting such criminal history record information if the court~~
 1950 ~~determines that circumstances warrant restriction and that the harm otherwise resulting~~
 1951 ~~to the individual clearly outweighs the public interest in the criminal history record~~
 1952 ~~information being publicly available."~~

1953 **SECTION 6B-8.**

1954 Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is
 1955 amended by revising paragraph (3) of subsection (a) of Code Section 42-8-36, relating to the
 1956 duty of a probationer to inform his or her probation officer of residence and whereabouts and
 1957 tolling, as follows:

1958 "(3) The effective date of the tolling of the sentence shall be the date the court enters a
 1959 tolling order and shall continue until the probationer shall personally report to the officer,
 1960 is taken into custody in this state, or is otherwise available to the court. The clerk of court
 1961 shall transmit a copy of a tolling order to the Georgia Crime Information Center within
 1962 30 days of the filing of such order."

1963 **SECTION 6B-9.**

1964 Said chapter is further amended by revising subsection (d) of Code Section 42-8-105, relating
 1965 to a probationer's obligation to keep his or her probation officer informed of certain
 1966 information, as follows:

1967 "(d) The effective date of the tolling of the sentence shall be the date the court enters a
 1968 tolling order and shall continue until the probationer personally reports to the probation
 1969 officer or private probation officer, as the case may be, is taken into custody in this state,
 1970 or is otherwise available to the court, whichever event first occurs. The clerk of court, or

1971 judge of any court when there is no clerk of court, shall transmit a copy of a tolling order
 1972 to the Georgia Crime Information Center within 30 days of the filing of such order."

1973 **PART VIC**
 1974 **SECTION 6C-1.**

1975 Code Section 10-1-393.5 of the Official Code of Georgia Annotated, relating to prohibited
 1976 telemarketing, Internet activities, and home repair, is amended by revising division
 1977 (b.1)(1)(B)(i) as follows:

1978 "(i) Access to his or her case or charges was restricted pursuant to Code Section
 1979 15-1-20, 35-3-37, or 42-8-62.1;"

1980 **SECTION 6C-2.**

1981 Code Section 16-11-131 of the Official Code of Georgia Annotated, relating to possession
 1982 of firearms by convicted felons and first offender probationers, is amended by revising
 1983 subsection (f) as follows:

1984 "(f) Any person placed on probation as a first offender pursuant to Article 3 of Chapter 8
 1985 of Title 42 and subsequently discharged without court adjudication of guilt as a matter of
 1986 law pursuant to Code Section ~~42-8-62~~ 42-8-60 shall, upon such discharge, be relieved from
 1987 the disabilities imposed by this Code section."

1988 **PART VII**
 1989 **MISDEMEANOR PROBATION SERVICES**
 1990 **SECTION 7-1.**

1991 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 1992 by revising Code Section 42-8-100, relating to definitions for county and municipal
 1993 probation, as follows:

1994 "42-8-100.

1995 As used in this article, the term:

1996 (1) 'Board' means the Board of Community Supervision.

1997 (2) 'DCS' means the Department of Community Supervision.

1998 ~~(2)~~(3) 'Private probation officer' means an individual employed by a private corporation,
 1999 private enterprise, private agency, or other private entity to supervise defendants placed
 2000 on probation by a court for committing an ordinance violation or misdemeanor.

2001 ~~(3)~~(4) 'Probation officer' means an individual employed by a governing authority of a
 2002 county, municipality, or consolidated government to supervise defendants placed on
 2003 probation by a court for committing an ordinance violation or misdemeanor."

2004 **SECTION 7-2**

2005 Said title is further amended by revising Code Section 42-8-101, relating to agreements for
 2006 probation services, as follows:

2007 "42-8-101.

2008 (a)(1) ~~The~~ Upon the request of the chief judge of any court within a county and with the
 2009 express written consent of such judge, ~~with the approval of~~ the governing authority of
 2010 such county; shall be authorized to enter into written contracts with corporations,
 2011 enterprises, or agencies to provide probation supervision, counseling, collection services
 2012 for all moneys to be paid by a defendant according to the terms of the sentence imposed
 2013 on the defendant as well as any moneys which by operation of law are to be paid by the
 2014 defendant in consequence of the conviction, and other probation services for persons
 2015 convicted in such court and placed on probation in such county. In no case shall a private
 2016 probation corporation or enterprise be charged with the responsibility for supervising a
 2017 felony sentence. The final contract negotiated by the ~~chief judge~~ governing authority of
 2018 the county with the private probation entity shall be attached to the approval by the
 2019 governing authority of the county to privatize probation services as an exhibit thereto.
 2020 The termination of a contract for probation services as provided for in this subsection
 2021 ~~shall~~ may be initiated by the chief judge of the court which ~~entered into the~~ is subject to
 2022 such contract; and shall be subject to approval by the governing authority of the county
 2023 which entered into the contract and in accordance with the agreed upon, written
 2024 provisions of such contract.

2025 (2) ~~The~~ Upon the request of the chief judge of any court within a county and with the
 2026 express written consent of such judge, ~~with the approval of~~ the governing authority of
 2027 such county, ~~is~~ shall be authorized to establish a county probation system to provide
 2028 probation supervision, counseling, collection services for all moneys to be paid by a
 2029 defendant according to the terms of the sentence imposed on the defendant as well as any
 2030 moneys which by operation of law are to be paid by the defendant in consequence of the
 2031 conviction, and other probation services for persons convicted in such court and placed
 2032 on probation in such county.

2033 (b)(1) ~~The~~ Upon the request of the judge of the municipal court of any municipality or
 2034 consolidated government of a municipality and county of this state and with the express
 2035 written consent of such judge, ~~with the approval of~~ the governing authority of such
 2036 municipality or consolidated government, ~~is~~ shall be authorized to enter into written

2037 contracts with private corporations, enterprises, or agencies to provide probation
 2038 supervision, counseling, collection services for all moneys to be paid by a defendant
 2039 according to the terms of the sentence imposed on the defendant as well as any moneys
 2040 which by operation of law are to be paid by the defendant in consequence of the
 2041 conviction, and other probation services for persons convicted in such court and placed
 2042 on probation. The final contract negotiated by the ~~judge~~ governing authority of the
 2043 municipality or consolidated government with the private probation entity shall be
 2044 attached to the approval by the governing authority of the municipality or consolidated
 2045 government to privatize probation services as an exhibit thereto. The termination of a
 2046 contract for probation services as provided for in this subsection ~~shall~~ may be initiated
 2047 by the chief judge of the court which ~~entered into the~~ is subject to such contract and shall
 2048 be subject to approval by the governing authority of the municipality or consolidated
 2049 government which entered into the contract and in accordance with the agreed upon,
 2050 written provisions of such contract.

2051 (2) ~~The~~ Upon the request of the judge of the municipal court of any municipality or
 2052 consolidated government of a municipality and county of this state and with the express
 2053 written consent of such judge, ~~with the approval of~~ the governing authority of such
 2054 municipality or consolidated government, ~~is~~ shall be authorized to establish a probation
 2055 system to provide probation supervision, counseling, collection services for all moneys
 2056 to be paid by a defendant according to the terms of the sentence imposed on the defendant
 2057 as well as any moneys which by operation of law are to be paid by the defendant in
 2058 consequence of the conviction, and other probation services for persons convicted in such
 2059 court and placed on probation."

2060 SECTION 7-3.

2061 Said title is further amended by revising subsection (f) of Code Section 42-8-102, relating
 2062 to probation, supervision, and revocation, as follows:

2063 "(f)(1) The sentencing judge shall not lose jurisdiction over any person placed on
 2064 probation during the term of his or her probated sentence. As further set forth in this
 2065 subsection, the judge may revoke any or all of the probated sentence, rescind any or all
 2066 of the sentence, or, in any manner deemed advisable by the judge, modify or change the
 2067 probated sentence, including tolling the sentence as provided in this article, at any time
 2068 during the period of time originally prescribed for the probated sentence to run.

2069 (2)(A) When the sole basis for a probation revocation is for failure to pay fines,
 2070 statutory surcharges, or probation supervision fees, the probationer shall be scheduled
 2071 to appear on the court's next available court calendar for a hearing on such issue. No
 2072 prehearing arrest warrant shall be issued under such circumstances. Absent a waiver,

2073 the court shall not revoke a probationary sentence for failure to pay fines, statutory
 2074 surcharges, or probation supervision fees without holding a hearing, inquiring into the
 2075 reasons for the probationer's failure to pay, and, if a probationary sentence is revoked,
 2076 making an express written determination that the probationer has not made sufficient
 2077 bona fide efforts to pay and the probationer's failure to pay was willful or that adequate
 2078 alternative types of punishment do not exist. Should the probationer fail to appear at
 2079 such hearing, the court may, in its discretion, revoke the probated sentence.

2080 ~~(3)(B)~~ A person otherwise found eligible to have his or her probation modified or
 2081 terminated pursuant to paragraph (1) of this subsection shall not be deemed ineligible
 2082 for modification or termination of probation solely due to his or her failure to pay fines,
 2083 statutory surcharges, or probation supervision fees.

2084 (3)(A) When the sole basis for a probation revocation is for failure to report as directed
 2085 by his or her probation officer or private probation officer, as the case may be, such
 2086 officer shall prepare an affidavit for the court, averring, at a minimum, that:

2087 (i) The probationer has failed to report to his or her probation officer or private
 2088 probation officer, as the case may be, on at least two occasions;

2089 (ii) The officer has attempted to contact the probationer at least two times by
 2090 telephone or e-mail at the probationer's last known telephone number or e-mail
 2091 address, which information shall be listed in the affidavit;

2092 (iii) The officer has checked the local jail rosters and determined that the probationer
 2093 is not incarcerated;

2094 (iv) The officer has sent a letter by first-class mail to the probationer's last known
 2095 address, which shall be listed in the affidavit, advising the probationer that the officer
 2096 will seek to have the probationer arrested and have his or her probation revoked if the
 2097 probationer does not report to such officer in person within ten days of the date on
 2098 which the letter was mailed; and

2099 (v) The probationer has failed to report to the probation officer or private probation
 2100 officer, as the case may be, as directed in the letter set forth in division (iv) of this
 2101 subparagraph and ten days have passed since the date on which the letter was mailed.

2102 (B) In the event the probationer reports to his or her probation officer or private
 2103 probation officer, as the case may be, within the period prescribed in division (iv) of
 2104 subparagraph (A) of this paragraph, the probationer may be scheduled to appear on the
 2105 next available court calendar for a hearing to consider whether the probation sentence
 2106 should be revoked in whole or in part.

2107 (C) A probation officer or private probation officer, as the case may be, shall submit
 2108 the affidavit required by subparagraph (A) of this paragraph together with his or her

2109 request for an arrest warrant, and the court may, in its discretion, issue a warrant for the
 2110 arrest of the probationer.

2111 (4) At any revocation hearing, upon proof that the probationer has violated probation:

2112 (A) For failure to report to probation or failure to pay fines, statutory surcharges, or
 2113 probation supervision fees, the court shall consider the use of alternatives to
 2114 confinement, including community service, modification of the terms of probation, or
 2115 any other alternative deemed appropriate by the court. The court shall consider whether
 2116 a failure to pay court imposed financial obligations was willful. In the event an
 2117 alternative is not warranted, the court shall revoke the balance of probation or a period
 2118 not to exceed 120 days in confinement, whichever is less; and

2119 (B) For failure to comply with any other general provision of probation or suspension,
 2120 the court shall consider the use of alternatives to confinement, including community
 2121 service or any other alternative deemed appropriate by the court. In the event an
 2122 alternative is not warranted, the court shall revoke the balance of probation or a period
 2123 not to exceed two years in confinement, whichever is less."

2124 **SECTION 7-4.**

2125 Said title is further amended by revising subsection (b) of and adding a new subsection to
 2126 Code Section 42-8-103, relating to pay-only probation, to read as follows:

2127 "(b) When pay-only probation is imposed, the probation supervision fees shall be capped
 2128 so as not to exceed three months of ordinary probation supervision fees notwithstanding
 2129 the number of cases for which a fine and statutory surcharge were imposed or that the
 2130 defendant was sentenced to serve consecutive sentences; provided, however, that collection
 2131 of any probation supervision fee shall terminate as soon as all court imposed fines and
 2132 statutory surcharges are paid in full; and provided, further, that when all such fines and
 2133 statutory surcharges are paid in full, the probation officer or private probation officer, as
 2134 the case may be, shall submit an order to the court terminating the probated sentence within
 2135 30 days of fulfillment of such conditions. The court shall terminate such probated sentence
 2136 or issue an order stating why such probated sentence shall continue."

2137 "(d) When a defendant is serving pay-only probation, upon motion by the defendant, the
 2138 court may discharge such defendant from further supervision or otherwise terminate
 2139 probation when it is satisfied that its action would be in the best interest of justice and the
 2140 welfare of society."

2141 **SECTION 7-5.**

2142 Said title is further amended by adding a new Code section to read as follows:

2143 "42-8-103.1.

2144 (a) When a defendant is serving consecutive misdemeanor sentences, whether as a result
 2145 of one case from one jurisdiction or multiple cases from multiple jurisdictions, upon
 2146 motion by the defendant, the court may discharge such defendant from further supervision
 2147 or otherwise terminate probation when it is satisfied that its action would be in the best
 2148 interest of justice and the welfare of society. Such motion shall not be ripe until 12 months
 2149 after the sentence was entered and every four months thereafter. The defendant shall serve
 2150 the applicable entity or governing authority that is providing his or her probation services
 2151 with a copy of such motion.

2152 (b) When a defendant is serving consecutive misdemeanor sentences, his or her probation
 2153 officer or private probation officer, as the case may be, shall review such case after 12
 2154 consecutive months of probation supervision wherein the defendant has paid in full all
 2155 court imposed fines, statutory surcharges, and restitution and has otherwise completed all
 2156 testing, evaluations, and rehabilitative treatment programs ordered by the court to
 2157 determine if such officer recommends early termination of probation. Each such case shall
 2158 be reviewed every four months thereafter for the same determination until the termination,
 2159 expiration, or other disposition of the case. If such officer recommends early termination,
 2160 he or she shall immediately submit an order to the court to effectuate such purpose."

2161 **SECTION 7-6.**

2162 Said title is further amended by revising subparagraph (b)(1)(D) of Code Section 42-8-105,
 2163 relating to the probationer's obligation to keep an officer informed of certain information and
 2164 tolling, as follows:

2165 "(D) The officer has sent a letter by first-class mail to the probationer's last known
 2166 address, which shall be listed in the affidavit, advising the probationer that the officer
 2167 will seek a tolling order if the probationer does not report to such officer, ~~either by~~
 2168 ~~telephone or~~ in person; within ten days of the date on which the letter was mailed; and"

2169 **SECTION 7-7.**

2170 Said title is further amended by revising Code Section 42-8-106, relating to the creation of
 2171 the advisory council, as follows:

2172 "42-8-106.

2173 (a) There is created ~~an~~ a judicial advisory council committee with respect to the provisions
 2174 of this article composed of one superior court judge designated by The Council of Superior
 2175 Court Judges of Georgia, one state court judge designated by The Council of State Court
 2176 Judges of Georgia, one municipal court judge designated by the Council of Municipal
 2177 Court Judges of Georgia, one probate court judge designated by The Council of Probate

2178 Court Judges of Georgia, one magistrate designated by the Council of Magistrate Court
 2179 Judges, one attorney who specializes in criminal defense appointed by the Governor, one
 2180 probation officer appointed by the Governor, and one private probation officer or
 2181 individual with expertise in private probation services by virtue of his or her training or
 2182 employment appointed by the Governor. The appointing authority shall determine the
 2183 length of its appointee's term serving on such ~~council~~ committee. The judicial advisory
 2184 committee shall provide advice and consultation to the board and DCS on matters relating
 2185 to this article. The judicial advisory ~~council~~ committee shall elect a chairperson from
 2186 among its membership and such other officers as it deems necessary.

2187 42-8-106.1.

2188 ~~(b)~~ The board shall have the following powers and duties; ~~provided that, with respect to~~
 2189 ~~promulgating the rules, regulations, and standards set forth in this subsection, the board~~
 2190 ~~shall act only upon consultation with and approval by the advisory board~~ seek input from
 2191 the commissioner of community supervision:

2192 ~~(1) To review the uniform professional standards for private probation officers and~~
 2193 ~~uniform contract standards for private probation contracts established in Code Section~~
 2194 ~~42-8-107 and submit a report with its recommendations to the General Assembly;~~

2195 ~~(2)~~(1) To promulgate rules and regulations to implement ~~those~~ the uniform professional
 2196 standards for probation officers and uniform ~~agreement~~ contract standards for the
 2197 establishment of probation services by a county, municipality, or consolidated
 2198 government established in Code Section 42-8-107;

2199 ~~(3)~~(2) To promulgate rules and regulations establishing a 40 hour initial orientation for
 2200 newly hired private probation officers and for 20 hours per annum of continuing
 2201 education for private probation officers, provided that the 40 hour initial orientation shall
 2202 not be required of any person who has successfully completed a basic course of training
 2203 for supervision of probationers or parolees certified by the Georgia Peace Officer
 2204 Standards and Training Council or any private probation officer who has been employed
 2205 by a private probation corporation, enterprise, or agency for at least six months as of
 2206 July 1, 1996;

2207 ~~(4)~~(3) To promulgate rules and regulations establishing a 40 hour initial orientation for
 2208 probation officers and for 20 hours per annum of continuing education for such probation
 2209 officers, provided that the 40 hour initial orientation shall not be required of any person
 2210 who has successfully completed a basic course of training for supervision of probationers
 2211 or parolees certified by the Georgia Peace Officer Standards and Training Council or any
 2212 probation officer who has been employed by a county, municipality, or consolidated
 2213 government as of March 1, 2006;

2214 ~~(5)~~(4) To promulgate rules and regulations relative to compliance with the provisions of
 2215 this article, and enforcement mechanisms that may include, but are not limited to, the
 2216 imposition of sanctions and fines and the voiding of contracts or agreements;
 2217 ~~(6)~~(5) To promulgate rules and regulations establishing registration for any private
 2218 corporation, private enterprise, private agency, county, municipality, or consolidated
 2219 government providing probation services under the provisions of this article, subject to
 2220 the provisions of Code Section 42-8-109.3;
 2221 ~~(7) To produce an annual summary report;~~
 2222 ~~(8)~~(6) To promulgate rules and regulations requiring criminal history record checks of
 2223 individuals seeking to become private probation officers and establishing procedures for
 2224 such criminal record checks. ~~The Department of Community Supervision~~ DCS on behalf
 2225 of the board shall conduct a criminal history records check for individuals seeking to
 2226 become probation officers as provided in Code Section 35-3-34. The board shall
 2227 promulgate rules and regulations relating to restrictions regarding misdemeanor
 2228 convictions. An agency or private entity shall also be authorized to conduct a criminal
 2229 history ~~background~~ records check of a person employed as a probation officer or private
 2230 probation officer or individuals seeking such positions. The criminal history records
 2231 check may be conducted in accordance with Code Section 35-3-34 and may be based
 2232 upon the submission of fingerprints of the individual whose records are requested. The
 2233 Georgia Bureau of Investigation shall submit the fingerprints to the Federal Bureau of
 2234 Investigation under the rules established by the United States Department of Justice for
 2235 processing and identification of records. The federal record, if any, shall be obtained and
 2236 returned to the requesting entity or agency; and
 2237 ~~(9) To create committees from among the membership of the board as well as appoint~~
 2238 ~~other persons to serve in an advisory capacity to the board in implementing this article;~~
 2239 ~~and~~
 2240 ~~(10)~~(7) To promulgate rules and regulations requiring probation officers and private
 2241 probation officers to be registered with ~~the board~~ DCS, pay a fee for such registration,
 2242 and provide for the ~~imposition of~~ board to impose sanctions and fines on such officers for
 2243 misconduct."

2244 SECTION 7-8.

2245 Said title is further amended by revising subsections (a), (c), and (d) of Code Section
 2246 42-8-107, relating to uniform professional standards and uniform contract standards, as
 2247 follows:

2248 "(a) The uniform professional standards contained in this subsection shall be met by any
 2249 person employed as and using the title of a private probation officer or probation officer.

2250 Any such person shall be at least 21 years of age at the time of appointment to the position
2251 of private probation officer or probation officer and shall have completed a standard
2252 two-year college course or have four years of law enforcement experience; provided,
2253 however, that any person employed as a private probation officer as of July 1, 1996, and
2254 who had at least six months of experience as a private probation officer or any person
2255 employed as a probation officer by a county, municipality, or consolidated government as
2256 of March 1, 2006, shall be exempt from such college requirements. Every private
2257 probation officer shall receive an initial 40 hours of orientation upon employment and shall
2258 receive 20 hours of continuing education per annum as approved by ~~the board~~ DCS,
2259 provided that the 40 hour initial orientation shall not be required of any person who has
2260 successfully completed a basic course of training for supervision of probationers or
2261 parolees certified by the Peace Officer Standards and Training Council or any private
2262 probation officer who has been employed by a private probation corporation, enterprise,
2263 or agency for at least six months as of July 1, 1996, or any person employed as a probation
2264 officer by a county, municipality, or consolidated government as of March 1, 2006. In no
2265 event shall any person convicted of a felony be employed as a probation officer or private
2266 probation officer."

2267 "(c) The uniform contract standards contained in this subsection shall apply to all counties,
2268 municipalities, and consolidated governments that enter into agreements ~~with a judge~~ to
2269 provide probation services under the authority of Code Section 42-8-101. The terms of any
2270 such agreement shall state at a minimum:

- 2271 (1) The extent of the services to be rendered by the local governing authority providing
2272 probation services;
- 2273 (2) Any requirements for staff qualifications, including those contained in this Code
2274 section;
- 2275 (3) Requirements for criminal record checks of staff in compliance with the rules and
2276 regulations established by the board;
- 2277 (4) Policies and procedures for the training of staff that comply with the rules and
2278 regulations established by the board;
- 2279 (5) Staffing levels and standards for offender supervision, including frequency and type
2280 of contacts with offenders;
- 2281 (6) Procedures for handling the collection of all court ordered fines, fees, and restitution;
- 2282 (7) Circumstances under which revocation of an offender's probation may be
2283 recommended;
- 2284 (8) Reporting and record-keeping requirements; and
- 2285 (9) Default and agreement termination procedures.

2286 ~~(d) The board shall review the uniform professional standards and uniform contract and~~
 2287 ~~agreement standards contained in this Code section and shall submit a report on its findings~~
 2288 ~~to the General Assembly. The board shall submit its initial report on or before January 1,~~
 2289 ~~2017, and shall continue such reviews every two years thereafter. Nothing contained in~~
 2290 ~~such report shall be considered to authorize or require a change in such standards without~~
 2291 ~~action by the General Assembly having the force and effect of law. Such report shall~~
 2292 ~~provide information which will allow the General Assembly to review the effectiveness of~~
 2293 ~~the minimum professional standards and, if necessary, to revise such standards. This~~
 2294 ~~subsection shall not be interpreted to prevent the board from making recommendations to~~
 2295 ~~the General Assembly prior to its required review and report."~~

2296 SECTION 7-9.

2297 Said title is further amended by revising Code Section 42-8-108, relating to quarterly
 2298 reporting to the judge, as follows:

2299 "42-8-108.

2300 (a) Any private corporation, private enterprise, or private agency contracting to provide
 2301 probation services or any county, municipality, or consolidated government entering into
 2302 an agreement under the provisions of this article shall provide to the judge ~~with whom the~~
 2303 who consented to such contract or agreement ~~was made~~ and the board DCS a quarterly
 2304 report summarizing the number of offenders under supervision; the amount of fines,
 2305 statutory surcharges, and restitution collected; the amount of fees collected and the nature
 2306 of such fees, including probation supervision fees, rehabilitation programming fees,
 2307 electronic monitoring fees, drug or alcohol detection device fees, substance abuse or mental
 2308 health evaluation or treatment fees if such services are provided directly or otherwise to the
 2309 extent such fees are known, and drug testing fees; the number of community service hours
 2310 performed by probationers under supervision; a listing of any other service for which a
 2311 probationer was required to pay to attend; the number of offenders for whom supervision
 2312 or rehabilitation has been terminated and the reason for the termination; and the number
 2313 of warrants issued during the quarter, in such detail as ~~the board~~ DCS may require.
 2314 Information reported pursuant to this subsection shall be annually submitted to the
 2315 governing authority that entered into such contract and thereafter be subject to disclosure
 2316 pursuant to Article 4 of Chapter 18 of Title 50. Local governments are encouraged to post
 2317 electronic copies of the annual report on the local government's website, if such website
 2318 exists.

2319 (b) All records of any private corporation, private enterprise, or private agency contracting
 2320 to provide services or of any county, municipality, or consolidated government entering
 2321 into an agreement under the provisions of this article shall be open to inspection upon the

2322 request of the affected county, municipality, consolidated government, court, the
 2323 Department of Audits and Accounts, an auditor appointed by the affected county,
 2324 municipality, or consolidated government, Department of Corrections, ~~Department of~~
 2325 ~~Community Supervision~~ DCS, State Board of Pardons and Paroles, or the board."

2326 **SECTION 7-10.**

2327 Said title is further amended by revising Code Section 42-8-109.2, relating to confidentiality
 2328 of records, as follows:

2329 "42-8-109.2.

2330 (a) Except as provided in subsection (a) of Code Section 42-8-108 and subsection (b) of
 2331 this Code section, all reports, files, records, and papers of whatever kind relative to the
 2332 supervision of probationers by a private corporation, private enterprise, or private agency
 2333 contracting under the provisions of this article or by a county, municipality, or consolidated
 2334 government providing probation services under this article are declared to be confidential
 2335 and shall be available only to the affected county, municipality, or consolidated
 2336 government, or an auditor appointed by such county, municipality, or consolidated
 2337 government, the judge handling a particular case, the Department of Audits and Accounts,
 2338 Department of Corrections, ~~Department of Community Supervision~~ DCS, State Board of
 2339 Pardons and Paroles, or the board.

2340 (b)(1) Any probationer under supervision under this article shall:

2341 (A) Be provided with a written receipt and a balance statement each time he or she
 2342 makes a payment;

2343 (B) Be permitted, upon written request, to have a copy of correspondence, payment
 2344 records, and reporting history from his or her probation file, one time, and thereafter,
 2345 he or she shall be required to pay a fee as set by ~~the board~~ DCS; provided, however,
 2346 that the board shall promulgate rules and regulations clarifying what confidential
 2347 information may be withheld from such disclosure; and

2348 (C) Be permitted, upon written request to ~~the board~~ DCS, to have a copy of the
 2349 supervision case notes from his or her probation file when the commissioner of
 2350 community supervision authorizes the release of such information in a written order;
 2351 provided, however, that the board shall promulgate rules and regulations clarifying
 2352 what confidential information may be withheld from such disclosure.

2353 (2) When a probationer claims that information is being improperly withheld from his
 2354 or her file, the probationer may file a motion with the sentencing court seeking an in
 2355 camera inspection of such file. The probationer shall serve such motion on the
 2356 prosecuting attorney and probation officer or private probation officer as appropriate.

- 2357 (3) The following shall be subject to disclosure pursuant to Article 4 of Chapter 18 of
 2358 Title 50:
- 2359 (A) The board's rules and regulations regarding contracts or agreements for the
 2360 provision of probation services;
- 2361 (B) The board's rules and regulations regarding the conduct of business by private
 2362 entities providing probation services as authorized by this article;
- 2363 (C) The board's rules and regulations regarding county, municipal, or consolidated
 2364 governments establishing probation systems as authorized by this article; and
- 2365 (D) The rules, regulations, operating procedures, and guidelines of any private
 2366 corporation, private enterprise, or private agency providing probation services under the
 2367 provisions of this article.
- 2368 (c) In the event of a transfer of the supervision of a probationer from a private corporation,
 2369 private enterprise, or private agency or county, municipality, or consolidated government
 2370 providing probation services under this article to ~~the Department of Community~~
 2371 ~~Supervision, the Department of Community Supervision~~ DCS, DCS shall have access to
 2372 any relevant reports, files, records, and papers of the transferring entity."

2373 **SECTION 7-11.**

2374 Said title is further amended by revising Code Section 42-8-109.3, relating to registration
 2375 with the board, as follows:

2376 "42-8-109.3.

2377 (a)(1) All private corporations, private enterprises, and private agencies contracting or
 2378 offering to contract for probation services shall register with ~~the board~~ DCS before
 2379 entering into any contract to provide services. Any private corporation, private
 2380 enterprise, or private agency registered with ~~the County and Municipal Probation~~
 2381 ~~Advisory Council~~ the board on or before June 30, ~~2015~~ 2016, shall be deemed registered
 2382 with ~~the board~~ DCS; provided, however, that ~~the board~~ DCS shall be authorized to review
 2383 such contract and shall be responsible for subsequent renewals or changes to such
 2384 contract. The information included in such registration shall include the name of the
 2385 corporation, enterprise, or agency, its principal business address and telephone number,
 2386 the name of its agent for communication, and other information in such detail as ~~the~~
 2387 ~~board~~ DCS may require. No registration fee shall be required.

2388 (2) Any private corporation, private enterprise, or private agency required to register
 2389 under the provisions of paragraph (1) of this subsection which fails or refuses to do so
 2390 shall be subject to revocation of any existing contracts, in addition to any other fines or
 2391 sanctions imposed by the board.

2392 (b)(1) All counties, municipalities, and consolidated governments agreeing or offering
 2393 to agree to establish a probation system shall register with ~~the board~~ DCS before entering
 2394 into an agreement ~~with the court~~ to provide services. Any county, municipality, or
 2395 consolidated government that has a probation system registered with the ~~County and~~
 2396 ~~Municipal Probation Advisory Council~~ board on or before June 30, ~~2015~~ 2016, shall be
 2397 deemed registered with ~~the board~~ DCS; provided, however, that ~~the board~~ DCS shall be
 2398 authorized to review such systems and shall be responsible for subsequent renewals or
 2399 changes to such systems. The information included in such registration shall include the
 2400 name of the county, municipality, or consolidated government, the principal business
 2401 address and telephone number, a contact name for communication with ~~the board~~ DCS,
 2402 and other information in such detail as ~~the board~~ DCS may require. No registration fee
 2403 shall be required.

2404 (2) Any county, municipality, or consolidated government required to register under the
 2405 provisions of paragraph (1) of this subsection which fails or refuses to do so shall be
 2406 subject to revocation of existing agreements, in addition to any other sanctions imposed
 2407 by the board."

2408 **SECTION 7-12.**

2409 Said title is further amended by revising paragraph (1) of subsection (a) and paragraph (1)
 2410 of subsection (b) of Code Section 42-8-109.4, relating to the applicability of the article to
 2411 contractors for probation services, as follows:

2412 "(1) Register with ~~the board~~ DCS;"

2413 "(1) Register with ~~the board~~ DCS;"

2414 **PART VIII**

2415 **PROVIDING FOR MISCELLANEOUS**

2416 **CROSS-REFERENCES IN TITLE 42**

2417 **SECTION 8-1.**

2418 Said title is further amended by revising subsection (e) of Code Section 42-1-14, relating to
 2419 risk assessment classification, as follows:

2420 "(e) Any sexually dangerous predator shall be required to wear an electronic monitoring
 2421 system that shall have, at a minimum:

2422 (1) The capacity to locate and record the location of a sexually dangerous predator by a
 2423 link to a global positioning satellite system;

2424 (2) The capacity to timely report or record a sexually dangerous predator's presence near
 2425 or within a crime scene or in a prohibited area or the sexually dangerous predator's
 2426 departure from specific geographic locations; and

2427 (3) An alarm that is automatically activated and broadcasts the sexually dangerous
 2428 predator's location if the global positioning satellite monitor is removed or tampered with
 2429 by anyone other than a law enforcement official designated to maintain and remove or
 2430 replace the equipment.

2431 Such electronic monitoring system shall be worn by a sexually dangerous predator for the
 2432 remainder of his or her natural life. The sexually dangerous predator shall pay the cost of
 2433 such system to the Department of Community ~~Service~~ Supervision if the sexually
 2434 dangerous predator is under probation or parole supervision and to the sheriff after the
 2435 sexually dangerous predator completes his or her term of probation and parole or if the
 2436 sexually dangerous predator has moved to this state from another state, territory, or
 2437 country. The electronic monitoring system shall be placed upon the sexually dangerous
 2438 predator prior to his or her release from confinement. If the sexual offender is not in
 2439 custody, within 72 hours of the decision classifying the sexual offender as a sexually
 2440 dangerous predator in accordance with subsection (b) of this Code section, the sexually
 2441 dangerous predator shall report to the sheriff of the county of his or her residence for
 2442 purposes of having the electronic monitoring system placed on the sexually dangerous
 2443 predator."

2444 **SECTION 8-2.**

2445 Said title is further amended by revising subsection (i) of Code Section 42-2-11, relating to
 2446 the powers and duties of the Board of Corrections, as follows:

2447 "(i) The board shall have the authority to request bids and proposals and to enter into
 2448 contracts for the operation of probation detention centers by private companies and entities
 2449 for the confinement of probationers under Code Section 42-8-35.4 ~~and probation diversion~~
 2450 ~~centers for the confinement of probationers under Code Section 42-8-35.5.~~ The board shall
 2451 have the authority to adopt, establish, and promulgate rules and regulations for the
 2452 operation of probation detention ~~and probation diversion~~ centers by private companies and
 2453 entities."

2454 **SECTION 8-3.**

2455 Said title is further amended by revising paragraph (4) of subsection (a) of Code Section
 2456 42-2-15, relating to the employee benefit fund, as follows:

2457 "(4) 'Facility' means a prison, institution, detention center, ~~diversion center~~, or such other
 2458 similar property under the jurisdiction or operation of the department."

SECTION 8-4.

2459
 2460 Said title is further amended by revising subsection (g) of Code Section 42-8-34, relating to
 2461 sentencing hearings and determinations, as follows:

2462 "(g) The sentencing judge shall not lose jurisdiction over any person placed on probation
 2463 during the term of the person's probated sentence. The judge is empowered to revoke any
 2464 or all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed
 2465 advisable by the judge, modify or change the probated sentence, including ordering the
 2466 probationer into the sentencing options system, as provided in Article 6 of Chapter 3 of this
 2467 title, at any time during the period of time prescribed for the probated sentence to run. In
 2468 addition, when the judge is considering revoking a probated sentence in order to require
 2469 the defendant to enter a drug court division, mental health court division, family treatment
 2470 court division, or veterans court division and the length of the original sentence is
 2471 insufficient to authorize such revocation, the defendant may voluntarily agree to an
 2472 extension of his or her original sentence within the maximum sentence allowed by law,
 2473 notwithstanding subsection (f) of Code Section 17-10-1. Such extension shall be for a
 2474 period not to exceed three years, and upon completion of such specific court division
 2475 program, the court may modify the terms of probation in accordance with subparagraph
 2476 (a)(5)(A) of Code Section 17-10-1."

SECTION 8-5.

2477
 2478 Said title is further amended by revising subsection (c) of Code Section 42-8-34.1, relating
 2479 to revocation of probated or suspended sentence, as follows:

2480 "(c) At any revocation hearing, upon proof that the defendant has violated any general
 2481 provision of probation or suspension other than by commission of a new felony offense,
 2482 the court shall consider the use of alternatives to include community service, ~~diversion~~
 2483 ~~centers~~, probation detention centers, special alternative incarceration, or any other
 2484 alternative to confinement deemed appropriate by the court or as provided by the state or
 2485 county. In the event the court determines that the defendant does not meet the criteria for
 2486 such alternatives, the court may revoke the balance of probation or not more than two years
 2487 in confinement, whichever is less."

SECTION 8-6.

2488
 2489 Said title is further amended by revising Code Section 42-8-35.5, relating to confinement in
 2490 probation diversion centers, as follows:

2491 "42-8-35.5.

2492 ~~(a) Notwithstanding any other terms and conditions of probation which may be imposed,~~
 2493 ~~a court may require that probationers sentenced to a period of not less than one year on~~

2494 ~~probation shall satisfactorily complete, as a condition of such probation, a program in a~~
 2495 ~~probation diversion center. Probationers so sentenced shall be required to serve a period~~
 2496 ~~of confinement as specified in the court order, which confinement period shall be computed~~
 2497 ~~from the date of initial confinement in the diversion center.~~

2498 ~~(b) The court shall determine that the defendant is at least 17 years of age at the time of~~
 2499 ~~sentencing, is capable both physically and mentally of maintaining paid employment in the~~
 2500 ~~community, and does not unnecessarily jeopardize the safety of the community.~~

2501 ~~(c) The Department of Corrections may assess and collect room and board fees from~~
 2502 ~~diversion center program participants at a level set by the Department of Corrections~~
 2503 Reserved."

2504 **SECTION 8-7.**

2505 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section
 2506 42-8-111, relating to court issuance of certificate for installation of ignition interlock devices,
 2507 as follows:

2508 "(3) Such person shall participate in a substance abuse treatment program as defined in
 2509 paragraph (16.2) of Code Section 40-5-1, ~~or a drug court division program in compliance~~
 2510 ~~with Code Section 15-1-15, a mental health court division in compliance with Code~~
 2511 ~~Section 15-1-16, a veterans court division in compliance with Code Section 15-1-17, or~~
 2512 ~~an operating under the influence court division in compliance with Code Section 15-1-19~~
 2513 ~~for a period of not less than 120 days."~~

2514 **PART IX**

2515 **PAROLE BOARD AUTHORITY REGARDING**

2516 **CERTAIN DRUG OFFENDERS**

2517 **SECTION 9-1.**

2518 Said title is further amended by revising subsection (b) of Code Section 42-9-45, relating to
 2519 the State Board of Pardons and Paroles general rule-making authority, as follows:

2520 "(b)(1) An inmate serving a misdemeanor sentence or misdemeanor sentences shall only
 2521 be eligible for consideration for parole after the expiration of six months of his or her
 2522 sentence or sentences or one-third of the time of his or her sentence or sentences,
 2523 whichever is greater.

2524 (2) Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7 and
 2525 ~~paragraph~~ paragraphs (3) and (4) of this subsection, an inmate serving a felony sentence
 2526 or felony sentences shall only be eligible for consideration for parole after the expiration
 2527 of nine months of his or her sentence or one-third of the time of the sentences, whichever

2528 is greater. Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7 and
 2529 ~~paragraph~~ paragraphs (3) and (4) of this subsection, inmates serving sentences
 2530 aggregating 21 years or more shall become eligible for consideration for parole upon
 2531 completion of the service of seven years.

2532 (3) When an inmate was sentenced pursuant to subsection (d) of Code Section 16-13-30
 2533 and subsection (c) of Code Section 17-10-7 to a term of at least 12 years and up to a life
 2534 sentence, he or she may become eligible for consideration for parole if he or she:

2535 (A) Has never been convicted of:

2536 (i) A serious violent felony as such term is defined in Code Section 17-10-6.1;

2537 (ii) An offense for which he or she was or could have been required to register
 2538 pursuant to Code Section 42-1-12; provided, however, that this paragraph shall not
 2539 apply to any felony that became punishable as a misdemeanor on or after July 1,
 2540 2006;

2541 (iii) A violation of paragraph (1) or (2) of subsection (b) of Code Section 16-5-21;

2542 (iv) A violation of Code Section 16-11-106; and

2543 (v) A violation of Code Section 16-11-131;

2544 (B) Has completed at least 12 years of his or her sentence;

2545 (C) Has obtained a low-risk for recidivism rating as determined by a validated risk
 2546 assessment instrument approved by the Department of Corrections;

2547 (D) Has been classified as a medium or less than medium security risk for institutional
 2548 housing classification purposes by the Department of Corrections;

2549 (E) Has completed all criminogenic programming requirements as determined by a
 2550 validated risk assessment instrument approved by the Department of Corrections;

2551 (F) In the 12 months preceding consideration, has not been found guilty of any serious
 2552 disciplinary infractions; and

2553 (G) Has a high school diploma or general educational development (GED) diploma,
 2554 unless he or she is unable to obtain such educational achievement due to a learning
 2555 disability or illiteracy. If the inmate is incapable of obtaining such education, he or she
 2556 shall have completed a job skills training program, a literacy program, an adult basic
 2557 education program, or a faith based program.

2558 (4) When an inmate was sentenced pursuant to subsection (c), (e), or (l) of Code Section
 2559 16-13-30 and subsection (c) of Code Section 17-10-7 to a term of at least six years, he or
 2560 she may become eligible for consideration for parole if he or she:

2561 (A) Has never been convicted of:

2562 (i) A serious violent felony as such term is defined in Code Section 17-10-6.1;

2563 (ii) An offense for which he or she was or could have been required to register
 2564 pursuant to Code Section 42-1-12; provided, however, that this paragraph shall not

2565 apply to any felony that became punishable as a misdemeanor on or after July 1,
 2566 2006;
 2567 (iii) A violation of paragraph (1) or (2) of subsection (b) of Code Section 16-5-21;
 2568 (iv) A violation of Code Section 16-11-106; and
 2569 (v) A violation of Code Section 16-11-131;
 2570 (B) Has completed at least six years of his or her sentence;
 2571 (C) Has obtained a low-risk for recidivism rating as determined by a validated risk
 2572 assessment instrument approved by the Department of Corrections;
 2573 (D) Has been classified as a medium or less than medium security risk for institutional
 2574 housing classification purposes by the Department of Corrections;
 2575 (E) Has completed all criminogenic programming requirements as determined by a
 2576 validated risk assessment instrument approved by the Department of Corrections;
 2577 (F) In the 12 months preceding consideration, has not been found guilty of any serious
 2578 disciplinary infractions; and
 2579 (G) Has a high school diploma or general educational development (GED) diploma,
 2580 unless he or she is unable to obtain such educational achievement due to a learning
 2581 disability or illiteracy. If the inmate is incapable of obtaining such education, he or she
 2582 shall have completed a job skills training program, a literacy program, an adult basic
 2583 education program, or a faith based program."

2584 PART X

2585 PROFESSIONAL LICENSING CONSIDERATIONS

2586 SECTION 10-1.

2587 Chapter 1 of Title 43 of the Official Code of Georgia Annotated, relating to general
 2588 provisions applicable to professions and businesses, is amended by revising Code
 2589 Section 43-1-19, relating to grounds for refusing to grant or revoking licenses and
 2590 probationary license, as follows:

2591 "43-1-19.

2592 (a) A professional licensing board shall have the authority to refuse to grant a license to
 2593 an applicant therefor or to revoke the license of a person licensed by that board or to
 2594 discipline a person licensed by that board, upon a finding by a majority of the entire board
 2595 that the licensee or applicant has:

2596 (1) Failed to demonstrate the qualifications or standards for a license contained in this
 2597 Code section, or under the laws, rules, or regulations under which licensure is sought or
 2598 held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the
 2599 board that he or she meets all the requirements for the issuance of a license, and, if the

2600 board is not satisfied as to the applicant's qualifications, it may deny a license without a
 2601 prior hearing; provided, however, that the applicant shall be allowed to appear before the
 2602 board if he or she so desires;

2603 (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the
 2604 practice of a business or profession licensed under this title or on any document
 2605 connected therewith; ~~or~~ practiced fraud or deceit or intentionally made any false
 2606 statement in obtaining a license to practice the licensed business or profession; or made
 2607 a false statement or deceptive registration with the board;

2608 (3) Been convicted of any felony or of any crime involving moral turpitude in the courts
 2609 of this state or any other state, territory, or country or in the courts of the United States;
 2610 as used in this paragraph, ~~and~~ paragraph (4) of this subsection, and subsection (q) of this
 2611 Code section, the term 'felony' shall include any offense which, if committed in this state,
 2612 would be deemed a felony, without regard to its designation elsewhere; and, as used in
 2613 this paragraph and subsection (q) of this Code section, the term 'conviction' shall include
 2614 a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the
 2615 conviction has been sought;

2616 (4) Been arrested, charged, and sentenced for the commission of any felony, or any crime
 2617 involving moral turpitude, where:

2618 (A) First offender treatment without adjudication of guilt pursuant to the charge was
 2619 granted; or

2620 (B) An adjudication of guilt or sentence was otherwise withheld or not entered on the
 2621 charge, except with respect to a plea of nolo contendere.

2622 The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating
 2623 to probation of first offenders, or other first offender treatment shall be conclusive
 2624 evidence of arrest and sentencing for such crime;

2625 (5) Had his or her license to practice a business or profession licensed under this title
 2626 revoked, suspended, or annulled by any lawful licensing authority other than the board;
 2627 ~~or~~ had other disciplinary action taken against him or her by any such lawful licensing
 2628 authority other than the board; ~~or~~ was denied a license by any such lawful licensing
 2629 authority other than the board, pursuant to disciplinary proceedings; or was refused the
 2630 renewal of a license by any such lawful licensing authority other than the board, pursuant
 2631 to disciplinary proceedings;

2632 (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct
 2633 or practice harmful to the public; ~~which conduct or practice~~ that materially affects the
 2634 fitness of the licensee or applicant to practice a business or profession licensed under this
 2635 title; or is of a nature likely to jeopardize the interest of the public; ~~which;~~ such conduct
 2636 or practice need not have resulted in actual injury to any person or be directly related to

2637 the practice of the licensed business or profession but shows that the licensee or applicant
 2638 has committed any act or omission which is indicative of bad moral character or
 2639 untrustworthiness; ~~unprofessional conduct.~~ Such conduct or practice shall also include
 2640 any departure from, or the failure to conform to, the minimal reasonable standards of
 2641 acceptable and prevailing practice of the business or profession licensed under this title;

2642 (7) Knowingly performed any act which in any way aids, assists, procures, advises, or
 2643 encourages any unlicensed person or any licensee whose license has been suspended or
 2644 revoked by a professional licensing board to practice a business or profession licensed
 2645 under this title or to practice outside the scope of any disciplinary limitation placed upon
 2646 the licensee by the board;

2647 (8) Violated a statute, law, or any rule or regulation of this state, any other state, the
 2648 professional licensing board regulating the business or profession licensed under this title,
 2649 the United States, or any other lawful authority (~~without regard to whether the violation~~
 2650 ~~is criminally punishable~~); ~~which~~ when such statute, law, or rule or regulation relates to
 2651 or in part regulates the practice of a business or profession licensed under this title; and
 2652 when the licensee or applicant knows or should know that such action ~~is violative of~~
 2653 violates such statute, law, or rule; or violated a lawful order of the board previously
 2654 entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

2655 (9) Been adjudged mentally incompetent by a court of competent jurisdiction within or
 2656 outside this state; any such adjudication shall automatically suspend the license of any
 2657 such person and shall prevent the reissuance or renewal of any license so suspended for
 2658 as so long as the adjudication of incompetence is in effect;

2659 (10) Displayed an inability to practice a business or profession licensed under this title
 2660 with reasonable skill and safety to the public or has become unable to practice the
 2661 licensed business or profession with reasonable skill and safety to the public by reason
 2662 of illness; or the use of alcohol, drugs, narcotics, chemicals, or any other type of material;

2663 (11) Failed to comply with an order for child support as defined by Code
 2664 Section 19-11-9.3; it shall be incumbent upon the applicant or licensee to supply a notice
 2665 of release to the board from the child support agency within the Department of Human
 2666 Services indicating that the applicant or licensee has come into compliance with an order
 2667 for child support so that a license may ~~issue~~ be issued or ~~be~~ granted if all other conditions
 2668 for licensure are met; or

2669 (12) Failed to enter into satisfactory repayment status and is a borrower in default as
 2670 defined by Code Section 20-3-295; it shall be incumbent upon the applicant or licensee
 2671 to supply a notice of release to the board from the Georgia Higher Education Assistance
 2672 Corporation indicating that the applicant or licensee has entered into satisfactory

2673 repayment status so that a license may be issued or granted if all other conditions for
2674 licensure are met.

2675 (b) The provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'
2676 with respect to emergency action by a professional licensing board and summary
2677 suspension of a license are adopted and incorporated by reference into this Code section.

2678 (c) For purposes of this Code section, a professional licensing board may obtain, through
2679 subpoena by the division director, upon reasonable grounds, any and all records relating
2680 to the mental or physical condition of a licensee or applicant, and such records shall be
2681 admissible in any hearing before the board.

2682 (d) When a professional licensing board finds that any person is unqualified to be granted
2683 a license or finds that any person should be disciplined pursuant to subsection (a) of this
2684 Code section or the laws, rules, or regulations relating to the business or profession
2685 licensed by the board, the board may take any one or more of the following actions:

2686 (1) Refuse to grant or renew a license to an applicant;

2687 (2) Administer a public or private reprimand, but a private reprimand shall not be
2688 disclosed to any person except the licensee;

2689 (3) Suspend any license for a definite period or for an indefinite period in connection
2690 with any condition which may be attached to the restoration of ~~said~~ such license;

2691 (4) Limit or restrict any license as the board deems necessary for the protection of the
2692 public;

2693 (5) Revoke any license;

2694 (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's
2695 or licensee's submission to such care, counseling, or treatment as the board may direct;

2696 (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation
2697 relating to the licensed business or profession; or

2698 (8) Impose on a licensee or applicant fees or charges in an amount necessary to
2699 reimburse the professional licensing board for the administrative and legal costs incurred
2700 by the board in conducting an investigative or disciplinary proceeding.

2701 (e) In addition to and in conjunction with the actions described in subsection (d) of this
2702 Code section, a professional licensing board may make a finding adverse to the licensee
2703 or applicant but withhold imposition of judgment and penalty; or it may impose the
2704 judgment and penalty but suspend enforcement thereof and place the licensee on probation,
2705 which ~~probation~~ may be vacated upon noncompliance with such reasonable terms as the
2706 board may impose.

2707 (f) Initial judicial review of a final decision of a professional licensing board shall be had
2708 solely in the superior court of the county of domicile of the board. The court may assess
2709 reasonable and necessary attorney's fees and expenses of litigation in any such review if,

2710 upon the motion of any party or the court itself, it finds that an attorney or any party
2711 aggrieved by an action of the board appealed such action of the board or any part thereof
2712 when such appeal lacked substantial justification or when such appeal or any part thereof
2713 was interposed for delay or harassment or if it finds that an attorney or aggrieved party
2714 unnecessarily expanded the proceeding by other improper conduct. As used in this
2715 subsection, the term 'lacked substantial justification' means substantially frivolous,
2716 substantially groundless, or substantially vexatious.

2717 (g) In its discretion, a professional licensing board may reinstate a license which has been
2718 revoked or issue a license which has been denied or refused, following such procedures as
2719 the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary
2720 or corrective method provided in this Code section or the laws relating to the licensed
2721 business or profession.

2722 (h)(1) The division director is vested with the power and authority to make, or cause to
2723 be made through employees or agents of the division, such investigations as he or she or
2724 a respective board may deem necessary or proper for the enforcement of the provisions
2725 of this Code section and the laws relating to businesses and professions licensed by that
2726 board. Any person properly conducting an investigation on behalf of a professional
2727 licensing board shall have access to and may examine any writing, document, or other
2728 material relating to the fitness of any licensee or applicant. The division director or his
2729 or her appointed representative may issue subpoenas to compel access to any writing,
2730 document, or other material upon a determination that reasonable grounds exist for the
2731 belief that a violation of this Code section or any other law relating to the practice of the
2732 licensed business or profession subject to regulation or licensing by such board may have
2733 taken place.

2734 (2) The results of all investigations initiated by the board shall be reported solely to the
2735 board, and the records of such investigations shall be kept for the board by the division
2736 director, with the board retaining the right to have access at any time to such records. No
2737 part of any such records shall be released, except to the board, for any purpose other than
2738 a hearing before the board, nor shall such records be subject to subpoena; provided,
2739 however, that the board shall be authorized to release such records to another
2740 enforcement agency or lawful licensing authority.

2741 (3) If a licensee is the subject of a board inquiry, all records relating to any person who
2742 receives services rendered by that licensee in his or her capacity as licensee shall be
2743 admissible at any hearing held to determine whether a violation of this chapter has taken
2744 place, regardless of any statutory privilege; provided, however, that any documentary
2745 evidence relating to a person who received those services shall be reviewed in camera and
2746 shall not be disclosed to the public.

2747 (4) The board shall have the authority to exclude all persons during its deliberations on
2748 disciplinary proceedings and to discuss any disciplinary matter in private with a licensee
2749 or applicant and the legal counsel of that licensee or applicant.

2750 (5) When a member of the public files a complaint with a professional licensing board
2751 or the division director against a licensee, within 30 days after the conclusion of the
2752 investigation of such complaint, the professional licensing board or the division director
2753 shall notify the complainant of the disposition of such complaint. Such notification shall
2754 include whether any action was taken by the board with regard to such complaint and the
2755 nature of such action. In addition, the division director and the board shall upon request
2756 by the complainant advise the complainant as to the status of the complaint during the
2757 period of time that such complaint is pending.

2758 (i) A person, firm, corporation, association, authority, or other entity shall be immune from
2759 civil and criminal liability for reporting or investigating the acts or omissions of a licensee
2760 or applicant which violate the provisions of subsection (a) of this Code section or any other
2761 provision of law relating to a licensee's or applicant's fitness to practice a business or
2762 profession licensed under this title or for initiating or conducting proceedings against such
2763 licensee or applicant, if such report is made or action is taken in good faith, without fraud
2764 or malice. Any person who testifies or who makes a recommendation to a professional
2765 licensing board in the nature of peer review, in good faith, without fraud or malice, before
2766 the board in any proceeding involving the provisions of subsection (a) of this Code section
2767 or any other law relating to a licensee's or applicant's fitness to practice the business or
2768 profession licensed by the board shall be immune from civil and criminal liability for so
2769 testifying.

2770 (j) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor
2771 the denial of a request for reinstatement of a revoked license nor the refusal to issue a
2772 previously denied license shall be considered to be a contested case within the meaning of
2773 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; notice and hearing
2774 within the meaning of ~~said~~ such chapter shall not be required, but the applicant or licensee
2775 shall be allowed to appear before the board if he or she so requests. A board may resolve
2776 a pending action by the issuance of a letter of concern. Such letter shall not be considered
2777 a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be
2778 disclosed to any person except the licensee or applicant.

2779 (k) If any licensee or applicant after reasonable notice fails to appear at any hearing of the
2780 professional licensing board for that licensee or applicant, the board may proceed to hear
2781 the evidence against such licensee or applicant and take action as if such licensee or
2782 applicant had been present. A notice of hearing, initial or recommended decision, or final
2783 decision of the board in a disciplinary proceeding shall be served personally upon the

2784 licensee or applicant or served by certified mail or statutory overnight delivery, return
 2785 receipt requested, to the last known address of record with the board. If such material is
 2786 served by certified mail or statutory overnight delivery and is returned marked 'unclaimed'
 2787 or 'refused' or is otherwise undeliverable and if the licensee or applicant cannot, after
 2788 diligent effort, be located, the division director, or his or her designee, shall be deemed to
 2789 be the agent for service for such licensee or applicant for purposes of this Code section, and
 2790 service upon that director, or that director's designee, shall be deemed to be service upon
 2791 the licensee or applicant.

2792 (l) The voluntary surrender of a license or the failure to renew a license by the end of an
 2793 established penalty period shall have the same effect as a revocation of ~~said~~ such license,
 2794 subject to reinstatement in the discretion of a board. A board may restore and reissue a
 2795 license to practice under the law relating to that board and, as a condition thereof, may
 2796 impose any disciplinary sanction provided by this Code section or the law relating to that
 2797 board.

2798 (m) This Code section shall apply equally to all licensees or applicants whether
 2799 individuals, partners, or members of any other incorporated or unincorporated associations,
 2800 corporations, limited liability companies, or other associations of any kind whatsoever.

2801 (n) Regulation by a professional licensing board of a business or profession licensed under
 2802 this title shall not exempt that business or profession from regulation pursuant to any other
 2803 applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10,
 2804 the 'Fair Business Practices Act of 1975.'

2805 (o) Subsections (a), (d), and (e) of this Code section shall be supplemental to and shall not
 2806 operate to prohibit any professional licensing board from acting pursuant to those
 2807 provisions of law which may now or hereafter authorize other disciplinary grounds and
 2808 actions for that particular board. In cases where those other provisions of law so authorize
 2809 other disciplinary grounds and actions but subsection (a), (d), or (e) of this Code section
 2810 ~~limit~~ limits such grounds or actions, those other provisions shall apply so long as the
 2811 requirements of subsection (q) of this Code section are met.

2812 (p)(1) Notwithstanding any other provision of this Code section or title, when an
 2813 applicant submits his or her application for licensure or renewal, together with proof of
 2814 completion of a drug court division ~~program~~, as set forth in Code Section 15-1-15, a
 2815 mental health court division as set forth in Code Section 15-1-16, a veterans court
 2816 division as set forth in Code Section 15-1-17, an operating under the influence court
 2817 division as set forth in Code Section 15-1-19, or a family treatment court division as set
 2818 forth in Code Section 15-11-70, a board shall issue the applicant a probationary license
 2819 under the terms and conditions deemed appropriate by such board.

2820 (2) Paragraph (1) of this subsection shall not supersede a board's consideration of an
 2821 applicant's other prior criminal history or arrests or convictions that occur subsequent to
 2822 completion of a drug court division program identified in paragraph (1) of this subsection.
 2823 (q)(1) Notwithstanding paragraphs (3) and (4) of subsection (a) of this Code section or
 2824 any other provision of law, no professional licensing board shall refuse to grant a license
 2825 to an applicant therefor or shall revoke the license of a person licensed by that board due
 2826 solely or in part to a conviction of any felony or due to any arrest, charge, and sentence
 2827 for the commission of any felony unless such felony directly relates to the occupation for
 2828 which the license is sought or held.

2829 (2) In determining if a felony directly relates to the occupation for which the license is
 2830 sought or held, the professional licensing board shall consider:

2831 (A) The nature and seriousness of the felony and the relationship of the felony to the
 2832 occupation for which the license is sought or held;

2833 (B) The age of the person at the time the felony was committed;

2834 (C) The length of time elapsed since the felony was committed;

2835 (D) All circumstances relative to the felony, including, but not limited to, mitigating
 2836 circumstances or social conditions surrounding the commission of the felony; and

2837 (E) Evidence of rehabilitation and present fitness to perform the duties of the
 2838 occupation for which the license is sought or held."

2839 PART XI

2840 YOUTHFUL PROBATION SUPERVISION

2841 SECTION 11-1.

2842 Code Section 49-4A-2 of the Official Code of Georgia Annotated, relating to the creation of
 2843 the Board of Juvenile Justice, is amended in subsection (b) by deleting "and" at the end of
 2844 paragraph (4), by replacing the period with "; and" at the end of paragraph (5), and by adding
 2845 a new paragraph to read as follows:

2846 "(6) Adopt rules and regulations governing the transfer of children who are at least 17
 2847 years of age and are released from restrictive custody due to an adjudication for a Class
 2848 A designated felony act or Class B designated felony act, as such terms are defined in
 2849 Code Section 15-11-2, to the Department of Community Supervision to ensure balanced
 2850 attention to the protection of the community, the imposition of accountability, and the
 2851 development of competencies to enable each child to become a responsible and
 2852 productive member of the community, taking into consideration a child's level of
 2853 participation in the department's educational, vocational, and other services prior to such
 2854 release."

2855 PART XII
 2856 PROVIDING FOR MISCELLANEOUS
 2857 CROSS-REFERENCES IN THE CODE
 2858 **SECTION 12-1.**

2859 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 2860 amended by revising subparagraph (b)(1)(B) of Code Section 16-8-14, relating to shoplifting,
 2861 as follows:

2862 "(B) Upon conviction of a third offense for shoplifting, ~~where~~ when the first two
 2863 offenses are either felonies or misdemeanors, or a combination of a felony and a
 2864 misdemeanor, as defined by this Code section, in addition to or in lieu of any fine
 2865 which might be imposed, the defendant shall be punished by imprisonment for not less
 2866 than 30 days or confinement in a 'special alternative incarceration-probation boot camp,'
 2867 probation detention center, ~~diversion center~~, or other community correctional facility
 2868 of the Department of Corrections for a period of 120 days or shall be sentenced to
 2869 monitored house arrest for a period of 120 days and, in addition to ~~either~~ such types of
 2870 confinement, may be required to undergo psychological evaluation and treatment to be
 2871 paid for by the defendant; and such sentence of imprisonment or confinement shall not
 2872 be suspended, probated, deferred, or withheld; and"

2873 **SECTION 12-2.**

2874 Said title is further amended by revising paragraph (2) of subsection (c) of Code Section
 2875 16-8-14.1, relating to refund fraud, as follows:

2876 "(2) Upon conviction of a third offense for a violation of any provision of this Code
 2877 section, the defendant shall be guilty of a felony and, in addition to or in lieu of any fine
 2878 which might be imposed, the defendant shall be punished by imprisonment for not less
 2879 than 30 days or confinement in a 'special alternative incarceration-probation boot camp,'
 2880 probation detention center, ~~diversion center~~, or other community correctional facility of
 2881 the Department of Corrections for a period of 120 days or shall be sentenced to monitored
 2882 house arrest for a period of 120 days and, in addition to ~~either~~ such types of confinement,
 2883 may be required to undergo psychological evaluation and treatment to be paid for by the
 2884 defendant; and such sentence of imprisonment or confinement shall not be suspended,
 2885 probated, deferred, or withheld."

2886 **SECTION 12-3.**

2887 Said title is further amended by revising paragraph (2) of subsection (d) of Code Section
2888 16-11-135, relating to public or private employer's parking lots and rights of action, as
2889 follows:

2890 "(2) To any penal institution, correctional institution, detention facility, ~~diversion center,~~
2891 jail, or similar place of confinement or confinement alternative;"

2892 **SECTION 12-4.**

2893 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
2894 amended by revising subparagraph (a)(3)(A) of Code Section 17-10-1, relating to fixing of
2895 sentence, as follows:

2896 "(3)(A) Any part of a sentence of probation revoked for a violation other than a
2897 subsequent commission of any felony, a violation of a special condition, or a
2898 misdemeanor offense involving physical violence resulting in bodily injury to an
2899 innocent victim which in the opinion of the trial court constitutes a danger to the
2900 community or a serious infraction occurring while the defendant is assigned to an
2901 alternative probation confinement facility shall be served in a probation detention
2902 center, probation boot camp, ~~diversion center,~~ weekend lock up, or confinement in a
2903 local jail or detention facility, or other community correctional alternatives available
2904 to the court or provided by the Department of Corrections."

2905 **SECTION 12-5.**

2906 Said title is further amended by revising paragraph (2) of subsection (a) of Code Section
2907 17-10-3, relating to punishment for misdemeanors generally, as follows:

2908 "(2) By confinement under the jurisdiction of the Board of Corrections in a state
2909 probation detention center ~~or diversion center~~ pursuant to Code ~~Sections~~
2910 Section 42-8-35.4 ~~and 42-8-35.5~~, for a determinate term of months which shall not
2911 exceed a total term of 12 months; or"

2912 **PART XIII**

2913 **EFFECTIVE DATES AND REPEALER**

2914 **SECTION 13-1.**

2915 (a) Except as provided in subsection (b) of this section, this Act shall become effective on
2916 July 1, 2016.

2917 (b) Part IX of this Act shall become effective upon its approval by the Governor or upon its
2918 becoming law without such approval. The provisions of Part IX of this Act shall be given
2919 retroactive effect to those sentences imposed before the effective date of Part IX of this Act.

2920

SECTION 13-2.

2921 All laws and parts of laws in conflict with this Act are repealed.