



KEITH HORTON
COMMISSIONER

IMPORTANT KEY INFORMATION:

- Child in immediate danger, please call 911!
- Call local DFCS office to make a CPS Report!
- After-Hours (between 5:00 p.m. and 8:30 a.m.) call 1-855-GACHILD!

DFCS LEADERSHIP:

Sharon Hill
Division Director

Carol Christopher
Deputy Director

CHILD PROTECTIVE SERVICES (CPS)

Every child needs to be treasured, protected and nurtured. Unfortunately, some parents are unable to care for their children. When neglect or abuse occurs, someone must step in to ensure their safety. The community, the police, the courts, and state and local agencies share this responsibility. In Georgia, the DHS' Division of Family & Children Services (DFCS) has a special role as the state agency designated to protect children and strengthen families.

IF YOU THINK A CHILD IS BEING HURT OR NEGLECTED...WHOM DO YOU CALL?

During the day, contact the local DFCS county office and provide them with the name and location of the child. For after hours, weekends and holidays, call 1-855-GACHILD to report abuse and/or neglect. Your report is confidential; however, it can be more helpful for the child if you are willing to tell who you are, and willing to testify in court if necessary. If you believe a child is in immediate danger, please call the police (911).

WHAT IS CONSIDERED CHILD ABUSE OR NEGLECT?

- Physical abuse is injury to a child under age 18 by a parent or caretaker which results in bruises, welts, fractures, burns, cuts or internal injuries.
- Neglect is the failure of the parent or caretaker to see that a child is adequately supervised, fed, clothed or housed.
- Sexual abuse occurs when a parent or other adult uses a child under age 18 for sexual gratification.

WHAT HAPPENS WHEN YOU CALL DFCS TO REPORT SUSPECTED ABUSE OR NEGLECT?

An Intake Worker will first determine whether the call is about the maltreatment of a child under 18 by a parent or caretaker. Reports that fall within the guidelines stated above are assessed by DFCS, frequently along with the police. The law requires DFCS to notify the police of all reports of physical and sexual abuse. In-person response times range from within 24 hours to five days depending on the nature and severity of the allegation, the age of the child, and history of the family with the agency, if any. The main concern throughout the assessment is the safety of the child.

UNDER WHAT CONDITIONS MAY DFCS REMOVE CHILDREN WHO ARE IN IMMINENT DANGER?

If the CPS staff determine that it is not safe for a child to remain at home, DFCS will file a petition with the local juvenile court to request temporary custody. A hearing will be held with juvenile court to discuss who should retain custody ongoing.

WHAT HAPPENS TO CHILDREN WHO ARE LEFT WITH THEIR FAMILIES AFTER DFCS HAS SUBSTANTIATED ABUSE OR NEGLECT?

DFCS works with families to provide services and referrals to decrease safety issues in the home and increase the parental capacities whenever possible. The most intensive services are provided to high risk families, which have been shown to reduce repeated abuse and neglect.

WHAT KINDS OF SERVICES ARE OFFERED TO THESE FAMILIES?

Services available to families include referral for alcohol and drug treatment, referrals for employment and child support, parenting education, counseling, in-home parent aides, and child care.

WHAT HAPPENS IF A CHILD IS STILL BEING NEGLECTED OR IS ABUSED AGAIN?

If conditions do not improve, DFCS may go to court to seek temporary custody of the child.

DOES GEORGIA EMPHASIZE KEEPING THE FAMILY UNIT TOGETHER AT ALL COSTS?

No. The most important consideration is the safety and protection of the child.

WHERE DO CHILDREN GO WHO MUST BE REMOVED FROM THEIR HOMES?

Children who are removed from their homes go to a relative's home that is deemed safe or into a foster home. DFCS evaluates all potential homes, to include relative and non-relative placements. Foster parents are screened and trained. Financial assistance is also provided to meet the needs of the child.

PROTECTING CHILDREN

How to Report Abuse or Neglect

The job of protecting children starts in the community. While certain people are required by law to report child mistreatment, anyone can make a report of suspected abuse. The sooner the authorities know about a child, the faster they can move to help.

Things to Look For

Children who are maltreated are

- often left home alone
- in the neighborhood for long periods without supervision
- frequently hungry
- dressed inadequately for the weather
- absent from school frequently
- bruised or have other marks of physical violence
- withdrawn or overly aggressive
- not receiving needed medical attention

If a relative, friend or neighbor sees one or more of these signs or suspects that the children are in danger, the situation should be reported to the county Department of Family and Children Services (DFCS).

How to Report

If a child is in immediate danger (obviously being beaten or left alone overnight, for example), the police should be called immediately. In all other cases, reports should be made to the DFCS office in the county where the child lives.

People who call to report suspected abuse do not have to be sure maltreatment has occurred. They simply report what they have seen or heard. The authorities will investigate and confirm whether or not abuse has occurred. People who call are asked to give the name and location of the child and the name of the suspected perpetrator. Reports are confidential and those who call do

not have to give their name. However, it is most helpful to the child in the long run if the reporter is willing to give his or her name and address and, if necessary, testify in court.

What Will Happen Next

If a child is under age 18 and appears to have been abused or neglected by a parent or caretaker, DFCS will begin investigating immediately.

If the child is not in imminent danger, a caseworker will visit the family within 5 days.

If the person who makes the original report wants to know what DFCS did, he or she can call the department and find out whether the maltreatment was confirmed.

Who is Required to Report Suspected Abuse or Neglect?

Georgia law requires people in certain professions to report. Mandated reporters include

- physicians, nurses and hospital personnel
- school and day care personnel
- social workers and counselors
- dentists



Division of Family and Children Services

House Bill 1176 (AS PASSED HOUSE AND SENATE)

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

**A BILL TO BE ENTITLED
AN ACT**

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

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

40 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

44 Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal or
45 certiorari by the state in criminal cases, is amended by revising paragraph (7) of subsection
46 (a) of Code Section 5-7-1, relating to orders, decisions, or judgments appealable, as follows:
47 "(7) From an order, decision, or judgment of a ~~superior~~ court granting a motion for new
48 trial or an extraordinary motion for new trial;"

49 **SECTION 1-2.**
50 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
51 5-7-2, relating to certification required for immediate review of nonfinal orders, decisions,
52 or judgments and exceptions, as follows:
53 "(2) Order, decision, or judgment described in paragraph (1) or (7) of subsection (a) of
54 Code Section 5-7-1."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2-2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2-3.

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

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

SECTION 2-4.

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

276

"ARTICLE 6

277 15-21-100.

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

286 (1) Code Section 3-3-23.1;

287 (2) Code Section 40-6-391; or

288 (3) Code Section 40-6-393 or 40-6-394 if the offender was also charged with a violation
289 of Code Section 40-6-391.

290 If no fine is provided for in the applicable Code section, and the judge places the defendant
291 on probation, the fine authorized by Code Section 17-10-8 shall be applicable.

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

296 15-21-101.

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

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

307 (1) For drug abuse treatment and education programs relating to controlled substances,
308 alcohol, and marijuana; and

309 (2) If a drug court division has been established in the county under Code Section
310 15-1-15, for purposes of the drug court division.

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

314 **PART III**

315 **CRIMES AND OFFENSES**

316 **SECTION 3-1.**

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

319 "16-7-1.

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

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

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

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

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

burglary in the second degree, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than eight years.

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

SECTION 3-2.

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

358 "16-8-12.

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

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

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

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

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

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

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

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

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

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

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

- 404 (i) 'Destructive device' means a destructive device as such term is defined by Code
405 Section 16-7-80.
- 406 (ii) 'Explosive' means an explosive as such term is defined by Code Section 16-7-80.
- 407 (iii) 'Firearm' means any rifle, shotgun, pistol, or similar device which propels a
408 projectile or projectiles through the energy of an explosive.

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

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

418 monument, memorial, plaque, or marker is privately owned or located on privately owned
419 land, by imprisonment for not less than one nor more than three years if the value of the
420 property which was the subject of the theft is \$300.00 \$1,000.00 or less, and by
421 imprisonment for not less than three years and not more than five years if the value of the
422 property which was the subject of the theft is more than \$300.00 \$1,000.00;
423 (8) If the property that was the subject of the theft was a vehicle engaged in commercial
424 transportation of cargo or any appurtenance thereto, including, without limitation, any
425 such trailer, semitrailer, container, or other associated equipment, or the cargo being
426 transported therein or thereon, by imprisonment for not less than three years nor more
427 than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if
428 applicable, the revocation of the defendant's commercial driver's license in accordance
429 with Code Section 40-5-151, or any combination of such penalties. For purposes of this
430 paragraph, the term 'vehicle' includes, without limitation, any railcar; or
431 (9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of
432 the theft was ferrous metals or regulated metal property, as such terms are defined in
433 Code Section 10-1-350, and the sum of the aggregate amount of such property, in its
434 original and undamaged condition, plus any reasonable costs which are or would be
435 incurred in the repair or the attempt to recover any property damaged in the theft or
436 removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less
437 than one nor more than five years, a fine of not more than \$5,000.00, or both.
438 (b) Except as otherwise provided in paragraph (5) of subsection (a) of this Code section,
439 any person who commits the offense of theft by deception when the property which was
440 the subject of the theft exceeded \$500.00 in value and the offense was committed against
441 a person who is 65 years of age or older shall, upon conviction thereof, be punished by
442 imprisonment for not less than five nor more than ten years.
443 (c) Where a violation of Code Sections 16-8-2 through 16-8-9 involves the theft of a
444 growing or otherwise unharvested commercial agricultural product which is being grown
445 or produced as a crop, such offense shall be punished by a fine of not less than \$500.00
446 \$1,000.00 and not more than the maximum fine otherwise authorized by law. This
447 minimum fine shall not in any such case be subject to suspension, stay, or probation. This
448 minimum fine shall not be required in any case in which a sentence of confinement is
449 imposed and such sentence of confinement is not suspended, stayed, or probated; but this
450 subsection shall not prohibit imposition of any otherwise authorized fine in such a case."

451 **SECTION 3-3.**

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

454 "16-8-14.

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

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

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

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

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

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

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

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

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

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

490 shall be punished by imprisonment for not less than one nor more than ten years; and
491 the first year of such sentence shall not be suspended, probated, deferred, or withheld.
492 (2) A person convicted of the offense of theft by shoplifting, as provided in subsection
493 (a) of this Code section, when the property which was the subject of the theft exceeds
494 \$300.00 \$500.00 in value commits a felony and shall be punished by imprisonment for
495 not less than one nor more than ten years.
496 (3) A person convicted of the offense of theft by shoplifting, as provided in subsection
497 (a) of this Code section, when the property which was the subject of the theft is taken
498 from three separate stores or retail establishments within one county during a period of
499 seven days or less and when the aggregate value of the property which was the subject
500 of each theft exceeds \$100.00 \$500.00 in value, commits a felony and shall be punished
501 by imprisonment for not less than one nor more than ten years.
502 (4) A person convicted of the offense of theft by shoplifting, as provided in subsection
503 (a) of this Code section, when the property which was the subject of the theft is taken
504 during a period of 180 days and when the aggregate value of the property which was the
505 subject of each theft exceeds \$500.00 in value, commits a felony and shall be punished
506 by imprisonment for not less than one nor more than ten years.
507 (c) In all cases involving theft by shoplifting, the term 'value' means the actual retail price
508 of the property at the time and place of the offense. The unaltered price tag or other
509 marking on property, or duly identified photographs thereof, shall be prima-facie evidence
510 of value and ownership of the property.
511 (d) Subsection (b) of this Code section shall in no way affect the authority of a sentencing
512 judge to provide for a sentence to be served on weekends or during the nonworking hours
513 of the defendant as provided in Code Section 17-10-3, relative to punishment for
514 misdemeanors."

515 SECTION 3-4.

516 Said title is further amended by revising Code Section 16-8-17, relating to counterfeit
517 Universal Product Codes, as follows:
518 "16-8-17.
519 (a)(1) Except as provided in paragraph (2) of this subsection, a person who, with intent
520 to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits,
521 or reproduces a retail sales receipt or a Universal Product Code label which results in a
522 theft of property which exceeds \$300.00 \$500.00 in value commits a felony and shall be
523 punished by imprisonment for not less than one nor more than three years or by a fine or
524 both.

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

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

SECTION 3-5.

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

541 "16-9-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

582 16-9-2.

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

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

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

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

600 16-9-3.

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

SECTION 3-6.

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

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

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

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

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

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

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

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

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

647 SECTION 3-7A.

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

651 "16-13-30.

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

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

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

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

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

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

676 (f) Reserved.

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

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

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

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

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

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

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

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

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

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

SECTION 3-7B.

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

730 "16-13-30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3-7C.

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

847 "16-13-30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3-8.

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

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

PART IV
CRIMINAL PROCEDURE
SECTION 4-1.

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

988 "17-3-1.

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

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

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

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

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

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

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

SECTION 4-2.

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

1018 "17-3-2.1.

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

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

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

(b) For crimes committed on and after July 1, 2012, if the victim of a violation of:

(1) Trafficking a person for sexual servitude, as defined in Code Section 16-5-46;

(2) Cruelty to children in the first degree, as defined in Code Section 16-5-70;

(3) Rape, as defined in Code Section 16-6-1;

(4) Aggravated sodomy, as defined in Code Section 16-6-2;

(5) Child molestation or aggravated child molestation, as defined in Code Section 16-6-4;

(6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5; or

(7) Incest, as defined in Code Section 16-6-22,
is under 16 years of age on the date of the violation and the violation is not subject to punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4, paragraph (2) of subsection (d) of Code Section 16-6-4, or subsection (c) of Code Section 16-6-5, a prosecution may be commenced at any time. This Code section shall apply to any offense designated in paragraphs (1) through (7) of subsection (a) of this Code section occurring on or after July 1, 1992."

SECTION 4-3.

1054 Said title is further amended by revising paragraphs (2) and (5) of subsection (a) of Code
1055 Section 17-10-1, relating to fixing of sentence, as follows:
1056 "(2) Active probation ~~Probation~~ supervision shall terminate in all cases no later than two
1057 years from the commencement of active probation supervision unless specially extended
1058 or reinstated by the sentencing court upon notice and hearing and for good cause shown;
1059 provided, however, that in those cases involving the collection of fines, restitution, or
1060 other funds, the period of active probation supervision shall remain in effect for so long
1061 as any such obligation is outstanding, or until termination of the sentence, whichever first

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

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

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

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

1095 SECTION 4-4.

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

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

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

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

PART V

MANDATORY REPORTING OF CHILD ABUSE SECTION 5-1.

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

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

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

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

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

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

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

- 1131 (B) Neglect or exploitation of a child by a parent or caretaker thereof;
1132 (C) Sexual abuse of a child; or
1133 (D) Sexual exploitation of a child.

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

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

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

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

1145 (A) Provides pregnancy counseling or information as its primary purpose, either for a
1146 fee or as a free service;
1147 (B) Does not provide or refer for abortions;
1148 (C) Does not provide or refer for FDA approved contraceptive drugs or devices; and
1149 (D) Is not licensed or certified by the state or federal government to provide medical
1150 or health care services and is not otherwise bound to follow federal Health Insurance
1151 Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws
1152 relating to patient confidentiality.

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

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

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

1162 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
1163 whether between persons of the same or opposite sex;
1164 (B) Bestiality;
1165 (C) Masturbation;
1166 (D) Lewd exhibition of the genitals or pubic area of any person;
1167 (E) Flagellation or torture by or upon a person who is nude;

- 1168 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
1169 of a person who is nude;
1170 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
1171 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed
1172 or unclothed breasts;
1173 (H) Defecation or urination for the purpose of sexual stimulation; or
1174 (I) Penetration of the vagina or rectum by any object except when done as part of a
1175 recognized medical procedure.

1176 'Sexual abuse' shall not include consensual sex acts involving persons of the opposite sex
1177 when the sex acts are between minors or between a minor and an adult who is not more
1178 than five years older than the minor. This provision shall not be deemed or construed to
1179 repeal any law concerning the age or capacity to consent.

1180 ~~(4)(11)~~ 'Sexual exploitation' means conduct by any person who allows, permits,
1181 encourages, or requires that child to engage in:

- 1182 (A) Prostitution, as defined in Code Section 16-6-9; or
1183 (B) Sexually explicit conduct for the purpose of producing any visual or print medium
1184 depicting such conduct, as defined in Code Section 16-12-100.

1185 (c)(1) The following persons having reasonable cause to believe that a child has been
1186 abused shall report or cause reports of that abuse to be made as provided in this Code
1187 section:

- 1188 (A) Physicians licensed to practice medicine, interns, or residents;
1189 (B) Hospital or medical personnel;
1190 (C) Dentists;
1191 (D) Licensed psychologists and persons participating in internships to obtain licensing
1192 pursuant to Chapter 39 of Title 43;
1193 (E) Podiatrists;
1194 (F) Registered professional nurses or licensed practical nurses licensed pursuant to
1195 Chapter 24 of Title 43 or nurse's aides;
1196 (G) Professional counselors, social workers, or marriage and family therapists licensed
1197 pursuant to Chapter 10A of Title 43;
1198 (H) School teachers;
1199 (I) School administrators;
1200 (J) School guidance counselors, visiting teachers, school social workers, or school
1201 psychologists certified pursuant to Chapter 2 of Title 20;
1202 (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section
1203 49-5-12;
1204 (L) Child-counseling personnel;

1205 (M) Child service organization personnel; or

1206 (N) Law enforcement personnel; or

1207 (O) Reproductive health care facility or pregnancy resource center personnel and
1208 volunteers.

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

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

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

PART VI

RESTRICTING RECORDS

SECTION 6-1.

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

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

SECTION 6-2.

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

1265 "35-3-37.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1375 (2) After indictment or accusation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1465 (i) Child molestation in violation of Code Section 16-6-4;
- 1466 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 1467 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation
1468 of Code Section 16-6-5.1;
- 1469 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;
- 1470 (v) Pimping in violation of Code Section 16-6-11;
- 1471 (vi) Pandering by compulsion in violation of Code Section 16-6-14;
- 1472 (vii) Masturbation for hire in violation of Code Section 16-6-16;
- 1473 (viii) Giving massages in a place used for lewdness, prostitution, assignation, or
1474 masturbation for hire in violation of Code Section 16-6-17;
- 1475 (ix) Sexual battery in violation of Code Section 16-6-22.1;
- 1476 (x) Any offense related to minors generally in violation of Part 2 of Article 3 of
1477 Chapter 12 of Title 16;
- 1478 (xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such
1479 prohibition shall not apply to a misdemeanor conviction of shoplifting in violation of
1480 Code Section 16-8-14; or
- 1481 (xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1579 **PART VII**

1580 **PENAL INSTITUTIONS**

1581 **SECTION 7-1.**

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

1585 "42-1-1.

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

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

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

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

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

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

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

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

(8) 'Graduated sanctions' means:

(A) Verbal and written warnings;

(B) Increased restrictions and reporting requirements:

(C) Community service or work crews;

(D) Referral to substance abuse or mental health treatment or counseling programs in the community:

(E) Increased substance abuse screening and monitoring;

(F) Electronic monitoring, as such term is defined in Code Section 42-8-151; and

(G) An intensive supervision program.

(9) 'Risk and needs assessment' means an actuarial tool, approved by the board and validated on a targeted population, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior.

(a) No employee of a penal institution may give advice to an inmate regarding the name or the employment of an attorney at law in any case where the inmate is confined in a penal institution or receive any sum of money paid as fees or otherwise to attorneys at law in a criminal case or cases against any inmate with which they may be connected in any capacity.

(b) Any person who violates this Code section shall be guilty of a misdemeanor."

SECTION 7-2.

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

"42-1-11.2.

(a) No employee of a penal institution shall give advice to an inmate regarding the name or the employment of an attorney at law in any case where the inmate is confined in a penal institution or receive any sum of money paid as fees or otherwise to attorneys at law in a criminal case or cases against any inmate with which they may be connected in any capacity.

(b) Any person who violates this Code section shall be guilty of a misdemeanor."

SECTION 7-3.

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

"42-2-1.

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

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

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

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

SECTION 7-4.

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

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

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

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

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

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

SECTION 7-5.

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

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

1670 (1) A certified copy of the sentence;

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

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

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

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

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

SECTION 7-6.

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

"42-8-21.

As used in this article, the term:

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

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

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

SECTION 7-7.

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

"42-8-23.

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

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

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

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

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

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

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

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

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

SECTION 7-8.

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

"42-8-35.

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

(1) Avoid injurious and vicious habits;

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

(3) Report to the probation supervisor as directed;

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

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

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

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

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

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

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

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

1786 ~~(4)~~(3) Required to have periodic unannounced inspections of the contents of the
1787 probationer's computer or any other device with Internet access, including the retrieval
1788 and copying of all data from the computer or device and any internal or external storage
1789 or portable media and the removal of such information, computer, device, or medium; and
1790

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

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

1795 SECTION 7-9.

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

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

1808 SECTION 7-10.

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

1811 "42-8-37.

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

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

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

1829 SECTION 7-11.

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

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

1844 PART VIII

1845 CROSS-REFERENCES

1846 SECTION 8-1.

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

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

SECTION 8-2.

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

1855 "15-10-260.

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

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

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

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

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

1872 (3) For furnishing alcoholic beverages to, and purchase and possession of alcoholic
1873 beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and
1874 (4) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.

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

SECTION 8-3.

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

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

SECTION 8-4.

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

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

SECTION 8-5

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

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

SECTION 8-6.

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

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

1919 SECTION 8-7.

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

1922 "16-16-1.

1923 As used in this chapter, the term:

1924 (1) 'Armed robbery' means the offense defined in subsection (a) of Code Section 16-8-41.
1925 (2) 'Burglary' means the offense defined in ~~subsection (a)~~ of Code Section 16-7-1 in any
1926 degree."

1927 SECTION 8-8.

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

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

1936 SECTION 8-9.

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

1940 "(1) In felony cases involving violations of the following:
1941 (A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, ~~16-9-2~~, 16-9-20, 16-9-31,
1942 16-9-33, 16-9-37, 16-10-52, and 40-5-58;
1943 (B) Article 1 of Chapter 8 of Title 16, relating to theft;
1944 (C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;
1945 (D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to
1946 confinement; or

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

SECTION 8-10.

1955 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section
1956 17-10-9.1, relating to voluntary surrender to county jail or correctional institution, as follows:
1957 "(10) Kidnapping, arson, or burglary in any degree if the person, at the time such person
1958 was charged, has previously been convicted of, was on probation or parole with respect
1959 to, or was on bail for kidnapping, arson, aggravated assault, burglary in any degree, or
1960 one or more of the offenses listed in paragraphs (1) through (9) of this subsection;"

SECTION 8-11.

1961 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section
1962 17-10-30, relating to procedure for imposition of the death penalty generally, as follows:
1963 "(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the
1964 offender was engaged in the commission of another capital felony or aggravated battery,
1965 or the offense of murder was committed while the offender was engaged in the
1966 commission of burglary in any degree or arson in the first degree;"

SECTION 8-12.

1969 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
1970 subparagraph (G) of paragraph (2) of Code Section 31-7-250, relating to definitions for
1971 personal care home licensing and employee record checks, as follows:
1972 "(G) A felony violation of Code Section 16-9-1 or 16-9-2, relating to forgery in the first
1973 and second degree, respectively;"

SECTION 8-13.

1975 Said title is further amended by revising subparagraph (K) of paragraph (2) of Code Section
1976 31-7-350, relating to definitions for nursing home employee record checks, as follows:
1977 "(K) A felony violation of Code Section 16-9-1, relating to forgery in the first degree;
1978 a violation of Code Section 16-9-2, relating to forgery in the second degree;"

SECTION 8-14.

1980
1981 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
1982 by revising Code Section 36-32-9, relating to the jurisdiction of shoplifting of \$300.00 in
1983 municipal courts, as follows:

1984 "36-32-9.

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

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

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

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

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

SECTION 8-15.

2007
2008 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
2009 by revising paragraph (2) of subsection (a) of Code Section 42-5-85, relating to delegation
2010 of authority to issue limited leave privileges, as follows:

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

2014

PART IX

2015

EFFECTIVE DATE, APPLICABILITY, AND REPEALER

2016

SECTION 9-1.

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

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

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

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

SECTION 9-2.

2040 All laws and parts of laws in conflict with this Act are repealed.



Recognizing Child Abuse: What Parents Should Know

The first step in helping abused children is learning to recognize the symptoms of child abuse. Although child abuse is divided into four types -- physical abuse, neglect, sexual abuse, and emotional maltreatment -- the types are more typically found in combination than alone. A physically abused child for example is often emotionally maltreated as well, and a sexually abused child may be also neglected. Any child at any age may experience any of the types of child abuse. Children over age five are more likely to be physically abused and to suffer moderate injury than are children under age five.

1. Recognizing Child Abuse
 2. Signs of Physical Abuse
 3. Signs of Neglect
 4. Signs of Sexual Abuse
 5. Signs of Emotional Maltreatment
-

RECOGNIZING CHILD ABUSE

Experienced educators likely have seen all forms of child abuse at one time or another. They are alert to signs like these that may signal the presence of child abuse.

The Child:

- Shows sudden changes in behavior or school performance;
- Has not received help for physical or medical problems brought to the parents' attention;
- Has learning problems that cannot be attributed to specific physical or psychological causes;
- Is always watchful, as though preparing for something bad to happen;
- Lacks adult supervision;
- Is overly compliant, an overachiever, or too responsible; or
- Comes to school early, stays late, and does not want to go home.

The Parent:

- Shows little concern for the child, rarely responding to the school's requests for information, for conferences, or for home visits;
- Denies the existence of -- or blames the child for -- the child's problems in school or at home;
- Asks the classroom teacher to use harsh physical discipline if the child misbehaves;
- Sees the child entirely bad, worthless, or burdensome;



- Demands perfection or a level of physical or academic performance the child cannot achieve; or
- Looks primarily to the child for care, attention, and satisfaction of emotional needs.

The Parent and Child:

- Rarely touch or look at each other;
- Consider their relationship entirely negative; or
- State that they do not like each other.

None of these signs proves that child abuse is present in a family. Any of them may be found in any parent or child at one time or another. But when these signs appear repeatedly or in combination, they should cause the educator to take closer look at the situation and to consider the possibility of child abuse. That second look may reveal further signs of abuse or signs of a particular kind of child abuse.

SIGNS OF PHYSICAL ABUSE

Consider the possibility of physical abuse when the child:

- Has unexplained burns, bites, bruises, broken bones, or black eyes;
- Has fading bruises or other marks noticeable after an absence from school;
- Seems frightened of the parents and protests or cries when it is time to go home from school;
- Shrinks at the approach of adults; or
- Reports injury by a parent or another adult caregiver.

Consider the possibility of physical abuse when the parent or other adult caregiver:

- Offers conflicting, unconvincing, or no explanation for the child's injury;
- Describes the child as "evil," or in some other very negative way;
- Uses harsh physical discipline with the child; or
- Has a history of abuse as a child.

SIGNS OF NEGLECT

Consider the possibility of neglect when the child:

- Is frequently absent from school;
- Begs or steals food or money from classmates;
- Lacks needed medical or dental care, immunizations, or glasses;
- Is consistently dirty and has severe body odor;
- Lacks sufficient clothing for the weather;



- Abuses alcohol or other drugs; or
- States there is no one at home to provide care.

Consider the possibility of neglect when the parent or other adult caregiver:

- Appears to be indifferent to the child;
- Seems apathetic or depressed;
- Behaves irrationally or in a bizarre manner; or
- Is abusing alcohol or other drugs.

SIGNS OF SEXUAL ABUSE

Consider the possibility of sexual abuse when the child:

- Has difficulty walking or sitting;
- Suddenly refuses to change for gym or to participate in physical activities;
- Demonstrates bizarre, sophisticated, or unusual sexual knowledge or behavior;
- Becomes pregnant or contracts a venereal disease, particularly if under age fourteen;
- Runs away; or
- Reports sexual abuse by a parent or another adult caregiver.

Consider the possibility of sexual abuse when the parent or other adult caregiver:

- Is unduly protective of the child, severely limits the child's contact with other children, especially of the opposite sex;
- Is secretive and isolated; or
- Describes marital difficulties involving family power struggles or sexual relations.

SIGNS OF EMOTIONAL MALTREATMENT

Consider the possibility of emotional maltreatment when the child:

- Shows extremes in behavior, such as overly compliant or demanding behavior, extreme passivity or aggression;
- Is either inappropriately adult (parenting other children, for example) or inappropriately infantile (frequently rocking or head-banging, for example);
- Is delayed in physical or emotional development;
- Has attempted suicide; or
- Reports a lack of attachment to the parent.

Consider the possibility of emotional maltreatment when the parent or other adult caregiver:

- Constantly blames, belittles, or berates the child;



- Is unconcerned about the child and refuses to consider offers of help for the child's school problems; or
- Overtly rejects the child.

228 S. Wabash Avenue
10th Floor, Chicago, IL 60604
312.663.3520 *tel*
312.939.8962 *fax*
mailbox@preventchildabuse.org
www.preventchildabuse.org



KEITH HORTON
COMMISSIONER

IMPORTANT KEY INFORMATION:

- Child in immediate danger, please call 911!
- Call local DFCS office to make a CPS Report!
- After-Hours (between 5:00 p.m. and 8:30 a.m.) call 1-855-GACHILD!

DFCS LEADERSHIP:

Sharon Hill
Division Director

Carol Christopher
Deputy Director

CHILD PROTECTIVE SERVICES (CPS)

Every child needs to be treasured, protected and nurtured. Unfortunately, some parents are unable to care for their children. When neglect or abuse occurs, someone must step in to ensure their safety. The community, the police, the courts, and state and local agencies share this responsibility. In Georgia, the DHS' Division of Family & Children Services (DFCS) has a special role as the state agency designated to protect children and strengthen families.

IF YOU THINK A CHILD IS BEING HURT OR NEGLECTED...WHOM DO YOU CALL?

During the day, contact the local DFCS county office and provide them with the name and location of the child. For after hours, weekends and holidays, call 1-855-GACHILD to report abuse and/or neglect. Your report is confidential; however, it can be more helpful for the child if you are willing to tell who you are, and willing to testify in court if necessary. If you believe a child is in immediate danger, please call the police (911).

WHAT IS CONSIDERED CHILD ABUSE OR NEGLECT?

- Physical abuse is injury to a child under age 18 by a parent or caretaker which results in bruises, welts, fractures, burns, cuts or internal injuries.
- Neglect is the failure of the parent or caretaker to see that a child is adequately supervised, fed, clothed or housed.
- Sexual abuse occurs when a parent or other adult uses a child under age 18 for sexual gratification.

WHAT HAPPENS WHEN YOU CALL DFCS TO REPORT SUSPECTED ABUSE OR NEGLECT?

An Intake Worker will first determine whether the call is about the maltreatment of a child under 18 by a parent or caretaker. Reports that fall within the guidelines stated above are assessed by DFCS, frequently along with the police. The law requires DFCS to notify the police of all reports of physical and sexual abuse. In-person response times range from within 24 hours to five days depending on the nature and severity of the allegation, the age of the child, and history of the family with the agency, if any. The main concern throughout the assessment is the safety of the child.

UNDER WHAT CONDITIONS MAY DFCS REMOVE CHILDREN WHO ARE IN IMMINENT DANGER?

If the CPS staff determine that it is not safe for a child to remain at home, DFCS will file a petition with the local juvenile court to request temporary custody. A hearing will be held with juvenile court to discuss who should retain custody ongoing.

WHAT HAPPENS TO CHILDREN WHO ARE LEFT WITH THEIR FAMILIES AFTER DFCS HAS SUBSTANTIATED ABUSE OR NEGLECT?

DFCS works with families to provide services and referrals to decrease safety issues in the home and increase the parental capacities whenever possible. The most intensive services are provided to high risk families, which have been shown to reduce repeated abuse and neglect.

WHAT KINDS OF SERVICES ARE OFFERED TO THESE FAMILIES?

Services available to families include referral for alcohol and drug treatment, referrals for employment and child support, parenting education, counseling, in-home parent aides, and child care.

WHAT HAPPENS IF A CHILD IS STILL BEING NEGLECTED OR IS ABUSED AGAIN?

If conditions do not improve, DFCS may go to court to seek temporary custody of the child.

DOES GEORGIA EMPHASIZE KEEPING THE FAMILY UNIT TOGETHER AT ALL COSTS?

No. The most important consideration is the safety and protection of the child.

WHERE DO CHILDREN GO WHO MUST BE REMOVED FROM THEIR HOMES?

Children who are removed from their homes go to a relative's home that is deemed safe or into a foster home. DFCS evaluates all potential homes, to include relative and non-relative placements. Foster parents are screened and trained. Financial assistance is also provided to meet the needs of the child.

PROTECTING CHILDREN

How to Report Abuse or Neglect

The job of protecting children starts in the community. While certain people are required by law to report child mistreatment, anyone can make a report of suspected abuse. The sooner the authorities know about a child, the faster they can move to help.

Things to Look For

Children who are maltreated are

- often left home alone
- in the neighborhood for long periods without supervision
- frequently hungry
- dressed inadequately for the weather
- absent from school frequently
- bruised or have other marks of physical violence
- withdrawn or overly aggressive
- not receiving needed medical attention

If a relative, friend or neighbor sees one or more of these signs or suspects that the children are in danger, the situation should be reported to the county Department of Family and Children Services (DFCS).

How to Report

If a child is in immediate danger (obviously being beaten or left alone overnight, for example), the police should be called immediately. In all other cases, reports should be made to the DFCS office in the county where the child lives.

People who call to report suspected abuse do not have to be sure maltreatment has occurred. They simply report what they have seen or heard. The authorities will investigate and confirm whether or not abuse has occurred. People who call are asked to give the name and location of the child and the name of the suspected perpetrator. Reports are confidential and those who call do

not have to give their name. However, it is most helpful to the child in the long run if the reporter is willing to give his or her name and address and, if necessary, testify in court.

What Will Happen Next

If a child is under age 18 and appears to have been abused or neglected by a parent or caretaker, DFCS will begin investigating immediately.

If the child is not in imminent danger, a caseworker will visit the family within 5 days.

If the person who makes the original report wants to know what DFCS did, he or she can call the department and find out whether the maltreatment was confirmed.

Who is Required to Report Suspected Abuse or Neglect?

Georgia law requires people in certain professions to report. Mandated reporters include

- physicians, nurses and hospital personnel
- school and day care personnel
- social workers and counselors
- dentists



Division of Family and Children Services



Recognizing Child Abuse: What Parents Should Know

The first step in helping abused children is learning to recognize the symptoms of child abuse. Although child abuse is divided into four types -- physical abuse, neglect, sexual abuse, and emotional maltreatment -- the types are more typically found in combination than alone. A physically abused child for example is often emotionally maltreated as well, and a sexually abused child may be also neglected. Any child at any age may experience any of the types of child abuse. Children over age five are more likely to be physically abused and to suffer moderate injury than are children under age five.

1. Recognizing Child Abuse
 2. Signs of Physical Abuse
 3. Signs of Neglect
 4. Signs of Sexual Abuse
 5. Signs of Emotional Maltreatment
-

RECOGNIZING CHILD ABUSE

Experienced educators likely have seen all forms of child abuse at one time or another. They are alert to signs like these that may signal the presence of child abuse.

The Child:

- Shows sudden changes in behavior or school performance;
- Has not received help for physical or medical problems brought to the parents' attention;
- Has learning problems that cannot be attributed to specific physical or psychological causes;
- Is always watchful, as though preparing for something bad to happen;
- Lacks adult supervision;
- Is overly compliant, an overachiever, or too responsible; or
- Comes to school early, stays late, and does not want to go home.

The Parent:

- Shows little concern for the child, rarely responding to the school's requests for information, for conferences, or for home visits;
- Denies the existence of -- or blames the child for -- the child's problems in school or at home;
- Asks the classroom teacher to use harsh physical discipline if the child misbehaves;
- Sees the child entirely bad, worthless, or burdensome;



- Demands perfection or a level of physical or academic performance the child cannot achieve; or
- Looks primarily to the child for care, attention, and satisfaction of emotional needs.

The Parent and Child:

- Rarely touch or look at each other;
- Consider their relationship entirely negative; or
- State that they do not like each other.

None of these signs proves that child abuse is present in a family. Any of them may be found in any parent or child at one time or another. But when these signs appear repeatedly or in combination, they should cause the educator to take closer look at the situation and to consider the possibility of child abuse. That second look may reveal further signs of abuse or signs of a particular kind of child abuse.

SIGNS OF PHYSICAL ABUSE

Consider the possibility of physical abuse when the child:

- Has unexplained burns, bites, bruises, broken bones, or black eyes;
- Has fading bruises or other marks noticeable after an absence from school;
- Seems frightened of the parents and protests or cries when it is time to go home from school;
- Shrinks at the approach of adults; or
- Reports injury by a parent or another adult caregiver.

Consider the possibility of physical abuse when the parent or other adult caregiver:

- Offers conflicting, unconvincing, or no explanation for the child's injury;
- Describes the child as "evil," or in some other very negative way;
- Uses harsh physical discipline with the child; or
- Has a history of abuse as a child.

SIGNS OF NEGLECT

Consider the possibility of neglect when the child:

- Is frequently absent from school;
- Begs or steals food or money from classmates;
- Lacks needed medical or dental care, immunizations, or glasses;
- Is consistently dirty and has severe body odor;
- Lacks sufficient clothing for the weather;



- Abuses alcohol or other drugs; or
- States there is no one at home to provide care.

Consider the possibility of neglect when the parent or other adult caregiver:

- Appears to be indifferent to the child;
- Seems apathetic or depressed;
- Behaves irrationally or in a bizarre manner; or
- Is abusing alcohol or other drugs.

SIGNS OF SEXUAL ABUSE

Consider the possibility of sexual abuse when the child:

- Has difficulty walking or sitting;
- Suddenly refuses to change for gym or to participate in physical activities;
- Demonstrates bizarre, sophisticated, or unusual sexual knowledge or behavior;
- Becomes pregnant or contracts a venereal disease, particularly if under age fourteen;
- Runs away; or
- Reports sexual abuse by a parent or another adult caregiver.

Consider the possibility of sexual abuse when the parent or other adult caregiver:

- Is unduly protective of the child, severely limits the child's contact with other children, especially of the opposite sex;
- Is secretive and isolated; or
- Describes marital difficulties involving family power struggles or sexual relations.

SIGNS OF EMOTIONAL MALTREATMENT

Consider the possibility of emotional maltreatment when the child:

- Shows extremes in behavior, such as overly compliant or demanding behavior, extreme passivity or aggression;
- Is either inappropriately adult (parenting other children, for example) or inappropriately infantile (frequently rocking or head-banging, for example);
- Is delayed in physical or emotional development;
- Has attempted suicide; or
- Reports a lack of attachment to the parent.

Consider the possibility of emotional maltreatment when the parent or other adult caregiver:

- Constantly blames, belittles, or berates the child;



- Is unconcerned about the child and refuses to consider offers of help for the child's school problems; or
- Overtly rejects the child.

228 S. Wabash Avenue
10th Floor, Chicago, IL 60604
312.663.3520 *tel*
312.939.8962 *fax*
mailbox@preventchildabuse.org
www.preventchildabuse.org

House Bill 1176 (AS PASSED HOUSE AND SENATE)

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

**A BILL TO BE ENTITLED
AN ACT**

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

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

40 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

44 Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal or
45 certiorari by the state in criminal cases, is amended by revising paragraph (7) of subsection
46 (a) of Code Section 5-7-1, relating to orders, decisions, or judgments appealable, as follows:
47 "(7) From an order, decision, or judgment of a ~~superior~~ court granting a motion for new
48 trial or an extraordinary motion for new trial;"

49 **SECTION 1-2.**
50 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
51 5-7-2, relating to certification required for immediate review of nonfinal orders, decisions,
52 or judgments and exceptions, as follows:
53 "(2) Order, decision, or judgment described in paragraph (1) or (7) of subsection (a) of
54 Code Section 5-7-1."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2-2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

264 SECTION 2-3.

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

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

273 SECTION 2-4.

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

276

"ARTICLE 6

277 15-21-100.

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

286 (1) Code Section 3-3-23.1;

287 (2) Code Section 40-6-391; or

288 (3) Code Section 40-6-393 or 40-6-394 if the offender was also charged with a violation
289 of Code Section 40-6-391.

290 If no fine is provided for in the applicable Code section, and the judge places the defendant
291 on probation, the fine authorized by Code Section 17-10-8 shall be applicable.

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

296 15-21-101.

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

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

307 (1) For drug abuse treatment and education programs relating to controlled substances,
308 alcohol, and marijuana; and

309 (2) If a drug court division has been established in the county under Code Section
310 15-1-15, for purposes of the drug court division.

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

314 **PART III**

315 **CRIMES AND OFFENSES**

316 **SECTION 3-1.**

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

319 "16-7-1.

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

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

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

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

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

burglary in the second degree, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than eight years.

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

SECTION 3-2.

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

358 "16-8-12.

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

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

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

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

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

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

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

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

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

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

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

- 404 (i) 'Destructive device' means a destructive device as such term is defined by Code
405 Section 16-7-80.
- 406 (ii) 'Explosive' means an explosive as such term is defined by Code Section 16-7-80.
- 407 (iii) 'Firearm' means any rifle, shotgun, pistol, or similar device which propels a
408 projectile or projectiles through the energy of an explosive.

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

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

418 monument, memorial, plaque, or marker is privately owned or located on privately owned
419 land, by imprisonment for not less than one nor more than three years if the value of the
420 property which was the subject of the theft is \$300.00 \$1,000.00 or less, and by
421 imprisonment for not less than three years and not more than five years if the value of the
422 property which was the subject of the theft is more than \$300.00 \$1,000.00;
423 (8) If the property that was the subject of the theft was a vehicle engaged in commercial
424 transportation of cargo or any appurtenance thereto, including, without limitation, any
425 such trailer, semitrailer, container, or other associated equipment, or the cargo being
426 transported therein or thereon, by imprisonment for not less than three years nor more
427 than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if
428 applicable, the revocation of the defendant's commercial driver's license in accordance
429 with Code Section 40-5-151, or any combination of such penalties. For purposes of this
430 paragraph, the term 'vehicle' includes, without limitation, any railcar; or
431 (9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of
432 the theft was ferrous metals or regulated metal property, as such terms are defined in
433 Code Section 10-1-350, and the sum of the aggregate amount of such property, in its
434 original and undamaged condition, plus any reasonable costs which are or would be
435 incurred in the repair or the attempt to recover any property damaged in the theft or
436 removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less
437 than one nor more than five years, a fine of not more than \$5,000.00, or both.
438 (b) Except as otherwise provided in paragraph (5) of subsection (a) of this Code section,
439 any person who commits the offense of theft by deception when the property which was
440 the subject of the theft exceeded \$500.00 in value and the offense was committed against
441 a person who is 65 years of age or older shall, upon conviction thereof, be punished by
442 imprisonment for not less than five nor more than ten years.
443 (c) Where a violation of Code Sections 16-8-2 through 16-8-9 involves the theft of a
444 growing or otherwise unharvested commercial agricultural product which is being grown
445 or produced as a crop, such offense shall be punished by a fine of not less than \$500.00
446 \$1,000.00 and not more than the maximum fine otherwise authorized by law. This
447 minimum fine shall not in any such case be subject to suspension, stay, or probation. This
448 minimum fine shall not be required in any case in which a sentence of confinement is
449 imposed and such sentence of confinement is not suspended, stayed, or probated; but this
450 subsection shall not prohibit imposition of any otherwise authorized fine in such a case."

451 **SECTION 3-3.**

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

454 "16-8-14.

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

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

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

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

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

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

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

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

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

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

490 shall be punished by imprisonment for not less than one nor more than ten years; and
491 the first year of such sentence shall not be suspended, probated, deferred, or withheld.
492 (2) A person convicted of the offense of theft by shoplifting, as provided in subsection
493 (a) of this Code section, when the property which was the subject of the theft exceeds
494 \$300.00 \$500.00 in value commits a felony and shall be punished by imprisonment for
495 not less than one nor more than ten years.
496 (3) A person convicted of the offense of theft by shoplifting, as provided in subsection
497 (a) of this Code section, when the property which was the subject of the theft is taken
498 from three separate stores or retail establishments within one county during a period of
499 seven days or less and when the aggregate value of the property which was the subject
500 of each theft exceeds \$100.00 \$500.00 in value, commits a felony and shall be punished
501 by imprisonment for not less than one nor more than ten years.
502 (4) A person convicted of the offense of theft by shoplifting, as provided in subsection
503 (a) of this Code section, when the property which was the subject of the theft is taken
504 during a period of 180 days and when the aggregate value of the property which was the
505 subject of each theft exceeds \$500.00 in value, commits a felony and shall be punished
506 by imprisonment for not less than one nor more than ten years.
507 (c) In all cases involving theft by shoplifting, the term 'value' means the actual retail price
508 of the property at the time and place of the offense. The unaltered price tag or other
509 marking on property, or duly identified photographs thereof, shall be prima-facie evidence
510 of value and ownership of the property.
511 (d) Subsection (b) of this Code section shall in no way affect the authority of a sentencing
512 judge to provide for a sentence to be served on weekends or during the nonworking hours
513 of the defendant as provided in Code Section 17-10-3, relative to punishment for
514 misdemeanors."

515 SECTION 3-4.

516 Said title is further amended by revising Code Section 16-8-17, relating to counterfeit
517 Universal Product Codes, as follows:
518 "16-8-17.
519 (a)(1) Except as provided in paragraph (2) of this subsection, a person who, with intent
520 to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits,
521 or reproduces a retail sales receipt or a Universal Product Code label which results in a
522 theft of property which exceeds \$300.00 \$500.00 in value commits a felony and shall be
523 punished by imprisonment for not less than one nor more than three years or by a fine or
524 both.

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

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

SECTION 3-5.

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

541 "16-9-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

582 16-9-2.

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

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

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

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

600 16-9-3.

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

SECTION 3-6.

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

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

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

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

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

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

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

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

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

647 SECTION 3-7A.

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

651 "16-13-30.

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

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

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

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

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

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

676 (f) Reserved.

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

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

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

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

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

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

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

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

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

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

SECTION 3-7B.

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

730 "16-13-30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3-7C.

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

847 "16-13-30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3-8.

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

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

PART IV

CRIMINAL PROCEDURE

SECTION 4-1.

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

988 "17-3-1.

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

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

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

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

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

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

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

SECTION 4-2.

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

1018 "17-3-2.1.

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

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

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

(b) For crimes committed on and after July 1, 2012, if the victim of a violation of:

(1) Trafficking a person for sexual servitude, as defined in Code Section 16-5-46;

(2) Cruelty to children in the first degree, as defined in Code Section 16-5-70;

(3) Rape, as defined in Code Section 16-6-1;

(4) Aggravated sodomy, as defined in Code Section 16-6-2;

(5) Child molestation or aggravated child molestation, as defined in Code Section 16-6-4;

(6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5; or

(7) Incest, as defined in Code Section 16-6-22,
is under 16 years of age on the date of the violation and the violation is not subject to punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4, paragraph (2) of subsection (d) of Code Section 16-6-4, or subsection (c) of Code Section 16-6-5, a prosecution may be commenced at any time. This Code section shall apply to any offense designated in paragraphs (1) through (7) of subsection (a) of this Code section occurring on or after July 1, 1992."

SECTION 4-3.

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

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

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

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

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

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

1095 SECTION 4-4.

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

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

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

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

PART V

MANDATORY REPORTING OF CHILD ABUSE SECTION 5-1.

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

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

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

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

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

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

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

- 1131 (B) Neglect or exploitation of a child by a parent or caretaker thereof;
1132 (C) Sexual abuse of a child; or
1133 (D) Sexual exploitation of a child.

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

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

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

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

1145 (A) Provides pregnancy counseling or information as its primary purpose, either for a
1146 fee or as a free service;
1147 (B) Does not provide or refer for abortions;
1148 (C) Does not provide or refer for FDA approved contraceptive drugs or devices; and
1149 (D) Is not licensed or certified by the state or federal government to provide medical
1150 or health care services and is not otherwise bound to follow federal Health Insurance
1151 Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws
1152 relating to patient confidentiality.

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

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

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

1162 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
1163 whether between persons of the same or opposite sex;
1164 (B) Bestiality;
1165 (C) Masturbation;
1166 (D) Lewd exhibition of the genitals or pubic area of any person;
1167 (E) Flagellation or torture by or upon a person who is nude;

- 1168 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
1169 of a person who is nude;
1170 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
1171 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed
1172 or unclothed breasts;
1173 (H) Defecation or urination for the purpose of sexual stimulation; or
1174 (I) Penetration of the vagina or rectum by any object except when done as part of a
1175 recognized medical procedure.

1176 'Sexual abuse' shall not include consensual sex acts involving persons of the opposite sex
1177 when the sex acts are between minors or between a minor and an adult who is not more
1178 than five years older than the minor. This provision shall not be deemed or construed to
1179 repeal any law concerning the age or capacity to consent.

1180 ~~(4)(11)~~ 'Sexual exploitation' means conduct by any person who allows, permits,
1181 encourages, or requires that child to engage in:

- 1182 (A) Prostitution, as defined in Code Section 16-6-9; or
1183 (B) Sexually explicit conduct for the purpose of producing any visual or print medium
1184 depicting such conduct, as defined in Code Section 16-12-100.

1185 (c)(1) The following persons having reasonable cause to believe that a child has been

1186 abused shall report or cause reports of that abuse to be made as provided in this Code

1187 section:

- 1188 (A) Physicians licensed to practice medicine, interns, or residents;
1189 (B) Hospital or medical personnel;
1190 (C) Dentists;
1191 (D) Licensed psychologists and persons participating in internships to obtain licensing
1192 pursuant to Chapter 39 of Title 43;
1193 (E) Podiatrists;
1194 (F) Registered professional nurses or licensed practical nurses licensed pursuant to
1195 Chapter 24 of Title 43 or nurse's aides;
1196 (G) Professional counselors, social workers, or marriage and family therapists licensed
1197 pursuant to Chapter 10A of Title 43;
1198 (H) School teachers;
1199 (I) School administrators;
1200 (J) School guidance counselors, visiting teachers, school social workers, or school
1201 psychologists certified pursuant to Chapter 2 of Title 20;
1202 (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section
1203 49-5-12;
1204 (L) Child-counseling personnel;

1205 (M) Child service organization personnel; or

1206 (N) Law enforcement personnel; or

1207 (O) Reproductive health care facility or pregnancy resource center personnel and
1208 volunteers.

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

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

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

PART VI

RESTRICTING RECORDS

SECTION 6-1.

1254 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
1255 agencies, is amended by revising paragraph (1) of subsection (a) of Code Section 35-3-34,
1256 relating to disclosure and dissemination of criminal records to private persons and businesses,
1257 by deleting "and" at the end of subparagraph (B), by replacing "or" with "and" at the end of
1258 subparagraph (C), and by adding a new subparagraph to read as follows:
1259 "(D) The center shall not provide records of arrests, charges, or dispositions when
1260 access has been restricted pursuant to Code Section 35-3-37; or"

SECTION 6-2.

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

1265 "35-3-37.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1375 (2) After indictment or accusation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1465 (i) Child molestation in violation of Code Section 16-6-4;
- 1466 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 1467 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation
1468 of Code Section 16-6-5.1;
- 1469 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;
- 1470 (v) Pimping in violation of Code Section 16-6-11;
- 1471 (vi) Pandering by compulsion in violation of Code Section 16-6-14;
- 1472 (vii) Masturbation for hire in violation of Code Section 16-6-16;
- 1473 (viii) Giving massages in a place used for lewdness, prostitution, assignation, or
1474 masturbation for hire in violation of Code Section 16-6-17;
- 1475 (ix) Sexual battery in violation of Code Section 16-6-22.1;
- 1476 (x) Any offense related to minors generally in violation of Part 2 of Article 3 of
1477 Chapter 12 of Title 16;
- 1478 (xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such
1479 prohibition shall not apply to a misdemeanor conviction of shoplifting in violation of
1480 Code Section 16-8-14; or
- 1481 (xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1579 **PART VII**

1580 **PENAL INSTITUTIONS**

1581 **SECTION 7-1.**

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

1585 "42-1-1.

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

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

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

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

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

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

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

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

(8) 'Graduated sanctions' means:

(A) Verbal and written warnings;

(B) Increased restrictions and reporting requirements:

(C) Community service or work crews;

(D) Referral to substance abuse or mental health treatment or counseling programs in the community:

(E) Increased substance abuse screening and monitoring;

(F) Electronic monitoring, as such term is defined in Code Section 42-8-151; and

(G) An intensive supervision program.

(9) 'Risk and needs assessment' means an actuarial tool, approved by the board and validated on a targeted population, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior.

(a) No employee of a penal institution may give advice to an inmate regarding the name or the employment of an attorney at law in any case where the inmate is confined in a penal institution or receive any sum of money paid as fees or otherwise to attorneys at law in a criminal case or cases against any inmate with which they may be connected in any capacity.

(b) Any person who violates this Code section shall be guilty of a misdemeanor."

SECTION 7-2.

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

"42-1-11.2.

(a) No employee of a penal institution shall give advice to an inmate regarding the name or the employment of an attorney at law in any case where the inmate is confined in a penal institution or receive any sum of money paid as fees or otherwise to attorneys at law in a criminal case or cases against any inmate with which they may be connected in any capacity.

(b) Any person who violates this Code section shall be guilty of a misdemeanor."

SECTION 7-3.

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

"42-2-1.

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

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

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

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

SECTION 7-4.

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

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

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

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

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

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

SECTION 7-5.

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

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

1670 (1) A certified copy of the sentence;

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

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

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

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

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

SECTION 7-6.

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

"42-8-21.

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

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

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

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

SECTION 7-7.

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

"42-8-23.

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

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

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

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

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

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

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

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

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

SECTION 7-8.

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

"42-8-35.

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

(1) Avoid injurious and vicious habits;

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

(3) Report to the probation supervisor as directed;

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

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

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

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

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

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

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

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

1786 ~~(4)~~(3) Required to have periodic unannounced inspections of the contents of the
1787 probationer's computer or any other device with Internet access, including the retrieval
1788 and copying of all data from the computer or device and any internal or external storage
1789 or portable media and the removal of such information, computer, device, or medium; and
1790

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

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

1795 SECTION 7-9.

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

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

1808 SECTION 7-10.

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

1811 "42-8-37.

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

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

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

1829 SECTION 7-11.

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

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

1844 PART VIII

1845 CROSS-REFERENCES

1846 SECTION 8-1.

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

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

SECTION 8-2.

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

1855 "15-10-260.

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

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

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

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

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

1872 (3) For furnishing alcoholic beverages to, and purchase and possession of alcoholic
1873 beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and
1874 (4) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.

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

SECTION 8-3.

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

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

SECTION 8-4.

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

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

SECTION 8-5

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

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

SECTION 8-6.

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

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

1919 SECTION 8-7.

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

1922 "16-16-1.

1923 As used in this chapter, the term:

1924 (1) 'Armed robbery' means the offense defined in subsection (a) of Code Section 16-8-41.
1925 (2) 'Burglary' means the offense defined in ~~subsection (a)~~ of Code Section 16-7-1 in any
1926 degree."

1927 SECTION 8-8.

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

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

1936 SECTION 8-9.

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

1940 "(1) In felony cases involving violations of the following:
1941 (A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, ~~16-9-2~~, 16-9-20, 16-9-31,
1942 16-9-33, 16-9-37, 16-10-52, and 40-5-58;
1943 (B) Article 1 of Chapter 8 of Title 16, relating to theft;
1944 (C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;
1945 (D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to
1946 confinement; or

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

SECTION 8-10.

1955 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section
1956 17-10-9.1, relating to voluntary surrender to county jail or correctional institution, as follows:
1957 "(10) Kidnapping, arson, or burglary in any degree if the person, at the time such person
1958 was charged, has previously been convicted of, was on probation or parole with respect
1959 to, or was on bail for kidnapping, arson, aggravated assault, burglary in any degree, or
1960 one or more of the offenses listed in paragraphs (1) through (9) of this subsection;"

SECTION 8-11.

1961 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section
1962 17-10-30, relating to procedure for imposition of the death penalty generally, as follows:
1963 "(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the
1964 offender was engaged in the commission of another capital felony or aggravated battery,
1965 or the offense of murder was committed while the offender was engaged in the
1966 commission of burglary in any degree or arson in the first degree;"

SECTION 8-12.

1969 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
1970 subparagraph (G) of paragraph (2) of Code Section 31-7-250, relating to definitions for
1971 personal care home licensing and employee record checks, as follows:
1972 "(G) A felony violation of Code Section 16-9-1 or 16-9-2, relating to forgery in the first
1973 and second degree, respectively;"

SECTION 8-13.

1975 Said title is further amended by revising subparagraph (K) of paragraph (2) of Code Section
1976 31-7-350, relating to definitions for nursing home employee record checks, as follows:
1977 "(K) A felony violation of Code Section 16-9-1, relating to forgery in the first degree;
1978 a violation of Code Section 16-9-2, relating to forgery in the second degree;"

SECTION 8-14.

1980
1981 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
1982 by revising Code Section 36-32-9, relating to the jurisdiction of shoplifting of \$300.00 in
1983 municipal courts, as follows:

1984 "36-32-9.

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

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

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

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

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

SECTION 8-15.

2007
2008 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
2009 by revising paragraph (2) of subsection (a) of Code Section 42-5-85, relating to delegation
2010 of authority to issue limited leave privileges, as follows:

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

2014

PART IX**EFFECTIVE DATE, APPLICABILITY, AND REPEALER**

2016

SECTION 9-1.

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

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

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

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

2040

SECTION 9-2.

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



A Fact Sheet for COACHES

To download the coaches fact sheet in Spanish, please visit www.cdc.gov/ConcussionInYouthSports

Para descargar la hoja informativa para los entrenadores en español, por favor visite

www.cdc.gov/ConcussionInYouthSports

THE FACTS

- A concussion is a **brain injury**.
- All concussions are **serious**.
- Concussions can occur **without** loss of consciousness.
- Concussions can occur **in any sport**.
- Recognition and proper management of concussions when they **first occur** can help prevent further injury or even death.

WHAT IS A CONCUSSION?

Concussion, a type of traumatic brain injury, is caused by a bump, blow, or jolt to the head. Concussions can also occur from a blow to the body that causes the head and brain to move quickly back and forth—causing the brain to bounce around or twist within the skull.

This sudden movement of the brain can cause stretching and tearing of brain cells, damaging the cells and creating chemical changes in the brain.

HOW CAN I RECOGNIZE A POSSIBLE CONCUSSION?

To help spot a concussion, you should watch for and ask others to report the following two things:

1. A forceful bump, blow, or jolt to the head or body that results in rapid movement of the head.
2. Any concussion signs or symptoms, such as a change in the athlete's behavior, thinking, or physical functioning.

Signs and symptoms of concussion generally show up soon after the injury. But the full effect of the injury may not be noticeable at first. For example, in the first few minutes the athlete might be slightly confused or appear a little bit dazed, but an hour later he or she can't recall coming to the practice or game.

You should repeatedly check for signs of concussion and also tell parents what to watch out for at home. Any worsening of concussion signs or symptoms indicates a medical emergency.

It's better to miss one game than the whole season.

SIGNS AND SYMPTOMS¹

SIGNS OBSERVED BY COACHING STAFF

- Appears dazed or stunned
- Is confused about assignment or position
- Forgets an instruction
- Is unsure of game, score, or opponent
- Moves clumsily
- Answers questions slowly
- Loses consciousness (even briefly)
- Shows mood, behavior, or personality changes
- Can't recall events prior to hit or fall
- Can't recall events after hit or fall

SYMPTOMS REPORTED BY ATHLETE

- Headache or "pressure" in head
- Nausea or vomiting
- Balance problems or dizziness
- Double or blurry vision
- Sensitivity to light
- Sensitivity to noise
- Feeling sluggish, hazy, foggy, or groggy
- Concentration or memory problems
- Confusion
- Just "not feeling right" or "feeling down"

Adapted from Lovell et al. 2004

WHAT ARE CONCUSSION DANGER SIGNS?

In rare cases, a dangerous blood clot may form on the brain in an athlete with a concussion and crowd the brain against the skull. Call 9-1-1 or take the athlete to the emergency department right away if after a bump, blow, or jolt to the head or body the athlete exhibits one or more of the following danger signs:

- One pupil larger than the other
- Is drowsy or cannot be awakened
- A headache that gets worse
- Weakness, numbness, or decreased coordination
- Repeated vomiting or nausea
- Slurred speech
- Convulsions or seizures
- Cannot recognize people or places
- Becomes increasingly confused, restless, or agitated
- Has unusual behavior
- Loses consciousness (even a brief loss of consciousness should be taken seriously)

WHY SHOULD I BE CONCERNED ABOUT CONCUSSIONS?

Most athletes with a concussion will recover quickly and fully. But for some athletes, signs and symptoms of concussion can last for days, weeks, or longer.

If an athlete has a concussion, his or her brain needs time to heal. A repeat concussion that occurs before the brain recovers from the first—usually within a short time period (hours, days, weeks)—can slow recovery or increase the chances for long-term problems. In rare cases, repeat concussions can result in brain swelling or permanent brain damage. It can even be fatal.^{2,3}

HOW CAN I HELP ATHLETES TO RETURN TO PLAY GRADUALLY?

An athlete should return to sports practices under the supervision of an appropriate health care professional. When available, be sure to work closely with your team's certified athletic trainer.

Below are five gradual steps that you and the health care professional should follow to help safely return an athlete to play. Remember, this is a gradual process. These steps should not be completed in one day, but instead over days, weeks, or months.

BASELINE: Athletes should not have any concussion symptoms. Athletes should only progress to the next step if they do not have any symptoms at the current step.

STEP 1: Begin with light aerobic exercise only to increase an athlete's heart rate. This means about 5 to 10 minutes on an exercise bike, walking, or light jogging. No weight lifting at this point.

STEP 2: Continue with activities to increase an athlete's heart rate with body or head movement. This includes moderate jogging, brief running, moderate-intensity stationary biking, moderate-intensity weightlifting (reduced time and/or reduced weight from your typical routine).

STEP 3: Add heavy non-contact physical activity, such as sprinting/running, high-intensity stationary biking, regular weightlifting routine, non-contact sport-specific drills (in 3 planes of movement).

STEP 4: Athlete may return to practice and full contact (if appropriate for the sport) in controlled practice.

STEP 5: Athlete may return to competition. If an athlete's symptoms come back or she or he gets new symptoms when becoming more active at any step, this is a sign that the athlete is pushing him or herself too hard.

The athlete should stop these activities and the athlete's health care provider should be contacted. After more rest and no concussion symptoms, the athlete should begin at the previous step.

PREVENTION AND PREPARATION

Insist that safety comes first. To help minimize the risks for concussion or other serious brain injuries:

- Ensure that athletes follow the rules for safety and the rules of the sport.
- Encourage them to practice good sportsmanship at all times.
- Wearing a helmet is a must to reduce the risk of severe brain injury and skull fracture.
 - However, helmets are not designed to prevent concussions. There is no "concussion-proof" helmet. So, even with a helmet, it is important for kids and teens to avoid hits to the head.

Check with your league, school, or district about concussion policies. Concussion policy statements can be developed to include:

- The school or league's commitment to safety
- A brief description of concussion
- Information on when athletes can safely return to school and play.

Parents and athletes should sign the concussion policy statement at the beginning of the season.

ACTION PLAN

WHAT SHOULD I DO WHEN A CONCUSSION IS SUSPECTED?

No matter whether the athlete is a key member of the team or the game is about to end, an athlete with a suspected concussion should be immediately removed from play. To help you know how to respond, follow the Heads Up four-step action plan:

1. REMOVE THE ATHLETE FROM PLAY.

PLAY. Look for signs and symptoms of a concussion if your athlete has experienced a bump or blow to the head or body. When in doubt, sit them out!

2. ENSURE THAT THE ATHLETE IS EVALUATED BY AN APPROPRIATE HEALTH CARE PROFESSIONAL.

Do not try to judge the severity of the injury yourself. Health care professionals have a number of methods that they can use to assess the severity of concussions. As a coach, recording the following information can help health care professionals in assessing the athlete after the injury:

- Cause of the injury and force of the hit or blow to the head or body
- Any loss of consciousness (passed out/knocked out) and if so, for how long
- Any memory loss immediately following the injury

- Any seizures immediately following the injury
- Number of previous concussions (if any)

3. INFORM THE ATHLETE'S PARENTS OR GUARDIANS.

Let them know about the possible concussion and give them the Heads Up fact sheet for parents. This fact sheet can help parents monitor the athlete for signs or symptoms that appear or get worse once the athlete is at home or returns to school.

4. KEEP THE ATHLETE OUT OF PLAY.

An athlete should be removed from play the day of the injury and until an appropriate health care professional says they are symptom-free and it's OK to return to play. After you remove an athlete with a suspected concussion from practice or play, the decision about return to practice or play is a medical decision.

REFERENCES

1. Lovell MR, Collins MW, Iverson GL, Johnston KM, Bradley JP. Grade 1 or "ding" concussions in high school athletes. *The American Journal of Sports Medicine* 2004; 32(1):47-54.
2. Institute of Medicine (US). Is soccer bad for children's heads? Summary of the IOM Workshop on Neuropsychological Consequences of Head Impact in Youth Soccer. Washington (DC): National Academies Press; 2002.
3. Centers for Disease Control and Prevention (CDC). Sports-related recurrent brain injuries—United States. *Morbidity and Mortality Weekly Report* 1997; 46(10):224-227. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/00046702.htm.

*If you think your athlete has a concussion...
take him/her out of play and seek the advice of a health care professional
experienced in evaluating for concussion.*



Parent/Athlete Concussion Information Sheet

A concussion is a type of traumatic brain injury that changes the way the brain normally works. A concussion is caused by bump, blow, or jolt to the head or body that causes the head and brain to move rapidly back and forth. Even a “ding,” “getting your bell rung,” or what seems to be a mild bump or blow to the head can be serious.

WHAT ARE THE SIGNS AND SYMPTOMS OF CONCUSSION?

Signs and symptoms of concussion can show up right after the injury or may not appear or be noticed until days or weeks after the injury.

If an athlete reports **one or more** symptoms of concussion listed below after a bump, blow, or jolt to

Did You Know?

- Most concussions occur *without* loss of consciousness.
- Athletes who have, at any point in their lives, had a concussion have an increased risk for another concussion.
- Young children and teens are more likely to get a concussion and take longer to recover than adults.

the head or body, s/he should be kept out of play the day of the injury and until a health care professional, experienced in evaluating for concussion, says s/he is symptom-free and it's OK to return to play.

SIGNS OBSERVED BY COACHING STAFF	SYMPTOMS REPORTED BY ATHLETES
Appears dazed or stunned	Headache or “pressure” in head
Is confused about assignment or position	Nausea or vomiting
Forgets an instruction	Balance problems or dizziness
Is unsure of game, score, or opponent	Double or blurry vision
Moves clumsily	Sensitivity to light
Answers questions slowly	Sensitivity to noise
Loses consciousness (<i>even briefly</i>)	Feeling sluggish, hazy, foggy, or groggy
Shows mood, behavior, or personality changes	Concentration or memory problems
Can’t recall events <i>prior</i> to hit or fall	Confusion
Can’t recall events <i>after</i> hit or fall	Just not “feeling right” or “feeling down”

CONCUSSION DANGER SIGNS

In rare cases, a dangerous blood clot may form on the brain in a person with a concussion and crowd the brain against the skull. An athlete should receive immediate medical attention if after a bump, blow, or jolt to the head or body s/he exhibits any of the following danger signs:

- One pupil larger than the other
- Is drowsy or cannot be awakened
- A headache that not only does not diminish, but gets worse
- Weakness, numbness, or decreased coordination
- Repeated vomiting or nausea
- Slurred speech
- Convulsions or seizures
- Cannot recognize people or places
- Becomes increasingly confused, restless, or agitated
- Has unusual behavior
- Loses consciousness (*even a brief loss of consciousness should be taken seriously*)

WHY SHOULD AN ATHLETE REPORT THEIR SYMPTOMS?

If an athlete has a concussion, his/her brain needs time to heal. While an athlete's brain is still healing, s/he is much more likely to have another concussion. Repeat concussions can increase the time it takes to recover. In rare cases, repeat concussions in young athletes can result in brain swelling or permanent damage to their brain. *They can even be fatal.*

It's better to miss one game than the whole season. For more information on concussions, visit: www.cdc.gov/Concussion.

Student-Athlete Name Printed

Student-Athlete Signature

Date

Parent or Legal Guardian Printed

Parent or Legal Guardian Signature

Date

Remember

Concussions affect people differently. While most athletes with a concussion recover quickly and fully, some will have symptoms that last for days, or even weeks. A more serious concussion can last for months or longer.

WHAT SHOULD YOU DO IF YOU THINK YOUR ATHLETE HAS A CONCUSSION?

If you suspect that an athlete has a concussion, remove the athlete from play and seek medical attention. Do not try to judge the severity of the injury yourself. Keep the athlete out of play the day of the injury and until a health care professional, experienced in evaluating for concussion, says s/he is symptom-free and it's OK to return to play.

Rest is key to helping an athlete recover from a concussion. Exercising or activities that involve a lot of concentration, such as studying, working on the computer, or playing video games, may cause concussion symptoms to reappear or get worse.

After a concussion, returning to sports and school is a gradual process that should be carefully managed and monitored by a health care professional.



HEADS UP CONCUSSION IN YOUTH SPORTS

SIGNS AND SYMPTOMS

These signs and symptoms may indicate that a concussion has occurred.

SIGNS OBSERVED BY COACHING STAFF

- Appears dazed or stunned
- Is confused about assignment or position
- Forgets sports plays
- Is unsure of game, score, or opponent
- Moves clumsily
- Answers questions slowly
- Loses consciousness (even briefly)
- Shows behavior or personality changes
- Can't recall events prior to hit or fall
- Can't recall events after hit or fall

SYMPTOMS REPORTED BY ATHLETE

- Headache or "pressure" in head
- Nausea or vomiting
- Balance problems or dizziness
- Double or blurry vision
- Sensitivity to light
- Sensitivity to noise
- Feeling sluggish, hazy, foggy, or groggy
- Concentration or memory problems
- Confusion
- Does not "feel right"

ACTION PLAN

If you suspect that a player has a concussion, you should take the following steps:

1. Remove athlete from play.
2. Ensure athlete is evaluated by an appropriate health care professional. Do not try to judge the seriousness of the injury yourself.
3. Inform athlete's parents or guardians about the known or possible concussion and give them the fact sheet on concussion.
4. Allow athlete to return to play **only** with permission from an appropriate health care professional.

It's better to miss one game than the whole season.

For more information and to order additional materials **free-of-charge**, visit:

www.cdc.gov/ConcussionInYouthSports

July 2007

*** Current Through the 2010 Regular Session ***
*** Annotations Current Through October 29, 2010 ***

TITLE 19. DOMESTIC RELATIONS
CHAPTER 7. PARENT AND CHILD RELATIONSHIP GENERALLY
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 19-7-5 (2011)

§ 19-7-5. Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report

(a) The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

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

- (1) "Abused" means subjected to child abuse.
- (2) "Child" means any person under 18 years of age.
- (3) "Child abuse" means:

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

- (B) Neglect or exploitation of a child by a parent or caretaker thereof;
- (C) Sexual abuse of a child; or
- (D) Sexual exploitation of a child.

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

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

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) Bestiality;
- (C) Masturbation;
- (D) Lewd exhibition of the genitals or pubic area of any person;
- (E) Flagellation or torture by or upon a person who is nude;
- (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (H) Defecation or urination for the purpose of sexual stimulation; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(4) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:

- (A) Prostitution, as defined in Code Section 16-6-9; or
- (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.
- (c)(1) The following persons having reasonable cause to believe that a child has been abused shall report or cause reports of that abuse to be made as provided in this Code section:
 - (A) Physicians licensed to practice medicine, interns, or residents;
 - (B) Hospital or medical personnel;
 - (C) Dentists;
 - (D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;
 - (E) Podiatrists;
- (F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 24 of Title 43;

(G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;

(H) School teachers;

(I) School administrators;

(J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;

(K) Child welfare agency personnel, as that agency is defined pursuant to Code Section 49-5-12;

(L) Child-counseling personnel;

(M) Child service organization personnel; or

(N) Law enforcement personnel.

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

(d) Any other person, other than one specified in subsection (c) of this Code section, who has reasonable cause to believe that a child is abused may report or cause reports to be made as provided in this Code section.

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

Such photograph shall be made available as soon as possible to the chief welfare agency providing protective services and to the appropriate police authority.

(f) Any person or persons, partnership, firm, corporation, association, hospital, or other entity participating in the making of a report or causing a report to be made to a child welfare agency providing protective services or to an appropriate police authority pursuant to this Code section or any other law or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided such participation pursuant to this Code section or any other law is made in good faith. Any person making a report, whether required by this Code section or not, shall be immune from liability as provided in this subsection.

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law.

(h) Any person or official required by subsection (c) of this Code section to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

(i) A report of child abuse or information relating thereto and contained in such report, when provided to a law enforcement agency or district attorney pursuant to subsection (e) of this Code section or pursuant to Code Section 49-5-41, shall not be subject to public inspection under Article 4 of Chapter 18 of Title 50 even though such report or information is contained in or part of closed records compiled for law enforcement or prosecution purposes unless:

(1) There is a criminal or civil court proceeding which has been initiated based in whole or in part upon the facts regarding abuse which are alleged in the child abuse reports and the person or entity seeking to inspect such records provides clear and convincing evidence of such proceeding; or

(2) The superior court in the county in which is located the office of the law enforcement agency or district attorney which compiled the records containing such reports, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this paragraph. When those records are located in more than one county, the application may be made to the superior court of any one of such counties. A copy of any application authorized by this paragraph shall be served on the office of the law enforcement agency or district attorney which compiled the records containing such reports. In cases where the location of the records is unknown to the applicant, the application may be made to the Superior Court of Fulton County. The superior court to which an application is made shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

HISTORY: Code 1933, § 74-111, enacted by Ga. L. 1965, p. 588, § 1; Ga. L. 1968, p. 1196, § 1; Ga. L. 1973, p. 309, § 1; Ga. L. 1974, p. 438, § 1; Ga. L. 1977, p. 242, §§ 1-3; Ga. L. 1978, p. 2059, §§ 1, 2; Ga. L. 1980, p. 921, § 1; Ga. L. 1981, p. 1034, §§ 1-3; Ga. L. 1988, p. 1624, § 1; Ga. L. 1990, p. 1761, § 1; Ga. L. 1993, p. 1695, §§ 1, 1.1; Ga. L. 1994, p. 97, § 19; Ga. L. 1999, p. 81, § 19; Ga. L. 2006, p. 485, § 1/SB 442; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2009, p. 733, § 1/SB 69.

House Bill 284 (AS PASSED HOUSE AND SENATE)

By: Representatives Pruett of the 149th, Kaiser of the 59th, Mitchell of the 88th, Cooper of the 43rd, Coleman of the 97th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 15 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia
2 Annotated, relating to miscellaneous provisions under the "Quality Basic Education Act,"
3 so as to enact the "Return to Play Act of 2013"; to require public and private schools which
4 provide youth athletic activities to provide information to parents on the nature and risk of
5 concussion and head injury and to establish concussion management and return to play
6 policies; to require public recreation facilities to provide information to parents on the nature
7 and risk of concussion and head injury; to provide for definitions; to provide for the
8 endorsement of concussion recognition education courses; to provide for limited liability; to
9 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 This Act shall be known and may be referred to as the "Return to Play Act of 2013."

14 **SECTION 2.**

15 Part 15 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,
16 relating to miscellaneous provisions under the "Quality Basic Education Act," is amended
17 by adding a new Code section to read as follows:

18 "20-2-324.1.

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

20 (1) 'Health care provider' means a licensed physician or another licensed individual under
21 the supervision of a licensed physician, such as a nurse practitioner, physician assistant,
22 or certified athletic trainer who has received training in concussion evaluation and
23 management.

24 (2) 'Public recreation facility' means a public facility that conducts an organized youth
25 athletic activity in which a participation fee and registration are required.

26 (3) 'Youth athlete' means a participant in a youth athletic activity who is seven years of
27 age or older and under 19 years of age.

28 (4) 'Youth athletic activity' means an organized athletic activity in which the majority of
29 the participants are youth athletes and are engaging in an organized athletic game or
30 competition against another team, club, or entity or in practice or preparation for an
31 organized game or competition against another team, club, or entity. This term shall not
32 include college or university activities or an activity which is entered into for
33 instructional purposes only, an athletic activity that is incidental to a nonathletic program,
34 youth athletic activities offered through a church or synagogue, or a lesson; provided,
35 however, that colleges, universities, churches, and synagogues, and any other entities that
36 conduct youth athletic activities but are not subject to this Code section are strongly
37 encouraged to establish and implement a concussion management and return to play
38 policy.

39 (b) Each local board of education, administration of a nonpublic school, and governing
40 body of a charter school shall adopt and implement a concussion management and return
41 to play policy comprising not less than the following components:

42 (1) Prior to the beginning of each athletic season of a youth athletic activity, provide an
43 information sheet to all youth athletes' parents or legal guardians which informs them of
44 the nature and risk of concussion and head injury;

45 (2) If a youth athlete participating in a youth athletic activity exhibits symptoms of
46 having a concussion, that athlete shall be removed from the game, competition, tryout,
47 or practice and be evaluated by a health care provider; and

48 (3) If a youth athlete is deemed by a health care provider to have sustained a concussion,
49 the coach or other designated personnel shall not permit the youth athlete to return to play
50 until the youth athlete receives clearance from a health care provider for a full or
51 graduated return to play.

52 (c) Each public recreation facility shall, at the time of registration for a youth athletic
53 activity, provide an information sheet to all youth athletes' parents or legal guardians which
54 informs them of the nature and risk of concussion and head injury; provided, however, that
55 public recreation facilities are strongly encouraged to establish and implement a concussion
56 management and return to play policy.

57 (d) The Department of Public Health shall endorse one or more concussion recognition
58 education courses to inform Georgia citizens of the nature and risk of concussions in youth
59 athletics, at least one of which shall be available online. Such course or courses may
60 include education and training materials made available, at no charge, by the federal
61 Centers for Disease Control and Prevention or other training materials substantively and
62 substantially similar to such materials.

63 (e) This Code section shall not create any liability for, or create a cause of action against,
64 a local board of education, the governing body of a nonpublic school, the governing body
65 of a charter school, or a public recreation facility or the officers, employees, volunteers, or
66 other designated personnel of any such entities for any act or omission to act related to the
67 removal or nonremoval of a youth athlete from a game, competition, tryout, or practice
68 pursuant to this Code section; provided, however, that for purposes of this subsection, other
69 designated personnel shall not include health care providers unless they are acting in a
70 volunteer capacity."

SECTION 3.

72 This Act shall become effective on January 1, 2014.

SECTION 4.

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



May 6, 2013

House Bill 284, "Return to Play Act of 2013"

Presented by:

Ken E. Jarrard
County Attorney, Forsyth County
105 Pilgrim Village Drive
Suite 200
Cumming, Georgia 30040
678-455-7150 - telephone
678-455-7149 - facsimile

Contents

Introduction / Background	3
History of Concussion Laws.....	3
House Bill 284, the “Return to Play Act of 2013”	5
Implications for Forsyth County Parks and Recreation Department	12
Results / Conclusion	13
Appendix A-C	15

Introduction / Background

On April 23, 2013, Governor Nathan Deal signed House Bill 284, also known as the “Return to Play Act of 2013” (hereinafter referred to as the “Act”),¹ which creates new protocols for informing parents about the dangers of concussions and for identifying and treating players with head injuries. House Bill 284 further mandates that local school boards, nonpublic school administrations and governing bodies for charter schools implement a concussion management and return to play policy. The Act “strongly encourages” colleges, universities, churches, and synagogues, and any other entities, such as public recreation facilities that conduct youth athletic activities to implement a concussion management and return to play policy. Additionally, public recreation facilities are required to provide parents or guardians with educational information pertaining to the nature and risk of concussion and head injury at the time of registration for the youth athletic activity.

History of Concussion Laws

As of April 2013, forty-seven (47) states (plus the District of Columbia and Chicago) have enacted concussion laws and several states have pending legislation to address the growing concerns associated with concussions in young athletes.² On May 14, 2009, the Zackery Lystedt Law, the first youth concussion statute in the United

¹ The Act will be codified at O.C.G.A. § 20-2-324.1. All citations to this code section are made in reference to the Act, as codified, that will be enacted on January 1, 2014.

² States with concussion laws: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

States, was passed in Washington State³ after a young boy suffered serious injuries due to head trauma he sustained while participating in a school sporting event.⁴ On October 21, 2006, Zackery Lystedt was playing middle school football when he sustained a concussion early on in the game. Lystedt returned to the game in the second half and sustained a second concussion causing second-impact syndrome. Second-impact syndrome leads to substantial brain swelling and 50% of those with the syndrome die.⁵ The other 50%, like Zackery Lystedt, will almost certainly suffer from permanent disabilities.⁶

The Lystedt Law contains three elements that have become a model for the youth concussion laws subsequently adopted in other states:

- (1) Athletes, parents and coaches must be educated about the dangers of concussions each year;⁷
- (2) If a young athlete is suspected of having a concussion, he/she must be removed from a game or practice and not be permitted to return to play. When in doubt, sit them out;⁸ and
- (3) A licensed health care professional must clear the young athlete to return to play in the subsequent days or weeks.⁹

The first component of the Lystedt law is education. Educating parents, coaches, volunteers and medical professionals about the signs and symptoms of concussions or

³ Zackery Lystedt Law, Wash. Rev. Code § 28A.600.190 (2012).

⁴ All biographical information pertaining to Zackery Lystedt was obtained from the CDC at <http://www.cdc.gov/media/subtopic/matte/pdf/031210-Zack-story.pdf>.

⁵ Erika A. Diehl, Note, What's all the Headache?: Reform Needed to Cope With the Effects of Concussions in Football, 23 J.L. & Health 83, 92 (2010).

⁶ *Id.*

⁷ §28A.600.190(2).

⁸ §28A.600.190(3).

⁹ §28A.600.190(4).

other head trauma is essential to not only complying with the law but to also protecting youth athletes. Secondly, the Lystedt Law mandates that a child suspected of having a concussion “must be removed from a game or practice.” This second prong is only effective if the first prong is properly implemented. Coaches, volunteers and parents who have been educated as to the signs of concussion will more readily identify athletes with concussive symptoms and “sit them out.” The last part of the Lystedt Law mandates that a health care professional “sign off” on an athlete’s return to play following any suspected concussive symptoms. Some state legislatures have charged administrative bodies with developing guidelines as to the definition of “sign off” and “clear the athlete to return to play” and other parts of the Lystedt law that are open to interpretation. It does not appear that Georgia will be doing so at this time and individual entities implementing concussion management and return to play policies will be responsible for understanding the definition of these terms and implementing same in their own policies.

House Bill 284, the “Return to Play Act of 2013”- Georgia’s Modification and Implementation of the Lystedt Model Law

Georgia, following in the footsteps of the majority of states and other local governmental entities, enacted House Bill 284 to address concussions in youth athletics. The Act is effective January 1, 2014. Georgia has adopted the Lystedt model law and requires local school boards, nonpublic school administrations and governing bodies for charter schools to implement a concussion management and return to play policy¹⁰ for athletes aged 7-19.¹¹ As indicated earlier, while not required other entities

¹⁰ O.C.G.A. § 20-2-324.1(b).

(e.g., county recreational departments) are strongly encouraged to implement such policies.¹²

Entities subject to the Act's requirement for implementing a concussion management and return to play policy must enact a policy comprised of not less than the following components:

- (1) Prior to the beginning of each athletic season of a youth athletic activity, provide an information sheet to all youth athletes' parents or legal guardians which informs them of the nature and risk of concussion and head injury;¹³
- (2) If a youth athlete participating in a youth athletic activity exhibits symptoms of having a concussion, that athlete shall be removed from the game, competition, tryout or practice and be evaluated by a health care provider;¹⁴ and
- (3) If a youth athlete is deemed by a health care provider to have sustained a concussion, the coach or other designated personnel shall not permit the youth athlete to return to play until the youth athlete receives clearance from a health care provider for a full or graduated return to play.¹⁵

The Act's first component pertains to education and is very specific as how to disseminate such educational information. The statute states that "an information sheet ... which informs them of the nature and risk of concussion and head injury" should be provided to parents and guardians.¹⁶ At this point we have received no indication that a state agency might assemble a standardized information sheet that all local governments could use. As such, one method to meet and fulfill this requirement is to

¹¹ O.C.G.A. § 20-2-324.1(a)(3) defines youth athlete as a participant in a youth athletic activity who is seven years of age or older and under 19 years of age.

¹² O.C.G.A. § 20-2-324.1(a)(4), (c).

¹³ O.C.G.A. § 20-2-324.1(b)(1).

¹⁴ O.C.G.A. § 20-2-324.1(b)(2).

¹⁵ O.C.G.A. § 20-2-324.1(b)(3).

¹⁶ O.C.G.A. § 20-2-324.1(b)(1).

utilize the concussion materials drafted for youth athletic programs provided by the Centers for Disease Control (CDC). The CDC website provides information about understanding and preventing concussions for coaches, parents, and athletes, including information sheets and online training courses.¹⁷ The CDC created such guidelines when instituting its Heads Up: Concussion in Youth Sports initiative.¹⁸

Entities providing an information sheet should, as a best practice, have parents confirm receipt of the information sheet via signature on a simple acknowledgement form at the time of athletic activity registration. This acknowledgement should be maintained in the sponsoring department's files. Similarly, all volunteers/coaches should be required to sign and acknowledgement of receipt of the entity's concussion policy as well as demonstrate completion of training on the identification of concussive symptoms. Training is currently provided by the CDC and others at no charge (see below).

The Act requires that youth athletes who exhibit symptoms of concussive injury be removed from play. The possible concussed youth athlete must then be evaluated by a health professional. A health professional is defined as "a licensed physician or another licensed individual under supervision of a licensed physician, such as a nurse practitioner, physician assistant, or certified athletic trainer who has received training in concussion evaluation and management."¹⁹ Coaches and others involved in youth athletics must be educated on the signs and symptoms of concussion in order to fulfill

¹⁷ See www.cdc.gov/concussion/pdf/coaches_Engl.pdf

¹⁸ Heads Up: Concussion in Youth Sports, CDC, <http://www.cdc.gov/concussion/HeadsUp/youth.html> (last updated May 29, 2012).

¹⁹ O.C.G.A. § 20-2-324.1(a)(1).

the requirements of this section. Those who are not properly trained will not be capable of properly evaluating youth athletes. Fortunately, the Act provides the following proviso regarding educational courses pertaining to concussion recognition:

The Department of Public Health shall endorse one or more concussion recognition education courses to inform Georgia citizens of the nature and risk of concussions in youth athletics, at least one of which shall be available online. Such course or courses may include education and training materials made available, at no charge, by the federal Centers for Disease Control and Prevention or other training materials substantively and substantially similar to such materials.²⁰

It is expected that the Department of Public Health will have information regarding such training and online courses available prior to the start of fall 2013 athletics. In the meantime, the CDC will continue to offer the Heads Up Online Training Course free of charge to all who access the program via their website.²¹ After completing the course a completion certificate can be printed to confirm receipt of training on concussion in youth athletes. A second free online concussion education program, *Concussion in Sports*, is offered by the National Federation of State High School Associations (NFHS).²²

The third part of the Act provides that when a youth athlete is deemed by a health care provider to have sustained a concussion, the coach or other designated official shall not permit the youth athlete to return to play until the youth athlete receives clearance from a health care provider for a full or graduated return to play.²³

²⁰ O.C.G.A. § 20-2-324.1(d).

²¹ See http://www.cdc.gov/concussion/HeadsUp/online_training.html.

²² See www.nfhslearn.com.

²³ O.C.G.A. § 20-2-324.1(b)(3).

Unfortunately, this proviso does not clearly delineate when a player is deemed to be “ready to return to play.” As such, entities required to implement a concussion management and return to play policy are strongly encouraged to define return to play “clearance” in their own policies. Due to the risks of subsequent injury syndrome in youth athletes, it is the best practice that youth athletes be symptom free for a defined period of time (e.g., 48 hours) before they are eligible to receive “clearance” to return to play. Confirmation from a health care provider that an athlete has been cleared to return to play should be in writing and maintained by the department responsible for implementing the concussion management and return to play policy.

Currently, the Act appears to have “no teeth” regarding enforcement penalties and specifically provides:

This Code section shall not create any liability for, or create a cause of action against, a local board of education, the governing body of a nonpublic school, the governing body of a charter school, or a public recreation facility or the officers, employees, volunteers, or other designated personnel of any such entities for any act or omission to act related to the removal or nonremoval of a youth athlete from a game, competition, tryout, or practice pursuant to this Code section; provided, however, that for purposes of this subsection, other designated personnel shall not include health care providers unless they are acting in a volunteer capacity.²⁴

This provision may help lessen the worries of volunteer coaches and others regarding personal liability for acting or failing to act regarding concussive symptoms in youth athletes. The new Act should not be viewed as an impediment for community members to volunteer in youth sports leagues. Nonetheless, the prudent volunteer will familiarize himself/herself with the symptoms of concussion and be aware of his or her

²⁴ O.C.G.A. § 20-2-324.1(e).

responsibilities and legal duties as a coach – not only in reference to head injuries but also with respect to some of the other mandatory reporting obligations that exist for their interacting with children and youth (e.g., mandatory reporting of child abuse pursuant to the recently amended O.C.G.A. § 19-7-5). Entities subject to the Act should also be aware of enforcement penalties that have cropped up in other jurisdictions. Some jurisdictions that previously enacted concussion legislation have subsequently amended such to provide penalties for failure to comply. For example, the City of Chicago's concussion law indicates that any school that does not observe the concussion law will have to pay the city water and sewer charges, a cost that schools are normally exempt from paying.²⁵

As to civil liability for negligence, O.C.G.A. § 51-1-41 provides statutory immunity to sports officials (this includes, coaches, managers, etc.) for injuries or damages claimed to have arisen by virtue of actions or inactions related in any manner to officiating duties within the confines of the athletic facility at which the athletic contest is played. However, sports officials are liable when “gross negligence” can be established. See O.C.G.A. § 51-1-41(c). Arguably, intentionally or willfully failing to comply with the mandates of the Act above could go a long way towards establishing gross negligence if it was determined that a reasonable coach, with full knowledge of the Act, would have taken a concussed athlete out a sporting event. Because of the “infancy” of concussion law, very little can be found regarding the implications of concussion statutes and the duty of care owed by a coach or other volunteer to the concussed youth athlete.

²⁵ See generally Chi., Ill., Mun. Code ch. 7-22-040 (2012).

In Cerny v. Cedar Bluffs Junior/Senior Public School, the Nebraska Supreme Court determined the standard of care of a coach to be “that of the reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement.” 262 Neb. 66, 76, 628 N.W.2d 697, 705 (2001). The aforementioned endorsement requires “familiarization with the common symptoms of a concussion in order to enable a coach to make a reasoned determination of when to withhold a student athlete from competition until a medical professional evaluates the athlete and clearance is obtained.” Id. at 76, 706. Cerny appears to imply that a majority of coaches would likely be held to a standard of care that includes concussion education.

The Act purports to provide no liability to counties with public recreation facilities or any other entity that complies with the requirements of this law. See O.C.G.A. § 20-2-324.1(e). A nationwide search of case law from 2006 forward yielded no decisions in which courts have found a governmental entity liable for civil damages or penalties for concussive injuries to a youth athlete where a concussion statute was in place. Again, legislative enactments regarding concussion recognition are very new and this area of the law will likely spawn decisions regarding governmental responsibility as time progresses.

Implications for Forsyth County Parks and Recreation Department

As indicated above, the Act’s mandates concerning the concussion management and return to play policies do not require the Forsyth County Parks and Recreation Department (hereinafter referred to as “the County”) to adopt a concussion management and return to play policy. The Act, however, does require the County to

provide parents or guardians with educational information pertaining to the nature and risk of concussion and head injury at the time of registration for the youth athletic activity.²⁶ A sample “Parent/Guardian Concussion Policy Acknowledgement form” is attached for your review (Appendix “A”). Although the County is not required to implement a concussion management and return to play policy, the Act indicates that this measure is “strongly encouraged.”

In 2011, the County worked to draft a concussion management and return to play policy. It appears that this policy was not implemented at that time and that no “formal” policy is currently in place. In anticipation of the Act becoming effective January 1, 2014, it is recommended that the County adopt a concussion management and return to play policy in addition to requiring a “parent acknowledgement” and “coach/assistant coach acknowledgement” of the same. These efforts will comply with the statutory requirements that public recreation facilities provide information on the nature and risk of concussion and head injury to guardians and also fulfill the aspirational goal contained in the Act: “public recreation facilities are strongly encouraged to establish and implement a concussion management and return to play policy.” It is also likely that this Act will be extended to cover public recreation facilities as more and more efforts are focused at reducing the risk of head injury in youth athletes. As such, the County will be ahead of the curve should the requirement of establishing and implementing a concussion management and return to play policy be extended to county recreational programming, and others, in the future.

Much of the labor of drafting such a policy has been completed and a copy of the policy as drafted in 2011 (with edits to reflect language found in the Act) is attached

²⁶ O.C.G.A. § 20-2-324.1(c).

for review (“Appendix B”). This policy follows the Lystedt model law. The proposed policy requires: (1) acknowledgement of the concussion policy by parents or guardians and coaches/assistant coaches; (2) that a youth athlete showing any signs or symptoms of concussion be removed from the activity; (3) that the parent or guardian of said athlete be informed of the return to play requirement of clearance by a medical professional; (4) that the youth athlete be “cleared” by a medical professional to return to play before return to athletic activities; and (5) also requires education as to the signs and symptoms of concussion for all coaches participating in youth athletics.

Should the County adopt the attached policy it will need to be available on the County website and posted in areas where coaches and others may view a physical copy of the policy (e.g., notice boards at various athletic facilities). Additionally, all coaches should be notified of their obligation to complete the CDC Head’s Up training program and submit a certificate showing completion of the same. This certificate should be maintained by the County to demonstrate steps or efforts made to educate coaches on concussion symptoms in youth athletes. As stated above, coaches/assistant-coaches must also acknowledge receipt of the County’s concussion management and return to play policy (Appendix “C”).

Results / Conclusion

As with any new policy, the County will likely be required to respond to many questions from parents, coaches/assistant coaches and employees regarding the new rules presented by the Act. Because of the recent and extensive media coverage regarding the hazards of head injury in athletes (especially in the NFL), the dangers of

concussions and the need for education should not be seen as novel or new for those involved in coaching or supervising active sporting activities. The County's proposed concussion management and return to play policy contains all three elements of the Lystedt Law model legislation and goes above what is required for similar entities by the Return to Play Act. Coaches, athletes, and parents should be educated about the potential severe health risks associated with concussions. It is probable that the educational component of the County's policy will create greater cooperation to ensure that athletes who suffer concussions are removed from active play and will not participate until completely symptom-free and cleared by a medical professional.

Appendix A-C