

The Senate Committee on Judiciary offered the following substitute to SB 174:

A BILL TO BE ENTITLED  
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**PART I**  
**SECTION 1-1.**

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

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

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

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

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

(E) The Council of Accountability Court Judges of Georgia and the Georgia Council on Criminal Justice Reform shall develop and manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all veterans court divisions. The Council of Accountability Court Judges of Georgia shall identify elements necessary for performance measurement, including, but not limited to, recidivism, the number of moderate-risk and high-risk participants in a veterans court division, drug testing results, drug testing failures, participant employment, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2018, and every three years thereafter, the Council of Accountability Court Judges of Georgia shall conduct a performance peer review of the veterans court divisions for the purpose of improving veterans court division policies and practices and the certification and recertification process."

## SECTION 1-2.

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

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

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

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

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

### SECTION 1-3.

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

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

### SECTION 1-4.

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

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

(1) Undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six 12 consecutive months;  
or  
(2) Successfully completes programming through a family treatment court division."

**SECTION 1-5.**

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

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

(1) Investigate reports of abuse ~~and~~ or neglect;

(2) Assess, promote, and support the safety of a child in a safe and stable family or other appropriate placement in response to allegations of abuse or neglect;

(3) Work cooperatively with law enforcement regarding reports that include criminal conduct allegations; ~~and~~

(4) In collaboration with the family treatment court division planning group, if one exists, establish a written protocol to assess cases involving substantiated reports of abuse or neglect for possible referral to a family treatment court division. Such protocol shall be consistent with the Council of Accountability Courts of Georgia's certification requirements and include sufficient criteria to determine the need for substance abuse treatment; and

~~(4)(5)~~ Without compromising child safety, coordinate services to achieve and maintain permanency on behalf of the child, strengthen the family, and provide prevention, intervention, and treatment services pursuant to this title."

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

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

"(a)(1)(A) Except in cases in which life imprisonment, life without parole, or the death penalty may be imposed, upon a verdict or plea of guilty in any case involving a misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence shall prescribe a determinate sentence for a specific number of months or years which shall be within the minimum and maximum sentences prescribed by law as the punishment for the crime. The judge imposing the sentence is granted power and authority to suspend or probate all or any part of the entire sentence under such rules and regulations as the judge deems proper, including service of a probated sentence in

the sentencing options system, as provided by Article 9 6 of Chapter 8 3 of Title 42, and including the authority to revoke the suspension or probation when the defendant has violated any of the rules and regulations prescribed by the court, even before the probationary period has begun, subject to the conditions set out in this subsection; provided, however, that such action shall be subject to the provisions of Code Sections 17-10-6.1 and 17-10-6.2.

(B)(i) As used in this subparagraph, the term 'nonviolent offense' means a felony offense of:

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

(II) Smash and grab burglary in violation of Code Section 16-7-2, provided that the damage caused was less than \$5,000.00 total;

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

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

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

(VI) Vandalism to a place of worship in violation of Code Section 16-7-26;

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

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

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

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

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

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

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

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

(XV) Forgery in the third degree in violation of subsection (d) of Code Section 16-9-1;

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

(XVII) Financial transaction card offenses in violation of Code Section 16-9-31, 16-9-32, 16-9-33, 16-9-34, 16-9-35, 16-9-36.1, 16-9-37, or 16-9-39 when the punishment is as set forth in Code Section 16-9-38;

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

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

(XX) Unlawfully manufacturing, delivering, distributing, selling, or possessing with the intent to distribute noncontrolled substances in violation of Code Section 16-13-30.1;

(XXI) Possession of substances containing ephedrine or pseudoephedrine or sales of products containing those ingredients in violation of Code Section 16-13-30.3 when the punishment is as set forth in subsection (b) of Code Section 16-13-30.3; and

(XXII) Violation of Article 3 of Chapter 13 of Title 16 when the punishment is as set forth in subsection (b) of Code Section 16-13-79.

(ii) When a defendant is convicted of a nonviolent offense and has no prior felony conviction, the court shall impose a sentence of probation, not to include a split sentence, unless the court finds by a preponderance of the evidence that confinement in prison is necessary and appropriate for the ends of justice and the protection of society. In considering a probationary sentence, the court shall take into consideration whether the defendant has previously been adjudicated pursuant to Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42 or has completed a program in an accountability court, as such term is defined in Code Section 15-1-20. If the prosecuting attorney objects to a sentence of probation, the court shall attach an order which includes findings of fact and conclusions of law to the final disposition form.

(iii) When a defendant is sentenced under division (ii) of this subparagraph, the court shall include a behavioral incentive date in its sentencing order that does not exceed three years from the date such sentence is imposed. Within 60 days of the expiration of such incentive date, if the defendant has not been arrested for anything other than a nonserious traffic offense as defined in Code Section 35-3-37, has been compliant with the general and special conditions of probation imposed, and has paid all restitution owed, the Department of Community Supervision shall notify the prosecuting attorney and the court of such facts. The Department of Community Supervision shall provide the court with an order to terminate such defendant's

probation which the court shall execute unless the court or the prosecuting attorney requests a hearing on such matter within 30 days of the receipt of such order.

(2) Active probation supervision shall terminate in all cases no later than two years from the commencement of active probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, that in those cases involving the collection of ~~fin~~<sup>es</sup>, restitution, ~~or other funds~~, the period of active probation supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs, and for those cases involving a conviction under Chapter 15 of Title 16, 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. 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."

"(d) In any case involving a misdemeanor or a felony in which the defendant has been punished in whole or in part by a fine, the sentencing judge shall be authorized to allow the defendant to satisfy such fine through community service as defined in Code Section 42-3-50. One hour of community service shall equal the dollar amount of one hour of paid labor at the minimum wage under the federal Fair Labor Standards Act of 1938, ~~as now or hereafter amended~~ in effect on January 1, 2017, unless otherwise specified by the sentencing judge. A defendant shall be required to serve the number of hours in community service which equals the number derived by dividing the amount of the fine by the federal minimum hourly wage or by the amount specified by the sentencing judge. Prior to or subsequent to sentencing, a defendant, or subsequent to sentencing, a community supervision officer, may request that the court ~~that~~ make all or any portion of a fine ~~may~~ be satisfied under this subsection."

## **SECTION 2-2.**

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

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

(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.

(ii) 'Recidivism' means returning to prison or jail within three years of being placed 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 coming under its custody 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. Any risk and needs assessment instrument shall be revalidated by January 1, 2019, and every five years thereafter. 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 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 Properties~~ Judiciary and the Senate ~~State Institutions and Property~~ Judiciary Committee.

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

### SECTION 2-3.

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

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

(A) '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.

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

(2) The board shall adopt rules and regulations governing the management and treatment of probationers and parolees 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 managing probationers and parolees in the community. Any risk and needs assessment instrument shall be revalidated by January 1, 2019, and every five years

thereafter. The board shall require DCS to collect and analyze data and performance outcomes relevant to the level and type of treatment given to a probationer or parolee 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 Properties~~ Judiciary and the Senate ~~State Institutions and Property~~ Judiciary Committee.

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

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

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

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

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

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

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

#### SECTION 2-4.

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

"(c) All institutional inmate files and central office inmate files of the department shall be classified as confidential state secrets and privileged under law, unless declassified in writing by the commissioner; provided, however, these records shall be subject to subpoena by a court of competent jurisdiction of this state and provided, further, that the commissioner shall prepare a summary of the conduct of record of any inmate serving a sentence for a serious violent felony, as such term is defined in Code Section 17-10-6.1, and it shall be subject to disclosure under paragraph (2) of subsection (a) of Code Section 42-9-43."

#### SECTION 2-5.

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

"42-8-27.

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

**SECTION 2-6.**

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

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

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

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

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

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

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

(F) Any other factor the court deems appropriate.

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

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

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

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

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

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

(B) The court shall waive, modify, or convert fines, statutory surcharges, probation supervision fees, and any other moneys assessed by the court or a provider of probation services upon a determination by the court prior to or subsequent to sentencing that a defendant has a significant financial hardship or inability to pay or that there are any other extenuating factors which prohibit payment or collection; provided, however, that

the imposition of sanctions for failure to pay such sums shall be within the discretion of the court through judicial process or hearings.

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

(i) Has a developmental disability;

(ii) Is totally and permanently disabled;

(iii) Is indigent; or

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

#### **SECTION 2-7.**

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

"42-8-37.

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

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

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

(d)(1) DCS shall file a petition to terminate probation for a person convicted of a nonviolent offense as defined in Code Section 17-10-1 if, after serving three years on probation, the person has:

(A) Paid all restitution owed;

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

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

(2) This subsection is intended to be retroactive and applied to any person under the supervision of DCS."

#### **SECTION 2-8.**

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

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

#### **SECTION 2-9.**

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

"(c) Good conduct, achievement of a fifth-grade level or higher on standardized reading tests, and efficient performance of duties by an inmate shall be considered by the board in his or her favor and shall merit consideration of an application for pardon or parole. No inmate shall be placed on parole until and unless the board shall find that there is reasonable probability that, if he or she is so released, he or she will live and conduct

himself or herself as a respectable and law-abiding person and that his or her release will be compatible with his or her own welfare and the welfare of society. Furthermore, no person shall be released on pardon or placed on parole unless and until the board is satisfied that he or she will be suitably employed in self-sustaining employment or that he or she will not become a public charge. However, notwithstanding other provisions of this chapter, the board may, in its discretion, grant pardon or parole to any aged or disabled persons.

(d)(1) Any person who is paroled shall be released on such terms and conditions as the board shall prescribe, and if he or she is serving a split sentence, the board's conditions shall include all of the terms of probation imposed by the sentencing court. The board shall diligently see that no peonage is allowed in the guise of parole relationship or supervision. The parolee shall remain in the legal custody of the board until the expiration of the maximum term specified in his or her sentence, ~~or until he or she is pardoned by the board, or his or her supervision is terminated as provided in Code Section 42-9-52.~~

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

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

**SECTION 2-10.**

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

"42-9-43.

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

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

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

~~(2)(3)~~ The results of such physical and mental examinations as may have been made of the person;

~~(3)(4)~~ The extent to which the person appears to have responded to the efforts made to improve his or her social attitude;

~~(4)(5)~~ The industrial record of the person while confined, the nature of his or her occupations while so confined, and a recommendation as to the kind of work he or she is best fitted to perform and at which he or she is most likely to succeed when and if he or she is released;

~~(5)(6)~~ The educational programs in which the person has participated and the level of education which the person has attained based on standardized reading tests;

~~(6)(7)~~ The written statements or oral testimony, if any, of the district attorney of the circuit in which the person was sentenced expressing views and making any recommendation as to parole, conditional release, a pardon for a serious offense, as such term is defined in Code Section 42-9-42, or commutation of a death sentence;

~~(7)(8)~~ The written, oral, audiotaped, or videotaped testimony of the victim, the victim's family, or a witness having personal knowledge of the victim's personal characteristics, including any information prepared by the victim or any individual offering or preparing information on behalf of the victim, for the purpose of the board's consideration of a parole, conditional release, pardon, or commutation of a death sentence if the victim has provided such information to the board; and

~~(8)(9)~~ If the person is or was required to register pursuant to Code Section 42-1-12, any court order issued releasing the person from registration requirements or residency or employment restrictions.

(b)(1) As used in this subsection, the term:



(A) 'Debilitating terminal illness' means a disease that cannot be cured or adequately treated and that is reasonably expected to result in death within 12 months.

(B) 'Entirely incapacitated' means an offender who:

(i) Requires assistance in order to perform two or more necessary daily life functions or who is completely immobile; and

(ii) Has such limited physical or mental ability, strength, or capacity that he or she poses an extremely low risk of physical threat to others or to the community.

(C) 'Necessary daily life function' means eating, breathing, dressing, grooming, toileting, walking, or bathing.

(2) The board may issue a medical reprieve to an entirely incapacitated person suffering a progressively debilitating terminal illness in accordance with Article IV, Section II, Paragraph II of the Constitution.

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

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

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

(d)(1) Before releasing any person on parole or conditional release, granting a pardon, or commuting a death sentence, the board may have the person appear before it and may personally examine him or her and consider any information it deems relevant or necessary. When objections to relief have been tendered, the board may hold a hearing and consider oral testimony. If the board holds a hearing, it shall provide the district attorney of the circuit in which the person was sentenced 30 days' notice via e-mail of such hearing date and the district attorney or his or her designee may attend such hearing and present evidence to the board and shall also provide the person being considered 30 days' notice of such hearing date and he or she may present evidence to the board. Upon consideration of the reports, files, records, papers, documents information, and oral

testimony submitted, the board shall make its findings and determine whether or not such person shall be granted a pardon, parole, or other relief within the power of the board and determine the terms and conditions thereof, and if such person is serving a split sentence, the board's conditions shall include all of the terms of probation imposed by the sentencing court.

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

(e) If a person in custody is granted a pardon, ~~or a parole, or conditional release,~~ the correctional official having such person in custody, upon notification thereof, shall inform him or her of the terms and conditions thereof and shall, in strict accordance therewith, release the person."

#### SECTION 2-11.

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

"42-9-44.

(a) The board, upon placing a person on parole or conditional release, shall specify in writing the terms and conditions thereof, and if such person is serving a split sentence, the board's conditions shall include all of the terms of probation imposed by the sentencing court. A certified copy of the conditions shall be given to the parolee or conditional releasee. Thereafter, a copy shall be sent to the clerk of the court in which the person was convicted. The board shall adopt general rules concerning the terms and conditions of parole or conditional release and concerning what shall constitute a violation thereof and shall make special rules to govern particular cases. The rules, both general and special, may include, among other things, a requirement that the parolee or conditional releasee shall not leave this state or any definite area in this state without the consent of the board; that the parolee or conditional releasee shall contribute to the support of his or her dependents to the best of the parolee's or conditional releasee's ability; that the parolee or conditional releasee shall make reparation or restitution for his or her crime; that the parolee or conditional releasee shall abandon evil associates and ways; and that the parolee or conditional releasee shall carry out the instructions of his or her community supervision officer, and, in general, so comport himself or herself as the ~~parolee's~~ community

628 supervision officer shall determine. A violation of the terms of parole or conditional  
629 release may render the parolee or conditional releasee liable to arrest and a return to a penal  
630 institution to serve out the term for which the parolee or conditional releasee was  
631 sentenced.

632 (b) Each parolee or conditional releasee who does not have a high school diploma or a  
633 general educational development (GED) diploma shall be required as a condition of parole  
634 or conditional release to obtain a high school diploma or general educational development  
635 (GED) diploma or to pursue a trade at a vocational or technical school. Any such parolee  
636 or conditional releasee who demonstrates to the satisfaction of the board an existing ability  
637 or skill which does in fact actually furnish the parolee or conditional releasee a reliable,  
638 regular, and sufficient income shall not be subject to this ~~provision~~ subsection. Any  
639 parolee or conditional releasee who is determined by the department or the board to be  
640 incapable of completing such requirements shall only be required to attempt to improve his  
641 or her basic educational skills. Failure of any parolee or conditional releasee subject to this  
642 requirement to attend the necessary schools or courses or to make reasonable progress  
643 toward fulfillment of such requirement shall be grounds for revocation of parole or  
644 conditional release. The board shall establish regulations regarding reasonable progress  
645 as required by this subsection. ~~This subsection shall apply to paroles granted on or after~~  
646 ~~July 1, 1995."~~

## 647 **SECTION 2-12.**

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

650 "42-9-46.

651 When the board considers a ~~Notwithstanding any other provisions of law to the contrary,~~  
652 ~~if the board is to consider any~~ case in which an inmate has ~~failed to serve~~ not served the  
653 time required by ~~law~~ Code Section 42-9-45 for automatic initial parole consideration, the  
654 board shall notify in writing, at least ten days prior to such early consideration, the  
655 sentencing judge, the district attorney of the ~~county~~ circuit in which the ~~person~~ inmate was  
656 sentenced, and any victim of ~~crimes against the person~~ a violation of Chapter 5 of Title 16  
657 or, if such victim is deceased, the spouse, children, or parents of the deceased victim if such  
658 person's contact information ~~is provided pursuant to Code Section 17-17-13~~ has been  
659 provided to the board with a current mailing or e-mail address and telephone number. Such  
660 notice shall provide a time frame in which such individuals may file an objection to early  
661 parole consideration. The sentencing judge, district attorney, or victim or, if such victim  
662 is deceased, the spouse, children, or parents of the deceased victim shall be given notice  
663 of a hearing date if a hearing will be held and, in order to express their views and make

664 their recommendation as to whether the inmate should be granted early parole, may appear  
665 at a ~~such~~ hearing ~~held by the board~~ or ~~may~~ make a written statement to the board  
666 ~~expressing their views and making their recommendation as to whether the person should~~  
667 ~~be paroled.~~ If an objection was filed and the board grants early parole, it shall issue a  
668 statement explaining its reasoning for granting such parole and such statement shall be  
669 served on any party who filed an objection."

### 670 SECTION 2-13.

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

674 "42-9-52.

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

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

684 (c) When a parolee or conditional releasee is serving a split sentence for a nonviolent  
685 offense, as such term is defined in Code Section 17-10-1, the board shall review such case  
686 after such parolee or conditional releasee has successfully completed 12 consecutive  
687 months of parole supervision to consider commutation of such sentence. The board may  
688 relieve a ~~person on parole or other conditional release~~ parolee or conditional releasee from  
689 making further reports and may permit ~~the~~ such person to leave the state or county if  
690 satisfied that this is for the parolee's or conditional releasee's best interest and for the best  
691 interest of society. When a parolee or ~~other~~ conditional releasee has, in the opinion of the  
692 board, so conducted himself or herself as to deserve a pardon or a commutation of sentence  
693 or the remission in whole or in part of any fine, forfeiture, or penalty, the board may grant  
694 such relief in cases within its power. The board may take into consideration whether or not  
695 a person is serving a split sentence in its determination of granting any relief."

**SECTION 2-14.**

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

"42-9-53.

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

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

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

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

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

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

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

**SECTION 2-15.**

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

730 "42-9-61.

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

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

741 **SECTION 2-16.**

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

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

746 (b) Issuance of a Program and Treatment Completion Certificate by the ~~Department~~ Board  
747 of Corrections or the Board of Community Supervision or the granting of a pardon from  
748 the State Board of Pardons and Paroles as provided in the Constitution and Code Section  
749 42-9-42 shall create a presumption of due care in hiring, retaining, licensing, leasing to,  
750 admitting to a school or program, or otherwise engaging in activity with the individual to  
751 whom the Program and Treatment Completion Certificate was issued or the pardon was  
752 granted. Such presumption may be rebutted by relevant evidence which extends beyond  
753 the scope of the Program and Treatment Completion Certificate or pardon and which was  
754 known or should have been known by the person against whom negligence is asserted."

755 **PART III**

756 **SECTION 3-1.**

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