

House Bill 1059 (AS PASSED HOUSE AND SENATE)

By: Representatives Keen of the 179th, Ralston of the 7th, Burkhalter of the 50th, Freeman of the 140th, Thomas of the 55th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 16, 17, 35, and 42 of the Official Code of Georgia Annotated, relating
2 respectively to crimes and offenses, criminal procedure, law enforcement officers and
3 agencies, and penal institutions, so as to change provisions relating to sexual offenders; to
4 change punishment provisions, registration requirements, and residency requirements for
5 sexual offenders; to provide for legislative findings; to change punishment provisions related
6 to aggravated assault with the intent to rape; to change punishment provisions related to
7 kidnapping; to change punishment provisions related to false imprisonment; to change
8 punishment provisions related to rape; to change certain provisions relating to sodomy and
9 aggravated sodomy; to provide for lesser punishment for certain sexual offenses committed
10 by persons of certain ages; to change certain provisions relating to statutory rape; to change
11 certain provisions relating to child molestation and aggravated child molestation; to change
12 certain provisions relating to enticing a child for indecent purposes; to change certain
13 provisions relating to persons convicted of sexual assault against persons in custody; to
14 change certain provisions relating to incest; to change certain provisions relating to sexual
15 battery; to change certain provisions relating to aggravated sexual battery; to change certain
16 restrictions on granting an appeal bond; to allow for judicial discretion for mandatory
17 minimum sentences under certain circumstances; to create a new crime involving
18 withholding information concerning a sexual offender and provide for penalties; to change
19 a provision relating to the fixing of a sentence by a judge; to change certain provisions
20 relating to punishment of serious violent offenders and increase the mandatory minimum
21 term of imprisonment for certain offenses; to require persons convicted of certain sexual
22 crimes to receive a mandatory split sentence including a minimum sentence of imprisonment;
23 to add a provision relating to statutory aggravating circumstances for the imposition of the
24 death penalty; to require the Georgia Crime Information Center to collect certain data; to
25 provide that notice of conviction and release of a person who is required to register as a
26 sexual offender shall be made for offenders sentenced directly to probation or who are newly
27 established residents in a county; to permit publication of such notice in the legal organ of

1 the county in which such person resides based on information available; to reorganize and
2 change provisions related to the State Sexual Offender Registry; to change and add certain
3 definitions; to change provisions relating to registration requirements for sexual offenders;
4 to provide for an annual registration fee; to provide that sexual offenders register prior to
5 release from prison; to require each sheriff to maintain and update a list of all sexual
6 offenders residing in the county; to provide for duties and responsibilities for sheriffs, the
7 Department of Corrections, the Georgia Bureau of Investigation, and sexual offenders; to
8 require registered sexual offenders to verify required registration information with the sheriff
9 whenever any changes occur to certain information and verify information at least annually
10 within 72 hours of the sexual offender's birthday; to increase the duration for registration
11 requirement; to provide for a procedure for certain sexual offenders to petition a court to be
12 relieved of registration requirements; to require the sheriff to notify certain people and
13 entities of the presence of sexual offenders in their community; to increase punishment for
14 failure to comply with registration requirements; to change the appointing authority for the
15 Sexual Offender Registration Review Board; to require the Sexual Offender Registration
16 Review Board to classify sexual offenders; to require sexually dangerous predators to wear
17 an electronic monitoring system for the balance of his or her life and to pay for such system;
18 to require sexually dangerous predators to update required registration information twice
19 yearly; to provide for employment restrictions for sexual offenders; to prohibit sexual
20 offenders from loitering in certain locations; to correct cross-references; to change provisions
21 relating to sexual offenders conditions for parole; to change provisions relating to chemical
22 treatment and counseling as a condition of parole for child molesters; to amend Title 5 of the
23 Official Code of Georgia Annotated, relating to appeal and error, so as to allow the state and
24 the defendant the right of direct appeal under certain circumstances; to provide for other
25 related matters; to provide for an effective date and applicability; to repeal conflicting laws;
26 and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 The General Assembly finds and declares that recidivist sexual offenders, sexual offenders
30 who use physical violence, and sexual offenders who prey on children are sexual predators
31 who present an extreme threat to the public safety. Many sexual offenders are extremely
32 likely to use physical violence and to repeat their offenses; and some sexual offenders
33 commit many offenses, have many more victims than are ever reported, and are prosecuted
34 for only a fraction of their crimes. The General Assembly finds that this makes the cost of

1 sexual offender victimization to society at large, while incalculable, clearly exorbitant. The
 2 General Assembly further finds that the high level of threat that a sexual predator presents
 3 to the public safety, and the long-term effects suffered by victims of sex offenses, provide
 4 the state with sufficient justification to implement a strategy that includes:

- 5 (1) Incarcerating sexual offenders and maintaining adequate facilities to ensure that
 6 decisions to release sexual predators into the community are not made on the basis of
 7 inadequate space;
- 8 (2) Requiring the registration of sexual offenders, with a requirement that complete and
 9 accurate information be maintained and accessible for use by law enforcement
 10 authorities, communities, and the public;
- 11 (3) Providing for community and public notification concerning the presence of sexual
 12 offenders;
- 13 (4) Collecting data relative to sexual offenses and sexual offenders;
- 14 (5) Requiring sexual predators who are released into the community to wear an electronic
 15 monitoring system for the rest of their natural life and to pay for such system; and
- 16 (6) Prohibiting sexual predators from working with children, either for compensation or
 17 as a volunteer.

18 The General Assembly further finds that the state has a compelling interest in protecting the
 19 public from sexual offenders and in protecting children from predatory sexual activity, and
 20 there is sufficient justification for requiring sexual offenders to register and for requiring
 21 community and public notification of the presence of sexual offenders. The General
 22 Assembly declares that in order to protect the public, it is necessary that the sexual offenders
 23 be registered and that members of the community and the public be notified of a sexual
 24 offender's presence. The designation of a person as a sexual offender is neither a sentence
 25 nor a punishment but simply a regulatory mechanism and status resulting from the conviction
 26 of certain crimes. Likewise, the designation of a person as a sexual predator is neither a
 27 sentence nor a punishment but simply a regulatory mechanism and status resulting from
 28 findings by the Sexual Offender Registration Review Board and a court if requested by a
 29 sexual offender.

30 **SECTION 2.**

31 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
 32 by striking subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed
 33 directly appealable, and inserting in lieu thereof the following:

- 34 "(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the
 35 following judgments and rulings of the superior courts, the constitutional city courts, and

1 such other courts or tribunals from which appeals are authorized by the Constitution and
2 laws of this state:

3 (1) All final judgments, that is to say, where the case is no longer pending in the court
4 below, except as provided in Code Section 5-6-35;

5 (2) All judgments involving applications for discharge in bail trover and contempt cases;

6 (3) All judgments or orders directing that an accounting be had;

7 (4) All judgments or orders granting or refusing applications for receivers or for
8 interlocutory or final injunctions;

9 (5) All judgments or orders granting or refusing applications for attachment against
10 fraudulent debtors;

11 ~~(5.1)~~(6) Any ruling on a motion which would be dispositive if granted with respect to a
12 defense that the action is barred by Code Section 16-11-184;

13 ~~(6)~~(7) All judgments or orders granting or refusing to grant mandamus or any other
14 extraordinary remedy, except with respect to temporary restraining orders;

15 ~~(7)~~(8) All judgments or orders refusing applications for dissolution of corporations
16 created by the superior courts;

17 ~~(8)~~(9) All judgments or orders sustaining motions to dismiss a caveat to the probate of
18 a will; ~~and~~

19 ~~(9)~~(10) All final judgments of child support; and

20 (11) All judgments or orders entered pursuant to subsection (c) of Code Section
21 17-10-6.2."

22 SECTION 3.

23 Said title is further amended by striking subsection (a) of Code Section 5-7-1, relating to
24 orders, decisions, or judgments appealable by the state, and inserting in lieu thereof the
25 following:

26 "(a) An appeal may be taken by and on behalf of the State of Georgia from the superior
27 courts, state courts, City Court of Atlanta, and juvenile courts and such other courts from
28 which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme
29 Court of Georgia in criminal cases and adjudication of delinquency cases in the following
30 instances:

31 (1) From an order, decision, or judgment setting aside or dismissing any indictment,
32 accusation, or petition alleging that a child has committed a delinquent act or any count
33 thereof;

34 (2) From an order, decision, or judgment arresting judgment of conviction or
35 adjudication of delinquency upon legal grounds;

1 (3) From an order, decision, or judgment sustaining a plea or motion in bar, when the
2 defendant has not been put in jeopardy;

3 (4) From an order, decision, or judgment suppressing or excluding evidence illegally
4 seized or excluding the results of any test for alcohol or drugs in the case of motions
5 made and ruled upon prior to the impaneling of a jury or the defendant being put in
6 jeopardy, whichever occurs first;

7 (5) From an order, decision, or judgment of a court where the court does not have
8 jurisdiction or the order is otherwise void under the Constitution or laws of this state;

9 (6) From an order, decision, or judgment of a superior court transferring a case to the
10 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28;

11 (7) From an order, decision, or judgment of a superior court granting a motion for new
12 trial or an extraordinary motion for new trial; or

13 (8) From an order, decision, or judgment denying a motion by the state to recuse or
14 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or

15 (9) From an order, decision, or judgment issued pursuant to subsection (c) of Code
16 Section 17-10-6.2."

17 SECTION 4.

18 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
19 amended by striking Code Section 16-5-21, relating to aggravated assault, and inserting in
20 lieu thereof the following:

21 "16-5-21.

22 (a) A person commits the offense of aggravated assault when he or she assaults:

23 (1) With intent to murder, to rape, or to rob;

24 (2) With a deadly weapon or with any object, device, or instrument which, when used
25 offensively against a person, is likely to or actually does result in serious bodily injury;
26 or

27 (3) A person or persons without legal justification by discharging a firearm from within
28 a motor vehicle toward a person or persons.

29 (b) Except as provided in subsections (c) through (i) (k) of this Code section, a person
30 convicted of the offense of aggravated assault shall be punished by imprisonment for not
31 less than one nor more than 20 years.

32 (c) A person who knowingly commits the offense of aggravated assault upon a peace
33 officer while the peace officer is engaged in, or on account of the performance of, his or
34 her official duties shall, upon conviction thereof, be punished by imprisonment for not less
35 than five nor more than 20 years.

1 (d) Any person who commits the offense of aggravated assault against a person who is 65
2 years of age or older shall, upon conviction thereof, be punished by imprisonment for not
3 less than three nor more than 20 years.

4 (e)(1) As used in this subsection, the term 'correctional officer' shall include
5 superintendents, wardens, deputy wardens, guards, and correctional officers of state,
6 county, and municipal penal institutions who are certified by the Georgia Peace Officer
7 Standards and Training Council pursuant to Chapter 8 of Title 35 and employees of the
8 Department of Juvenile Justice who are known to be employees of the department or who
9 have given reasonable identification of their employment. The term 'correctional officer'
10 shall also include county jail officers who are certified or registered by the Georgia Peace
11 Officer Standards and Training Council pursuant to Chapter 8 of Title 35.

12 (2) A person who knowingly commits the offense of aggravated assault upon a
13 correctional officer while the correctional officer is engaged in, or on account of the
14 performance of, his or her official duties shall, upon conviction thereof, be punished by
15 imprisonment for not less than five nor more than 20 years.

16 (f) Any person who commits the offense of aggravated assault in a public transit vehicle
17 or station shall, upon conviction thereof, be punished by imprisonment for not less than
18 three nor more than 20 years. For purposes of this Code section, 'public transit vehicle' has
19 the same meaning as in subsection (c) of Code Section 16-5-20.

20 ~~(f.1)~~(g) Any person who commits the offense of aggravated assault upon a person in the
21 course of violating Code Section 16-8-2 where the property that was the subject of the theft
22 was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto,
23 including without limitation any such trailer, semitrailer, container, or other associated
24 equipment, or the cargo being transported therein or thereon, shall upon conviction be
25 punished by imprisonment for not less than five years nor more than 20 years, a fine not
26 less than \$50,000.00 nor more than \$200,000.00, or both such fine and imprisonment. For
27 purposes of this subsection, the term 'vehicle' includes without limitation any railcar.

28 ~~(g)~~(h) A person convicted of an offense described in paragraph (3) of subsection (a) of this
29 Code section shall be punished by imprisonment for not less than five nor more than 20
30 years.

31 ~~(h)~~(i) Any person who commits the offense of aggravated assault involving the use of a
32 firearm upon a student or teacher or other school personnel within a school safety zone as
33 defined in paragraph (1) of subsection (a) of Code Section 16-11-127.1 shall, upon
34 conviction thereof, be punished by imprisonment for not less than five nor more than 20
35 years.

1 (i)(j) If the offense of aggravated assault is committed between past or present spouses,
 2 persons who are parents of the same child, parents and children, stepparents and
 3 stepchildren, foster parents and foster children, or other persons excluding siblings living
 4 or formerly living in the same household, the defendant shall be punished by imprisonment
 5 for not less than three nor more than 20 years.

6 (k) Any person who commits the offense of aggravated assault with intent to rape against
 7 a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor
 8 more than 50 years. Any person convicted under this subsection shall, in addition, be
 9 subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

10 SECTION 5.

11 Said title is further amended by striking Code Section 16-5-40, relating to kidnapping, and
 12 inserting in lieu thereof the following:

13 "16-5-40.

14 (a) A person commits the offense of kidnapping when he abducts or steals away any
 15 person without lawful authority or warrant and holds such person against his will.

16 (b) A person convicted of the offense of kidnapping shall be punished by:

17 (1) Imprisonment ~~imprisonment~~ for not less than ten nor more than 20 years, ~~provided~~
 18 ~~that a person convicted of the offense of kidnapping for ransom shall be punished by~~ if
 19 the kidnapping involved a victim who was 14 years of age or older;

20 (2) Imprisonment for life or by a split sentence that is a term of imprisonment for not less
 21 than 25 years and not exceeding life imprisonment, followed by probation for life, if the
 22 kidnapping involved a victim who is less than 14 years of age;

23 (3) Life ~~life~~ imprisonment or by death and ~~provided, further, that, if the person kidnapped~~
 24 ~~shall have received bodily injury, the person convicted shall be punished by~~ if the
 25 kidnapping was for ransom; or

26 (4) Life ~~life~~ imprisonment or by death if the person kidnapped received bodily injury.

27 (c) Any person convicted under this Code section shall, in addition, be subject to the
 28 sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

29 SECTION 6.

30 Said title is further amended by striking Code Section 16-5-41, relating to false
 31 imprisonment, and inserting in lieu thereof the following:

32 "16-5-41.

33 (a) A person commits the offense of false imprisonment when, in violation of the personal
 34 liberty of another, he arrests, confines, or detains such person without legal authority.

1 (b) A person convicted of the offense of false imprisonment shall be punished by
2 imprisonment for not less than one nor more than ten years.

3 (c) Any person convicted under this Code section wherein the victim is not the child of the
4 defendant and the victim is less than 14 years of age shall, in addition, be subject to the
5 sentencing and punishment provisions of Code Section 17-10-6.2."

6 SECTION 7.

7 Said title is further amended by striking subsection (a) of Code Section 16-5-110, relating
8 to the publication of notices and information required for registered sex offenders,
9 assessment for costs, and certain immunity, and inserting in lieu thereof the following:

10 "(a) When a person who has been convicted of a crime for which that person is required
11 to register under Code Section 42-1-12 makes his or her first report to a sheriff after such
12 person's release from confinement, placement on probation, or upon establishing residency
13 in the county, the sheriff shall cause to be published a notice of conviction and release from
14 confinement of such person. ~~Such notice shall be published in the manner of legal notices~~
15 ~~in the legal organ of the county in which person resides.~~ Such notice shall be one column
16 wide by two inches long and shall contain the photograph taken by the arresting law
17 enforcement agency at the time of arrest; ~~or a subsequent photograph~~; the name and address
18 of the convicted person, ~~and~~; if available, the date, time, place of arrest; ~~and~~ the disposition
19 of the case. The notice and shall be published at or near the time the person registers with
20 the sheriff at least once, and, at the sheriff's option, may be published more than once, in
21 the legal organ of the appropriate county ~~in the second week following such person's~~
22 ~~release from confinement or as soon thereafter as publication may be made.~~ The notice
23 shall include the address of the Georgia Bureau of Investigation website for additional
24 information regarding the sexual offender registry."

25 SECTION 8.

26 Said title is further amended by striking Code Section 16-6-1, relating to rape, and inserting
27 in lieu thereof the following:

28 "16-6-1.

29 (a) A person commits the offense of rape when he has carnal knowledge of:

- 30 (1) A female forcibly and against her will; or
31 (2) A female who is less than ten years of age.

32 Carnal knowledge in rape occurs when there is any penetration of the female sex organ by
33 the male sex organ. The fact that the person allegedly raped is the wife of the defendant
34 shall not be a defense to a charge of rape.

1 (b) A person convicted of the offense of rape shall be punished by death, by imprisonment
 2 for life without parole, by imprisonment for life, or by a split sentence that is a term of
 3 imprisonment for not less than ~~ten nor more than 20~~ 25 years and not exceeding life
 4 imprisonment, followed by probation for life. Any person convicted under this Code
 5 section shall, in addition, be subject to the sentencing and punishment provisions of Code
 6 Sections 17-10-6.1 and 17-10-7.

7 (c) When evidence relating to an allegation of rape is collected in the course of a medical
 8 examination of the person who is the victim of the alleged crime, the law enforcement
 9 agency investigating the alleged crime shall be responsible for the cost of the medical
 10 examination to the extent that expense is incurred for the limited purpose of collecting
 11 evidence."

12 SECTION 9.

13 Said title is further amended by striking Code Section 16-6-2, relating to sodomy and
 14 aggravated sodomy, and inserting in lieu thereof the following:

15 "16-6-2.

16 (a)(1) A person commits the offense of sodomy when he or she performs or submits to
 17 any sexual act involving the sex organs of one person and the mouth or anus of another.

18 (2) A person commits the offense of aggravated sodomy when he or she commits
 19 sodomy with force and against the will of the other person or when he or she commits
 20 sodomy with a person who is less than ten years of age. The fact that the person allegedly
 21 sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated
 22 sodomy.

23 (b)(1) Except as provided in subsection (d) of this Code section, a ~~A~~ person convicted
 24 of the offense of sodomy shall be punished by imprisonment for not less than one nor
 25 more than 20 years and shall be subject to the sentencing and punishment provisions of
 26 Code Section 17-10-6.2.

27 (2) A person convicted of the offense of aggravated sodomy shall be punished by
 28 imprisonment for life or by a split sentence that is a term of imprisonment for not less
 29 than ~~ten nor more than 30~~ 25 years and not exceeding life imprisonment, followed by
 30 probation for life. Any person convicted under this Code section of the offense of
 31 aggravated sodomy shall, in addition, be subject to the sentencing and punishment
 32 provisions of Code Sections 17-10-6.1 and 17-10-7.

33 (c) When evidence relating to an allegation of aggravated sodomy is collected in the course
 34 of a medical examination of the person who is the victim of the alleged crime, the law
 35 enforcement agency investigating the alleged crime shall be financially responsible for the

1 cost of the medical examination to the extent that expense is incurred for the limited
2 purpose of collecting evidence.

3 (d) If the victim is at least 13 but less than 16 years of age and the person convicted of
4 sodomy is 18 years of age or younger and is no more than four years older than the victim,
5 such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and
6 punishment provisions of Code Section 17-10-6.2."

7 SECTION 10.

8 Said title is further amended by striking Code Section 16-6-3, relating to statutory rape, and
9 inserting in lieu thereof the following:

10 "16-6-3.

11 (a) A person commits the offense of statutory rape when he or she engages in sexual
12 intercourse with any person under the age of 16 years and not his or her spouse, provided
13 that no conviction shall be had for this offense on the unsupported testimony of the victim.

14 (b) Except as provided in subsection (c) of this Code section, a ~~A~~ person convicted of the
15 offense of statutory rape shall be punished by imprisonment for not less than one nor more
16 than 20 years; provided, however, that if the person so convicted is 21 years of age or older,
17 such person shall be punished by imprisonment for not less than ten nor more than 20
18 years; ~~provided, further, that if.~~ Any person convicted under this subsection of the offense
19 of statutory rape shall, in addition, be subject to the sentencing and punishment provisions
20 of Code Section 17-10-6.2.

21 (c) If the victim is ~~14 or 15~~ at least 14 but less than 16 years of age and the person so
22 convicted of statutory rape is 18 years of age or younger and is no more than ~~three~~ four
23 years older than the victim, such person shall be guilty of a misdemeanor."

24 SECTION 11.

25 Said title is further amended by striking Code Section 16-6-4, relating to child molestation
26 and aggravated child molestation, and inserting in lieu thereof the following:

27 "16-6-4.

28 (a) A person commits the offense of child molestation when he or she does any immoral
29 or indecent act to or in the presence of or with any child under the age of 16 years with the
30 intent to arouse or satisfy the sexual desires of either the child or the person.

31 (b)(1) Except as provided in paragraph (2) of this subsection, a ~~A~~ person convicted of
32 a first offense of child molestation shall be punished by imprisonment for not less than
33 five nor more than 20 years and shall be subject to the sentencing and punishment
34 provisions of Code Sections 17-10-6.2 and 17-10-7. ~~Upon such first conviction of the~~

1 offense of child molestation, the judge may probate the sentence, and such probation may
 2 be upon the special condition that the defendant undergo a mandatory period of
 3 counseling administered by a licensed psychiatrist or a licensed psychologist. However,
 4 if the judge finds that such probation should not be imposed, he or she shall sentence the
 5 defendant to imprisonment; provided, further, that upon a defendant's Upon a defendant
 6 being incarcerated on a conviction for such a first offense, the Department of Corrections
 7 shall provide counseling to such defendant. Except as provided in paragraph (2) of this
 8 subsection, upon ~~Upon~~ a second or subsequent conviction of an offense of child
 9 molestation, the defendant shall be punished by imprisonment for not less than ten years
 10 nor more than 30 years or by imprisonment for life and shall be subject to the sentencing
 11 and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however,
 12 that prior to trial, a defendant shall be given notice, in writing, that the state intends to
 13 seek a punishment of life imprisonment. ~~Adjudication of guilt or imposition of sentence~~
 14 ~~for a conviction of a second or subsequent offense of child molestation, including a plea~~
 15 ~~of nolo contendere, shall not be suspended, probated, deferred, or withheld.~~

16 (2) If the victim is at least 14 but less than 16 years of age and the person convicted of
 17 child molestation is 18 years of age or younger and is no more than four years older than
 18 the victim, such person shall be guilty of a misdemeanor and shall not be subject to the
 19 sentencing and punishment provisions of Code Section 17-10-6.2.

20 (c) A person commits the offense of aggravated child molestation when such person
 21 commits an offense of child molestation which act physically injures the child or involves
 22 an act of sodomy.

23 (d)(1) Except as provided in paragraph (2) of this subsection, a ~~A~~ person convicted of
 24 the offense of aggravated child molestation shall be punished by imprisonment for life
 25 or by a split sentence that is a term of imprisonment for not less than ten nor more than
 26 30 25 years and not exceeding life imprisonment, followed by probation for life. ~~Any~~
 27 ~~person convicted under this Code section of the offense of aggravated child molestation~~
 28 ~~shall, in addition, and shall~~ be subject to the sentencing and punishment provisions of
 29 Code Sections 17-10-6.1 and 17-10-7.

30 (2) A person convicted of the offense of aggravated child molestation when:

31 (A) The victim is at least 13 but less than 16 years of age;

32 (B) The person convicted of aggravated child molestation is 18 years of age or younger
 33 and is no more than four years older than the victim; and

34 (C) The basis of the charge of aggravated child molestation involves an act of sodomy
 35 shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment
 36 provisions of Code Section 17-10-6.1.

1 ~~(2) The court sentencing a person who has been convicted of a first offense of~~
 2 ~~aggravated child molestation when the victim is 16 years of age or younger at the time~~
 3 ~~of the offense is authorized to require, before sentencing, that the defendant undergo a~~
 4 ~~psychiatric evaluation to ascertain whether or not medroxyprogesterone acetate chemical~~
 5 ~~treatment or its equivalent would be effective in changing the defendant's behavior. If~~
 6 ~~it is determined by a qualified mental health professional that such treatment would be~~
 7 ~~effective, the court may require, as a condition of probation and upon provisions arranged~~
 8 ~~between the court and the defendant, the defendant to undergo medroxyprogesterone~~
 9 ~~acetate treatment or its chemical equivalent which must be coupled with treatment by a~~
 10 ~~qualified mental health professional. In case of a person sentenced to probation who is~~
 11 ~~required to undergo such treatment or its chemical equivalent and is in the custody of a~~
 12 ~~law enforcement agency or confined in a jail at the time of sentencing, when he or she~~
 13 ~~becomes eligible for probation, such person shall begin medroxyprogesterone acetate~~
 14 ~~treatment and counseling prior to his or her release from custody or confinement. A~~
 15 ~~person sentenced to probation who is required to undergo such treatment and who is not~~
 16 ~~in the custody of a law enforcement agency or confined in a jail at the time of sentencing~~
 17 ~~shall be taken into custody or confined until treatment can begin. Additional treatment~~
 18 ~~may continue after such defendant's release from custody or confinement until the~~
 19 ~~defendant demonstrates to the court that such treatment is no longer necessary. No such~~
 20 ~~treatment shall be administered until such person has been fully informed of the side~~
 21 ~~effects of hormonal chemical treatment and has consented to the treatment in writing.~~
 22 ~~The administration of the treatment shall conform to the procedures and conditions set~~
 23 ~~out in subsection (c) of Code Section 42-9-44.2.~~

24 ~~(3) Any physician or qualified mental health professional who acts in good faith in~~
 25 ~~compliance with the provisions of this Code section and subsection (c) of Code Section~~
 26 ~~42-9-44.2 in the administration of treatment or provision of counseling provided for in~~
 27 ~~this Code section shall be immune from civil or criminal liability for his or her actions~~
 28 ~~in connection with such treatment or counseling."~~

29 SECTION 12.

30 Said title is further amended by striking Code Section 16-6-5, relating to enticing a child for
 31 indecent purposes, and inserting in lieu thereof the following:

32 "16-6-5.

33 (a) A person commits the offense of enticing a child for indecent purposes when he or she
 34 solicits, entices, or takes any child under the age of 16 years to any place whatsoever for
 35 the purpose of child molestation or indecent acts.

1 (b) Except as provided in subsection (c) of this Code section, a ~~A~~ person convicted of the
 2 offense of enticing a child for indecent purposes shall be punished by imprisonment for not
 3 less than ~~one~~ ten nor more than ~~20~~ 30 years. Any person convicted under this Code section
 4 of the offense of enticing a child for indecent purposes shall, in addition, be subject to the
 5 sentencing and punishment provisions of Code Section 17-10-6.2. ~~Upon a first conviction~~
 6 ~~of the offense of enticing a child for indecent purposes, the judge may probate the sentence;~~
 7 ~~and such probation may be upon the special condition that the defendant undergo a~~
 8 ~~mandatory period of counseling administered by a licensed psychiatrist or a licensed~~
 9 ~~psychologist. However, if the judge finds that such probation should not be imposed, he~~
 10 ~~shall sentence the defendant to imprisonment. Upon a second or third conviction of such~~
 11 ~~offense, the defendant shall be punished by imprisonment for not less than five years. For~~
 12 ~~a fourth or subsequent conviction of the offense of enticing a child for indecent purposes,~~
 13 ~~the defendant shall be punished by imprisonment for 20 years. Adjudication of guilt or~~
 14 ~~imposition of sentence for a conviction of a third, fourth, or subsequent offense of enticing~~
 15 ~~a child for indecent purposes, including a plea of nolo contendere, shall not be suspended,~~
 16 ~~probated, deferred, or withheld.~~

17 (c) If the victim is at least 14 but less than 16 years of age and the person convicted of
 18 enticing a child for indecent purposes is 18 years of age or younger and is no more than
 19 four years older than the victim, such person shall be guilty of a misdemeanor and shall not
 20 be subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

21 SECTION 13.

22 Said title is further amended by striking Code Section 16-6-5.1, relating to sexual assault
 23 against persons in custody, and inserting in lieu thereof the following:

24 "16-6-5.1.

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

26 (1) 'Actor' means a person accused of sexual assault.

27 (2) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of a
 28 person.

29 (3) 'Psychotherapy' means the professional treatment or counseling of a mental or
 30 emotional illness, symptom, or condition.

31 (4) 'Sexual contact' means any contact between for the purpose of sexual gratification of
 32 the actor and a person not married to the actor involving ~~with~~ the intimate parts of a
 33 ~~person not married to the actor~~ either person for the purpose of sexual gratification of the
 34 actor.

1 (b) A probation or parole officer or other custodian or supervisor of another person
 2 referred to in this Code section commits sexual assault when he or she engages in sexual
 3 contact with another person who is a probationer or parolee under the supervision of said
 4 probation or parole officer or who is in the custody of law or who is enrolled in a school
 5 or who is detained in or is a patient in a hospital or other institution and such actor has
 6 supervisory or disciplinary authority over such other person. A person convicted of sexual
 7 assault shall be punished by imprisonment for not less than ~~one~~ ten nor more than ~~three~~ 30
 8 years; provided, however, that any person convicted of the offense of sexual assault under
 9 this subsection of a child under the age of 14 years shall be punished by imprisonment for
 10 not less than 25 nor more than 50 years. Any person convicted under this subsection of the
 11 offense of sexual assault shall, in addition, be subject to the sentencing and punishment
 12 provisions of Code Section 17-10-6.2.

13 (c)(1) A person commits sexual assault when such person has supervisory or disciplinary
 14 authority over another person and such person engages in sexual contact with that other
 15 person who is:

16 (A) In the custody of law; or

17 (B) Detained in or is a patient in a hospital or other institution.

18 (2) A person commits sexual assault when, as an actual or purported practitioner of
 19 psychotherapy, he or she engages in sexual contact with another person who the actor
 20 knew or should have known is the subject of the actor's actual or purported treatment or
 21 counseling, or, if the treatment or counseling relationship was used to facilitate sexual
 22 contact between the actor and said person.

23 (3) Consent of the victim shall not be a defense to a prosecution under this subsection.

24 (4) A person convicted of sexual assault under this subsection shall be punished by
 25 imprisonment for not less than ~~one~~ ten nor more than ~~three~~ 30 years; provided, however,
 26 that any person convicted of the offense of sexual assault under this subsection of a child
 27 under the age of 14 years shall be punished by imprisonment for not less than 25 nor more
 28 than 50 years. Any person convicted under this subsection of the offense of sexual
 29 assault shall, in addition, be subject to the sentencing and punishment provisions of Code
 30 Section 17-10-6.2.

31 (d) A person who is an employee, agent, or volunteer at any facility licensed or required
 32 to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code
 33 Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant
 34 to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, commits
 35 sexual assault when such person engages in sexual contact with another person who has
 36 been admitted to or is receiving services from such facility, person, or entity. A person

1 convicted of sexual assault pursuant to this subsection shall be punished by imprisonment
 2 for not less than ~~one~~ ten nor more than ~~five~~ 30 years, or a fine of not more than \$5,000.00,
 3 or both. Any violation of this subsection shall constitute a separate offense. Any person
 4 convicted under this subsection of the offense of sexual assault shall, in addition, be subject
 5 to the sentencing and punishment provisions of Code Section 17-10-6.2."

6 SECTION 14.

7 Said title is further amended by striking Code Section 16-6-22, relating to incest, and
 8 inserting in lieu thereof the following:

9 "16-6-22.

10 (a) A person commits the offense of incest when ~~he~~ the person engages in sexual
 11 intercourse with a person to whom he or she knows he or she is related either by blood or
 12 by marriage as follows:

- 13 (1) Father and daughter or stepdaughter;
- 14 (2) Mother and son or stepson;
- 15 (3) Brother and sister of the whole blood or of the half blood;
- 16 (4) Grandparent and grandchild;
- 17 (5) Aunt and nephew; or
- 18 (6) Uncle and niece.

19 (b) A person convicted of the offense of incest shall be punished by imprisonment for not
 20 less than ~~one~~ ten nor more than ~~20~~ 30 years; provided, however, that any person convicted
 21 of the offense of incest under this subsection with a child under the age of 14 years shall
 22 be punished by imprisonment for not less than 25 nor more than 50 years. Any person
 23 convicted under this Code section of the offense of incest shall, in addition, be subject to
 24 the sentencing and punishment provisions of Code Section 17-10-6.2."

25 SECTION 15.

26 Said title is further amended by striking Code Section 16-6-22.1, relating to sexual battery,
 27 and inserting in lieu thereof the following:

28 "16-6-22.1.

29 (a) For the purposes of this Code section, the term 'intimate parts' means the primary
 30 genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a
 31 female.

32 (b) A person commits the offense of sexual battery when he or she intentionally makes
 33 physical contact with the intimate parts of the body of another person without the consent
 34 of that person.

1 (c) Except as otherwise provided in this Code section, a person convicted of the offense
2 of sexual battery shall be punished as for a misdemeanor of a high and aggravated nature.

3 (d) A person convicted of the offense of sexual battery against any child under the age of
4 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by
5 imprisonment for not less than one nor more than five years.

6 (e) Upon a second or subsequent conviction under subsection (b) of this Code section, a
7 person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not
8 less than one nor more than five years and, in addition, shall be subject to the sentencing
9 and punishment provisions of Code Section 17-10-6.2."

10 SECTION 16.

11 Said title is further amended by striking Code Section 16-6-22.2, relating to aggravated
12 sexual battery, and inserting in lieu thereof the following:

13 "16-6-22.2.

14 (a) For the purposes of this Code section, the term 'foreign object' means any article or
15 instrument other than the sexual organ of a person.

16 (b) A person commits the offense of aggravated sexual battery when he or she intentionally
17 penetrates with a foreign object the sexual organ or anus of another person without the
18 consent of that person.

19 (c) A person convicted of the offense of aggravated sexual battery shall be punished by
20 imprisonment for life or by a split sentence that is a term of imprisonment for not less than
21 ~~ten nor more than 20~~ 25 years and not exceeding life imprisonment, followed by probation
22 for life. ~~Any person convicted under this Code section shall, in addition, and shall be~~
23 subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and
24 17-10-7."

25 SECTION 17.

26 Said title is further amended by inserting a new Code Section 16-6-25 to read as follows:

27 "16-6-25.

28 (a) As used in this Code section, the term 'law enforcement unit' means any agency, organ,
29 or department of this state, or a subdivision or municipality thereof, whose primary
30 functions include the enforcement of criminal or traffic laws; the preservation of public
31 order; the protection of life and property; or the prevention, detection, or investigation of
32 crime. Such term shall also include the Department of Corrections and the State Board of
33 Pardons and Paroles.

1 (b) Any person who knows or reasonably believes that a sexual offender, as defined in
 2 Code Section 42-1-12, is not complying, or has not complied, with the requirements of
 3 Code Section 42-1-12 and who, with the intent to assist such sexual offender in eluding a
 4 law enforcement unit that is seeking such sexual offender to question him or her about, or
 5 to arrest him or her for, his or her noncompliance with the requirements of Code Section
 6 42-1-12:

7 (1) Harbors, attempts to harbor, or assists another person in harboring or attempting
 8 harbor such sexual offender;

9 (2) Conceals, attempts to conceal, or assists another person in concealing or attempting
 10 to conceal such sexual offender; or

11 (3) Provides information to the law enforcement unit regarding such sexual offender
 12 which the person knows to be false information

13 commits a felony and shall be punished by imprisonment for not less than five nor more
 14 than 20 years."

15 SECTION 18.

16 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 17 amended by striking subsection (g) of Code Section 17-6-1, relating to where offenses are
 18 bailable and appeal bonds, and inserting in lieu thereof the following:

19 "(g) No appeal bond shall be granted to any person who has been convicted of murder,
 20 rape, aggravated sodomy, armed robbery, aggravated child molestation, child molestation,
 21 kidnapping, trafficking in cocaine or marijuana, aggravated stalking, or aircraft hijacking
 22 and who has been sentenced to serve a period of incarceration of ~~seven~~ five years or more.
 23 The granting of an appeal bond to a person who has been convicted of any other felony
 24 offense or of any misdemeanor offense involving an act of family violence as defined in
 25 Code Section 19-13-1, or of any offense delineated as a high and aggravated misdemeanor
 26 or of any offense set forth in Code Section 40-6-391, shall be in the discretion of the
 27 convicting court. Appeal bonds shall terminate when the right of appeal terminates, and
 28 such bonds shall not be effective as to any petition or application for writ of certiorari
 29 unless the court in which the petition or application is filed so specifies."

30 SECTION 19.

31 Said title is further amended by striking paragraph (1) of subsection (a) of Code Section
 32 17-10-1, relating to the fixing of a sentence, and inserting in lieu thereof the following:

1 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death
 2 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
 3 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
 4 shall prescribe a determinate sentence for a specific number of months or years which
 5 shall be within the minimum and maximum sentences prescribed by law as the
 6 punishment for the crime. The judge imposing the sentence is granted power and
 7 authority to suspend or probate all or any part of the entire sentence under such rules and
 8 regulations as the judge deems proper, including service of a probated sentence in the
 9 sentencing options system, as provided by Article 9 of Chapter 8 of Title 42, and
 10 including the authority to revoke the suspension or probation when the defendant has
 11 violated any of the rules and regulations prescribed by the court, even before the
 12 probationary period has begun, subject to the conditions set out in this subsection;
 13 provided, however, that such action shall be subject to the provisions of Code ~~Section~~
 14 Sections 17-10-6.1 and 17-10-6.2."

15 **SECTION 20.**

16 Said title is further amended by striking Code Section 17-10-6.1, relating to punishment for
 17 serious violent offenders, and inserting in lieu thereof the following:

18 "17-10-6.1.

19 (a) As used in this Code section, the term 'serious violent felony' means:

- 20 (1) Murder or felony murder, as defined in Code Section 16-5-1;
 21 (2) Armed robbery, as defined in Code Section 16-8-41;
 22 (3) Kidnapping, as defined in Code Section 16-5-40;
 23 (4) Rape, as defined in Code Section 16-6-1;
 24 (5) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
 25 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
 26 16-6-4;
 27 (6) Aggravated sodomy, as defined in Code Section 16-6-2; or
 28 (7) Aggravated sexual battery, as defined in Code Section 16-6-22.2.

29 (b)(1) Notwithstanding any other provisions of law to the contrary, any person convicted
 30 of a ~~the~~ serious violent felony ~~as defined in paragraphs (2) through (7) of subsection (a)~~
 31 ~~of this Code section~~ of kidnapping involving a victim who is 14 years of age or older or
 32 armed robbery shall be sentenced to a mandatory minimum term of imprisonment of ten
 33 years and no portion of the mandatory minimum sentence imposed shall be suspended,
 34 stayed, probated, deferred, or withheld by the sentencing court and shall not be reduced

1 by any form of pardon, parole, or commutation of sentence by the State Board of Pardons
2 and Paroles.

3 (2) Notwithstanding any other provisions of law to the contrary, the sentence of any
4 person convicted of the serious violent felony of:

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

6 (B) Rape;

7 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
8 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
9 16-6-4;

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

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

12 shall, unless sentenced to life imprisonment, be a split sentence which shall include a
13 mandatory minimum term of imprisonment of 25 years, followed by probation for life.
14 No portion of the mandatory minimum sentence imposed shall be suspended, stayed,
15 probated, deferred, or withheld by the sentencing court and shall not be reduced by any
16 form of pardon, parole, or commutation of sentence by the State Board of Pardons and
17 Paroles.

18 (3) No person convicted of a serious violent felony as defined in subsection (a) of this
19 Code section shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of
20 Title 42, relating to probation for first offenders, or any other provision of Georgia law
21 relating to the sentencing of first offenders. The State of Georgia shall have the right to
22 appeal any sentence which is imposed by the superior court which does not conform to
23 the provisions of this subsection in the same manner as is provided for other appeals by
24 the state in accordance with Chapter 7 of Title 5, relating to appeals or certiorari by the
25 state.

26 (c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a first
27 conviction of a serious violent felony in which the defendant has been sentenced to life
28 imprisonment, that person shall not be eligible for any form of parole or early release
29 administered by the State Board of Pardons and Paroles until that person has served a
30 minimum of ~~14~~ 30 years in prison. The minimum term of imprisonment shall not be
31 reduced by any earned time, early release, work release, leave, or other sentence-reducing
32 measures under programs administered by the Department of Corrections.

33 (2) For a first conviction of a serious violent felony in which the defendant has been
34 sentenced to death but the sentence of death has been commuted to life imprisonment,
35 that person shall not be eligible for any form of parole or early release administered by
36 the State Board of Pardons and Paroles until that person has served a minimum of ~~25~~ 30

1 years in prison. The minimum term of imprisonment shall not be reduced by any earned
 2 time, early release, work release, leave, or other sentence-reducing measures under
 3 programs administered by the Department of Corrections.

4 (3) Any sentence imposed for the first conviction of any serious violent felony other than
 5 a sentence of life imprisonment or life without parole or death shall be served in its
 6 entirety as imposed by the sentencing court and shall not be reduced by any form of
 7 parole or early release administered by the State Board of Pardons and Paroles or by any
 8 earned time, early release, work release, leave, or other sentence-reducing measures under
 9 programs administered by the Department of Corrections, the effect of which would be
 10 to reduce the period of incarceration ordered by the sentencing court.

11 (d) For purposes of this Code section, a first conviction of any serious violent felony
 12 means that the person has never been convicted of a serious violent felony under the laws
 13 of this state or of an offense under the laws of any other state or of the United States, which
 14 offense if committed in this state would be a serious violent felony. Conviction of two or
 15 more crimes charged on separate counts of one indictment or accusation, or in two or more
 16 indictments or accusations consolidated for trial, shall be deemed to be only one
 17 conviction."

18 SECTION 21.

19 Said title is further amended by adding a new Code section to follow Code Section 17-10-6.1,
 20 relating to punishment for serious violent offenders, to read as follows:

21 "17-10-6.2.

22 (a) As used in this Code section, the term 'sexual offense' means:

23 (1) Aggravated assault with the intent to rape, as defined in Code Section 16-5-21;

24 (2) False imprisonment, as defined in Code Section 16-5-41, if the victim is not the child
 25 of the defendant and the victim is less than 14 years of age;

26 (3) Sodomy, as defined in Code Section 16-6-2, unless subject to the provisions of
 27 subsection (d) of Code Section 16-6-2;

28 (4) Statutory rape, as defined in Code Section 16-6-3, if the person convicted of the
 29 crime is 21 years of age or older;

30 (5) Child molestation, as defined in subsection (a) of Code Section 16-6-4, unless subject
 31 to the provisions of paragraph (2) of subsection (b) of Code Section 16-6-4;

32 (6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, unless
 33 subject to the provisions of subsection (c) of Code Section 16-6-5;

34 (7) Sexual assault against persons in custody, as defined in Code Section 16-6-5.1;

35 (8) Incest, as defined in Code Section 16-6-22;

1 (9) A second or subsequent conviction for sexual battery, as defined in Code Section
2 16-6-22.1; or

3 (10) Sexual exploitation of children, as defined in Code Section 16-12-100.

4 (b) Except as provided in subsection (c) of this Code section, and notwithstanding any
5 other provisions of law to the contrary, any person convicted of a sexual offense shall be
6 sentenced to a split sentence which shall include the minimum term of imprisonment
7 specified in the Code section applicable to the offense. No portion of the mandatory
8 minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by
9 the sentencing court and such sentence shall include, in addition to the mandatory
10 imprisonment, an additional probated sentence of at least one year. No person convicted
11 of a sexual offense shall be sentenced as a first offender pursuant to Article 3 of Chapter
12 8 of Title 42, relating to probation for first offenders, or any other provision of Georgia law
13 relating to the sentencing of first offenders.

14 (c)(1) In the court's discretion, the court may deviate from the mandatory minimum
15 sentence as set forth in subsection (b) of this Code section, or any portion thereof,
16 provided that:

17 (A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of
18 Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any
19 offense under federal law or the laws of another state or territory of the United States
20 which consists of the same or similar elements of offenses prohibited by Chapter 6 of
21 Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;

22 (B) The defendant did not use a deadly weapon or any object, device, or instrument
23 which when used offensively against a person would be likely to or actually did result
24 in serious bodily injury during the commission of the offense;

25 (C) The court has not found evidence of a relevant similar transaction;

26 (D) The victim did not suffer any intentional physical harm during the commission of
27 the offense;

28 (E) The offense did not involve the transportation of the victim; and

29 (F) The victim was not physically restrained during the commission of the offense.

30 (2) If the court deviates in sentencing pursuant to this subsection, the judge shall issue
31 a written order setting forth the judge's reasons. Any such order shall be appealable by
32 the defendant pursuant to Code Section 5-6-34, or by the State of Georgia pursuant to
33 Code Section 5-7-1.

34 (d) If the court imposes a probated sentence, the defendant shall submit to review by the
35 Sexual Offender Registration Review Board for purposes of risk assessment classification

1 within ten days of being sentenced and shall otherwise comply with Article 2 of Chapter
2 1 of Title 42."

3 **SECTION 22.**

4 Said title is further amended in subsection (b) of Code Section 17-10-30, relating to the
5 procedure for implementation of the death penalty generally, by striking "or" at the end of
6 paragraph (9), by adding "; or" at the end of paragraph (10), and by adding a new paragraph
7 (11) to read as follows:

8 "(11) The offense of murder, rape, or kidnapping was committed by a person previously
9 convicted of rape, aggravated sodomy, aggravated child molestation, or aggravated sexual
10 battery."

11 **SECTION 23.**

12 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
13 agencies, is amended by striking subparagraph (A) of paragraph (4) of Code Section 35-3-30,
14 relating to definitions used for the Georgia Crime Information Center article, and inserting
15 in lieu thereof the following:

16 "(A) 'Criminal history record information' means information collected by criminal
17 justice agencies on individuals consisting of identifiable descriptions and notations of
18 arrests, detentions, indictments, accusations, information, or other formal charges, and
19 any disposition arising therefrom, sentencing, correctional supervision, and release.
20 Such term also includes the age and sex of each victim as provided by criminal justice
21 agencies. The term does not include identification information, such as fingerprint
22 records, to the extent that such information does not indicate involvement of the
23 individual in the criminal justice system."

24 **SECTION 24.**

25 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
26 by designating Code Sections 42-1-1 through 42-1-11 as Article 1 of Chapter 1, striking in
27 their entirety Code Sections 42-1-12 and 42-1-13, and inserting in their place a new Article
28 2 to read as follows:

29 "ARTICLE 2

30 42-1-12.

31 (a) As used in this article, the term:

1 (1) 'Address' means the street or route address of the sexual offender's residence. For
2 purposes of this Code section, the term does not mean a post office box, and homeless
3 does not constitute an address.

4 (2) 'Appropriate official' means:

5 (A) With respect to a sexual offender who is sentenced to probation without any
6 sentence of incarceration in the state prison system or who is sentenced pursuant to
7 Article 3 of Chapter 8 of this title, relating to first offenders, the Division of Probation
8 of the Department of Corrections;

9 (B) With respect to a sexual offender who is sentenced to a period of incarceration in
10 a prison under the jurisdiction of the Department of Corrections and who is
11 subsequently released from prison or placed on probation, the commissioner of
12 corrections or his or her designee;

13 (C) With respect to a sexual offender who is placed on parole, the chairperson of the
14 State Board of Pardons and Paroles or his or her designee; and

15 (D) With respect to a sexual offender who is placed on probation through a private
16 probation agency, the director of the private probation agency or his or her designee.

17 (3) 'Area where minors congregate' shall include all public and private parks and
18 recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums,
19 school bus stops, and public and community swimming pools.

20 (4) 'Assessment criteria' means the tests that the board members use to determine the
21 likelihood that a sexual offender will commit another criminal offense against a victim
22 who is a minor or commit a dangerous sexual offense.

23 (5) 'Board' means the Sexual Offender Registration Review Board.

24 (6) 'Child care facility' means all public and private pre-kindergarten facilities, day-care
25 centers, child care learning centers, preschool facilities, and long-term care facilities for
26 children.

27 (7) 'Church' means a place of public religious worship.

28 (8) 'Conviction' includes a final judgment of conviction entered upon a verdict or finding
29 of guilty of a crime, a plea of guilty, or a plea of nolo contendere. A defendant who is
30 discharged without adjudication of guilt and who is not considered to have a criminal
31 conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall
32 be subject to the registration requirements of this Code section for the period of time prior
33 to the defendant's discharge after completion of his or her sentence or upon the defendant
34 being adjudicated guilty. Unless otherwise required by federal law, a defendant who is
35 discharged without adjudication of guilt and who is not considered to have a criminal
36 conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall

1 not be subject to the registration requirements of this Code section upon the defendant's
2 discharge.

3 (9)(A) 'Criminal offense against a victim who is a minor' with respect to convictions
4 occurring on or before June 30, 2001, means any criminal offense under Title 16 or any
5 offense under federal law or the laws of another state or territory of the United States
6 which consists of:

- 7 (i) Kidnapping of a minor, except by a parent;
- 8 (ii) False imprisonment of a minor, except by a parent;
- 9 (iii) Criminal sexual conduct toward a minor;
- 10 (iv) Solicitation of a minor to engage in sexual conduct;
- 11 (v) Use of a minor in a sexual performance;
- 12 (vi) Solicitation of a minor to practice prostitution; or
- 13 (vii) Any conviction resulting from an underlying sexual offense against a victim
14 who is a minor.

15 (B) 'Criminal offense against a victim who is a minor' with respect to convictions
16 occurring after June 30, 2001, means any criminal offense under Title 16 or any offense
17 under federal law or the laws of another state or territory of the United States which
18 consists of:

- 19 (i) Kidnapping of a minor, except by a parent;
- 20 (ii) False imprisonment of a minor, except by a parent;
- 21 (iii) Criminal sexual conduct toward a minor;
- 22 (iv) Solicitation of a minor to engage in sexual conduct;
- 23 (v) Use of a minor in a sexual performance;
- 24 (vi) Solicitation of a minor to practice prostitution;
- 25 (vii) Use of a minor to engage in any sexually explicit conduct to produce any visual
26 medium depicting such conduct;
- 27 (viii) Creating, publishing, selling, distributing, or possessing any material depicting
28 a minor or a portion of a minor's body engaged in sexually explicit conduct;
- 29 (ix) Transmitting, making, selling, buying, or disseminating by means of a computer
30 any descriptive or identifying information regarding a child for the purpose of
31 offering or soliciting sexual conduct of or with a child or the visual depicting of such
32 conduct;
- 33 (x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors
34 engaged in sexually explicit conduct; or
- 35 (xi) Any conduct which, by its nature, is a sexual offense against a minor.

1 (C) For purposes of subparagraph (a)(9)(B) of this Code section, conduct which is
 2 punished as for a misdemeanor or which is prosecuted in juvenile court shall not be
 3 considered a criminal offense against a victim who is a minor.

4 (10)(A) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
 5 2006, means any criminal offense under Title 16 as specified in this paragraph or any
 6 offense under federal law or the laws of another state or territory of the United States
 7 which consists of the same or similar elements of the following offenses:

- 8 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-2;
- 9 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 10 is less than 14 years of age, except by a parent;
- 11 (iii) False imprisonment in violation of Code Section 16-5-41 which involves a
 12 victim who is less than 14 years of age, except by a parent;
- 13 (iv) Rape in violation of Code Section 16-6-1;
- 14 (v) Sodomy in violation of Code Section 16-6-2;
- 15 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- 16 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 17 of the offense is 21 years of age or older;
- 18 (viii) Child molestation in violation of Code Section 16-6-4;
- 19 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 20 person was convicted of a misdemeanor offense;
- 21 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 22 (xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;
- 23 (xii) Incest in violation of Code Section 16-6-22;
- 24 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
- 25 (xiv) Aggravated sexual battery in violation of Code Section 16-6-23;
- 26 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- 27 (xvi) Electronically furnishing obscene material to minors in violation of Code
 28 Section 16-12-100.1;
- 29 (xvii) Computer pornography and child exploitation prevention in violation of Code
 30 Section 16-12-100.2;
- 31 (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or
- 32 (xix) Any conduct which, by its nature, is a sexual offense against a minor or an
 33 attempt to commit a sexual offense against a minor.

34 (B) For purposes of this paragraph, conduct which is punished as for a misdemeanor
 35 or which is prosecuted in juvenile court shall not be considered a dangerous sexual
 36 offense.

1 (11) 'Institution of higher education' means a private or public community college, state
2 university, state college, or independent postsecondary institution.

3 (12) 'Level I risk assessment classification' means the sexual offender is a low sex
4 offense risk and low recidivism risk for future sexual offenses.

5 (13) 'Level II risk assessment classification' means the sexual offender is an intermediate
6 sex offense risk and intermediate recidivism risk for future sexual offenses and includes
7 all sexual offenders who do not meet the criteria for classification either as a sexually
8 dangerous predator or for Level I risk assessment.

9 (14) 'Minor' means any individual under the age of 18 years and any individual that the
10 sexual offender believed at the time of the offense was under the age of 18 years if such
11 individual was the victim of an offense.

12 (15) 'Public and community swimming pools' includes municipal, school, hotel, motel,
13 or any pool to which access is granted in exchange for payment of a daily fee. The term
14 includes apartment complex pools, country club pools, or subdivision pools which are
15 open only to residents of the subdivision and their guests. This term does not include a
16 private pool or hot tub serving a single-family dwelling and used only by the residents of
17 the dwelling and their guests.

18 (16) 'Required registration information' means:

19 (A) Name; social security number; age; race; sex; date of birth; height; weight; hair
20 color, eye color, fingerprints; and photograph;

21 (B) Address of any permanent residence and address of any current temporary
22 residence, within the state or out of state, and, if applicable in addition to the address,
23 a rural route address and a post office box;

24 (C) If the place of residence is a motor vehicle or trailer, provide the vehicle
25 identification number, the license tag number, and a description, including color
26 scheme, of the motor vehicle or trailer;

27 (D) If the place of residence is a mobile home, provide the mobile home location
28 permit number; the name and address of the owner of the home; a description, including
29 the color scheme of the mobile home; and, if applicable, a description of where the
30 mobile home is located on the property;

31 (E) If the place of residence is a manufactured home, provide the name and address of
32 the owner of the home; a description, including the color scheme of the manufactured
33 home; and, if applicable, a description of where the manufactured home is located on
34 the property;

35 (F) If the place of residence is a vessel, live-aboard vessel, or houseboat, provide the
36 hull identification number; the manufacturer's serial number; the name of the vessel,

1 live-aboard vessel, or houseboat; the registration number; and a description, including
 2 color scheme, of the vessel, live-aboard vessel, or houseboat;

3 (G) Date of employment, place of any employment, and address of employer;

4 (H) Place of vocation and address of the place of vocation;

5 (I) Vehicle make, model, color, and license tag number;

6 (J) If enrolled, employed, or carrying on a vocation at an institution of higher education
 7 in this state, the name, address, and county of each institution, including each campus
 8 attended, and enrollment or employment status; and

9 (K) The name of the crime or crimes for which the sexual offender is registering and
 10 the date released from prison or placed on probation, parole, or supervised release.

11 (17) 'Risk assessment classification' means the notification level into which a sexual
 12 offender is placed based on the board's assessment.

13 (18) 'School' means all public and private kindergarten, elementary, and secondary
 14 schools.

15 (19) 'School bus stop' means a school bus stop as designated by local school boards of
 16 education or by a private school.

17 (20) 'Sexual offender' means any individual:

18 (A) Who has been convicted of a criminal offense against a victim who is a minor or
 19 any dangerous sexual offense; or

20 (B) Who has been convicted under the laws of another state or territory, under the laws
 21 of the United States, under the Uniform Code of Military Justice, or in a tribal court of
 22 a criminal offense against a victim who is a minor or a dangerous sexual offense.

23 (21) 'Sexually dangerous predator' means a sexual offender:

24 (A) Who was designated as a sexually violent predator between July 1, 1996, and June
 25 30, 2006; or

26 (B) Who is determined by the Sexual Offender Registration Review Board to be at risk
 27 of perpetrating any future dangerous sexual offense.

28 (22) 'Vocation' means any full-time, part-time, or volunteer employment with or without
 29 compensation exceeding 14 consecutive days or for an aggregate period of time
 30 exceeding 30 days during any calendar year.

31 (b) Before a sexual offender who is required to register under this Code section is released
 32 from prison or placed on parole, supervised release, or probation, the appropriate official
 33 shall:

34 (1) Inform the sexual offender of the obligation to register, the amount of the registration
 35 fee, and how to maintain registration;

36 (2) Obtain the information necessary for the required registration information;

1 (3) Inform the sexual offender that, if the sexual offender changes any of the required
2 registration information, other than residence address, the sexual offender shall give the
3 new information to the sheriff of the county with whom the sexual offender is registered
4 within 72 hours of the change of information; if the information is the sexual offender's
5 new residence address, the sexual offender shall give the information to the sheriff of the
6 county with whom the sexual offender last registered within 72 hours prior to moving and
7 to the sheriff of the county to which the sexual offender is moving within 72 hours after
8 the change of information;

9 (4) Inform the sexual offender that he or she shall also register in any state where he or
10 she is employed, carries on a vocation, or is a student;

11 (5) Inform the sexual offender that, if he or she changes residence to another state, the
12 sexual offender shall register the new address with the sheriff of the county with whom
13 the sexual offender last registered, and that the sexual offender shall also register with a
14 designated law enforcement agency in the new state within 72 hours after establishing
15 residence in the new state;

16 (6) Obtain fingerprints and a current photograph of the sexual offender;

17 (7) Require the sexual offender to read and sign a form stating that the obligations of the
18 sexual offender have been explained;

19 (8) Obtain and forward any information obtained from the clerk of court pursuant to
20 Code Section 42-5-50 to the sheriff's office of the county in which the sexual offender
21 will reside; and

22 (9) If required by Code Section 42-1-14, place any required electronic monitoring system
23 on the sexually dangerous predator and explain its operation and cost.

24 (c) The Department of Corrections shall:

25 (1) Forward to the Georgia Bureau of Investigation a copy of the form stating that the
26 obligations of the sexual offender have been explained;

27 (2) Forward any required registration information to the Georgia Bureau of Investigation;

28 (3) Forward the sexual offender's fingerprints and photograph to the sheriff's office of
29 the county where the sexual offender is going to reside;

30 (4) Inform the board and the prosecuting attorney for the jurisdiction in which a sexual
31 offender was convicted of the impending release of a sexual offender at least eight
32 months prior to such release so as to facilitate compliance with Code Section 42-1-14;
33 and

34 (5) Keep all records of sexual offenders in a secure facility until official proof of death
35 of a registered sexual offender and thereafter the records shall be destroyed in accordance
36 with Code Sections 15-1-10, 15-6-62, and 15-6-62.1.

1 (d) No sexual offender shall be released from prison or placed on parole, supervised
2 release, or probation until:

3 (1) The appropriate official has provided the Georgia Bureau of Investigation and the
4 sheriff's office in the county where the sexual offender will be residing with the sexual
5 offender's required registration information and risk assessment classification level; and

6 (2) The sexual offender's name has been added to the list of sexual offenders maintained
7 by the Georgia Bureau of Investigation and the sheriff's office as required by this Code
8 section.

9 (e) Registration pursuant to this Code section shall be required by any individual who:

10 (1) Is convicted on or after July 1, 1996, of a criminal offense against a victim who is a
11 minor;

12 (2) Is convicted on or after July 1, 2006, of a dangerous sexual offense;

13 (3) Has previously been convicted of a criminal offense against a minor and may be
14 released from prison or placed on parole, supervised release, or probation on or after July
15 1, 1996;

16 (4) Has previously been convicted of a sexually violent offense and may be released from
17 prison or placed on parole, supervised release, or probation;

18 (5) Is a resident of Georgia who intends to reside in this state and who is convicted under
19 the laws of another state or the United States, under the Uniform Code of Military Justice,
20 or in a tribal court of a sexually violent offense, a criminal offense against a victim who
21 is a minor on or after July 1, 1999, or a dangerous sexual offense on or after July 1, 2006;

22 (6) Is a nonresident sexual offender who changes residence from another state or territory
23 of the United States to Georgia who is required to register as a sexual offender under
24 federal law, military law, tribal law, or the laws of another state or territory, regardless
25 of when the conviction occurred;

26 (7) Is a nonresident sexual offender who enters this state for the purpose of employment
27 or any other reason for a period exceeding 14 consecutive days or for an aggregate period
28 of time exceeding 30 days during any calendar year regardless of whether such sexual
29 offender is required to register under federal law, military law, tribal law, or the laws of
30 another state or territory; or

31 (8) Is a nonresident sexual offender who enters this state for the purpose of attending
32 school as a full-time or part-time student regardless of whether such sexual offender is
33 required to register under federal law, military law, tribal law, or the laws of another state
34 or territory.

35 (f) Any sexual offender required to register under this Code section shall:

- 1 (1) Provide the required registration information to the appropriate official before being
2 released from prison or placed on parole, supervised release, or probation;
- 3 (2) Register with the sheriff of the county in which the sexual offender resides within 72
4 hours after the sexual offender's release from prison or placement on parole, supervised
5 release, probation, or entry into this state;
- 6 (3) Maintain the required registration information with the sheriff of the county in which
7 the sexual offender resides;
- 8 (4) Renew the required registration information with the sheriff of the county in which
9 the sexual offender resides by reporting to the sheriff within 72 hours prior to such
10 offender's birthday each year to be photographed and fingerprinted;
- 11 (5) Update the required registration information with the sheriff of the county in which
12 the sexual offender resides within 72 hours of any change to the required registration
13 information, other than residence address; if the information is the sexual offender's new
14 residence address, the sexual offender shall give the information to the sheriff of the
15 county with whom the sexual offender last registered within 72 hours prior to any change
16 of residence address and to the sheriff of the county to which the sexual offender is
17 moving within 72 hours after establishing the new residence;
- 18 (6) If convicted of a dangerous sexual offense on or after July 1, 2006, pay to the sheriff
19 of the county where the sexual offender resides an annual registration fee of \$250.00
20 upon each anniversary of such registration; and
- 21 (7) Continue to comply with the registration requirements of this Code section for the
22 entire life of the sexual offender, including ensuing periods of incarceration.
- 23 (g)(1) Any sexual offender required to register under this Code section who meets the
24 criteria set forth in paragraph (2) of this Code section may petition the superior court of
25 the jurisdiction in which the sexual offender is registered to be released from the
26 registration requirements of this Code section. The court may issue an order releasing the
27 sexual offender from further registration if the court finds that the sexual offender does
28 not pose a substantial risk of perpetrating any future dangerous sexual offense.
- 29 (2) In order to petition the court pursuant to paragraph (1) of this subsection, the sexual
30 offender shall:
- 31 (A) Have been sentenced pursuant to subsection (c) of Code Section 17-10-6.2; and
32 (B) Have had ten years elapse since his or her release from prison, parole, supervised
33 release, or probation.
- 34 (h)(1) The appropriate official or sheriff shall, within 72 hours after receipt of the
35 required registration information, forward such information to the Georgia Bureau of
36 Investigation. Once the data is entered into the Criminal Justice Information System by

1 the appropriate official or sheriff, the Georgia Crime Information Center shall notify the
 2 sheriff of the sexual offender's county of residence, either permanent or temporary, the
 3 sheriff of the county of employment, and the sheriff of the county where the sexual
 4 offender attends an institution of higher education within 24 hours of entering the data
 5 or any change to the data.

6 (2) The Georgia Bureau of Investigation shall:

7 (A) Transmit all information, including the conviction data and fingerprints, to the
 8 Federal Bureau of Investigation within 24 hours of entering the data;

9 (B) Establish operating policies and procedures concerning record ownership, quality,
 10 verification, modification, and cancellation; and

11 (C) Perform mail out and verification duties as follows:

12 (i) Send each month Criminal Justice Information System network messages to
 13 sheriffs listing sexual offenders due for verification;

14 (ii) Create a photo image file from original entries and provide such entries to sheriffs
 15 to assist in sexual offender identification and verification;

16 (iii) Mail a nonforwardable verification form to the last reported address of the sexual
 17 offender within ten days prior to the sexual offender's birthday;

18 (iv) If the sexual offender changes residence to another state, notify the law
 19 enforcement agency with which the sexual offender shall register in the new state; and

20 (v) Maintain records required under this Code section.

21 (i) The sheriff's office in each county shall:

22 (1) Prepare and maintain a list of all sexual offenders and sexually dangerous predators
 23 residing in each county. Such list shall include the sexual offender's name; age; physical
 24 description; address; crime of conviction, including conviction date and the jurisdiction
 25 of the conviction; photograph; and the risk assessment classification level provided by
 26 the board, and an explanation of how the board classifies sexual offenders and sexually
 27 dangerous predators;

28 (2) Electronically submit and update all information provided by the sexual offender
 29 within two working days to the Georgia Bureau of Investigation in a manner prescribed
 30 by the Georgia Bureau of Investigation;

31 (3) Maintain and post a list of every sexual offender residing in each county:

32 (A) In the sheriff's office;

33 (B) In any county administrative building;

34 (C) In the main administrative building for any municipal corporation;

35 (D) In the office of the clerk of the superior court so that such list is available to the
 36 public; and

- 1 (E) On a website maintained by the sheriff of the county for the posting of general
2 information;
- 3 (4) Update the public notices required by paragraph (3) of this Code section within two
4 working days;
- 5 (5) Inform the public of the presence of sexual offenders in each community;
- 6 (6) Update the list of sexual offenders residing in the county upon receipt of new
7 information affecting the residence address of a sexual offender or upon the registration
8 of a sexual offender moving into the county by virtue of release from prison, relocation
9 from another county, conviction in another state, federal court, military tribunal, or tribal
10 court. Such list, and any additions to such list, shall be delivered, within 72 hours of
11 updating the list of sexual offenders residing in the county, to all schools or institutions
12 of higher education located in the county;
- 13 (7) Within 72 hours of the receipt of changed required registration information, notify
14 the Georgia Bureau of Investigation through the Criminal Justice Information System of
15 each change of information;
- 16 (8) Retain the verification form stating that the sexual offender still resides at the address
17 last reported;
- 18 (9) Enforce the criminal provisions of this Code section. The sheriff may request the
19 assistance of the Georgia Bureau of Investigation to enforce the provisions of this Code
20 section;
- 21 (10) Cooperate and communicate with other sheriffs' offices in this state and in the
22 United States to maintain current data on the location of sexual offenders;
- 23 (11) Determine the appropriate time of day for reporting by sexual offenders, which shall
24 be consistent with the reporting requirements of this Code section;
- 25 (12) If required by Code Section 42-1-14, place any electronic monitoring system on the
26 sexually dangerous predator and explain its operation and cost;
- 27 (13) Provide current information on names and addresses of all registered sexual
28 offenders to campus police with jurisdiction for the campus of an institution of higher
29 education if the campus is within the sheriff's jurisdiction; and
- 30 (14) Collect the annual \$250.00 registration fee from the sexual offender and transmit
31 such fees to the state for deposit into the general fund.
- 32 (j)(1) The sheriff of the county where the sexual offender resides or last registered shall
33 be the primary law enforcement official charged with communicating the whereabouts
34 of the sexual offender and any changes in required registration information to the
35 sheriff's office of the county or counties where the sexual offender is employed,
36 volunteers, attends an institution of higher education, or moves.

1 (2) The sheriff's office may post the list of sexual offenders in any public building in
2 addition to those locations enumerated in subsection (h) of this Code section.

3 (k) The Georgia Crime Information Center shall create the Criminal Justice Information
4 System network transaction screens by which appropriate officials shall enter original data
5 required by this Code section. Screens shall also be created for sheriffs' offices for the
6 entry of record confirmation data; employment; changes of residence, institutions of higher
7 education, or employment; or other pertinent data to assist in sexual offender identification.

8 (l)(1) On at least an annual basis, the Department of Education shall obtain from the
9 Georgia Bureau of Investigation a complete list of the names and addresses of all
10 registered sexual offenders and shall send such list, accompanied by a hold harmless
11 provision, to each school in this state. In addition, the Department of Education shall
12 provide information to each school in this state on accessing and retrieving from the
13 Georgia Bureau of Investigation's website a list of the names and addresses of all
14 registered sexual offenders.

15 (2) On at least an annual basis, the Department of Early Care and Learning shall provide
16 current information to all child care programs regulated pursuant to Code Section
17 20-1A-10 and to all child care learning centers, day-care, group day-care, and family
18 day-care programs regulated pursuant to Code Section 49-5-12 on accessing and
19 retrieving from the Georgia Bureau of Investigation's website a list of the names and
20 addresses of all registered sexual offenders and shall include, on a continuing basis, such
21 information with each application for licensure, commissioning, or registration for early
22 care and education programs.

23 (3) On at least an annual basis, the Department of Human Resources shall provide
24 current information to all long-term care facilities for children on accessing and retrieving
25 from the Georgia Bureau of Investigation's website a list of the names and addresses of
26 all registered sexual offenders.

27 (m) Within ten days of the filing of a defendant's discharge and exoneration of guilt
28 pursuant to Article 3 of Chapter 8 of this title, the clerk of court shall transmit the order of
29 discharge and exoneration to the Georgia Bureau of Investigation and any sheriff
30 maintaining records required under this Code section.

31 (n) Any individual who:

32 (1) Is required to register under this Code section and who fails to comply with the
33 requirements of this Code section;

34 (2) Provides false information; or

35 (3) Fails to respond directly to the sheriff within 72 hours of such individual's birthday

1 shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor
2 more than 30 years; provided, however, that upon the conviction of the second offense
3 under this subsection, the defendant shall be punished by imprisonment for life.

4 (o) The information collected pursuant to this Code section shall be treated as private data
5 except that:

6 (1) Such information may be disclosed to law enforcement agencies for law enforcement
7 purposes;

8 (2) Such information may be disclosed to government agencies conducting confidential
9 background checks; and

10 (3) The Georgia Bureau of Investigation or any sheriff maintaining records required
11 under this Code section shall, in addition to the requirements of this Code section to
12 inform the public of the presence of sexual offenders in each community, release such
13 other relevant information collected under this Code section that is necessary to protect
14 the public concerning sexual offenders required to register under this Code section,
15 except that the identity of a victim of an offense that requires registration under this Code
16 section shall not be released.

17 (p) The Board of Public Safety is authorized to promulgate rules and regulations necessary
18 for the Georgia Bureau of Investigation and the Georgia Crime Information Center to
19 implement and carry out the provisions of this Code section.

20 (q) Law enforcement agencies, employees of law enforcement agencies, and state officials
21 shall be immune from liability for good faith conduct under this article.

22 42-1-13.

23 (a) The Sexual Offender Registration Review Board shall be composed of three
24 professionals licensed under Title 43 and knowledgeable in the field of the behavior and
25 treatment of sexual offenders; at least one representative from a victims' rights advocacy
26 group or agency; and at least two representatives from law enforcement, each of whom is
27 either employed by a law enforcement agency as a certified peace officer under Title 35 or
28 retired from such employment. The members of the board shall be appointed by the
29 commissioner of human resources for terms of four years. On and after July 1, 2006,
30 successors to the members of the board shall be appointed by the Governor. Members of
31 the board shall take office on the first day of September immediately following the expired
32 term of that office and shall serve for a term of four years and until the appointment of their
33 respective successors. No member shall serve on the board more than two consecutive
34 terms. Vacancies occurring on the board, other than those caused by expiration of a term
35 of office, shall be filled in the same manner as the original appointment to the position

1 vacated for the remainder of the unexpired term and until a successor is appointed.
2 Members shall be entitled to an expense allowance and travel cost reimbursement the same
3 as members of certain other boards and commissions as provided in Code Section 45-7-21.

4 (b) The board shall be attached to the Department of Human Resources for administrative
5 purposes and, provided there is adequate funding, shall:

6 (1) Exercise its quasi-judicial, rule-making, or policy-making functions independently
7 of the department and without approval or control of the department;

8 (2) Prepare its budget, if any, and submit its budgetary requests, if any, through the
9 department; and

10 (3) Hire its own personnel if authorized by the Constitution of this state or by statute or
11 if the General Assembly provides or authorizes the expenditure of funds therefor.

12 (c) Members of the board shall be immune from liability for good faith conduct under this
13 article.

14 42-1-14.

15 (a) The board shall determine the likelihood that a sexual offender will engage in another
16 crime against a victim who is a minor or a dangerous sexual offense. The board shall make
17 such determination for any sexual offender convicted on or after July 1, 2006, of a criminal
18 act against a minor or a dangerous sexual offense and for any sexual offender incarcerated
19 on July 1, 2006, but convicted prior to July 1, 2006, of a criminal act against a minor. Such
20 determination shall not be required to be made by the board until January 1, 2007;
21 provided, however, that such persons shall be subject to this Code section. A sexual
22 offender shall be placed into Level I risk assessment classification, Level II risk assessment
23 classification, or sexually dangerous predator classification based upon the board's
24 assessment criteria and information obtained and reviewed by the board. The sexual
25 offender may provide the board with information including, but not limited to,
26 psychological evaluations, sexual history polygraph information, treatment history,
27 personal, social, educational, and work history, and may agree to submit to a psychosexual
28 evaluation or sexual history polygraph conducted by the board. If the sexual offender has
29 undergone treatment through the Department of Corrections, such treatment records shall
30 also be submitted to the board for evaluation. The prosecuting attorney shall provide the
31 board with any information available to assist the board in rendering an opinion, including,
32 but not limited to, criminal history and records related to previous criminal history. On and
33 after July 1, 2006, the clerk of court shall send a copy of the sexual offender's conviction
34 to the board and notify the board that a sexual offender's evaluation will need to be

1 performed. The board shall render its recommendation for risk assessment classification
2 within:

3 (1) Sixty days of receipt of a request for an evaluation if the sexual offender is being
4 sentenced pursuant to subsection (c) of Code Section 17-10-6.2;

5 (2) Six months prior to the sexual offender's proposed release from confinement if the
6 offender is incarcerated; and

7 (3) Forty-five days of receipt of the required registration information if the sexual
8 offender has entered this state from another state and registered as a sexual offender.

9 The board shall send a copy of its risk assessment classification to the Department of
10 Corrections, sexual offender, and sentencing court, if applicable.

11 (b)(1) If the sexual offender has been sentenced pursuant to subsection (c) of Code
12 Section 17-10-6.2, after receiving a recommendation from the board that he or she be
13 classified as a sexually dangerous predator, the sexual offender may request that the
14 sentencing court set a date to conduct a hearing affording the sexual offender the
15 opportunity to present testimony or evidence relevant to the recommended classification.
16 After the hearing and within 60 days of receiving the report, the court shall issue a ruling
17 as to whether or not the sexual offender shall be classified as a sexually dangerous
18 predator. If the court determines the sexual offender to be a sexually dangerous predator,
19 such fact shall be communicated in writing to the appropriate official, the Georgia Bureau
20 of Investigation, and the sheriff of the county where the sexual offender resides.

21 (2) If the sexual offender received a sentence of imprisonment and was sentenced for a
22 dangerous sexual offense on or after July 1, 2006, or if the sexual offender is incarcerated
23 on July 1, 2006, for a crime against a victim who is a minor, after receiving a
24 recommendation from the board that he or she be classified as a sexually dangerous
25 predator, the sexual offender may request that the sentencing court set a date to conduct
26 a hearing affording the sexual offender the opportunity to present testimony or evidence
27 relevant to the recommended classification. After the hearing and within 60 days of
28 receiving the report, the court shall issue a ruling as to whether or not the sexual offender
29 shall be classified as a sexually dangerous predator. If the court determines the sexual
30 offender to be a sexually dangerous predator, such fact shall be communicated in writing
31 to the appropriate official, the Georgia Bureau of Investigation, and the sheriff of the
32 county where the sexual offender resides.

33 (c) Any sexual offender who changes residence from another state or territory of the
34 United States to this state and who is not designated as a sexually dangerous predator,
35 sexual predator, or a sexually violent predator shall have his or her required registration
36 information forwarded by the sheriff of his or her county of registration to the board for the

1 purpose of risk assessment classification. After receiving a recommendation from the
2 board that he or she be classified as a sexually dangerous predator, the sexual offender may,
3 within 30 days after the issuance of such classification, request a hearing before an
4 administrative law judge. Such hearing shall be conducted in accordance with Chapter 13
5 of Title 50, the 'Georgia Administrative Procedure Act.' The decision of the administrative
6 law judge shall constitute the final decision of the board subject to the right of judicial
7 review in accordance with Chapter 13 of Title 50. If the final determination is that the
8 sexual offender is classified as a sexually dangerous predator, such fact shall be
9 communicated in writing to the appropriate official, the Georgia Bureau of Investigation,
10 and the sheriff of the county where the sexual offender resides.

11 (d) Any individual who was classified as a sexually violent predator prior to July 1, 2006,
12 shall be classified as a sexually dangerous predator on and after July 1, 2006.

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

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

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

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

24 Such electronic monitoring system shall be worn by a sexually dangerous predator for the
25 remainder of his or her natural life. The sexually dangerous predator shall pay the cost of
26 such system to the Department of Corrections if the sexually dangerous predator is on
27 probation; to the Board of Pardons and Paroles if the sexually dangerous predator is on
28 parole; and to the sheriff after the sexually dangerous predator completes his or her term
29 of probation and parole or if the sexually dangerous predator has moved to this state from
30 another state, territory, or country. The electronic monitoring system shall be placed upon
31 the sexually dangerous predator prior to his or her release from confinement. If the sexual
32 offender is not in custody, within 72 hours of the decision classifying the sexual offender
33 as a sexually dangerous predator by the court in accordance with subsection (b) of this
34 Code section or a final decision pursuant to subsection (c) of this Code section, whichever
35 applies to the sexual offender's situation, the sexually dangerous predator shall report to

1 the sheriff of the county of his or her residence for purposes of having the electronic
2 monitoring system placed on the sexually dangerous predator.

3 (f) In addition to the requirements of registration for all sexual offenders, a sexually
4 dangerous predator shall report to the sheriff of the county where such predator resides six
5 months following his or her birth month and update or verify his or her required
6 registration information.

7 42-1-15.

8 (a) No individual required to register pursuant to Code Section 42-1-12 shall reside or
9 loiter within 1,000 feet of any child care facility, church, school, or area where minors
10 congregate. Such distance shall be determined by measuring from the outer boundary of
11 the property on which the individual resides to the outer boundary of the property of the
12 child care facility, church, school, or area where minors congregate at their closest points.

13 (b)(1) No individual who is required to register under Code Section 42-1-12 shall be
14 employed by any child care facility, school, or church or by any business or entity that is
15 located within 1,000 feet of a child care facility, a school, or a church.

16 (2) No individual who is a sexually dangerous predator shall be employed by any
17 business or entity that is located within 1,000 feet of an area where minors congregate.

18 (c) Notwithstanding any ordinance or resolution adopted pursuant to Code Section 16-6-24
19 or subsection (d) of Code Section 16-11-24, it shall be unlawful for any individual required
20 to register pursuant to Code Section 42-1-12 to loiter, as prohibited by Code Section
21 16-11-36, at any child care facility, school, or area where minors congregate.

22 (d) Any sexual offender who knowingly violates the provisions of this Code section shall
23 be guilty of a felony and shall be punished by imprisonment for not less than ten nor more
24 than 30 years.

25 (e) Nothing in this Code section shall create, either directly or indirectly, any civil cause
26 of action against or result in criminal prosecution of any person, firm, corporation,
27 partnership, trust, or association other than an individual required to be registered under
28 Code Section 42-1-12."

29 SECTION 25.

30 Said title is further amended by striking subsection (b) of Code Section 42-8-35, relating to
31 terms and conditions of probation, and inserting in lieu thereof the following:

32 "(b) In determining the terms and conditions of probation for a probationer who has been
33 convicted of a criminal offense against a victim who is a minor or dangerous sexual offense

1 as ~~that phrase is~~ those terms are defined in ~~subparagraph (a)(4)(B)~~ of Code Section
2 42-1-12, the court may provide that the probationer shall be:

3 (1) Prohibited from entering or remaining present at a victim's school, place of
4 employment, place of residence, or other specified place at times when a victim is present
5 or from ~~entering or remaining present~~ loitering in areas where minors congregate, child
6 care facilities, churches, or schools as those terms are defined in ~~subsection (a)~~ of Code
7 Section ~~42-1-13~~ 42-1-12;

8 (2) Required to wear a device capable of tracking the location of the probationer by
9 means including electronic surveillance or global positioning systems. ~~The~~ Unless the
10 ~~probationer is indigent, the~~ department shall assess and collect fees from the probationer
11 for such monitoring at levels set by regulation by the department; and

12 (3) Prohibited from seeking election to a ~~Local Board of Education~~ local board of
13 education."

14 SECTION 26.

15 Said title is further amended by striking Code Section 42-8-60, relating to probation prior to
16 adjudication of guilt, and inserting in lieu thereof the following:

17 "42-8-60.

18 (a) Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication
19 of guilt, in the case of a defendant who has not been previously convicted of a felony, the
20 court may, without entering a judgment of guilt and with the consent of the defendant:

21 (1) Defer further proceeding and place the defendant on probation as provided by law;

22 or

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

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

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

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

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

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

2 (3) Sexual exploitation of a minor as defined in Code Section 16-12-100;

3 (4) Electronically furnishing obscene material to a minor as defined in Code Section
4 16-12-100.1; or

5 (5) Computer pornography and child exploitation, as defined in Code Section
6 16-12-100.2."

7 **SECTION 27.**

8 Said title is further amended by striking subsections (b) and (c) of Code Section 42-9-39,
9 relating to restrictions on relief for person serving a second life sentence, and inserting new
10 subsections (b) and (c) to read as follows:

11 "(b) Except as otherwise provided in subsection (b) of Code Section 17-10-7, when a
12 person is convicted of murder and sentenced to life imprisonment and such person has
13 previously been incarcerated under a life sentence, such person shall serve at least ~~25~~ 30
14 years in the penitentiary before being granted a pardon and before becoming eligible for
15 parole.

16 (c) When a person receives consecutive life sentences as the result of offenses occurring
17 in the same series of acts and any one of the life sentences is imposed for the crime of
18 murder, such person shall serve consecutive ~~ten-year~~ 30 year periods for each such
19 sentence, up to a maximum of ~~30~~ 60 years, before being eligible for parole consideration."

20 **SECTION 28.**

21 Said title is further amended by striking in its entirety Code Section 42-9-44.1, relating to
22 conditions of parole for sexual offenders, and inserting in lieu thereof the following:

23 "42-9-44.1.

24 ~~(a) As used in this Code section, the term 'sexual offense' means a violation of Code~~
25 ~~Section 16-6-1, 16-6-2, 16-6-5.1, 16-6-22, or 16-6-22.2 when the victim was under 18 years~~
26 ~~of age at the time of the commission of the offense or a violation of Code Section 16-6-3,~~
27 ~~16-6-4, or 16-6-5 when the victim was under 14 years of age at the time of the commission~~
28 ~~of the offense.~~

29 ~~(b)(1) The board shall adopt rules providing that with respect to any person who has been~~
30 ~~convicted of a sexual offense, as a condition of parole, the offender shall be ordered to~~
31 ~~give notice of his or her name and address, the crime for which he or she was convicted,~~
32 ~~and the date of parole to:~~

33 ~~(A) The superintendent of the public school district where the offender will reside; and~~

34 ~~(B) The sheriff of the county wherein the offender will reside.~~

1 ~~(2) The offender shall provide the notice and information required in paragraph (1) of~~
 2 ~~this subsection within ten days of the release on parole or within ten days of setting up~~
 3 ~~residency in the locale where the offender plans to have his or her domicile.~~

4 ~~(c) Any sex offender who has been paroled and who moves his or her legal residence from~~
 5 ~~one county within this state to another county within this state shall be required to provide~~
 6 ~~the information and notice required in subsection (b) of this Code section with respect to~~
 7 ~~his or her new residence within ten days after moving during the period of his or her parole.~~

8 ~~(d) Any person who fails to comply with the requirements of this Code section or who~~
 9 ~~provides false information shall, in the case of a person on parole, be in violation of such~~
 10 ~~person's conditions of parole and shall be guilty of a misdemeanor.~~

11 ~~(e) It shall be the duty of the sheriff of each county within this state to maintain a register~~
 12 ~~of the names and addresses of all offenders providing information to the sheriff under this~~
 13 ~~Code section. Such register shall be open to public inspection.~~

14 ~~(f) The requirement that a sex offender provide notice and information pursuant to~~
 15 ~~subsections (b) and (c) of this Code section shall terminate upon the offender's satisfactory~~
 16 ~~completion of his or her terms of parole. Reserved.~~

17 SECTION 29.

18 Said title is further amended by striking in its entirety Code Section 42-9-44.2, relating to
 19 chemical treatment and counseling as a condition of parole for child molesters, and inserting
 20 in lieu thereof the following:

21 "42-9-44.2.

22 ~~(a) The Board of Pardons and Paroles may in the exercise of its discretion in considering~~
 23 ~~the grant of parole to a person who has been convicted of a second or subsequent offense~~
 24 ~~of child molestation of a child who was 16 years of age or younger at the time of the~~
 25 ~~offense or who has been convicted of a first offense of aggravated child molestation of a~~
 26 ~~child who was 16 years of age or younger at the time of the offense require, as a condition~~
 27 ~~of parole, that such person undergo medroxyprogesterone acetate treatment or its chemical~~
 28 ~~equivalent. While undergoing such treatment, such person must participate in and pay for~~
 29 ~~counseling currently available from a private or public provider of outpatient mental health~~
 30 ~~services. No such treatment shall be administered until such person has consented thereto~~
 31 ~~in writing.~~

32 ~~(b) A person who is required to undergo medroxyprogesterone acetate treatment or its~~
 33 ~~chemical equivalent and counseling as a condition of parole shall begin such treatment~~
 34 ~~prior to his or her release from confinement in the state correctional institution or other~~

1 ~~institution, but additional treatment may continue after such defendant's release on parole~~
 2 ~~until the defendant demonstrates to the board that such treatment is no longer necessary.~~

3 ~~(c) The provision of treatment required as a condition of parole shall be administered by~~
 4 ~~the State Board of Pardons and Paroles through licensed medical personnel employed by~~
 5 ~~the defendant and approved by the board. Any physician or qualified mental health~~
 6 ~~professional who acts in good faith in compliance with the provisions of this Code section~~
 7 ~~in the administration of treatment or provision of counseling provided for in this Code~~
 8 ~~section shall be immune from civil or criminal liability for his or her actions in connection~~
 9 ~~with such treatment. The Department of Corrections shall permit access by such licensed~~
 10 ~~medical personnel for such purpose to any person required to begin the treatment and~~
 11 ~~counseling while confined in a facility of the department. The medical personnel utilized~~
 12 ~~or approved by the board shall be required to inform the person about the effect of~~
 13 ~~hormonal chemical treatment and any side effects that may result from it. A person subject~~
 14 ~~to treatment under this Code section shall acknowledge in writing the receipt of this~~
 15 ~~information. Reserved.~~

16 **SECTION 30.**

17 (a) This Act shall become effective July 1, 2006.

18 (b) Any person required to register pursuant to the provisions of Code Section 42-1-12,
 19 relating to the state sexual offender registry, and any person required not to reside within
 20 areas where minors congregate, as prohibited by Code Section 42-1-13, shall not be relieved
 21 of the obligation to comply with the provisions of said Code sections by the repeal and
 22 reenactment of said Code sections.

23 (c) The provisions of this Act shall not affect or abate the status as a crime of any such act
 24 or omission which occurred prior to the effective date of the Act repealing, repealing and
 25 reenacting, or amending such law, nor shall the prosecution of such crime be abated as a
 26 result of such repeal, repeal and reenactment, or amendment.

27 **SECTION 31.**

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