

House Bill 64

By: Representative Powell of the 29<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions,  
 2 so as to create the Division of Probation/Parole Community Based Supervision; to provide for  
 3 the responsibilities of the division with respect to supervision of probationers and parolees;  
 4 to transfer responsibility of certain functions of probation and parole supervision to the  
 5 division; to provide for the selection, service, and powers and duties of the director and  
 6 employees of the division; to provide for rules and regulations and forms; to provide for  
 7 administration; to authorize appropriation of funds; to provide for transfer of prior  
 8 appropriations; to provide for transfer of personnel, equipment, and facilities; to amend  
 9 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to  
 10 correct cross-references; to amend Title 17 of the Official Code of Georgia Annotated,  
 11 relating to criminal procedure, so as to change provisions relating to imposition and service  
 12 of split sentences; to provide for sentencing orders and their terms and effect; to provide that  
 13 where a person is sentenced to a term of imprisonment followed by a period of probation and  
 14 the person is paroled or released prior to service of the full period of imprisonment, the  
 15 person shall be subject to an increased period of probation and probation supervision but shall  
 16 not be subject to supervision by the State Board of Pardons and Paroles; to make  
 17 corresponding changes with respect to the jurisdiction and authority of the State Board of  
 18 Pardons and Paroles; to amend Titles 19, 40, and 45 of the Official Code of Georgia  
 19 Annotated, relating to domestic relations, motor vehicles and traffic, and public officers and  
 20 employees, respectively, so as to provide for certain changes in the administrative organization  
 21 of the Department of Corrections and the State Board of Pardons and Paroles and to provide  
 22 for conforming amendments; to provide for related matters; to provide for an effective date  
 23 and applicability; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:



1 (b) The director shall receive an annual salary to be set by the Governor which shall be his  
2 or her total compensation for services as director. The director shall be reimbursed for all  
3 actual and necessary expenses incurred by him or her in carrying out his or her official  
4 duties.

5 (c) The duties of the division shall be performed by that division and not by any other agency  
6 of state government, and the division shall not perform the duties of any other agency of state  
7 government. The position of director of the division shall be a separate and distinct position  
8 from any other position in state government. The duties of the director shall be performed  
9 by the director and not by any other officer of state government, and the director shall not  
10 perform the duties of any other officer of state government.

11 42-14-4.

12 (a) The director shall establish units within the division as he or she deems proper for its  
13 administration and shall designate persons to be assistant directors of each unit and to  
14 exercise authority as he or she may delegate to them in writing.

15 (b) The director shall have the authority to employ as many persons as he or she deems  
16 necessary for the administration of the division and for the discharge of the duties of his or  
17 her office. The director shall issue all necessary directions, instructions, orders, and rules  
18 applicable to employees of the division. The director shall have authority, as the director  
19 deems proper, to employ, assign, compensate, and discharge employees of the division  
20 within the limitations of the division's appropriation and the restrictions set forth by law.

21 (c) All employees of the division shall be compensated upon a fixed salary basis, and no  
22 person shall be compensated for services to the division on a commission or contingent fee  
23 basis.

24 (d) Neither the director nor any officer or employee of the division shall be given or receive  
25 any fee, compensation, loan, gift, or other thing of value in addition to the compensation and  
26 expense allowance provided by law for any service or pretended service either rendered or  
27 to be rendered as director or as an officer or employee of the division.

28 42-14-5.

29 (a) The director shall have the power to make and publish reasonable rules and regulations  
30 not inconsistent with this title or other laws or with the Constitution of this state or of the  
31 United States for the administration of this chapter or any law which it is his or her duty to  
32 administer.

33 (b) The director may prescribe forms as he or she deems necessary for the administration  
34 and enforcement of this chapter and Chapters 8 and 9 of this title or any law which it is his  
35 or her duty to administer.

1 (c) The following rules and regulations shall remain of full force and effect as rules and  
 2 regulations of the division until amended, repealed, or superseded by rules or regulations  
 3 adopted by the director of the division:

4 (1) All rules and regulations previously adopted by the Advisory Council for Probation  
 5 which relate to functions transferred under this chapter from the state-wide probation  
 6 system to the division;

7 (2) All rules and regulations previously adopted by corrections which relate to functions  
 8 transferred under this chapter from corrections to the division; and

9 (3) All rules and regulations previously adopted by the board which relate to functions  
 10 transferred under this chapter from the board to the division.

11 42-14-6.

12 (a) Appropriations to corrections and the board for functions transferred to the division  
 13 pursuant to this chapter may be transferred to the division as provided for in Code  
 14 Section 45-12-90. Personnel, equipment, and facilities previously employed by corrections  
 15 and the board for transferred functions shall likewise be transferred to the division. Any  
 16 disagreement as to any of the transfers shall be resolved by the Governor.

17 (b) The enactment of this chapter and the Act by which it is enacted shall not affect or abate  
 18 the status of a probation revocation or parole revocation which occurred prior to July 1,  
 19 2007."

## 20 SECTION 2.

21 Said title is further amended by revising Code Section 42-1-10, relating to preliminary urine  
 22 screen drug tests, as follows:

23 "42-1-10.

24 (a) Any probation/parole supervisor, probation officer, ~~parole officer~~, or other official or  
 25 employee of the Department of Corrections or the Division of Probation/Parole Community  
 26 Based Supervision who supervises any person covered under the provisions of paragraphs (1)  
 27 through (7) of this subsection shall be exempt from the provisions of Chapter 22 of Title 31  
 28 for the limited purposes of administering a preliminary urine screen drug test to any person  
 29 who is:

30 (1) Incarcerated;

31 (2) Released as a condition of probation for a felony or misdemeanor;

32 (3) Released as a condition of conditional release;

33 (4) Released as a condition of parole;

34 (5) Released as a condition of provisional release;

35 (6) Released as a condition of pretrial release; or

1 (7) Released as a condition of control release.

2 (b) The Department of Corrections, the Division of Probation/Parole Community Based  
 3 Supervision, and the State Board of Pardons and Paroles shall develop a procedure for the  
 4 performance of preliminary urine screen drug tests in accordance with the manufacturer's  
 5 standards for certification. Probation/parole supervisors, probation officers, ~~parole officers~~,  
 6 or other officials or employees of the Department of Corrections or the Division of  
 7 Probation/Parole Community Based Supervision who are supervisors of any person covered  
 8 under paragraphs (1) through (7) of subsection (a) of this Code section shall be authorized  
 9 to perform preliminary urine screen drug tests in accordance with such procedure. Such  
 10 procedure shall include instructions as to a confirmatory test by a licensed clinical  
 11 laboratory where necessary."

### 12 SECTION 3.

13 Said title is further amended by revising Code Section 42-2-4, relating to the creation of the  
 14 Department of Corrections, as follows:

15 "42-2-4.

16 There is created the Department of Corrections. Within the department shall be the Division  
 17 of Probation/Parole Community Based Supervision."

### 18 SECTION 4.

19 Said title is further amended by revising Code Section 42-8-2, relating to the Advisory Council  
 20 for Probation's duties and responsibilities, as follows:

21 "42-8-2.

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

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

24 (2) 'Corrections' means the Department of Corrections.

25 (3) 'Division' means the Division of Probation/Parole Community Based Supervision.

26 (b) The Advisory Council for Probation shall meet, consult, and advise with the ~~Board of~~  
 27 Corrections board, the division, and the ~~Department of Corrections~~ corrections on questions  
 28 and matters of mutual concern and interest relative to policy, personnel, and budget which  
 29 pertain to probationary activities, powers, duties, and responsibilities of the board, ~~and the~~  
 30 ~~department~~ division, and corrections. The advisory council shall institute such studies and  
 31 surveys and shall make such recommendations to the board, corrections, and ~~department~~ the  
 32 division as the council deems wise and necessary and which, in the opinion of the council,  
 33 will improve the effectiveness and efficiency of probation services rendered throughout the  
 34 state. No change in existing policy of the board, corrections, or the ~~department~~ division  
 35 relative to probation, if the magnitude of the change will result in a significant impact upon

1 state-wide probationary services, or any such new policy, shall be instituted by the board,  
 2 corrections, or ~~department~~ the division without opportunity being afforded to the advisory  
 3 council to advise and consult with the board, corrections, or ~~department~~ the division on the  
 4 proposed changes. However, the recommendations of the advisory council shall be advisory  
 5 only and shall not bind the board, corrections, or ~~department~~ the division. The board,  
 6 corrections, the ~~department~~ division, and the council shall meet periodically throughout each  
 7 year for the purpose of improving the administration, efficiency, and effectiveness of  
 8 probation services."

9 **SECTION 5.**

10 Said title is further amended by revising Code Section 42-8-21, relating to definitions in the  
 11 "State-wide Probation Act," as follows:

12 "42-8-21.

13 As used in this article, the term:

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

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

16 (3) 'Corrections' means the Department of Corrections.

17 (4) 'Division' 'Department' means the ~~Department of Corrections~~ Division of  
 18 Probation/Parole Community Based Supervision.

19 (5) 'Split sentence' means any felony sentence that includes a term of imprisonment  
 20 followed by a term of probation."

21 **SECTION 6.**

22 Said title is further amended by revising Code Section 42-8-22, relating to creation and  
 23 administration of the state-wide probation system, as follows:

24 "42-8-22.

25 There is created a state-wide probation system for felony offenders to be administered by  
 26 the ~~Department of Corrections~~ Division of Probation/Parole Community Based Supervision.

27 The probation system shall not be administered as part of the duties and activities of the State  
 28 Board of Pardons and Paroles; but, with respect to a split sentence imposed on or after July

29 1, 2007, the division shall have jurisdiction over any increased period of probation resulting  
 30 from a release of the defendant by the State Board of Pardons and Paroles as provided for

31 in Code Section 17-10-1.3. Separate files and records shall be kept with relation to the  
 32 system."





1 surety, by virtue of his or her holding the position or performing the duties of  
 2 probation/parole supervisor in the circuit or circuits, and his or her individual signature shall  
 3 not be necessary for such bond to be valid in accordance with all the laws of this state. The  
 4 bond or bonds shall be made payable to ~~the department~~ corrections."

5 **SECTION 11.**

6 Said title is further amended by revising Code Section 42-8-27, relating to the duties of  
 7 probation supervisors, as follows:

8 "42-8-27.

9 The probation/parole supervisor shall supervise and counsel probationers in the judicial  
 10 circuit to which he or she is assigned. Each supervisor shall perform the duties prescribed  
 11 in this chapter and ~~such other~~ duties as are prescribed by the ~~department~~ division and shall  
 12 keep ~~such~~ records and files and make ~~such~~ any reports as are required of him or her."

13 **SECTION 12.**

14 Said title is further amended by revising Code Section 42-8-28, relating to the assignment of  
 15 probation supervisors among the judicial circuits, as follows:

16 "42-8-28.

17 Probation/parole supervisors shall be assigned among the respective judicial circuits based  
 18 generally on the relative number of persons on probation and parole in each circuit."

19 **SECTION 13.**

20 Said title is further amended by revising Code Section 42-8-29, relating to presentence  
 21 investigations, supervision of probationers, and record keeping, as follows:

22 "42-8-29.

23 (a) It shall be the duty of the probation/parole supervisor to investigate all cases referred to  
 24 him or her by the court and to make ~~his~~ findings and report thereon in writing to the court  
 25 with ~~his~~ a recommendation. The superior court may require, before imposition of sentence,  
 26 a presentence investigation and written report in each felony case in which the defendant has  
 27 entered a plea of guilty or nolo contendere or has been convicted.

28 (b) The probation/parole supervisor shall cause to be delivered to each person placed on  
 29 probation under his or her supervision a certified copy of the terms of probation and any  
 30 change or modification thereof and shall cause the person to be instructed regarding the  
 31 same. ~~He~~ The probation/parole supervisor shall keep informed concerning the conduct,  
 32 habits, associates, employment, recreation, and whereabouts of the probationer by visits, by  
 33 requiring reports, or in other ways. ~~He~~ The probation/parole supervisor shall make ~~such~~  
 34 reports in writing or otherwise as the court may require. ~~He~~ The probation/parole supervisor

1 shall use all practicable and proper methods to aid and encourage persons on probation and  
 2 to bring about improvements in their conduct and condition.

3 (c) The probation/parole supervisor ~~He~~ shall keep records on each probationer and parolee  
 4 referred to ~~him~~ the probation/parole supervisor."

#### 5 SECTION 14.

6 Said title is further amended by revising Code Section 42-8-29.1, relating to disposition of a  
 7 probation supervisor's documents upon committing a convicted person to an institution, as  
 8 follows:

9 "42-8-29.1.

10 (a) When a convicted person is committed to an institution under the jurisdiction of ~~the~~  
 11 ~~department~~ corrections, any presentence or post-sentence investigation or psychological  
 12 evaluation compiled by a probation/parole supervisor or other probation official shall be  
 13 forwarded to ~~any~~ the division or any office designated by the commissioner. Accompanying  
 14 this document or evaluation will be the case history form and the criminal history sheets  
 15 from the Federal Bureau of Investigation or the Georgia Crime Information Center, if  
 16 available, unless any ~~such~~ of this information has previously been sent to ~~the department~~  
 17 corrections pursuant to Code Section 42-5-50. A copy of these same documents shall be  
 18 made available for the State Board of Pardons and Paroles. A copy of one or more of these  
 19 documents, based on need, may be forwarded to another institution to which the defendant  
 20 may be committed.

21 (b) The prison or institution receiving these documents shall maintain the confidentiality of  
 22 the documents and the information contained therein and shall not send them or release them  
 23 or reveal them to any other person, institution, or agency without the express consent of the  
 24 ~~probation~~ unit which originated or accumulated the documents."

#### 25 SECTION 15.

26 Said title is further amended by revising Code Section 42-8-30, relating to supervision of  
 27 juvenile offenders by probation supervisors, as follows:

28 "42-8-30.

29 In the counties where no juvenile probation system exists, juvenile offenders, upon direction  
 30 of the court, shall be supervised by probation/parole supervisors. Other than in this respect,  
 31 nothing in this article shall be construed to change or modify any law relative to probation  
 32 as administered by any juvenile court in this state."

#### 33 SECTION 16.

1 Said title is further amended by revising Code Section 42-8-31, relating to collection and  
2 disbursement of funds by probation supervisors, record keeping, and bank accounts, as follows:

3 "42-8-31.

4 No probation/parole supervisor shall collect or disburse any funds whatsoever, except by  
5 written order of the court; and it shall be the duty of the supervisor to transmit a copy of the  
6 order to the ~~department~~ division not later than 15 days after it has been issued by the court.

7 Every supervisor who collects or disburses any funds whatsoever shall faithfully keep the  
8 records of accounts as are required by the ~~department~~ division, which records shall be  
9 subject to inspection by the ~~department~~ division at any time. In every instance where a bank  
10 account is required, it shall be kept in the name of the 'State Probation Office.'

#### 11 SECTION 17.

12 Said title is further amended by revising Code Section 42-8-32, relating to funds which may  
13 be collected by probation supervisors, as follows:

14 "42-8-32.

15 No probation/parole supervisor shall be directed to collect any funds other than funds  
16 directed to be paid as the result of a criminal proceeding."

#### 17 SECTION 18.

18 Said title is further amended by revising Code Section 42-8-33, relating to auditing probation  
19 supervisors' accounts and restrictions on refunding overpayments of fines, restitution, or  
20 moneys owed, as follows:

21 "42-8-33.

22 (a) The ~~department~~ division shall make periodic audits of each probation/parole supervisor  
23 who, by virtue of ~~his~~ the supervisor's duties, has any moneys, fines, court costs, property, or  
24 other funds coming into ~~his~~ the supervisor's control or possession or being disbursed by ~~him~~  
25 the supervisor. The ~~department~~ division shall keep a permanent record of the audit of each  
26 probation/parole supervisor's accounts on file. It shall be the duty of the employee of the  
27 ~~department~~ division conducting the audit to notify the ~~department~~ division in writing of any  
28 discrepancy of an illegal nature that might result in prosecution. The ~~department~~ division  
29 shall have the right to interview and make inquiry of certain selected payors or recipients of  
30 funds, as it may choose, without notifying the probation/parole supervisor, to carry out the  
31 purposes of the audit. The employee who conducts the audit shall be required to give bond  
32 in such amount as may be set by the ~~department~~ division, in the same manner and for the  
33 same purposes as provided under Code Section 42-8-26 for the bonds of probation/parole  
34 supervisors. The bond shall bind the employee and ~~his~~ the surety in the performance of ~~his~~  
35 the employee's duties.

1 (b) Any overpayment of fines, restitutions, or other moneys owed as a condition of  
 2 probation shall not be refunded to the probationer if the amount of ~~such~~ the overpayment is  
 3 less than \$5.00."

#### 4 SECTION 19.

5 Said title is further amended by revising subsections (b), (c), and (d) of Code Section 42-8-34,  
 6 relating to probation hearings, as follows:

7 "(b) Prior to the hearing, the court may refer the case to the probation/parole supervisor of  
 8 the circuit in which the court is located for investigation and recommendation. The court,  
 9 upon such reference, shall direct the supervisor to make an investigation and to report to the  
 10 court, in writing at a specified time, upon the circumstances of the offense and the criminal  
 11 record, social history, and present condition of the defendant, together with the supervisor's  
 12 recommendation; and it shall be the duty of the supervisor to carry out the directive of the  
 13 court.

14 (c) Subject to the provisions of subsection (a) of Code Section 17-10-1 and subsection (f)  
 15 of Code Section 17-10-3, if it appears to the court upon a hearing of the matter that the  
 16 defendant is not likely to engage in a criminal course of conduct and that the ends of justice  
 17 and the welfare of society do not require that the defendant shall presently suffer the penalty  
 18 imposed by law, the court in its discretion shall impose sentence upon the defendant but may  
 19 stay and suspend the execution of the sentence or any portion thereof or may place ~~him~~ the  
 20 defendant on probation under the supervision and control of the probation/parole supervisor  
 21 for the duration of ~~such probation~~ the sentence. The period of probation or suspension shall  
 22 not exceed the maximum sentence of confinement which could be imposed on the defendant.

23 (d)(1) In every case that a court of this state or any other state sentences a defendant to  
 24 probation or any pretrial release or diversion program under the supervision of the  
 25 ~~department~~ division, in addition to any fine or order of restitution imposed by the court,  
 26 there shall be imposed a probation fee as a condition of probation, release, or diversion in  
 27 the amount equivalent to \$23.00 per each month under supervision, and in addition, a  
 28 one-time fee of \$50.00 where such defendant was convicted of any felony. The probation  
 29 fee may be waived or amended after administrative process by the ~~department~~ division and  
 30 approval of the court, or upon determination by the court, as to the undue hardship, inability  
 31 to pay, or any other extenuating factors which prohibit collection of the fee; provided,  
 32 however, that the imposition of sanctions for failure to pay fees shall be within the  
 33 discretion of the court through judicial process or hearings. Probation fees shall be waived  
 34 on probationers incarcerated or detained in a ~~departmental~~ Department of Corrections or  
 35 other confinement facility which prohibits employment for wages. All probation fees  
 36 collected by the ~~department~~ division shall be paid into the general fund of the state

1 treasury, except as provided in subsection (f) of Code Section 17-15-13, relating to sums  
 2 to be paid into the Georgia Crime Victims Emergency Fund. Any fees collected by the  
 3 court under this paragraph shall be remitted not later than the last day of the month after  
 4 such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for  
 5 deposit into the general fund of the state treasury.

6 (2) In addition to any other provision of law, any person convicted of a violation of Code  
 7 Section 40-6-391 or subsection (b) of Code Section 16-13-2 who is sentenced to  
 8 probation or a suspended sentence by a municipal, magistrate, probate, recorder's, mayor's,  
 9 state, or superior court shall also be required by the court to pay a one-time fee of \$25.00.  
 10 The clerk of court, or if there is no clerk the person designated to collect fines, fees, and  
 11 forfeitures for such court, shall collect such fee and remit the same not later than the last  
 12 day of the month after such fee is collected to the Georgia Superior Court Clerks'  
 13 Cooperative Authority for deposit into the general fund of the state treasury."

#### 14 SECTION 20.

15 Said title is further amended by revising subsection (a) of Code Section 42-8-34.2, relating  
 16 to a defendant's delinquent payment of fines, costs, or restitution or reparation and costs of  
 17 garnishment, as follows:

18 "(a) In the event that a defendant is delinquent in the payment of fines, costs, or restitution  
 19 or reparation, as was ordered by the court as a condition of probation, the defendant's  
 20 probation/parole supervisor ~~officer~~ is authorized, but not required, to execute a sworn  
 21 affidavit wherein the amount of arrearage is set out. In addition, the affidavit shall contain  
 22 a succinct statement as to what efforts the ~~department~~ division has made in trying to collect  
 23 the delinquent amount. The affidavit shall then be submitted to the sentencing court for  
 24 approval. Upon signature and approval of the court, said arrearage shall then be collectable  
 25 through issuance of a writ of fieri facias by the clerk of the sentencing court; and the  
 26 ~~department~~ division may enforce such collection through any judicial or other process or  
 27 procedure which may be used by the holder of a writ of execution arising from a civil action."

#### 28 SECTION 21.

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

31 "42-8-35.

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

34 (1) Avoid injurious and vicious habits;

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

- 1 (3) Report to the probation/parole supervisor as directed;
- 2 (4) Permit the supervisor to visit the probationer at the probationer's home or elsewhere;
- 3 (5) Work faithfully at suitable employment insofar as may be possible;
- 4 (6) Remain within a specified location; provided, however, that the court shall not banish
- 5 a probationer to any area within the state:
- 6 (A) That does not consist of at least one entire judicial circuit as described by Code
- 7 Section 15-6-1; or
- 8 (B) In which any service or program in which the probationer must participate as a
- 9 condition of probation is not available;
- 10 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
- 11 by the probationer's offense, in an amount to be determined by the court. Unless otherwise
- 12 provided by law, no reparation or restitution to any aggrieved person for the damage or loss
- 13 caused by the probationer's offense shall be made if the amount is in dispute unless the
- 14 same has been adjudicated;
- 15 (8) Make reparation or restitution as reimbursement to a municipality or county for the
- 16 payment for medical care furnished the person while incarcerated pursuant to the
- 17 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local
- 18 governmental unit for the provision of medical care shall be made if the amount is in
- 19 dispute unless the same has been adjudicated;
- 20 (9) Repay the costs incurred by any municipality or county for wrongful actions by an
- 21 inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section
- 22 42-4-71;
- 23 (10) Support the probationer's legal dependents to the best of the probationer's ability;
- 24 (11) Violate no local, state, or federal laws and be of general good behavior;
- 25 (12) If permitted to move or travel to another state, agree to waive extradition from any
- 26 jurisdiction where the probationer may be found and not contest any effort by any
- 27 jurisdiction to return the probationer to this state; and
- 28 (13) Submit to evaluations and testing relating to rehabilitation and participate in and
- 29 successfully complete rehabilitative programming as directed by the department.
- 30 (b) In determining the terms and conditions of probation for a probationer who has been
- 31 convicted of a criminal offense against a victim who is a minor or dangerous sexual offense
- 32 as those terms are defined in Code Section 42-1-12, the court may provide that the
- 33 probationer shall be:
- 34 (1) Prohibited from entering or remaining present at a victim's school, place of
- 35 employment, place of residence, or other specified place at times when a victim is present
- 36 or from loitering in areas where minors congregate, child care facilities, churches, or
- 37 schools as those terms are defined in Code Section 42-1-12;

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

5 (3) Prohibited from seeking election to a local board of education."

6 **SECTION 22.**

7 Said title is further amended by revising Code Section 42-8-35.1, relating to special alternative  
 8 incarceration, as follows:

9 "42-8-35.1.

10 (a) In addition to any other terms or conditions of probation provided for under this chapter,  
 11 the trial judge may provide that probationers sentenced for felony offenses committed on  
 12 or after July 1, 1993, to a period of time of not less than one year on probation as a condition  
 13 of probation must satisfactorily complete a program of confinement in a 'special alternative  
 14 incarceration—probation boot camp' unit of ~~the department~~ corrections for a period of 120  
 15 days computed from the time of initial confinement in the unit; provided, however, ~~the~~  
 16 ~~department~~ that corrections may release the defendant upon service of 90 days in recognition  
 17 of excellent behavior.

18 (b) Before a court can place this condition upon the sentence, an initial investigation ~~will~~  
 19 shall be completed by the probation/parole supervisor ~~officer~~ which will indicate that the  
 20 probationer is qualified for such treatment in that the individual does not appear to be  
 21 physically or mentally disabled in a way that would prevent him or her from strenuous  
 22 physical activity, that the individual has no obvious contagious diseases, that the individual  
 23 is not less than 17 years of age nor more than 30 years of age at the time of sentencing, and  
 24 that ~~the department~~ corrections has granted provisional approval of the placement of the  
 25 individual in the 'special alternative incarceration—probation boot camp' unit.

26 (c) In every case where an individual is sentenced under the terms of this Code section, the  
 27 sentencing court shall, within its probation order, direct ~~the department~~ corrections to  
 28 arrange with the sheriff's office in the county of incarceration to have the individual  
 29 delivered to a designated unit of ~~the department~~ corrections within a specific date not more  
 30 than 15 days after the issuance of such probation order by the court.

31 (d) At any time during the individual's confinement in the unit, but at least five days prior to  
 32 his or her expected date of release, ~~the department~~ corrections will certify to the trial court  
 33 as to whether the individual has satisfactorily completed this condition of probation.

34 (e) Upon the receipt of a satisfactory report of performance in the program from ~~the~~  
 35 ~~department~~ corrections, the trial court shall release the individual from confinement in the  
 36 'special alternative incarceration—probation boot camp' unit. However, the receipt of an

1 unsatisfactory report will be grounds for revocation of the probated sentence as would any  
2 other violation of a condition or term of probation.

3 (f) The satisfactory report of performance in the program from ~~the department~~ corrections  
4 shall, in addition to the other requirements specified in this Code section, require  
5 participation of the individual confined in the unit in such adult education courses necessary  
6 to attain the equivalency of a grade five competency level as established by the State Board  
7 of Education for elementary schools. Those individuals who are mentally disabled as  
8 determined by initial testing are exempt from mandatory participation. After the individual  
9 is released from the unit, it shall be a special condition of probation that the individual  
10 participate in an education program in the community until grade five level competency is  
11 achieved or active probation supervision terminates. It shall be the duty of ~~the department~~  
12 corrections to certify to the trial court that such individual has satisfactorily completed this  
13 condition of probation while on active probation supervision. The receipt of an  
14 unsatisfactory report may be grounds for revocation of the probated sentence as would any  
15 other violation of a condition or term of probation. Under certain circumstances, the  
16 probationer may be exempt from this requirement if it is determined by the probation/parole  
17 supervisor ~~officer~~ that community education resources are inaccessible to the probationer."

#### 18 SECTION 23.

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

21 "(c) During the period of confinement, ~~the department~~ corrections may transfer the  
22 probationer to other facilities in order to provide needed physical and mental health care or  
23 for other reasons essential to the care and supervision of the probationer or as necessary for  
24 the effective administration and management of its facilities."

#### 25 SECTION 24.

26 Said title is further amended by revising subsection (c) of Code Section 42-8-35.5, relating  
27 to confinement in probation diversion centers, as follows:

28 "(c) Corrections ~~The department~~ may assess and collect room and board fees from diversion  
29 center program participants at a level set by ~~the department~~ corrections."

#### 30 SECTION 25.

31 Said title is further amended by revising Code Section 42-8-35.7, relating to drug and alcohol  
32 screening of probationers, as follows:

33 "42-8-35.7.

1 Unless the court has ordered more frequent such screenings, it shall be the duty of each  
 2 probation/parole supervisor to administer or have administered a drug and alcohol screening  
 3 not less than once every 60 days to any person who is placed on probation and who, as a  
 4 condition of such probation, is required to undergo regular, random drug and alcohol  
 5 screenings, provided that the drug and alcohol screenings required by this Code section shall  
 6 be performed only to the extent that necessary funds therefor are appropriated in the state  
 7 budget."

#### 8 SECTION 26.

9 Said title is further amended by revising subsection (a) of Code Section 42-8-36, relating to  
 10 a probationer's duties, as follows:

11 "(a)(1) Any other provision of this article to the contrary notwithstanding, it shall be the  
 12 duty of a probationer, as a condition of probation, to keep his or her probation/parole  
 13 supervisor informed as to his or her residence. Upon the recommendation of the  
 14 probation/parole supervisor, the court may also require, as a condition of probation and  
 15 under such any terms as the court deems advisable, that the probationer keep the  
 16 probation/parole supervisor informed as to his the probationer's whereabouts. The failure  
 17 of a probationer to report to his or her probation/parole supervisor as directed or a return  
 18 of non est inventus or other return to a warrant, for the violation of the terms and  
 19 conditions of probation, that the probationer cannot be found in the county that appears  
 20 from the records of the probation/parole supervisor to be the probationer's county of  
 21 residence shall automatically suspend the running of the probated sentence until the  
 22 probationer shall personally report to the probation/parole supervisor, is taken into custody  
 23 in this state, or is otherwise available to the court; and such period of time shall not be  
 24 included in computing creditable time served on probation or as any part of the time that  
 25 the probationer was sentenced to serve. The effective date of the tolling of the sentence  
 26 shall be the date that the ~~officer~~ probation/parole supervisor returns the warrant showing  
 27 non est inventus. Any officer authorized by law to issue or serve warrants may return the  
 28 warrant for the absconded probationer showing non est inventus.

29 (2) In addition to the provisions of paragraph (1) of this subsection, if the probation/parole  
 30 supervisor submits an affidavit to the court stating that a probationer has absconded and  
 31 cannot be found, the running of the probated sentence shall be suspended effective on the  
 32 date such affidavit is submitted to the court and continuing until the probationer shall  
 33 personally report to the probation/parole supervisor, is taken into custody in this state, or  
 34 is otherwise available to the court."

#### 35 SECTION 27.

1 Said title is further amended by revising subsection (b) of Code Section 42-8-37, relating to  
2 terminating and reviewing probation cases, as follows:

3 "(b) Upon the request of the chief judge of the court from which ~~said~~ a person was  
4 sentenced, the case of each person receiving a probated sentence of more than two years  
5 shall be reviewed by the probation/parole supervisor responsible for that case after service  
6 of two years on probation, and a written report of the probationer's progress shall be  
7 submitted to the sentencing court along with the supervisor's recommendation as to early  
8 termination. Upon the request of the chief judge of the court from which said person was  
9 sentenced, each such case shall be reviewed and a written report submitted annually  
10 thereafter, or more often if required, until the termination, expiration, or other disposition  
11 of the case."

### 12 SECTION 28.

13 Said title is further amended by revising subsections (a) and (d) of Code Section 42-8-38,  
14 relating to the procedures in probation revocation matters, as follows:

15 "(a) Whenever, within the period of probation, a probation/parole supervisor believes that  
16 a probationer under his or her supervision has violated his the terms of probation in a  
17 material respect, ~~he~~ the probation/parole supervisor may arrest the probationer without  
18 warrant, wherever found, and return ~~him~~ the probationer to the court granting the probation  
19 or, if under supervision in a county or judicial circuit other than that of conviction, to a court  
20 of equivalent original criminal jurisdiction within the county wherein the probationer resides  
21 for purposes of supervision. Any officer authorized by law to issue warrants may issue a  
22 warrant for the arrest of the probationer upon the affidavit of one having knowledge of the  
23 alleged violation, returnable forthwith before the court in which revocation proceedings are  
24 being brought."

25 "(d) In cases where the probation is revoked in a county other than the county of original  
26 conviction, the clerk of court in the county revoking probation may record the order of  
27 revocation in the judge's minute docket, which recordation shall constitute sufficient  
28 permanent record of the proceedings in that court. The clerk shall send one copy of the  
29 order revoking probation to ~~the department~~ corrections to serve as a temporary commitment  
30 and shall send the original order revoking probation and all other papers pertaining thereto  
31 to the county of original conviction to be filed with the original records. The clerk of court  
32 of the county of original conviction shall then issue a formal commitment to ~~the department~~  
33 corrections."

### 34 SECTION 29.

1 Said title is further amended by revising Code Section 42-8-42, relating to the provision of  
2 office space and clerical help by the Department of Corrections and counties, as follows:

3 "42-8-42.

4 ~~The department~~ Corrections may provide office space and clerical help wherever needed.

5 The counties of this state shall cooperate in this respect and, wherever possible, shall furnish  
6 office space if needed."

7 **SECTION 30.**

8 Said title is further amended by revising subsections (b) and (c) of Code Section 42-8-72,  
9 relating to community service as a condition of probation, as follows:

10 "(b) The judge may confer with the prosecutor, defense attorney, probation/parole  
11 supervisor, community service officer, or other interested persons to determine if the  
12 community service program is appropriate for an offender. If community service is ordered  
13 as a condition of probation, the court shall order:

14 (1) Not less than 20 hours nor more than 250 hours in cases involving traffic or ordinance  
15 violations or misdemeanors, said service to be completed within one year; or

16 (2) Not less than 20 hours nor more than 500 hours in felony cases, said service to be  
17 completed within three years.

18 (c)(1) Any agency may recommend to the court that certain disabled persons are in need  
19 of a live-in attendant. The judge shall confer with the prosecutor, defense attorney,  
20 probation/parole supervisor, community service officer, or other interested persons to  
21 determine if a community service program involving a disabled person is appropriate for  
22 an offender. If community service as a live-in attendant for a disabled person is deemed  
23 appropriate and if both the offender and the disabled person consent to such service, the  
24 court may order such live-in community service as a condition of probation but for no  
25 longer than two years.

26 (2) The agency shall be responsible for coordinating the provisions of the cost of food or  
27 other necessities for the offender which the disabled person is not able to provide. The  
28 agency, with the approval of the court, shall determine a schedule which will provide the  
29 offender with certain free hours each week.

30 (3) Such live-in arrangement shall be terminated by the court upon the request of the  
31 offender or the disabled person. Upon termination of such an arrangement, the court shall  
32 determine if the offender has met the conditions of probation.

33 (4) The appropriate agency shall make personal contact with the disabled person on a  
34 frequent basis to ensure the safety and welfare of the disabled person."

**SECTION 31.**

Said title is further amended by revising subsection (b) of Code Section 42-8-111, relating to court ordered installation of ignition interlock devices, as follows:

"(b) Any resident of this state who is ordered to use an ignition interlock device, as a condition of probation, shall complete the DUI Alcohol or Drug Use Risk Reduction Program and submit to the court or ~~probation department~~ Division of Probation/Parole Community Based Supervision a certificate of completion of the DUI Alcohol or Drug Use Risk Reduction Program and certification of installation of a certified ignition interlock device to the extent required by subsection (a) of this Code section."

**SECTION 32.**

Said title is further amended by revising subsection (a) of Code Section 42-8-114, relating to specifying providers for ignition interlock devices, as follows:

"(a) No judicial officer, probation officer, probation/parole supervisor, law enforcement officer, or other officer or employee of a court; person who owns, operates, or is employed by a private company which has contracted to provide private probation services for misdemeanor cases; or professional bondsman or agent or employee thereof shall specify, directly or indirectly, a particular provider center which the person may or shall utilize when use of an ignition interlock device is required. This subsection shall not prohibit any judicial officer, probation officer, probation/parole supervisor, law enforcement officer, or other officer or employee of a court; owner, operator, or employee of a private company which has contracted to provide probation services for misdemeanor cases; or professional bondsman or agent or employee thereof from furnishing any person, upon request, the names of certified provider centers."

**SECTION 33.**

Said title is further amended by revising Code Section 42-8-116, relating to warning labels for ignition interlock devices, as follows:

"42-8-116.

The providers certified by the Department of Driver Services shall design and adopt pursuant to regulations of the ~~department~~ Department of Driver Services a warning label which shall be affixed to each ignition interlock device upon installation. The label shall contain a warning that any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor and may be subject to civil liability."

**SECTION 34.**

1 Said title is further amended by revising Code Section 42-8-151, relating to definitions  
2 relative to the "Probation Management Act of 2004," and inserting in lieu thereof the  
3 following:

4 "42-8-151.

5 For purposes of this article, the term:

6 (1) 'Chief probation officer' means the highest ranking field probation officer in each  
7 judicial circuit.

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

9 (3) ~~'Department' means the Department of Corrections~~ 'Division' means the Division of  
10 Probation/Parole Community Based Supervision.

11 (4) 'Electronic monitoring' means supervising, mapping, or tracking the location of a  
12 probationer by means including electronic surveillance, voice recognition, facial  
13 recognition, fingerprinting or biometric scan, automated kiosk, automobile ignition  
14 interlock device, or global positioning systems which may coordinate data with crime  
15 scene information.

16 (5) 'Hearing officer' means an impartial ~~department~~ division employee or representative  
17 who has been selected and appointed to hear alleged cases regarding violations of probation  
18 for administrative sanctioning.

19 (6) 'Initial sanction' means the sanction set by the judge upon initial sentencing.

20 (7) 'Intensive probation' means a level of probation supervision which includes, but is not  
21 limited to, curfews, community service, drug testing, program participation, special  
22 conditions of probation, and general conditions of probation as set forth in Code Section  
23 42-8-35.

24 (8) 'Options system day reporting center' means a state facility providing supervision of  
25 probationers which includes, but is not limited to, mandatory reporting, program  
26 participation, drug testing, community service, all special conditions of probation, and  
27 general conditions of probation as set forth in Code Section 42-8-35.

28 (9) 'Options system probationer' means a probationer who has been sentenced to the  
29 sentencing options system.

30 (10) 'Probation supervision' means a level of probation supervision which includes, but is  
31 not limited to, general conditions of probation as set forth in Code Section 42-8-35 and  
32 all special conditions of probation.

33 (11) 'Residential substance abuse treatment facility' means a state correctional facility that  
34 provides inpatient treatment for alcohol and drug abuse.

35 (12) 'Sentencing options system' means a continuum of sanctions for probationers that  
36 includes the sanctions set forth in subsection (c) of Code Section 42-8-153."



1 probationer to comply with a sanction imposed by the chief probation officer shall constitute  
2 a violation of probation.

3 (c)(1) Upon issuance of a petition outlining the alleged probation violations, the hearing  
4 officer may initiate an administrative proceeding to determine whether an options system  
5 probationer has violated a condition of probation. If the hearing officer determines by a  
6 preponderance of the evidence that the probationer has violated a condition of probation,  
7 the hearing officer may impose sanctions consistent with Code Section 42-8-153.

8 (2) The administrative proceeding provided for under this subsection shall be commenced  
9 within 15 days but not less than 48 hours after notice of the administrative proceeding has  
10 been served on the probationer. The administrative proceeding may be conducted  
11 electronically.

12 (d) The failure of a probationer to comply with the sanction or sanctions imposed by the  
13 chief probation officer or hearing officer shall constitute a violation of probation.

14 (e) An options system probationer may at any time waive a hearing and voluntarily accept  
15 the sanctions proposed by the ~~department~~ division."

#### 16 SECTION 37.

17 Said title is further amended by revising Code Section 42-8-156, relating to finality of hearing  
18 officer's decision, as follows:

19 "42-8-156.

20 (a) The hearing officer's decision shall be final unless the options system probationer files  
21 an appeal in the sentencing court. Such appeal shall name the commissioner as defendant and  
22 shall be filed within 30 days of the issuance of the decision by the ~~department~~ division.

23 (b) This appeal shall be first reviewed by the judge upon the record. At the judge's  
24 discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not  
25 stay the ~~department's~~ division's decision.

26 (c) Where the sentencing judge does not act on the appeal within 30 days of the date of the  
27 filing of the appeal, the ~~department's~~ division's decision shall be affirmed by operation of  
28 law."

#### 29 SECTION 38.

30 Said title is further amended by revising Code Section 42-8-158, relating to application only  
31 in counties with certified options system day reporting center, as follows:

32 "42-8-158.

33 This article shall only apply in counties that have an options system day reporting center  
34 certified by the ~~department~~ division."







1 conditional release in a material respect, shall notify the board or some member thereof; and  
 2 proceedings shall thereupon be had as provided in this Code section."

3 **SECTION 45.**

4 Said title is further amended by revising Code Section 42-9-57, relating to the effect of parole  
 5 on probation and the board's cooperation with local agencies, as follows:

6 "42-9-57.

7 Nothing contained in this chapter shall be construed as repealing any power given to any  
 8 court of this state to place offenders on probation or to supervise the same nor any power  
 9 of any probation agency set up in any county of ~~the~~ this state in conjunction with the courts.

10 The board shall be authorized to cooperate with any such agencies, ~~except that it and~~  
 11 specifically with the division for purposes of supervising parolees and persons released  
 12 pursuant to conditional release. The board shall not assume or pay any financial obligations  
 13 thereof. ~~The board shall also be authorized to cooperate with the courts for the probation~~  
 14 ~~of offenders in those counties in which there is no existing probation agency, when a court~~  
 15 ~~so requests~~ of other agencies but shall share appropriately in the financial obligation of the  
 16 division for purposes of supervision needs of the board."

17 **SECTION 46.**

18 Said title is further amended by revising subsection (b) of Code Section 42-9-90, relating to  
 19 application fee required for parolee transfer consideration, as follows:

20 "(b) ~~The Department of Corrections~~ division and the ~~State Board of Pardons and Paroles~~  
 21 board are authorized to require any nonindigent ~~adult~~ offender to pay a \$25.00 application  
 22 fee when applying to transfer his or her supervision from Georgia to any other state or  
 23 territory pursuant to the provisions of Articles 3 and 4 of this chapter."

24 **SECTION 47.**

25 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 26 amended by revising subsection (b) of Code Section 16-6-5.1, relating to sexual assaults  
 27 against persons in custody, detained, in hospitals, or involved in psychotherapy, as follows:

28 "(b) A probation/parole supervisor or ~~parole~~ probation officer or other custodian or  
 29 supervisor of another person referred to in this Code section commits sexual assault when  
 30 he or she engages in sexual contact with another person who is a probationer or parolee under  
 31 the supervision of said probation/parole supervisor or ~~parole~~ probation officer or who is in  
 32 the custody of law or who is enrolled in a school or who is detained in or is a patient in a  
 33 hospital or other institution and such actor has supervisory or disciplinary authority over  
 34 such other person. A person convicted of sexual assault shall be punished by imprisonment

1 for not less than ten nor more than 30 years; provided, however, that any person convicted  
 2 of the offense of sexual assault under this subsection of a child under the age of 14 years  
 3 shall be punished by imprisonment for not less than 25 nor more than 50 years. 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 48.**

7 Said title is further amended by revising subsection (b) of Code Section 16-10-24, relating to  
 8 obstructing or hindering law enforcement officers, as follows:

9 "(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement  
 10 officer, prison guard, correctional officer, probation/parole supervisor, ~~parole supervisor~~,  
 11 or conservation ranger in the lawful discharge of his or her official duties by offering or  
 12 doing violence to the person of such officer or legally authorized person is guilty of a felony  
 13 and shall, upon conviction thereof, be punished by imprisonment for not less than one nor  
 14 more than five years."

15 **SECTION 49.**

16 Said title is further amended by revising subsection (a) of Code Section 16-10-33, relating to  
 17 removal or attempted removal of a weapon from a public official and punishment therefor, as  
 18 follows:

19 "(a) It shall be unlawful for any person knowingly to remove or attempt to remove a firearm,  
 20 chemical spray, or baton from the possession of another person if:

21 (1) The other person is lawfully acting within the course and scope of employment; and

22 (2) The person has knowledge or reason to know that the other person is employed as:

23 (A) A peace officer as defined in paragraph (8) of Code Section 35-8-2;

24 (B) A probation officer, or other employee with the power of arrest, by the Department  
 25 of Corrections;

26 (C) A probation/parole supervisor, or other employee with the power of arrest, by the  
 27 ~~State Board of Pardons and Paroles~~ Division of Probation/Parole Community Based  
 28 Supervision;

29 (D) A jail officer or guard by a county or municipality and has the responsibility of  
 30 supervising inmates who are confined in a county or municipal jail or other detention  
 31 facility; or

32 (E) A juvenile correctional officer by the Department of Juvenile Justice and has the  
 33 primary responsibility for the supervision and control of youth confined in such  
 34 department's programs and facilities."

**SECTION 50.**

Said title is further amended by revising subsection (d) of Code Section 16-11-37, relating to terroristic threats and acts and penalties therefor, as follows:

"(d) A person who commits or attempts to commit a terroristic threat or act with the intent to retaliate against any person for:

(1) Attending a judicial or administrative proceeding as a witness, attorney, judge, or party or producing any record, document, or other object in a judicial or official proceeding; or

(2) Providing to a law enforcement officer, adult probation/parole supervisor or juvenile probation officer, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state or of the United States or a violation of conditions of bail, pretrial release, probation, or parole

shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall be punished, for a terroristic threat, by imprisonment for not less than five nor more than ten years or by a fine of not less than \$50,000.00, or both, and, for a terroristic act, by imprisonment for not less than five nor more than 20 years or by a fine of not less than \$100,000.00, or both."

**SECTION 51.**

Said title is further amended by revising paragraph (1) of Code Section 16-11-124, relating to exemptions from application of the "Georgia Firearms and Weapons Act," as follows:

"(1) A peace officer of any duly authorized police agency of this state or of any political subdivision thereof, or a law enforcement officer of any department or agency of the United States who is regularly employed and paid by the United States, this state, or any such political subdivision, ~~or~~ an employee of the Department of Corrections of this state who is authorized in writing by the commissioner of corrections to transfer or possess such firearms while in the official performance of his or her duties, or an employee of the Division of Probation/Parole Community Based Supervision of this state who is authorized in writing by the director of the Division of Probation/Parole Community Based Supervision to transfer or possess such firearms while in the official performance of his or her duties;".

**SECTION 52.**

Said title is further amended by revising paragraph (12) of subsection (c) of Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on school property, as follows:

"(12) Probation supervisors employed by and under the authority of the Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide

1 Probation Act,' when specifically designated and authorized in writing by the director of  
 2 the Division of Probation or an employee of the Division of Probation/Parole Community  
 3 Based Supervision of this state who is authorized in writing by the director of the Division  
 4 of Probation/Parole Community Based Supervision to transfer or possess such firearms  
 5 while in the official performance of his or her duties;".

### 6 SECTION 53.

7 Said title is further amended by revising subsections (a) and (b) of Code Section 16-11-130,  
 8 relating to certain exemptions concerning carrying weapons, as follows:

9 "(a) Code Sections 16-11-126 through 16-11-128 shall not apply to or affect any of the  
 10 following persons if such persons are employed in the offices listed below or when  
 11 authorized by federal or state law, regulations, or order:

12 (1) Peace officers, as such term is defined in paragraph (11) of Code Section 16-1-3, and  
 13 retired peace officers so long as they remain certified whether employed by the state or  
 14 a political subdivision of the state or another state or a political subdivision of another state  
 15 but only if such other state provides a similar privilege for the peace officers of this state;

16 (2) Wardens, superintendents, and keepers of correctional institutions, jails, or other  
 17 institutions for the detention of persons accused or convicted of an offense;

18 (3) Persons in the military service of the state or of the United States;

19 (4) Persons employed in fulfilling defense contracts with the government of the United  
 20 States or agencies thereof when possession of the weapon is necessary for manufacture,  
 21 transport, installation, and testing under the requirements of such contract;

22 (5) District attorneys, investigators employed by and assigned to a district attorney's  
 23 office, assistant district attorneys, attorneys employed by the Prosecuting Attorneys'  
 24 Council of Georgia, and any retired district attorney, assistant district attorney, or district  
 25 attorneys investigator if such retired employee is receiving benefits under Title 47 or is  
 26 retired in good standing and receiving benefits from a county or municipal retirement  
 27 system;

28 (6) State court solicitors-general; investigators employed by and assigned to a state court  
 29 solicitor-general's office; assistant state court solicitors-general; the corresponding  
 30 personnel of any city court expressly continued in existence as a city court pursuant to  
 31 Article VI, Section X, Paragraph I, subparagraph (5) of the Constitution; and the  
 32 corresponding personnel of any civil court expressly continued as a civil court pursuant to  
 33 said provision of the Constitution;

34 (7) Those employees of the State Board of Pardons and Paroles when specifically  
 35 designated and authorized in writing by the members of the State Board of Pardons and  
 36 Paroles to carry a weapon and those employees of the Division of Probation/Parole

1 Community Based Supervision of this state who are authorized in writing by the director  
 2 of the Division of Probation/Parole Community Based Supervision to transfer or possess  
 3 such firearms while in the official performance of their duties;

4 (8) The Attorney General and those members of his or her staff whom he or she  
 5 specifically authorizes in writing to carry a weapon;

6 (9) Chief probation officers, probation officers, intensive probation officers, and  
 7 surveillance officers employed by and under the authority of the Department of  
 8 Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide  
 9 Probation Act,' when specifically designated and authorized in writing by the director of  
 10 Division of Probation;

11 (10) Public safety directors of municipal corporations;

12 (11) Explosive ordnance disposal technicians, as such term is defined by Code Section  
 13 16-7-80, and persons certified as provided in Code Section 35-8-13 to handle animals  
 14 trained to detect explosives, while in the performance of their duties;

15 (12) State and federal trial and appellate judges, full-time and permanent part-time judges  
 16 of municipal and city courts, and former state trial and appellate judges retired from their  
 17 respective offices under state retirement;

18 (13) United States Attorneys and Assistant United States Attorneys;

19 (14) County medical examiners and coroners and their sworn officers employed by county  
 20 government; and

21 (15) Clerks of the superior courts.

22 (b) Code Sections 16-11-126 through 16-11-128 shall not apply to or affect persons who  
 23 at the time of their retirement from service with the Department of Corrections were chief  
 24 probation officers, probation officers, intensive probation officers, or surveillance officers,  
 25 when specifically designated and authorized in writing by the director of Division of  
 26 Probation or were probation/parole supervisors of the Division of Probation/Parole  
 27 Community Based Supervision of this state when specifically designated and authorized in  
 28 writing by the director of the division of probation/parole community based supervision."

#### 29 SECTION 54.

30 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended  
 31 by revising subsection (a) of Code Section 17-10-1, relating to fixing and modification of  
 32 sentences, as follows:

33 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death penalty  
 34 may be imposed, upon a verdict or plea of guilty in any case involving a misdemeanor or  
 35 felony, and after a presentence hearing, the judge fixing the sentence shall prescribe a  
 36 determinate sentence for a specific number of months or years which shall be within the

1 minimum and maximum sentences prescribed by law as the punishment for the crime. The  
 2 judge imposing the sentence is granted power and authority to suspend or probate all or any  
 3 part of the entire sentence under such rules and regulations as the judge deems proper,  
 4 including service of a probated sentence in the sentencing options system, as provided by  
 5 Article 9 of Chapter 8 of Title 42, and including the authority to revoke the suspension or  
 6 probation when the defendant has violated any of the rules and regulations prescribed by  
 7 the court, even before the probationary period has begun, subject to the conditions set out  
 8 in this subsection; provided, however, that such action shall be subject to the provisions of  
 9 Code Sections 17-10-6.1 and 17-10-6.2.

10 (2) Probation supervision shall terminate in all cases no later than two years from the  
 11 commencement of probation supervision unless specially extended or reinstated by the  
 12 sentencing court upon notice and hearing and for good cause shown; provided, however,  
 13 that, in those cases involving the collection of fines, restitution, or other funds, the period  
 14 of supervision shall remain in effect for so long as any ~~such~~ obligation is outstanding, or  
 15 until termination of the sentence, whichever first occurs; and provided, further, that, where  
 16 a period of postincarceration probation is increased as a result of parole or other release  
 17 as provided in Code Section 17-10-1.3, the otherwise applicable two-year maximum shall  
 18 be increased by the amount of time for which the period of postincarceration probation is  
 19 increased. Probation supervision shall not be required for defendants sentenced to  
 20 probation while the defendant is in the legal custody of the Department of Corrections ~~or~~  
 21 ~~the State Board of Pardons and Paroles.~~

22 (3)(A) Any part of a sentence of probation revoked for a violation other than a  
 23 subsequent commission of any felony, a violation of a special condition, or a  
 24 misdemeanor offense involving physical violence resulting in bodily injury to an innocent  
 25 victim which in the opinion of the trial court constitutes a danger to the community or  
 26 a serious infraction occurring while the defendant is assigned to an alternative probation  
 27 confinement facility shall be served in a probation detention center, probation boot camp,  
 28 diversion center, weekend lock up, or confinement in a local jail or detention facility, or  
 29 other community correctional alternatives available to the court or provided by the  
 30 Department of Corrections.

31 (B) A parolee or probationer charged with a misdemeanor involving physical injury or  
 32 an attempt to commit physical injury or terroristic threats or with a new felony shall not  
 33 be entitled to bond pending a hearing on the revocation of his or her parole or probation,  
 34 except by order of a judge of the superior, state, or magistrate court wherein the alleged  
 35 new offense occurred after a hearing and upon determination of the superior, state, or  
 36 magistrate court that the parolee or probationer does not constitute a threat to the  
 37 community; provided, however, that this subparagraph does not authorize state or

1 magistrate court judges to grant bail for a person charged with any offense listed in  
2 subsection (a) of Code Section 17-6-1.

3 (4) In cases of imprisonment followed by probation, the sentence shall specifically  
4 provide that the period of probation shall not begin until the defendant has completed  
5 service of the confinement portion of the sentence or been released from confinement by  
6 the State Board of Pardons and Paroles as provided in Code Section 17-10-1.3. ~~No~~ With  
7 respect to a sentence entered prior to July 1, 2007, no revocation of any part of a probated  
8 sentence shall be effective while a defendant is in the legal custody of the State Board of  
9 Pardons and Paroles.

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

20 (B) The ~~Department of Corrections~~ Division of Probation/Parole Community Based  
21 Supervision shall establish a form document which shall include the elements set forth  
22 in this Code section concerning notification of victims and shall make copies of such  
23 form available to prosecuting attorneys in the state. When requested by the victim, the  
24 form document shall be provided to the victim by the prosecuting attorney. The form  
25 shall include the address of the probation/parole community based supervision office  
26 having jurisdiction over the case and contain a statement that the victim must maintain a  
27 copy of his or her address with the probation/parole community based supervision office  
28 and must notify the office of any change of address in order to maintain eligibility for  
29 notification by the ~~Department of Corrections~~ Division of Probation/Parole Community  
30 Based Supervision as required in this Code section.

31 (6)(A) Except as otherwise authorized by law, no court shall modify, suspend, probate,  
32 or alter a previously imposed sentence so as to reduce or eliminate a period of  
33 incarceration or probation and impose a financial payment which:

34 (i) Exceeds the statutorily specified maximum fine, plus all penalties, fees, surcharges,  
35 and restitution permitted or authorized by law; or

36 (ii) Is to be made to an entity which is not authorized by law to receive fines, penalties,  
37 fees, surcharges, or restitution.

1 (B) The prohibitions contained in this paragraph shall apply regardless of whether a  
2 defendant consents to the modification, suspension, probation, or alteration of such  
3 defendant's sentence and the imposition of such payment.

4 (C) Nothing in this paragraph shall prohibit or prevent a court from requiring, as a  
5 condition of suspension, modification, or probation of a sentence in a criminal case  
6 involving child abandonment, that the defendant pay all or a portion of child support  
7 which is owed to the custodial parent of a child which is the subject of such case."

#### 8 SECTION 55.

9 Said title is further amended by adding immediately after Code Section 17-10-1.2, relating to  
10 oral victim impact statements, a new Code Section 17-10-1.3 to read as follows:

11 "17-10-1.3.

12 (a) As used in this Code section, the term 'split sentence' means any felony sentence that  
13 includes a term of imprisonment followed by a term of probation.

14 (b) In any case where a judge on or after July 1, 2007, sentences a defendant to a split  
15 sentence, postincarceration supervision of the defendant shall be conducted exclusively by  
16 the Division of Probation/Parole Community Based Supervision and not by the State Board  
17 of Pardons and Paroles, regardless of whether the defendant has served the full period of  
18 incarceration ordered in the sentence or has been released prior to the full period of  
19 incarceration by parole, conditional release, or other action of the State Board of Pardons  
20 and Paroles.

21 (c) Any split sentence order entered on or after July 1, 2007, shall provide that the  
22 postincarceration period of probation ordered in the sentence shall be increased by an  
23 amount of time equal to any amount of time by which the period of incarceration is  
24 decreased by the State Board of Pardons and Paroles. Such increased portion of the period  
25 of probation shall run concurrently with the period of time by which the period of  
26 incarceration was decreased and shall commence upon the defendant's release from  
27 incarceration. Any split sentence order entered on or after July 1, 2007, which by its terms  
28 fails to so provide for the increased period of probation shall be deemed to so provide by  
29 operation of law.

30 (d) In any case where a judge on or after July 1, 2007, sentences a defendant for a felony  
31 offense to straight probation or to an alternative probation confinement facility, supervision  
32 of the defendant shall be conducted exclusively by the Division of Probation/Parole  
33 Community Based Supervision and not by the state-wide probation system.

34 (e) Nothing in this Code section shall apply to or affect any case in which a pardon is granted  
35 by the State Board of Pardons and Paroles."

**SECTION 56.**

Said title is further amended by revising subsection (a) of Code Section 17-10-6, relating to sentence review for sentences of imprisonment exceeding 12 years, as follows:

"(a) In any case, except cases in which the death penalty is imposed or cases involving a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1, in which a sentence of 12 or more years, or several consecutive sentences which total 12 or more years, has been fixed and imposed by a judge, without a jury, the defendant shall have the right to have the sentence or sentences reviewed by a panel of three superior court judges to determine whether the sentence or sentences so imposed are excessively harsh. Consideration shall be given in the review to the nature of the crime for which the defendant has been convicted and to the defendant's prior criminal record. Any defendant seeking a review of such sentence or sentences shall make application therefor within 30 days of the date on which the sentence was imposed by a judge of the superior court or after the remittitur from the Court of Appeals or Supreme Court affirming the conviction is made the judgment of the sentencing court, whichever occurs last. The application shall be filed with the clerk of the superior court in which the sentence was imposed. Upon the filing of an application the clerk shall transmit the same to the three-judge panel created under this Code section within ten days of the date on which the application was filed. For such service, the clerk shall receive the fees prescribed in Code Section 15-6-77 from the funds of the county, except where the clerk is on a salary. It shall be the duty of the judge imposing the sentence and any probation/parole supervisor ~~officer~~ to transmit, within ten days of the filing of an application for review of a sentence, a copy of any presentence or postsentence report prepared by the probation/parole supervisor ~~officer~~, including the record of the defendant, to the three-judge panel."

**SECTION 57.**

Said title is further amended by revising subsections (c) and (d) of Code Section 17-10-9.1, relating to voluntary surrender to county jail or correctional institution and release of defendant, as follows:

"(c) When a defendant submits a request to the sentencing judge to be allowed to surrender voluntarily to a county jail or a correctional facility, the judge may consider the request and if, taking into the consideration the crime for which the defendant is being sentenced, the history of the defendant, and any other factors which may aid in the decision, the judge determines that the granting of the request will pose no threat to society, the defendant shall be remanded to the supervision of a probation/parole supervisor ~~officer~~ by the judge and ordered to surrender voluntarily to a county jail designated by the court or to a correctional institution as thereafter designated by the Department of Corrections. The surrender date

1 shall be a date thereafter specified as provided in subsection (d) of this Code section. The  
 2 sentence of any defendant who is released pursuant to this Code section shall not begin to  
 3 run until such person surrenders to the facility designated by the court or by the ~~department~~  
 4 Department of Corrections, provided that such person will receive credit toward his or her  
 5 sentence for time spent in confinement awaiting trial as provided in Code Section 17-10-11.

6 (d) In the event the defendant is ordered to surrender voluntarily to a county jail, the court  
 7 shall designate the date on which the defendant shall surrender, which date shall not be more  
 8 than 120 days after the date of conviction. When the sentencing judge issues an order  
 9 requiring a defendant to surrender voluntarily to a correctional institution, the Department  
 10 of Corrections shall authorize the commitment and designate the correctional institution to  
 11 which the defendant shall report and the date on which the defendant is to report, which date  
 12 shall not be more than 120 days after the date of conviction. Upon such designation, the  
 13 ~~department~~ Department of Corrections shall notify the ~~supervising~~ defendant's  
 14 probation/parole supervisor ~~officer~~ who shall notify the defendant accordingly. Subsistence  
 15 and transportation expenses en route to the correctional institution shall be borne by the  
 16 defendant."

#### 17 SECTION 58.

18 Said title is further amended by revising Code Section 17-14-8, relating to apportionment of  
 19 payments for fines and restitution, as follows:

20 "17-14-8.

21 (a) In any case in which a court sentences an offender to pay restitution and a fine, if the  
 22 court permits the offender to pay such restitution and fine in other than a lump sum, the clerk  
 23 of any superior court of this state, probation officer or ~~parole officer~~ probation/parole  
 24 supervisor, or other official who receives such partial payments shall apply not less than  
 25 one-half of each payment to the restitution before paying any portion of such fine or any  
 26 forfeitures, costs, fees, or surcharges provided for by law to any agency, department,  
 27 commission, committee, authority, board, or bureau of state or local government.

28 (b) The clerk of any court of this state, probation officer or ~~parole officer~~ probation/parole  
 29 supervisor, or other official who receives partial payments for restitution shall pay the  
 30 restitution amount to the victim as provided in the restitution order not later than the last day  
 31 of each month, provided that the amount exceeds \$100.00. If the amount does not exceed  
 32 \$100.00, the clerk of any court of this state, probation officer or ~~parole officer~~  
 33 probation/parole supervisor, or other official may allow the amount of restitution to  
 34 accumulate until such time as it exceeds \$100.00 or until the end of the next calendar  
 35 quarter, whichever occurs first."

**SECTION 59.**

Said title is further amended by revising subsection (c) of Code Section 17-14-14, relating to restitution payments, as follows:

"(c) Until such time as the restitution has been paid or the sentence has been completed, the clerk of court or the probation officer or ~~parole officer~~ probation/parole supervisor assigned to the case, whoever is responsible for collecting restitution, shall review the case not less frequently than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be made within a specific period of time, the case shall be reviewed at the end of the specific period of time to determine if the restitution has been paid in full. The final review shall be conducted before the sentence or probationary or parole period expires. If it is determined at any review that restitution is not being paid as ordered, a written report of the violation shall be filed with the court on a form prescribed by the Council of Superior Court Clerks of Georgia."

**SECTION 60.**

Said title is further amended by revising paragraph (5) of Code Section 17-17-3, relating to definitions in the "Crime Victims' Bill of Rights," as follows:

"(5) 'Custodial authority' means a warden, sheriff, jailer, deputy sheriff, police officer, correctional officer, officer or employee of the Department of Corrections, Division of Probation/Parole Community Based Supervision, or the Department of Juvenile Justice, or any other law enforcement officer having actual custody of the accused."

**SECTION 61.**

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by revising subsection (a) of Code Section 19-7-52, relating to whom child support payments are made, as follows:

"(a) The court may order that support payments be made to the mother or other interested party, the child support receiver, the prosecuting attorney, the probation officer, the probation/parole supervisor, or the clerk of court, provided that, in those cases where the action has been brought by the Department of Human Resources on behalf of a child, the support payment shall be made to the Department of Human Resources for distribution or to the child support receiver if the Department of Human Resources so requests."

**SECTION 62.**

Said title is further amended by revising Code Section 19-11-21, relating to payment of support to the Department of Human Resources, as follows:

"19-11-21.

1 Payment of support pursuant to an administrative determination or a voluntary agreement  
 2 shall be made to the department. In non-TANF cases, where the department deems it  
 3 appropriate, it may authorize distribution of the actual payment by other individuals,  
 4 agencies, or entities and utilize certification schedules reflecting such payments or  
 5 distributions which the department requires, in accordance with the federal Social Security  
 6 Act, as amended. Child support which is ordered by a court pursuant to a divorce decree or  
 7 in any other proceeding in which the responsible parent is required to pay support for his or  
 8 her child or children, whether the proceeding is civil or criminal, shall be paid by the  
 9 responsible parent, the clerk of court, the probation officer, the probation/parole supervisor,  
 10 the child support receiver, or a similar official who is collecting support to the department  
 11 upon the department's certification that the child is a recipient of public assistance or upon  
 12 the department's certification that an application has been filed with the department for  
 13 enforcement of support in accordance with the provisions of the federal Social Security Act."

#### 14 SECTION 63.

15 Said title is further amended by revising paragraph (4) of Code Section 19-13-51, relating to  
 16 definitions in the "Family Violence and Stalking Protective Order Registry Act," as follows:

17 "(4) 'Law enforcement officer' means any agent or officer of this state, or a political  
 18 subdivision or municipality thereof, who, as a full-time or part-time employee, is vested  
 19 either expressly by law or by virtue of public employment or service with authority to  
 20 enforce the criminal or traffic laws and whose duties include the preservation of public  
 21 order, the protection of life and property, or the prevention, detection, or investigation of  
 22 crime. Such term also includes the following: state or local officer, sheriff, deputy sheriff,  
 23 dispatcher, 9-1-1 operator, police officer, prosecuting attorney, member of the State Board  
 24 of Pardons and Paroles, and a hearing officer and or probation/parole officer supervisor  
 25 ~~of the State Board of Pardons and Paroles, and a probation officer of the Department of~~  
 26 ~~Corrections~~ Division of Probation/Parole Community Based Supervision."

#### 27 SECTION 64.

28 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
 29 amended by revising subsection (b) of Code Section 40-5-81, relating to attendance at driver  
 30 improvement programs, as follows:

31 "(b) Whenever any person is authorized or required to attend a driver improvement clinic or  
 32 DUI Alcohol or Drug Use Risk Reduction Program as a condition of any sentence imposed  
 33 under this title or any ordinance enacted pursuant to this title or as a condition of the  
 34 retention or restoration of the person's driving privilege, such person, in complying with  
 35 such condition, shall be authorized to attend any driver improvement clinic or DUI Alcohol

1 or Drug Use Risk Reduction Program certified under this article; and no judicial officer,  
 2 probation officer, probation/parole supervisor, law enforcement officer, or other officer or  
 3 employee of a court or person who owns, operates, or is employed by a private company  
 4 which has contracted to provide private probation services for misdemeanor cases shall  
 5 specify, directly or indirectly, a particular driver improvement clinic or DUI Alcohol or Drug  
 6 Use Risk Reduction Program which the person may or shall attend. This Code section shall  
 7 not prohibit any judicial officer, probation officer, probation/parole supervisor, law  
 8 enforcement officer, or other officer or employee of a court or owner, operator, or  
 9 employee of a private company which has contracted to provide probation services for  
 10 misdemeanor offenders from furnishing any person, upon request, the names of certified  
 11 driver improvement clinics or DUI Alcohol or Drug Use Risk Reduction Programs."

12 **SECTION 65.**

13 Said title is further amended by revising subsection (d) of Code Section 40-5-83, relating to  
 14 establishment and approval of driving clinics and programs and restrictions, as follows:

15 "(d) Notwithstanding the provisions of any law or rule or regulation which prohibits any  
 16 individual who is a probation officer or other official or employee of the probation division  
 17 of the Department of Corrections or a spouse of such individual from owning, operating,  
 18 instructing at, or being employed by a driver improvement clinic, any individual who is a  
 19 probation officer or other official or employee of the probation division of the Department  
 20 of Corrections or a spouse of such individual who owns, operates, instructs at, or is  
 21 employed by a driver improvement clinic on June 1, 1985, and who in all respects is and  
 22 remains qualified to own, operate, instruct at, or be employed by a driver improvement clinic  
 23 is expressly authorized to continue on and after June 1, 1985, to engage in such activities.  
 24 Any individual who is a probation/parole supervisor or other official or employee of the  
 25 Division of Probation/Parole Community Based Supervision or a spouse of such individual  
 26 who owns, operates, instructs at, or is employed by a driver improvement clinic on June 1,  
 27 2007, and who in all respects is and remains qualified to own, operate, instruct at, or be  
 28 employed by a driver improvement clinic is expressly authorized to continue on and after  
 29 June 1, 2007, to engage in such activities. No person who owns, operates, or is employed  
 30 by a private company which has contracted to provide probation services for misdemeanor  
 31 cases shall be authorized to own, operate, be an instructor at, or be employed by a driver  
 32 improvement clinic or a DUI Alcohol or Drug Use Risk Reduction Program."

33 **SECTION 66.**

1 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,  
2 is amended by revising paragraph (8) of Code Section 45-9-81, relating to definitions  
3 concerning the Georgia State Indemnification Fund, as follows:

4 "(8) 'Prison guard' means any person employed by the state or any political subdivision  
5 thereof whose principal duties relate to the supervision and incarceration of persons  
6 accused or convicted of the violation of the criminal laws of this state or any political  
7 subdivision thereof. Such term shall also mean any probation/parole supervisor or parole  
8 officer who is required to be certified under Chapter 8 of Title 35, the 'Georgia Peace  
9 Officer Standards and Training Act,' and whose principal duties directly relate to the  
10 supervision of adult probationers or adult parolees. Such term also means any person  
11 employed by the state or any political subdivision thereof whose principal duties include  
12 the supervision of youth who are charged with or adjudicated for an act which if committed  
13 by adults would be considered a crime."

14 **SECTION 67.**

15 This Act shall become effective July 1, 2007, and shall apply with respect to sentences entered  
16 on or after that date.

17 **SECTION 68.**

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