



The Georgia Success Story

Georgia Passes “Romeo and Juliet” Law to Protect Youth from Disproportionate Sentencing for Sex Offenses

The Georgia legislature recently took a necessary first step to remedy the problem of disproportionate sentencing for juvenile sex offenders. House Bill 1059, enacted April 26, 2006, creates an exception to the mandatory minimum sentences for sex offenders in cases where the victim is 13 to 15 years old, the offender is 18 years old or younger, and the age difference between the two is no more than four years. This legislation came in reaction to the highly publicized case of Genarlow Wilson, who, in 2005, was convicted of aggravated child molestation for receiving consensual oral sex from a 15-year-old girl when he was 17 years old. Genarlow was sentenced to the mandatory minimum for aggravated child molestation at the time, which was 10 years in jail without the possibility of parole. Under the new law, consensual sexual acts between teenagers meeting the age criteria above are now a misdemeanor, to which no mandatory minimum sentences are attached.¹

March 2011

References

¹ H.B. 1059, 2005-2006 Legis. Sess. (Ga. 2006)



Georgia General Assembly

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06 HB 1059/AP

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

To amend Titles 16, 17, 35, and 42 of the Official Code of Georgia Annotated, relating respectively to crimes and offenses, criminal procedure, law enforcement officers and agencies, and penal institutions, so as to change provisions relating to sexual offenders; to change punishment provisions, registration requirements, and residency requirements for sexual offenders; to provide for legislative findings; to change punishment provisions related to aggravated assault with the intent to rape; to change punishment provisions related to kidnapping; to change punishment provisions

related to false imprisonment; to change punishment provisions related to rape; to change certain provisions relating to sodomy and aggravated sodomy; to provide for lesser punishment for certain sexual offenses committed by persons of certain ages; to change certain provisions relating to statutory rape; to change certain provisions relating to child molestation and aggravated child molestation; to change certain provisions relating to enticing a child for indecent purposes; to change certain provisions relating to persons convicted of sexual assault against persons in custody; to change certain provisions relating to incest; to change certain provisions relating to sexual battery; to change certain provisions relating to aggravated sexual battery; to change certain restrictions on granting an appeal bond; to allow for judicial discretion for mandatory minimum sentences under certain circumstances; to create a new crime involving withholding information concerning a sexual offender and provide for penalties; to change a provision relating to the fixing of a sentence by a judge; to change certain provisions relating to punishment of serious violent offenders and increase the mandatory minimum term of imprisonment for certain offenses; to require persons convicted of certain sexual crimes to receive a mandatory split sentence including a minimum sentence of imprisonment; to add a provision relating to statutory aggravating circumstances for the imposition of the death penalty; to require the Georgia Crime Information Center to collect certain data; to provide that notice of conviction and release of a person who is required to register as a sexual offender shall be made for offenders sentenced directly to probation or who are newly established residents in a county; to permit publication of such notice in the legal organ of the county in which

such person resides based on information available; to reorganize and change provisions related to the State Sexual Offender Registry; to change and add certain definitions; to change provisions relating to registration requirements for sexual offenders; to provide for an annual registration fee; to provide that sexual offenders register prior to release from prison; to require each sheriff to maintain and update a list of all sexual offenders residing in the county; to provide for duties and responsibilities for sheriffs, the Department of Corrections, the Georgia Bureau of Investigation, and sexual offenders; to require registered sexual offenders to verify required registration information with the sheriff whenever any changes occur to certain information and verify information at least annually within 72 hours of the sexual offenders' birthday; to increase the duration for registration requirement; to provide for a procedure for certain sexual offenders to petition a court to be relieved of registration requirements; to require the sheriff to notify certain people and entities of the presence of sexual offenders in their community; to increase punishment for failure to comply with registration requirements; to change the appointing authority for the Sexual Offender Registration Review Board; to require the Sexual Offender Registration Review Board to classify sexual offenders; to require sexually dangerous predators to wear an electronic monitoring system for the balance of his or her life and to pay for such system; to require sexually dangerous predators to update required registration information twice yearly; to provide for employment restrictions for sexual offenders; to prohibit sexual offenders from loitering in certain locations; to correct cross-references; to change provisions relating to sexual offenders conditions for parole; to change provisions relating to chemical treatment and counseling as a condition of parole for child molesters;

to amend Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, so as to allow the state and the defendant the right of direct appeal under certain circumstances; to provide for other related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

The General Assembly finds and declares that recidivist sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Many sexual offenders are extremely likely to use physical violence and to repeat their offenses; and some sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. The General Assembly finds that this makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant. The General Assembly further finds that the high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

- (1) Incarcerating sexual offenders and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space;
- (2) Requiring the registration of sexual offenders, with a requirement that complete and accurate

information be maintained and accessible for use by law enforcement authorities, communities, and the public;

(3) Providing for community and public notification concerning the presence of sexual offenders;

(4) Collecting data relative to sexual offenses and sexual offenders;

(5) Requiring sexual predators who are released into the community to wear an electronic monitoring system for the rest of their natural life and to pay for such system; and

(6) Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

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

SECTION 2.

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

"(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

- (1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;
- (2) All judgments involving applications for discharge in bail trover and contempt cases;
- (3) All judgments or orders directing that an accounting be had;
- (4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;
- (5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;
- ~~(5.1)~~(6) Any ruling on a motion which would be dispositive if granted with respect to a defense that the action is barred by Code Section 16-11-184;
- ~~(6)~~(7) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;

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

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

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

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

SECTION 3.

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

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

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

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

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

(4) From an order, decision, or judgment suppressing or excluding evidence illegally seized or

excluding the results of any test for alcohol or drugs in the case of motions made and ruled upon prior to the impaneling of a jury or the defendant being put in jeopardy, whichever occurs first;

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

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

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

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

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

SECTION 4.

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

"16-5-21.

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

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

- (2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; or
- (3) A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons.
- (b) Except as provided in subsections (c) through ~~(i)~~ (k) of this Code section, a person convicted of the offense of aggravated assault shall be punished by imprisonment for not less than one nor more than 20 years.
- (c) A person who knowingly commits the offense of aggravated assault upon a peace officer while the peace officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.
- (d) Any person who commits the offense of aggravated assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.
- (e)(1) As used in this subsection, the term 'correctional officer' shall include superintendents, wardens, deputy wardens, guards, and correctional officers of state, county, and municipal penal institutions who are certified by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35 and employees of the Department of Juvenile Justice who are known to be employees of the department or who have given reasonable identification of their employment. The term 'correctional officer' shall also include county jail officers who are

certified or registered by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35.

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

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

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

~~(g)~~(h) A person convicted of an offense described in paragraph (3) of subsection (a) of this Code

section shall be punished by imprisonment for not less than five nor more than 20 years.

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

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

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

SECTION 5.

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

"16-5-40.

(a) A person commits the offense of kidnapping when he abducts or steals away any person

without lawful authority or warrant and holds such person against his will.

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

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

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

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

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

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

SECTION 6.

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

"16-5-41.

(a) A person commits the offense of false imprisonment when, in violation of the personal liberty

of another, he arrests, confines, or detains such person without legal authority.

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

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

SECTION 7.

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

"(a) When a person who has been convicted of a crime for which that person is required to register under Code Section 42-1-12 makes his or her first report to a sheriff after such person's release from confinement, placement on probation, or upon establishing residency in the county, the sheriff shall cause to be published a notice of conviction and release from confinement of such person. ~~Such notice shall be published in the manner of legal notices in the legal organ of the county in which person resides.~~ Such notice shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest; ~~or a subsequent photograph~~, the name and address of the convicted person, ~~and; if available~~, the date, time, place of arrest; and the disposition of the case. The notice and shall be published at or near

the time the person registers with the sheriff at least once, and, at the sheriff's option, may be published more than once, in the legal organ of the appropriate county in the second week following such persons' release from confinement or as soon thereafter as publication may be made. The notice shall include the address of the Georgia Bureau of Investigation website for additional information regarding the sexual offender registry."

SECTION 8.

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

"16-6-1.

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

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

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

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than ten nor more than 20 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section shall, in addition, be subject to the

sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

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

SECTION 9.

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

"16-6-2.

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

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

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

- (2) A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than ten nor more than 30 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section of the offense of aggravated sodomy shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.
- (c) When evidence relating to an allegation of aggravated sodomy is collected in the course of a medical examination of the person who is the victim of the alleged crime, the law enforcement agency investigating the alleged crime shall be financially responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.
- (d) If the victim is at least 13 but less than 16 years of age and the person convicted of sodomy is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

SECTION 10.

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

"16-6-3.

- (a) A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction

shall be had for this offense on the unsupported testimony of the victim.

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

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

SECTION 11.

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

"16-6-4.

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

(b)(1) Except as provided in paragraph (2) of this subsection, a A person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more

than 20 years and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7. ~~Upon such first conviction of the offense of child molestation, the judge may probate the sentence; and such probation may be upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist. However, if the judge finds that such probation should not be imposed, he or she shall sentence the defendant to imprisonment; provided, further, that upon a defendant's~~
Upon a defendant being incarcerated on a conviction for such a first offense, the Department of Corrections shall provide counseling to such defendant. Except as provided in paragraph (2) of this subsection, upon ~~Upon~~ a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment. ~~Adjudication of guilt or imposition of sentence for a conviction of a second or subsequent offense of child molestation, including a plea of nolo contendere, shall not be suspended, probated, deferred, or withheld.~~

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

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

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

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

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

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

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

~~(2) The court sentencing a person who has been convicted of a first offense of aggravated child molestation when the victim is 16 years of age or younger at the time of the offense is authorized to require, before sentencing, that the defendant undergo a psychiatric evaluation to ascertain whether or not medroxyprogesterone acetate chemical treatment or its equivalent would be~~

~~effective in changing the defendant's behavior. If it is determined by a qualified mental health professional that such treatment would be effective, the court may require, as a condition of probation and upon provisions arranged between the court and the defendant, the defendant to undergo medroxyprogesterone acetate treatment or its chemical equivalent which must be coupled with treatment by a qualified mental health professional. In case of a person sentenced to probation who is required to undergo such treatment or its chemical equivalent and is in the custody of a law enforcement agency or confined in a jail at the time of sentencing, when he or she becomes eligible for probation, such person shall begin medroxyprogesterone acetate treatment and counseling prior to his or her release from custody or confinement. A person sentenced to probation who is required to undergo such treatment and who is not in the custody of a law enforcement agency or confined in a jail at the time of sentencing shall be taken into custody or confined until treatment can begin. Additional treatment may continue after such defendant's release from custody or confinement until the defendant demonstrates to the court that such treatment is no longer necessary. No such treatment shall be administered until such person has been fully informed of the side effects of hormonal chemical treatment and has consented to the treatment in writing. The administration of the treatment shall conform to the procedures and conditions set out in subsection (c) of Code Section 42-9-44.2.~~

~~(3) Any physician or qualified mental health professional who acts in good faith in compliance with the provisions of this Code section and subsection (c) of Code Section 42-9-44.2 in the administration of treatment or provision of counseling provided for in this Code section shall be~~

~~immune from civil or criminal liability for his or her actions in connection with such treatment or counseling."~~

SECTION 12.

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

"16-6-5.

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

(b) Except as provided in subsection (c) of this Code section, a ~~A~~ person convicted of the offense of enticing a child for indecent purposes shall be punished by imprisonment for not less than ~~one~~ ten nor more than ~~20~~ 30 years. Any person convicted under this Code section of the offense of enticing a child for indecent purposes shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2. Upon a first conviction of the offense of enticing a child for indecent purposes, the judge may probate the sentence; and such probation may be upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist. However, if the judge finds that such probation should not be imposed, he shall sentence the defendant to imprisonment. Upon a second or third conviction of such offense, the defendant shall be punished by imprisonment for

~~not less than five years. For a fourth or subsequent conviction of the offense of enticing a child for indecent purposes, the defendant shall be punished by imprisonment for 20 years. Adjudication of guilt or imposition of sentence for a conviction of a third, fourth, or subsequent offense of enticing a child for indecent purposes, including a plea of nolo contendere, shall not be suspended, probated, deferred, or withheld.~~

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

SECTION 13.

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

"16-6-5.1.

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

- (1) 'Actor' means a person accused of sexual assault.
- (2) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of a person.
- (3) 'Psychotherapy' means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.
- (4) 'Sexual contact' means any contact between ~~for the purpose of sexual gratification of the actor~~

and a person not married to the actor involving with the intimate parts of a person not married to the actor either person for the purpose of sexual gratification of the actor.

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

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

(A) In the custody of law; or

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

(2) A person commits sexual assault when, as an actual or purported practitioner of psychotherapy, he or she engages in sexual contact with another person who the actor knew or

should have known is the subject of the actor's actual or purported treatment or counseling, or, if the treatment or counseling relationship was used to facilitate sexual contact between the actor and said person.

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

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

(d) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, commits sexual assault when such person engages in sexual contact with another person who has been admitted to or is receiving services from such facility, person, or entity. A person convicted of sexual assault pursuant to this subsection shall be punished by imprisonment for not less than ~~one~~ ten nor more than ~~five~~ 30 years, or a fine of not more than \$5,000.00, or both. Any violation of this subsection shall constitute a separate offense. Any person convicted under this subsection of the offense of sexual

assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

SECTION 14.

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

"16-6-22.

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

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

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

provisions of Code Section 17-10-6.2."

SECTION 15.

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

"16-6-22.1.

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

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

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

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

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

SECTION 16.

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

"16-6-22.2.

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

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

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

SECTION 17.

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

"16-6-25.

(a) As used in this Code section, the term 'law enforcement unit' means any agency, organ, or department of this state, or a subdivision or municipality thereof, whose primary functions include the enforcement of criminal or traffic laws; the preservation of public order; the protection of life

and property; or the prevention, detection, or investigation of crime. Such term shall also include the Department of Corrections and the State Board of Pardons and Paroles.

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

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

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

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

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

SECTION 18.

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

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

SECTION 19.

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

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

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

SECTION 20.

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

"17-10-6.1.

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

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

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

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

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

(B) Rape;

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

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

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

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

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

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

(2) For a first conviction of a serious violent felony in which the defendant has been sentenced to death but the sentence of death has been commuted to life imprisonment, that person shall not be eligible for any form of parole or early release administered by the State Board of Pardons and Paroles until that person has served a minimum of ~~25~~ 30 years in prison. The minimum term of imprisonment shall not be reduced by any earned time, early release, work release, leave, or other

sentence-reducing measures under programs administered by the Department of Corrections.

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

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

SECTION 21.

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

"17-10-6.2.

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

- (1) Aggravated assault with the intent to rape, as defined in Code Section 16-5-21;
 - (2) False imprisonment, as defined in Code Section 16-5-41, if the victim is not the child of the defendant and the victim is less than 14 years of age;
 - (3) Sodomy, as defined in Code Section 16-6-2, unless subject to the provisions of subsection (d) of Code Section 16-6-2;
 - (4) Statutory rape, as defined in Code Section 16-6-3, if the person convicted of the crime is 21 years of age or older;
 - (5) Child molestation, as defined in subsection (a) of Code Section 16-6-4, unless subject to the provisions of paragraph (2) of subsection (b) of Code Section 16-6-4;
 - (6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, unless subject to the provisions of subsection (c) of Code Section 16-6-5;
 - (7) Sexual assault against persons in custody, as defined in Code Section 16-6-5.1;
 - (8) Incest, as defined in Code Section 16-6-22;
 - (9) A second or subsequent conviction for sexual battery, as defined in Code Section 16-6-22.1;
or
 - (10) Sexual exploitation of children, as defined in Code Section 16-12-100.
- (b) Except as provided in subsection (c) of this Code section, and notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to the offense. No portion of the mandatory minimum sentence imposed shall be

suspended, stayed, probated, deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory imprisonment, an additional probated sentence of at least one year. No person convicted of a sexual offense shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42, relating to probation for first offenders, or any other provision of Georgia law relating to the sentencing of first offenders.

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

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

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

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

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

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

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

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

(d) If the court imposes a probated sentence, the defendant shall submit to review by the Sexual Offender Registration Review Board for purposes of risk assessment classification within ten days of being sentenced and shall otherwise comply with Article 2 of Chapter 1 of Title 42."

SECTION 22.

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

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

SECTION 23.

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

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

SECTION 24.

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

"ARTICLE 2

42-1-12.

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

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

(2) 'Appropriate official' means:

(A) With respect to a sexual offender who is sentenced to probation without any sentence of

incarceration in the state prison system or who is sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, the Division of Probation of the Department of Corrections;

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

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

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

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

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

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

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

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

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

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

- (i) Kidnapping of a minor, except by a parent;
- (ii) False imprisonment of a minor, except by a parent;
- (iii) Criminal sexual conduct toward a minor;
- (iv) Solicitation of a minor to engage in sexual conduct;
- (v) Use of a minor in a sexual performance;
- (vi) Solicitation of a minor to practice prostitution; or

(vii) Any conviction resulting from an underlying sexual offense against a victim who is a minor.

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

(i) Kidnapping of a minor, except by a parent;

(ii) False imprisonment of a minor, except by a parent;

(iii) Criminal sexual conduct toward a minor;

(iv) Solicitation of a minor to engage in sexual conduct;

(v) Use of a minor in a sexual performance;

(vi) Solicitation of a minor to practice prostitution;

(vii) Use of a minor to engage in any sexually explicit conduct to produce any visual medium depicting such conduct;

(viii) Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor's body engaged in sexually explicit conduct;

(ix) Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct;

(x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in

sexually explicit conduct; or

(xi) Any conduct which, by its nature, is a sexual offense against a minor.

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

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

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-2;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) False imprisonment in violation of Code Section 16-5-41 which involves a victim who is less than 14 years of age, except by a parent;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-23;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;

(xvii) Computer pornography and child exploitation prevention in violation of Code Section 16-12-100.2;

(xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

(xix) Any conduct which, by its nature, is a sexual offense against a minor or an attempt to commit a sexual offense against a minor.

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

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

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

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

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

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

(16) 'Required registration information' means:

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

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

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

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

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

(F) If the place of residence is a vessel, live-aboard vessel, or houseboat, provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat;

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

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

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

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

enrollment or employment status; and

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

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

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

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

(20) 'Sexual offender' means any individual:

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

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

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

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

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

(22) 'Vocation' means any full-time, part-time, or volunteer employment with or without

compensation exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year.

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

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

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

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

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

(5) Inform the sexual offender that, if he or she changes residence to another state, the sexual offender shall register the new address with the sheriff of the county with whom the sexual offender last registered, and that the sexual offender shall also register with a designated law

enforcement agency in the new state within 72 hours after establishing residence in the new state;

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

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

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

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

(c) The Department of Corrections shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Is a nonresident sexual offender who changes residence from another state or territory of the

United States to Georgia who is required to register as a sexual offender under federal law, military law, tribal law, or the laws of another state or territory, regardless of when the conviction occurred;

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

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

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

(1) Provide the required registration information to the appropriate official before being released from prison or placed on parole, supervised release, or probation;

(2) Register with the sheriff of the county in which the sexual offender resides within 72 hours after the sexual offender's release from prison or placement on parole, supervised release, probation, or entry into this state;

(3) Maintain the required registration information with the sheriff of the county in which the sexual offender resides;

(4) Renew the required registration information with the sheriff of the county in which the sexual

offender resides by reporting to the sheriff within 72 hours prior to such offenders' birthday each year to be photographed and fingerprinted;

(5) Update the required registration information with the sheriff of the county in which the sexual offender resides within 72 hours of any change to the required registration information, other than residence address; if the information is the sexual offenders' new residence address, the sexual offender shall give the information to the sheriff of the county with whom the sexual offender last registered within 72 hours prior to any change of residence address and to the sheriff of the county to which the sexual offender is moving within 72 hours after establishing the new residence;

(6) If convicted of a dangerous sexual offense on or after July 1, 2006, pay to the sheriff of the county where the sexual offender resides an annual registration fee of \$250.00 upon each anniversary of such registration; and

(7) Continue to comply with the registration requirements of this Code section for the entire life of the sexual offender, including ensuing periods of incarceration.

(g)(1) Any sexual offender required to register under this Code section who meets the criteria set forth in paragraph (2) of this Code section may petition the superior court of the jurisdiction in which the sexual offender is registered to be released from the registration requirements of this Code section. The court may issue an order releasing the sexual offender from further registration if the court finds that the sexual offender does not pose a substantial risk of perpetrating any

future dangerous sexual offense.

(2) In order to petition the court pursuant to paragraph (1) of this subsection, the sexual offender shall:

(A) Have been sentenced pursuant to subsection (c) of Code Section 17-10-6.2; and

(B) Have had ten years elapse since his or her release from prison, parole, supervised release, or probation.

(h)(1) The appropriate official or sheriff shall, within 72 hours after receipt of the required registration information, forward such information to the Georgia Bureau of Investigation. Once the data is entered into the Criminal Justice Information System by the appropriate official or sheriff, the Georgia Crime Information Center shall notify the sheriff of the sexual offender's county of residence, either permanent or temporary, the sheriff of the county of employment, and the sheriff of the county where the sexual offender attends an institution of higher education within 24 hours of entering the data or any change to the data.

(2) The Georgia Bureau of Investigation shall:

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

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

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

(i) Send each month Criminal Justice Information System network messages to sheriffs listing

sexual offenders due for verification;

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

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

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

(v) Maintain records required under this Code section.

(i) The sheriffs office in each county shall:

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

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

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

(A) In the sheriffs' office;

- (B) In any county administrative building;
 - (C) In the main administrative building for any municipal corporation;
 - (D) In the office of the clerk of the superior court so that such list is available to the public; and
 - (E) On a website maintained by the sheriff of the county for the posting of general information;
- (4) Update the public notices required by paragraph (3) of this Code section within two working days;
- (5) Inform the public of the presence of sexual offenders in each community;
- (6) Update the list of sexual offenders residing in the county upon receipt of new information affecting the residence address of a sexual offender or upon the registration of a sexual offender moving into the county by virtue of release from prison, relocation from another county, conviction in another state, federal court, military tribunal, or tribal court. Such list, and any additions to such list, shall be delivered, within 72 hours of updating the list of sexual offenders residing in the county, to all schools or institutions of higher education located in the county;
- (7) Within 72 hours of the receipt of changed required registration information, notify the Georgia Bureau of Investigation through the Criminal Justice Information System of each change of information;
- (8) Retain the verification form stating that the sexual offender still resides at the address last reported;
- (9) Enforce the criminal provisions of this Code section. The sheriff may request the assistance of the Georgia Bureau of Investigation to enforce the provisions of this Code section;

- (10) Cooperate and communicate with other sheriffs' offices in this state and in the United States to maintain current data on the location of sexual offenders;
- (11) Determine the appropriate time of day for reporting by sexual offenders, which shall be consistent with the reporting requirements of this Code section;
- (12) If required by Code Section 42-1-14, place any electronic monitoring system on the sexually dangerous predator and explain its operation and cost;
- (13) Provide current information on names and addresses of all registered sexual offenders to campus police with jurisdiction for the campus of an institution of higher education if the campus is within the sheriffs' jurisdiction; and
- (14) Collect the annual \$250.00 registration fee from the sexual offender and transmit such fees to the state for deposit into the general fund.
- (j)(1) The sheriff of the county where the sexual offender resides or last registered shall be the primary law enforcement official charged with communicating the whereabouts of the sexual offender and any changes in required registration information to the sheriffs' office of the county or counties where the sexual offender is employed, volunteers, attends an institution of higher education, or moves.
- (2) The sheriffs' office may post the list of sexual offenders in any public building in addition to those locations enumerated in subsection (h) of this Code section.
- (k) The Georgia Crime Information Center shall create the Criminal Justice Information System

network transaction screens by which appropriate officials shall enter original data required by this Code section. Screens shall also be created for sheriffs' offices for the entry of record confirmation data; employment; changes of residence, institutions of higher education, or employment; or other pertinent data to assist in sexual offender identification.

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

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

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

sexual offenders.

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

(n) Any individual who:

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

(2) Provides false information; or

(3) Fails to respond directly to the sheriff within 72 hours of such individual's birthday shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that upon the conviction of the second offense under this subsection, the defendant shall be punished by imprisonment for life.

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

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

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

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

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

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

42-1-13.

(a) The Sexual Offender Registration Review Board shall be composed of three professionals licensed under Title 43 and knowledgeable in the field of the behavior and treatment of sexual offenders; at least one representative from a victim's rights advocacy group or agency; and at least two representatives from law enforcement, each of whom is either employed by a law enforcement agency as a certified peace officer under Title 35 or retired from such employment. The members of the board shall be appointed by the commissioner of human resources for terms of four years.

On and after July 1, 2006, successors to the members of the board shall be appointed by the

Governor. Members of the board shall take office on the first day of September immediately following the expired term of that office and shall serve for a term of four years and until the appointment of their respective successors. No member shall serve on the board more than two consecutive terms. Vacancies occurring on the board, other than those caused by expiration of a term of office, shall be filled in the same manner as the original appointment to the position vacated for the remainder of the unexpired term and until a successor is appointed. Members shall be entitled to an expense allowance and travel cost reimbursement the same as members of certain other boards and commissions as provided in Code Section 45-7-21.

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

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

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

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

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

42-1-14.

(a) The board shall determine the likelihood that a sexual offender will engage in another crime

against a victim who is a minor or a dangerous sexual offense. The board shall make such determination for any sexual offender convicted on or after July 1, 2006, of a criminal act against a minor or a dangerous sexual offense and for any sexual offender incarcerated on July 1, 2006, but convicted prior to July 1, 2006, of a criminal act against a minor. Such determination shall not be required to be made by the board until January 1, 2007; provided, however, that such persons shall be subject to this Code section. A sexual offender shall be placed into Level I risk assessment classification, Level II risk assessment classification, or sexually dangerous predator classification based upon the board's assessment criteria and information obtained and reviewed by the board. The sexual offender may provide the board with information including, but not limited to, psychological evaluations, sexual history polygraph information, treatment history, personal, social, educational, and work history, and may agree to submit to a psychosexual evaluation or sexual history polygraph conducted by the board. If the sexual offender has undergone treatment through the Department of Corrections, such treatment records shall also be submitted to the board for evaluation. The prosecuting attorney shall provide the board with any information available to assist the board in rendering an opinion, including, but not limited to, criminal history and records related to previous criminal history. On and after July 1, 2006, the clerk of court shall send a copy of the sexual offender's conviction to the board and notify the board that a sexual offender's evaluation will need to be performed. The board shall render its recommendation for risk assessment classification within:

(1) Sixty days of receipt of a request for an evaluation if the sexual offender is being sentenced

pursuant to subsection (c) of Code Section 17-10-6.2;

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

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

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

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

(2) If the sexual offender received a sentence of imprisonment and was sentenced for a dangerous sexual offense on or after July 1, 2006, or if the sexual offender is incarcerated on July 1, 2006, for a crime against a victim who is a minor, after receiving a recommendation from the board that

he or she be classified as a sexually dangerous predator, the sexual offender may request that the sentencing court set a date to conduct a hearing affording the sexual offender the opportunity to present testimony or evidence relevant to the recommended classification. After the hearing and within 60 days of receiving the report, the court shall issue a ruling as to whether or not the sexual offender shall be classified as a sexually dangerous predator. If the court determines the sexual offender to be a sexually dangerous predator, such fact shall be communicated in writing to the appropriate official, the Georgia Bureau of Investigation, and the sheriff of the county where the sexual offender resides.

(c) Any sexual offender who changes residence from another state or territory of the United States to this state and who is not designated as a sexually dangerous predator, sexual predator, or a sexually violent predator shall have his or her required registration information forwarded by the sheriff of his or her county of registration to the board for the purpose of risk assessment classification. After receiving a recommendation from the board that he or she be classified as a sexually dangerous predator, the sexual offender may, within 30 days after the issuance of such classification, request a hearing before an administrative law judge. Such hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The decision of the administrative law judge shall constitute the final decision of the board subject to the right of judicial review in accordance with Chapter 13 of Title 50. If the final determination is that the sexual offender is classified as a sexually dangerous predator, such fact shall be communicated in writing to the appropriate official, the Georgia Bureau of Investigation, and the

sheriff of the county where the sexual offender resides.

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

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

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

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

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

Such electronic monitoring system shall be worn by a sexually dangerous predator for the remainder of his or her natural life. The sexually dangerous predator shall pay the cost of such system to the Department of Corrections if the sexually dangerous predator is on probation; to the Board of Pardons and Paroles if the sexually dangerous predator is on parole; and to the sheriff after the sexually dangerous predator completes his or her term of probation and parole or if the sexually dangerous predator has moved to this state from another state, territory, or country. The

electronic monitoring system shall be placed upon the sexually dangerous predator prior to his or her release from confinement. If the sexual offender is not in custody, within 72 hours of the decision classifying the sexual offender as a sexually dangerous predator by the court in accordance with subsection (b) of this Code section or a final decision pursuant to subsection (c) of this Code section, whichever applies to the sexual offender's situation, the sexually dangerous predator shall report to the sheriff of the county of his or her residence for purposes of having the electronic monitoring system placed on the sexually dangerous predator.

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

42-1-15.

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

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

- (2) No individual who is a sexually dangerous predator shall be employed by any business or entity that is located within 1,000 feet of an area where minors congregate.
- (c) Notwithstanding any ordinance or resolution adopted pursuant to Code Section 16-6-24 or subsection (d) of Code Section 16-11-24, it shall be unlawful for any individual required to register pursuant to Code Section 42-1-12 to loiter, as prohibited by Code Section 16-11-36, at any child care facility, school, or area where minors congregate.
- (d) Any sexual offender who knowingly violates the provisions of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor more than 30 years.
- (e) Nothing in this Code section shall create, either directly or indirectly, any civil cause of action against or result in criminal prosecution of any person, firm, corporation, partnership, trust, or association other than an individual required to be registered under Code Section 42-1-12."

SECTION 25.

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

"(b) In determining the terms and conditions of probation for a probationer who has been convicted of a criminal offense against a victim who is a minor or dangerous sexual offense as ~~that phrase is~~ those terms are defined in ~~subparagraph (a)(4)(B)~~ of Code Section 42-1-12, the court may provide that the probationer shall be:

- (1) Prohibited from entering or remaining present at a victim's school, place of employment,

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

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

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

SECTION 26.

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

"42-8-60.

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

- (1) Defer further proceeding and place the defendant on probation as provided by law; or
- (2) Sentence the defendant to a term of confinement as provided by law.

(b) Upon violation by the defendant of the terms of probation, upon a conviction for another crime during the period of probation, or upon the court determining that the defendant is or was not

eligible for sentencing under this article, the court may enter an adjudication of guilt and proceed as otherwise provided by law. No person may avail himself or herself of this article on more than one occasion.

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

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

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

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

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

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

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

SECTION 27.

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

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

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

SECTION 28.

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

"42-9-44.1.

~~(a) As used in this Code section, the term 'sexual offense' means a violation of Code 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 of age at the time of the commission of the offense or a violation of Code Section 16-6-3, 16-6-4, or 16-6-5 when the victim was under 14 years of age at the time of the commission of the offense.~~

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

of parole to:

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

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

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

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

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

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

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

SECTION 29.

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

"42-9-44.2.

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

~~(b) A person who is required to undergo medroxyprogesterone acetate treatment or its chemical equivalent and counseling as a condition of parole shall begin such treatment prior to his or her release from confinement in the state correctional institution or other institution, but additional treatment may continue after such defendant's release on parole until the defendant demonstrates to the board that such treatment is no longer necessary.~~

~~(c) The provision of treatment required as a condition of parole shall be administered by the State~~

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

Reserved."

SECTION 30.

- (a) This Act shall become effective July 1, 2006.
- (b) Any person required to register pursuant to the provisions of Code Section 42-1-12, relating to the state sexual offender registry, and any person required not to reside within areas where minors congregate, as prohibited by Code Section 42-1-13, shall not be relieved of the obligation to comply with the provisions of said Code sections by the repeal and reenactment of said Code sections.
- (c) The provisions of this Act shall not affect or abate the status as a crime of any such act or omission which occurred prior to the effective date of the Act repealing, repealing and reenacting, or

amending such law, nor shall the prosecution of such crime be abated as a result of such repeal, repeal and reenactment, or amendment.

SECTION 31.

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

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