

Agenda

Sentencing Classification Workgroup – December 7th, 2pm – 4pm

1. Introduction. – Representative Smith

2. Ongoing policy discussions. – Emily Levett (Pew)

- a. Adjusting drug trafficking mandatory minimums to better target high-level offenders
 - i. Review of last meeting's discussion
 - ii. Outstanding policy questions
- b. Instituting carve-outs to mandatory minimums for armed robbery and aggravated dwelling burglary
 - i. Overview of the data on people convicted of armed robbery and aggravated dwelling burglary
 - ii. South Carolina's statutes in context with North Carolina and Virginia
 - iii. Review of last week's discussion
 - iv. Outstanding policy questions
- c. Providing greater sentence graduation for common property offenses
 - i. Review of last week's discussion
 - ii. Outstanding policy questions
 - iii. Summary policy recommendations
- d. Bringing South Carolina's drug statutes into line with neighboring states
 - i. Review of last meeting's discussion
 - ii. Outstanding policy questions
 - iii. Summary policy recommendations

3. New policy discussions.— Emily Levett (Pew)

- a. Make sex offender registration an opt-in requirement, not an opt-out requirement

Adjusting Drug Trafficking Mandatory Minimums to Better Target High-Level Offenders.—

Review of last meeting's discussion.—

- General agreement to return to a discussion on drug trafficking mandatory minimums; &
- General agreement to ensure that any policy forwarded by the Committee should not create an undue burden on the court.

Outstanding policy questions.—

- What narrowly tailored factors could be included in a safety valve or statutory carve-out that would focus mandatory minimums on serious drug traffickers without unnecessarily slowing the proceedings? (See example Georgia safety valve at end of packet.)
 - Previous convictions: The offender has not been previously been convicted of drug trafficking; “drug trafficking” means a conviction pursuant to §44-53-370(e), §44-53-375(C), or §44-53-375(E).
 - Leader of drug trafficking organization: The offender was not a leader of a drug trafficking enterprise; “leader” means a person who planned and organized others and acted as a guiding force to achieve a common goal.
 - Weapon: The offender did not possess or use a weapon during the crime; “weapon” shall have the same meaning as put forth in §16-23-405(a).
 - Injury or death: The offense did not result in death or great bodily injury of a person not party to the offense; “great bodily injury” shall have the same meaning as put forth in §16-3-600(B)(1)(a).
- Should the state implement a traditional post-conviction safety-valve (option A, below), a pre-trial safety valve (option b, next page), or should it modify the trafficking statute to provide two tiers of penalties, one where the minimum can be suspended, and one where the minimum cannot be suspended (option c, next page)?
 - Option A – traditional post-conviction safety valve: Implement a post-conviction safety valve for drug trafficking, whereby judges can sentence the below the mandatory minimum requires if they find certain mitigating factors.
 - Option B – pre-trial safety valve: Implement a pre-trial safety valve for drug trafficking mandatory minimums, whereby consideration of whether the case requires a mandatory

minimum would be argued alongside a plea. If the defendant opts for a trial, then the use of a safety valve could be considered in a separate motion based on specific mitigating factors.

- Option C – statutory carve-out: Within the trafficking sections, provide two tiers of sentences: one where the minimum is mandatory and one where it is suspendable if certain factors are found. (This option looks similar to a policy passed pursuant to S. 1154).
- Should the policy be retroactive?

Instituting Carve-Outs to Armed Robbery and Aggravated Dwelling Burglary Mandatory Minimums.—

Overview of the data on armed robbery and dwelling burglary.—

- Armed robbery
 - Admissions for armed robbery have declined 38% since 2010¹
 - Average sentence length for armed robbery has been relatively steady since 2010²

2010	2016
160 (~13.5 years)	163 months (~14 years)
<i>Mandatory minimum = 10 years</i>	

- Aggravated burglary of a dwelling (burglary I)
 - Admissions for burglary I have declined 32% since 2010³
 - Average sentence length for burglary I has been relatively steady since 2010⁴

2010	2016
204 (17 years)	197 months (~16.5 years)
<i>Mandatory minimum = 15 years</i>	

Review of last meeting's discussion.—

- General interest in continuing a discussion around carve-outs for South Carolina's armed robbery and aggravated burglary of a dwelling statutes &
- Interest in looking at the data on aggravated dwelling burglaries in context with the data on non-aggravated dwelling burglaries. (See below.)
 - Non-aggravated burglary of a dwelling (nonviolent burglary II)
 - Admissions for nonviolent burglary II have declined by 44% since 2010⁵
 - Average sentence length for nonviolent burglary II have declined by 15% since 2010⁶

2010	2016
55 months (~4.5 years)	47 months (~4 years)

South Carolina’s statutes in context with North Carolina and Virginia.—

Armed robbery

State	Sentence
South Carolina ⁷	<u>10</u> – 30 years (does not include attempted armed robbery)
North Carolina ⁸	~3 – ~13 years
Virginia ⁹	5 – life* *Statute includes, alongside armed robbery, robbery by violence (i.e. strangulation, striking or beating, or assault).

Aggravated burglary of a dwelling

State	Aggravating factors	Sentence
South Carolina ¹⁰ (Burglary 1st)	<ul style="list-style-type: none"> • Actor is armed with deadly weapon; causes injury; uses or threatens use of a dangerous instrument; • Actor has two or more convictions for burglary or similar offenses; or • The entering occurs in the nighttime. 	<u>15</u> – life
North Carolina ¹¹ (Burglary 1st)	<ul style="list-style-type: none"> • A person is in actual occupation of the building during the commission of the crime. 	~3 – ~13 years
Virginia ¹²	<ul style="list-style-type: none"> • The entering occurs in the nighttime. • Actor is armed with a deadly weapon. 	5 – 20 years 20 – life

Outstanding policy questions.—

- If there is interest in pursuing this policy, what factors should carve conduct out of the mandatory minimums for armed robbery and burglary I?

Potential carve-outs to South Carolina’s armed robbery mandatory minimum.—

Current statute (<u>10</u> - 30 years)	Potential Mandatory Minimum Carve-Outs
<i>Committing robbery while armed with a dangerous weapon, or alleging that one is armed with a dangerous weapon.</i>	<ul style="list-style-type: none"> • <i>No actual weapon was brandished.</i> • <i>Actor is of YOA age (18 to 25)</i>

Potential carve-outs to South Carolina’s burglary I mandatory minimum (15 years).—

Current statute (<u>15</u> – life)	Potential Mandatory Minimum Carve-Outs
Burglary in the first degree. <i>Entering a dwelling without consent and with intent to commit a crime, and one of the following:</i> <ul style="list-style-type: none"> • Actor is armed with deadly weapon; causes injury; uses or threatens use of a dangerous instrument; • Actor has two or more convictions for burglary or similar offenses; or • The entering occurs in the nighttime. 	<ul style="list-style-type: none"> • <i>No one in actual occupation of the building during the commission of the crime.</i> • <i>Entering occurred in the nighttime.</i> • <i>No actual weapon was brandished.</i> • <i>Actor is of YOA age (18 to 25).</i>

- For defendants who do fall into a carve-out, what should the relief be? Should it be an elimination of the mandatory minimum? Or a lower minimum mandatory sentence?

Providing Greater Sentence Graduation for Common Property Offenses.—

Review of last meeting's discussion.—

- Agreement to apply a graduated sentence policy across common, value-based property offenses; &
- Agreement to standardize tiers across these offenses while maintaining higher penalties for more severe crimes (forgery crimes and credit card fraud offenses). The tiers across offenses shall be as follows: (1) \$0 - \$2,000; (2) \$2,000 to \$5,000; (3) \$5,000 to \$10,000; and (4) \$10,000 and above.

Outstanding policy questions.—

- How should South Carolina sentence these newly created tiers?

Summary policy recommendations.—

Option A:

Value	Theft, damage to property and fraud offenses whose felony threshold level was raised to \$2,000 in 2010, as well as check fraud offenses	Forgery offenses and credit card fraud offenses
\$0 - \$2,000	0 – 30 days	0 – 180 days
\$2,000 - \$5,000	0 – 1 year	0 – 3 years
\$5,000 - \$10,000	0 – 5 years	0 – 5 years
\$10,000	0 – 10 years	0 – 10 years
<i>Impact:</i>	<i>Impact: 66 beds in 10 years</i>	
	<ul style="list-style-type: none"> • 9% reduction in prison beds for property offenders 	

Option B:

Value	Theft, damage to property and fraud offenses whose felony threshold level was raised to \$2,000 in 2010, as well as check fraud offenses	Forgery offenses and credit card fraud offenses
\$0 - \$2,000	0 – 30 days	0 – 1 year
\$2,000 - \$5,000	0 – 3 years	0 – 3 years
\$5,000 - \$10,000	0 – 5 years	0 – 5 years
\$10,000	0 – 10 years	0 – 10 years
<i>Impact:</i>	<i>Impact: 18 beds in 10 years</i>	
	<ul style="list-style-type: none"> • 3% reduction in prison beds for property offenders 	

Additional details of the above policy recommendations listed on pages 7 and 8.

Policy options for theft, damage to property, and fraud offenses whose felony threshold level was raised to \$2,000 in 2010:

Amount	South Carolina	Option A	Option B
\$1,000	(\$0 - \$2,000): 0 – 30 days	(\$0 - \$2,000): 0 – 30 days	(\$0 - \$2,000): 0 – 30 days
\$2,000			
\$3,000	(\$2,000 – \$10,000): 0 – 5 years	(\$2,000 - \$5,000): 0 – 1 year	(\$2,000 - \$5,000): 0 – 3 years
\$4,000			
\$5,000			
\$6,000		(5,000 - \$10,000): 0 – 5 years	(5,000 - \$10,000): 0 – 5 years
\$7,000			
\$8,000			
\$9,000			
\$10,000			
\$10,000+	(\$10,000+): 0 – 10 years	(\$10,000+): 0 – 10 years	(\$10,000+): 0 – 10 years

- Policy would carve out offenses with associated values of \$2,000 to \$5,000 and penalize them with a shorter maximum sentence.

Penalties would apply to the following crimes: malicious injury to animals or property (16-11-510); malicious injury to tree, house, fence or fixture (16-11-520); obtaining nonferrous metals unlawfully, disruption of communication or electrical service (16-11-523); larceny (petit and grand) (16-11-30); stealing of bonds and the like (16-11-40); stealing of livestock and the like (16-11-50); stealing vessels and equipment (16-11-70); shoplifting (16-3-110); receiving stolen goods (16-13-180); breach of trust with fraudulent intent (16-13-230); obtaining signature or property by false pretenses (16-13-240); obtaining property under false tokens or letters (16-13-260); failure to return rented objects (16-13-420); fraudulent acquisition of food stamps (16-13-430); receiving, possessing, concealing, or disposing of a stolen vehicle (16-21-80); unlawful sale or disposal of personal property subject to a security interest (36-9-410); presenting false claims for payment (38-55-170); damage to a lodging establishment (45-2-4(B)); stealing from a field (46-1-20); stealing a tobacco plant (46-1-40); stealing produce (46-1-60); commission merchants failing to account for product (46-1-70); and unlawful purchase or sale of drifted lumber or timber (49-1-50).

Policy options for check fraud offenses with an associated value (i.e. passing checks with insufficient funds):

Amount	South Carolina	Option A	Option A
\$500	(0 - \$1,000): 0 – 30 days	(0 - \$2,000): 0 – 30 days	(0 - \$2,000): 0 – 30 days
\$1,000			
\$2,000	1: 0 – 2 years 2+: 30 days – 10 years	(\$2,000 - \$5,000): 0 – 1 year	(\$2,000 - \$5,000): 0 – 3 years
\$3,000			
\$4,000		(\$5,000 - \$10,000): 0 – 5 years	(\$5,000 - \$10,000): 0 – 5 years
\$5,000			
\$6,000			
\$7,000			
\$8,000			
\$9,000			
\$10,000		(\$10,000+): 0 – 10 years*	(\$10,000+): 0 – 10 years*
\$10,000+			

- Policy would raise the felony theft threshold from \$1,000 to \$2,000.
- Policy would carve out offenses with associated values of \$2,000 to \$5,000 and penalize them with a shorter maximum sentence.
- *Policy would enhance sentences for high-value check-fraud offenses (those with associated values of \$10,000 or more) and raise the maximum penalty for those offenses to 10 years.

Penalties would apply to the following crimes: uttering fraudulent checks (currently set at \$1,000)(34-11-60), and stopping payment on check with intent to defraud (currently set at \$1,000)(34-11-80).

Policy options for forgery.—

Amount	South Carolina	Option A	Option B
No \$	(No \$): 0 – 3 years	(0 – \$2,000): 0 – 180 days	(0 – \$2,000): 0 – 1 year
\$1,000	(\$1 to \$10,000) F: 0 – 5 years		
\$2,000			
\$3,000		(\$2,000 - \$5,000): 0 – 3 years	(\$2,000 - \$5,000): 0 – 3 years
\$4,000		(\$5,000 - \$10,000): 0 – 5 years	(\$5,000 - \$10,000): 0 – 5 years
\$5,000			
\$6,000			
\$7,000			
\$8,000			
\$9,000			
\$10,000			
\$10,000+	(10,000+) F: 0 – 10 years	(\$10,000+) F: 0 – 10 years	(\$10,000+) F: 0 – 10 years

- Policy would establish the felony theft threshold at \$2,000.
- Policy would carve out offenses with associated values between \$2,000 and \$5,000 and penalize them with a shorter maximum sentence.

Penalties would apply to the following crime: forgery (16-13-10).

Policy options for value-based credit card fraud offenses.—

Amount	South Carolina		Option A	Option B
	Financial Transaction Card Fraud	Criminally receiving goods	Financial transaction card fraud/criminally receiving goods	Financial transaction card fraud/criminally receiving goods
\$500	(0 - \$500): 0 – 1 year	(0 - \$1,000): 0 – 30 days	(0 - \$2,000): 0 – 180 days	(0 – \$2,000): 0 – 1 year
\$1,000	(\$500+): 0 – 5 years			
\$2,000				
\$3,000		(\$1,000+): 0 – 5 years	(\$2,000 - \$5,000): 0 – 3 years	(\$2,000 - \$5,000): 0 – 3 years
\$4,000		(\$5,000 - \$10,000): 0 – 5 years	(\$5,000 - \$10,000): 0 – 5 years	(\$5,000 - \$10,000): 0 – 5 years
\$5,000				
\$6,000				
\$7,000				
\$8,000				
\$9,000				
\$10,000				
\$10,000+		(\$10,000+): 0 – 10 years	(\$10,000+): 0 – 10 years	

- Policy would raise the felony theft threshold to \$2,000.
- Policy would carve out offenses with associated values between \$2,000 to \$5,000 and penalize them with a shorter maximum sentence.
- **Policy would enhance sentences for high-value credit card fraud offenses (those with associated values of \$10,000 or more) and raise the maximum penalty to 10 years.

Penalties would apply to the following crimes: financial transaction card fraud (16-14-60) and criminally receiving goods and services fraudulently obtained (16-14-80).

Aligning South Carolina Drug Sentences with Neighboring States.—

Review of last meeting's discussion.—

- Agreement to increase the presumptive threshold differentiating possession and commercial drug offenses, and the threshold differentiating commercial and trafficking crimes to match that of Alabama (excluding marijuana, for which Alabama does not have a threshold) and to differentiate sentences for PWID offenses from other types of commercial activity;
- Agreement to restructure weights and sentences across Schedule I and Schedule II drugs; &
- Pursuant to testimony from Major Hughey and Captain Bell from the South Carolina Law Enforcement Division Forensic Services Laboratory, interest in converting drugs that are currently measured in dosage units (i.e. tablets, pills) to weights.

Outstanding policy questions.—

- How should the committee approach those drugs tied to dosage units or milliliters, not weights?
 - Option A: Bring weights into line with other common drugs (i.e. cocaine, methamphetamine).
 - Option B: Remove weights for these uncommon drugs (similar to Alabama's approach).
 - Option C: Derive approximate weights for the following dosage units (in consultation with the SLED Forensic Services Laboratory), and raise weights proportionally to other drugs.

Controlled substances that are currently measured according to dosage units or milliliters:

- Lysergic acid diethylamide (LSD) or its compounds
 - Possession: .00005 grams (i.e. 50 micrograms)¹³
 - Commercial offenses: .00005 grams – 100 dosage units¹⁴
 - Trafficking, level 1: 100 dosage units – 500 dosage units¹⁵
 - Trafficking, level 2: 500 dosage units – 1,000 dosage units¹⁶
 - Trafficking, level 3: 1,000 dosage units or more¹⁷
- MDMA/Ecstasy:
 - Possession: 0 – 15 dosage units¹⁸
 - Commercial: 15 – 100 dosage units¹⁹
 - Trafficking, level 1: 100 – 500 dosage units²⁰
 - Trafficking, level 2: 500 – 1,000 dosage units²¹
 - Trafficking, level 3: 1,000+ dosage units²²
- GHA
 - Possession: 0 – 20 milliliters (or 20 milligrams)²³
 - Commercial: 20 milliliters (or 20 milligrams) to 50 milliliters (or 50 milligrams)²⁴
 - Trafficking: 50 milliliters or more (or 50 milligrams)²⁵

Summary policy recommendations.—

- Impact: 211 beds in 10 years (for all drug reforms listed on pages 10 through 12).
 - 10% reduction in prison beds for drug offenders
- Cocaine, cocaine base (crack), methamphetamine, amphetamine.—

Weight	Sentence	
0 – 8g	Possession: 1: 0 – 1 years 2: 0 – 3 years 3+: 0 – 5 years	
8 – 28g	Possession with intent to distribute: 1: 0 – 10 years 2: 0 – 15 years 3+, all priors possession: 5 – 25 years 3+: <u>5</u> – 25 years	Distribution and manufacture: 1: 0 – 15 years 2: 5 – 30 years 3+, all priors possession: 10 – 30 years 3+: <u>10</u> – 30 years
28g to 100g	Trafficking: 1: <u>3</u> – 10 years 2: <u>5</u> – 30 years 3+: <u>25</u> – 30 years	
100g – 200g	1: <u>7</u> – 25 years 2: <u>7</u> – 30 years 3+: <u>25</u> – 30 years	
200g – 400g	<u>25</u> years	
400g+	<u>25</u> to 30 years	

- Narcotics (including heroin).—

Weight	Sentence	
0 – 2g	Possession: 1: 0 – 2 years 2: 0 – 5 years 3+: 0 – 5 years	
2g – 4g	Possession with intent to distribute: 1: 0 – 10 years 2: 0 – 25 years 3+, all priors possession: 5 – 25 3+: 5 – 25	Distribution and manufacture: 1: 0 – 15 years 2: 5 – 30 years 3+, all priors possession: 10 – 30 years 3+: 10 – 30 years
4g – 14g	Trafficking: 1: <u>7</u> – 25 years 2+: <u>25</u> years	
14g – 28g	<u>25</u> years	
28g+	<u>25</u> – 40 years	

Additional details of the above policy recommendations listed on pages 13 and 14.

Summary policy recommendations (continued).—

• Marijuana and synthetic marijuana.—

Weight	Sentence	
0 – 2.5lbs	Possession: 1: 0 – 30 days 2+: 0 – 1 year	
2.5lbs to 60lbs	Possession with intent to distribute: 1: 0 – 3 years 2: 0 – 5 years 3+, all priors possession: 0 - 15 years 3+: 0 – 15 years	Distribution and manufacture: 1: 0 – 5 years 2: 0 – 10 years 3+, all priors possession: 5 – 20 years 3+: <u>5</u> – 20 years
60lbs – 2,000lbs	Trafficking: 1: 1 – 10 2: 5 – 20 3+: 25 years	
2,000lbs– 10,000 lbs	<u>25</u> years	
10,000lbs+	<u>25</u> – 30 years	

• Methaqualone (also known as Quaaludes).—

Weight	Sentence	
0 – 8g	Possession: 1: 0 – 6 months 2+: 0 – 1 year	
8 – 28g	Possession with intent to distribute: 1: 0 – 3 years 2: 0 – 5 years 3, all priors possession: 0 – 15 years 3+: 0 – 15 years	Distribution and manufacture: 1: 0 – 5 years 2: 0 – 10 years 3, all priors possession: 5 – 20 years 3+: <u>5</u> – 20 years
28g to 150g	1: <u>1</u> – 10 years 2+: <u>25</u> years	
150g – 1.5kg	<u>25</u> years	
1.5kg – 15kg	<u>25</u> years	
15kg+	<u>25</u> – 30 years	

Additional details of the above policy recommendations listed on pages 15 and 16.

Summary policy recommendations (continued).—

- All other schedule I and II controlled substances.—

Weight	Sentence	
0 – 8g	Possession: 1: 0 – 6 months 2+: 0 – 1 year	
More than 8g	PWID: 1: 0 – 3 years 2: 0 – 5 years 3, all priors possession: 0 – 15 years 3+: 0 – 15 years	Distribution and Manufacture: 1: 0 – 5 years 2: 0 – 10 years 3, all priors possession: 5 – 20 years 3+: <u>5</u> – 20 years

Additional details of the above policy recommendation listed on page 17.

Cocaine, cocaine base, methamphetamine, amphetamine

- Raises the presumptive threshold differentiating possession and commercial drug offenses to match Alabama (8g).
- Raises the threshold differentiating commercial and trafficking offenses to match Alabama (28g).
- Differentiates sentences for PWID from sentences for other types of commercial drug activity.

Offense	Distribution and Manufacture	Possession with Intent to Distribute
1 st offense	0 – 15 years	0 – 10 years
2 nd offense	5 – 30 years	0 – 25 years
3 rd + offense, all priors possession:	10 – 30 years	5 – 25 years
3 rd + offense	<u>10</u> – 30 years	<u>5</u> – 25 years

- Accordingly adjusts possession offenses (such that they are lesser sentences than PWID offenses).

Weight	Current Law		Workgroup Recommendation*	
	Amount	Sentence	Amount	Sentence
0 to 1 g	0 – 1g	<i>Possession:</i> 1: 0 – 3 2: 0 – 5 3+: 0 – 10	0 – 8g	<i>Possession:</i> 1: 0 – 1 2: 0 – 3 3+: 0 – 5
1g to 2g	1 – 10g	<i>Commercial:</i> 1: 0 – 15 2: 5 – 30 3+, all priors possession: 10 – 30 3+: <u>10</u> – 30		
2g to 3g				
3g to 4g				
4g to 5g				
5g to 6g				
6g to 7g				
7g to 8g				
8g to 9g				
9g to 10g	10 – 28g	<i>Trafficking:</i> 1: <u>3</u> – 10 2: <u>5</u> – 30 3: <u>25</u> – 30	8 – 28g	<i>PWID:</i> 1: 0 – 10 2: 0 – 15 3+, all priors possession: 5 – 25 3+: <u>5</u> – 25 <i>Distribution and Manufacture:</i> 1: 0 – 15 2: 5 – 30 3+, all priors possession: 10 – 30 3+: <u>10</u> – 30
10g to 11g				
11g to 12g				
12g to 13g				
13g to 14g				
14g to 15g				
15g to 16g				
16g to 17g				
17g to 18g				
18g to 19g				
19g to 20g				
20g to 30g				
30g to 40g	28g to 100g	1: <u>7</u> – 25 2: <u>7</u> – 30 3+: <u>25</u> – 30	28g to 100g	<i>Trafficking:</i> 1: <u>3</u> – 10 2: <u>5</u> – 30 3: <u>25</u> – 30
40g to 50g				
50g to 60g				
60g to 70g				
70g to 80g				
80g to 90g				
90g to 100g				
100g to 200g				
200g to 300g	200g – 400g	<u>25</u>	200g – 400g	<u>25</u>
300g to 400g				
400g+	400g+	<u>25</u> – 30	400g+	<u>25</u> to 30

*Workgroup recommendation would adjust sentences for manufacture of methamphetamine; the offense would continue to be violent pursuant to 16-1-60.

*Underlined sentences denote sentences that cannot be suspended.

Narcotics (including heroin)

- Raises the presumptive threshold differentiating possession and commercial drug offenses to 2g to match Alabama.
- Does not change the trafficking threshold or trafficking offenses (South Carolina’s trafficking threshold – 4g – currently aligns with neighbor states).
- Differentiates sentences for PWID from sentences for other types of commercial drug activity.

Offense	Distribution and Manufacture	Possession with Intent to Distribute
1 st offense	0 – 15 years	0 – 10 years
2 nd offense	5 – 30 years	0 – 25 years
3 rd + offense, all priors possession:	10 – 30 years	5 – 25 years
3 rd + offense	<u>10</u> – 30 years	<u>5</u> – 25 years

Weight	Current Law		Recommendation	
Weights	Amount	Sentence	Amount	Sentence
0 to .1g	0 - 0.13g (2 grains) of heroin; 0 - .26g of opium or morphine (no weight threshold otherwise)	<i>Possession</i> ²⁶ : 1: 0 – 2 2: 0 – 5 3+: 0 – 5	0 – 2g	<i>Possession</i> : 1: 0 – 2 2: 0 – 5 3+: 0 – 5
.1g to .2g				
.2g to .4g	0.13g – 4g	<i>Commercial</i> ²⁷ : 1: 0 – 15 years 2: 5 – 30 years 3+, all priors possession: 10 – 30 years 3+: <u>10</u> – 30 years	2g – 4g	<i>PWID</i> : 1: 0 – 10 2: 0 – 15 3+, all priors possession: 5 – 20 3+: <u>5</u> – 20 <i>Distribution and Manufacture</i> : 1: 0 – 15 years 2: 5 – 30 years 3+, all priors possession: 10 – 30 years 3+: <u>10</u> – 30 years
.4g to .6g				
.6g to .8g				
.8g to .1g				
1g to 1.2g				
1.2g to 1.4g				
1.4g – 1.6g				
1.6g to 1.8g				
1.8g – 2g				
2g to 2.2g				
2.2g – 2.4g				
2.4g – 2.6g				
2.6g – 2.8g				
2.8g – 3g				
3g – 3.2g				
3.2g – 3.4g				
3.4g – 3.6g				
3.6 to 3.8g				
3.8g to 4g				
4g to 5g	4g – 14g	1: <u>7</u> – 25 2+: <u>25</u>	4g – 14g	1: <u>7</u> – 25 2+: <u>25</u>
5g to 6g				
6g to 7g				
7g to 8g				
8g to 9g				
9g to 10g				
10g to 20g	14g – 28g	Any: <u>25</u>	14g – 28g	Any: <u>25</u>
20g to 30g				
30g to 40g	28g+	Any: <u>25</u> – 40	28g+	Any: <u>25</u> – 40

*Underlined sentences denote sentences that cannot be suspended.

Marijuana

- Raises the presumptive threshold differentiating possession and commercial drug offenses to 2.5lbs.
- Raises the threshold differentiating commercial and trafficking offenses to 60lbs.
- Differentiates sentences for PWID from sentences for other types of commercial drug activity.

Offense	Distribution and Manufacture	Possession with Intent to Distribute
1 st offense	0 – 5 years	0 – 3 years
2 nd offense	0 – 10 years	0 – 5 years
3 rd + offense, all priors possession:	5 – 20 years	0 – 15 years
3 rd + offense	<u>5</u> – 20 years	0 – 15 years

Weight		Current Law		Workgroup Recommendation	
Amount	Amount	Sentence	Amount	Sentence	
0 to 10g	0 – 28g (marijuana) 0 – 10g (hashish)	<i>Possession</i> ²⁸ : 1: 0 – 30 days 2+: 0 – 1 year	0 – 2.5lbs	<i>Possession</i> : 1: 0 – 30 years 2+: 0 – 1 year	
10g to 20g					
20g to 30g					
30g to 40g	28g – 10lbs	<i>Commercial</i> ²⁹ : 1: 0 – 5 years 2: 0 – 10 years 3+, all priors possession: 5 – 20 years 3+: <u>5</u> – 20 years			
40g to 50g					
50g to 100g					
100g to 200g					
200g to 300g					
300g to 400g					
400g to 1lb					
1lb to 5lb					
2lb to 3lb					
3lb to 4lb					
4lb to 5lb					
5lb to 6lb					
6lb to 7lb					
7lb to 8lb					
8lb to 9lb					
10lb to 20lb	10lb – 100lbs	<i>Trafficking</i> ³⁰ : 1: <u>1</u> – 10 2: <u>5</u> – 20 3+: <u>25</u> years	2.5lbs to 10lbs	<i>PWID</i> : 1: 0 – 3 years 2: 0 – 5 years 3+, all priors possession: 5 – 15 years 3+: <u>5</u> – 15 years	
20lb to 30lb					
30lb to 40lb					
40lb to 50lb					
50lb to 60lb					
60lb to 70lb					
70lb to 80lb					
80lb to 90lb					
90lb to 100lb					
100lb to 110lb					
110lb to 120lb					
120 lb to 130lb					
130lb to 140lb					
140lb to 150lb					
150lb to 160lb					
170lb to 180lb					
190lb to 200lb					
200lb to 2,000lb					
2,000 to 10,000 lbs	2,000lbs – 10,000 lbs (or 1,000 to 10,000 marijuana plants)	<u>25</u> years	2,000lbs – 10,000 lbs	<u>25</u> years	
10,000lb+	10,000lbs+	<u>25</u> – 30 years	10,000lbs+	<u>25</u> – 30 years	

*Underlined sentences denote sentences that cannot be suspended.

Methaqualone

- Creates a presumptive threshold differentiating possession and commercial drug offenses at 8g.
- Raises the threshold differentiating commercial/possession offenses and trafficking offenses at 28g.
- Differentiates sentences for PWID from sentences for other types of commercial drug activity (i.e. distribution, manufacture).

Offense	Distribution and Manufacture	Possession with Intent to Distribute
1 st offense	0 – 5 years	0 – 3 years
2 nd offense	0 – 10 years	0 – 5 years
3 rd + offense, all priors possession:	5 – 20 years	0 – 15 years
3 rd + offense	<u>5</u> – 20 years	0 – 15 years

Weight	Current Law		Workgroup Recommendation			
	Amount	Sentence	Amount	Sentence		
0 to 5g	0 – 15g	<i>Possession:</i> 1: 0 – 6 months 2+: 0 – 1 year <i>Commercial:</i> 1: 0 – 5 years 2: 0 – 10 years 3, all priors possession: 5 – 20 years 3+: <u>5</u> – 20 years	0 – 8g	<i>Possession:</i> 1: 0 – 6 months 2+: 0 – 1 year		
5g to 10 g			8 – 28g	<i>PWID:</i> 1: 0 – 3 years 2: 0 – 5 years 3, all priors possession: 0 – 15 years 3+: 0 – 15 years		
10g to 15g			<i>Trafficking:</i> 1: 1 – 10 years 2+: <u>25</u> years	28g – 150g	<i>Dist. + Manufacture</i> 1: 0 – 5 years 2: 0 – 10 years 3, all priors possession: 5 – 20 years 3+: <u>5</u> – 20 years 1: 1 – 10 years 2+: <u>25</u> years	
15g to 20g	150g – 1.5kg	25 years				25 years
20g to 25g						
25g to 30g						
30g to 35g						
35g to 40g						
45g to 50g						
50g to 100g						
100g to 150g						
150g to 200g						
200g to 300g						
300g to 400g						
400g to 500g						
500g to 600g						
600g to 700g						
700g to 800g						
800g to 900g						
900g to 1kg						
1kg to 2kg						
2kg to 3kg	1.5kg – 15kg	<u>25</u> years	1.5kg – 15kg	<u>25</u> years		
3kg to 4kg						
4kg to 5kg						
5kg to 10kg						
10kg to 15kg						
15kg+	15kg +	<u>25</u> – 30 years	15kg+	<u>25</u> – 30 years		

*Underlined sentences denote sentences that cannot be suspended.

All other Schedule I and II drugs

- Creates a presumptive threshold differentiating possession and commercial drug offenses at 8g.
- Differentiates sentences for PWID from sentences for other types of commercial drug activity.

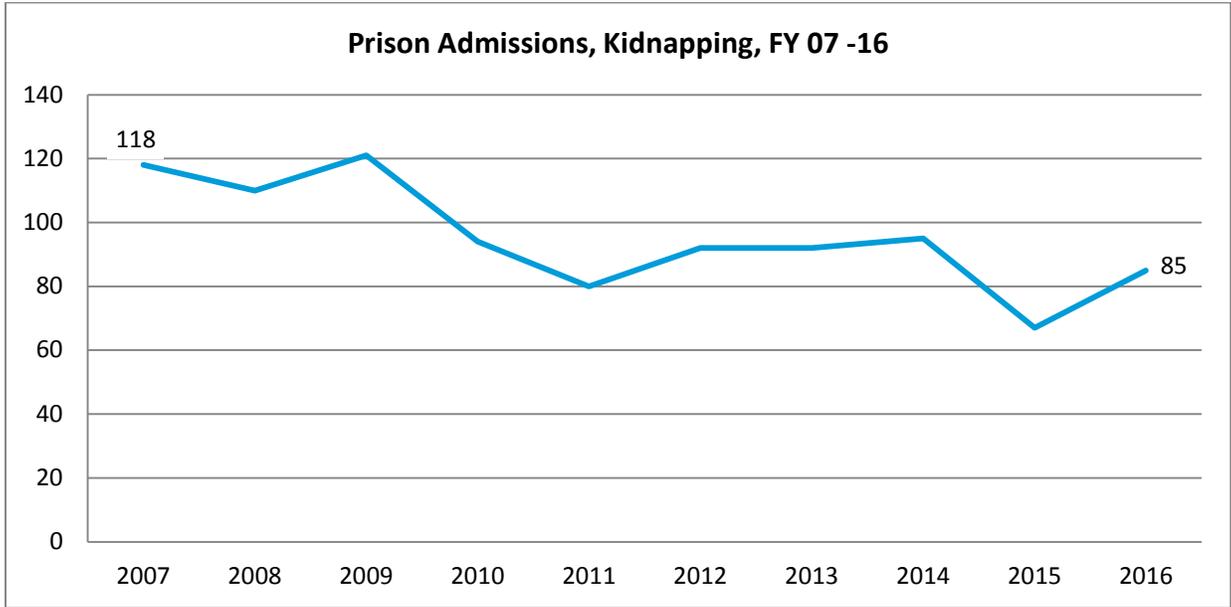
Offense	Distribution and Manufacture	Possession with Intent to Distribute
1 st offense	0 – 5 years	0 – 3 years
2 nd offense	0 – 10 years	0 – 5 years
3 rd + offense, all priors possession:	5 – 20 years	0 – 15 years
3 rd + offense	<u>5</u> – 20 years	0 – 15 years

Current law		Workgroup Recommendation	
Amount	Sentence	Amount	Sentence
None	<i>Possession:</i> ³¹ 1: 0 – 6 months 2: 0 – 1 year	Less than 8g	<i>Possession:</i> 1: 0 – 6 months 2+: 0 – 1 year
None	<i>Commercial:</i> ³² 1: 0 – 5 years 2: 0 – 10 years 3, all priors possession: 5 – 20 years 3: <u>5</u> – 20 years	More than 8g	<i>PWID:</i> 1: 0 – 3 years 2: 0 – 5 years 3, all priors possession: 0 – 15 years 3+: 0 – 15 years <i>Distribution and Manufacture:</i> 1: 0 – 5 years 2: 0 – 10 years 3, all priors possession: 5 – 20 years 3+: <u>5</u> – 20 years
<i>No trafficking level</i>		<i>No trafficking level</i>	

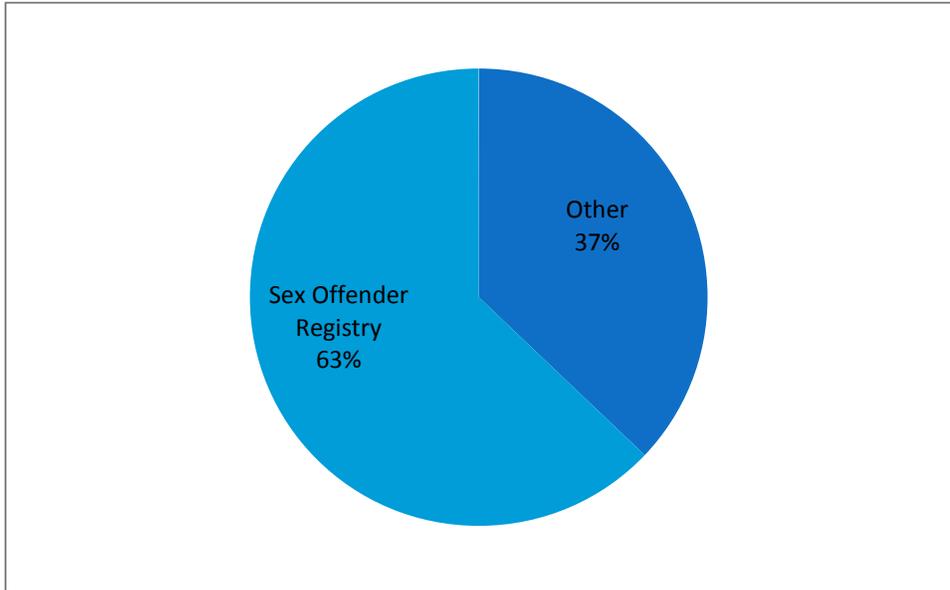
*Underlined sentences denote sentences that cannot be suspended.

Overview of the data on people convicted of kidnapping.—

Admissions for people convicted of kidnapping have declined by 28 percent since 2006. As of 2016, there were 1,132 people in prison for kidnapping offenses.—



63 percent of people in prison for kidnapping are registered as a sex offender; 37 percent are not registered as a sex offender (note that some people may be registered for other convictions).—



Policy: Kidnapping

For those convicted of kidnapping, make sex offender registration an opt-in requirement, not an opt-out requirement

Currently, people convicted for kidnapping are automatically required to register as a sex offender, unless the judge makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense. Of the people currently in prison on a kidnapping charge, 63 percent are required to register as a sex offender.

To ensure that people convicted of kidnapping whose offenses were not sexual in nature are not required to register, render sex offender registration for kidnapping offenses an opt-in requirement. Under this scenario, to put someone convicted of kidnapping on the sex offender registration list, a judge would have to make a finding on the record that the offense was sexual in nature.

Endnotes

¹ Does not include attempted armed robbery; includes admissions for new criminal convictions only

² Includes life sentences using a 40-year stand-in average; use sentences for new criminal convictions; excludes YOA sentences.

³ Includes admissions for new criminal convictions only.

⁴ Includes life sentences using a 40-year stand-in average; uses sentences for new criminal convictions; excludes YOA sentences.

⁵ Includes admissions for new criminal convictions only.

⁶ Includes life sentences using a 40-year stand-in average; uses sentences for new criminal convictions; excludes YOA sentences

⁷ S.C. Code Ann § 16-11-330(A).

⁸ N.C. Gen. Stat. § 14-87.

⁹ Va. Code Ann. § 18.2-58.

¹⁰ S.C. Code Ann § 16-11-311.

¹¹ N.C. Gen. Stat. § 14-52.

¹² Va. Code Ann. § 18.2-91.

¹³ S.C. Code Ann. § 44-53-370(d)(4).

¹⁴ S.C. Code Ann. § 44-53-370(b)(1).

¹⁵ S.C. Code Ann. § 44-53-370(e)(5)(a).

¹⁶ S.C. Code Ann. § 44-53-370(e)(5)(b).

¹⁷ S.C. Code Ann. § 44-53-370(e)(5)(c).

¹⁸ S.C. Code Ann. § 44-53-370(d)(4).

¹⁹ S.C. Code Ann. § 44-53-370(b)(2).

²⁰ S.C. Code Ann. § 44-53-370(e)(8)(a).

²¹ S.C. Code Ann. § 44-53-370(e)(8)(b).

²² S.C. Code Ann. § 44-53-370(e)(8)(b).

²³ S.C. Code Ann. § 44-53-370(d)(4).

²⁴ S.C. Code Ann. § 44-53-370(b)(2).

²⁵ S.C. Code Ann. § 44-53-370(e)(7).

²⁶ S.C. Code Ann. § 44-53-370(d)(1).

²⁷ S.C. Code Ann. § 44-53-370(d)(1); In South Carolina, weight of the controlled substances gives rise to an assumption of intent to distribute, though intent would still need to be proven at trial.

²⁸ S.C. Code Ann. § 44-53-370(d)(2).

²⁹ S.C. Code Ann. § 44-53-370(b)(2)

³⁰ S.C. Code Ann. § 44-53-370(e)(1).

³¹ S.C. Code Ann. § 44-53-370(d)(2)

³² S.C. Code Ann. § 44-53-370(b)(2)

House Bill 349 (AS PASSED HOUSE AND SENATE)

By: Representatives Golick of the 40th, Hatchett of the 150th, Coomer of the 14th, Pak of the 108th, Oliver of the 82nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal
2 or certiorari by the state in criminal cases, so as to provide the state with more direct appeal
3 rights; to provide the state with cross appeal rights; to provide for cross-references; to
4 provide for liberal construction of the chapter; to amend Part 1 of Article 2 of Chapter 13 of
5 Title 16, Title 17, Article 3A of Chapter 5 of Title 40, and Title 42 of the Official Code of
6 Georgia Annotated, relating to schedules, offenses, and penalties for controlled substances,
7 criminal procedure, suspension of driver's license for certain drug offenses, and penal
8 institutions, respectively, so as to enact provisions recommended by the Governor's Special
9 Council on Criminal Justice Reform in Georgia; to change provisions relating to sentencing
10 for trafficking in certain drugs; to provide for definitions; to clarify provisions relating to the
11 weight or quantity of controlled substances and marijuana; to change provisions relating to
12 sentencing serious violent offenders, certain sexual offenders, and repeat offenders; to create
13 the Georgia Council on Criminal Justice Reform and provide for its members, chairperson,
14 other officers, committees, staff, and funding; to allow a drug court or mental health court
15 division judge to order the Department of Driver's Services to change a defendant's driving
16 privileges for participants in their court programs under certain circumstances; to delete
17 definitions; to change terms of a probated sentence; to amend Part 7 of Article 7 of Chapter
18 3 of Title 20 of the Official Code of Georgia Annotated, relating to HOPE scholarships and
19 grants, so as to provide that incarcerated individuals who qualify for HOPE GED vouchers
20 may use such vouchers within 24 months of release; to amend Article 2 of Chapter 8 of Title
21 24 of the Official Code of Georgia Annotated, relating to admissions and confessions, so as
22 to change provisions relating to a child's description of sexual contact or physical abuse; to
23 amend Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review
24 of individual's criminal history record information, definitions, and privacy considerations,
25 so as to clarify provisions relating to record restriction involving certain felony offenses; to
26 change provisions relating to the application of the Code section to arrests occurring prior
27 to July 1, 2013; to amend Code Section 42-9-43 of the Official Code of Georgia Annotated,
28 relating to information to be considered by the State Board of Pardons and Paroles generally,

29 so as to define terms applicable to issuing medical reprieves to entirely incapacitated persons
 30 suffering a progressively debilitating terminal illness; to amend Code Section 49-5-183.1 of
 31 the Official Code of Georgia Annotated, relating to notice to alleged child abuser of
 32 classification, procedures, notification to division, and children under 14 years of age not
 33 required to testify, so as to correct a cross-reference; to provide for related matters; to provide
 34 for an effective date and applicability; to repeal conflicting laws; and for other purposes.

35 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

36 **SECTION 1.**

37 Chapter 7 of Title 5 of the Official Code of Georgia Annotated, relating to appeal or
 38 certiorari by the state in criminal cases, is amended by revising Code Section 5-7-1, relating
 39 to orders, decisions, or judgments appealable and defendant's right to cross appeal, as
 40 follows:

41 "5-7-1.

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

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

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

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

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

58 (5) From an order, decision, or judgment excluding any other evidence to be used by the
 59 state at trial on any motion filed by the state or defendant at least 30 days prior to trial and
 60 ruled on prior to the impaneling of a jury or the defendant being put in jeopardy,
 61 whichever occurs first, if:

62 (A) Notwithstanding the provisions of Code Section 5-6-38, the notice of appeal filed
 63 pursuant to this paragraph is filed within two days of such order, decision, or judgment;
 64 and

65 (B) The prosecuting attorney certifies to the trial court that such appeal is not taken for
 66 purpose of delay and that the evidence is a substantial proof of a material fact in the
 67 proceeding;

68 ~~(5)~~(6) From an order, decision, or judgment of a court where the court does not have
 69 jurisdiction or the order is otherwise void under the Constitution or laws of this state;

70 ~~(6)~~(7) From an order, decision, or judgment of a superior court transferring a case to the
 71 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28 or subsection
 72 (b) of Code Section 17-7-50.1;

73 ~~(7)~~(8) From an order, decision, or judgment of a court granting a motion for new trial or
 74 an extraordinary motion for new trial;

75 ~~(8)~~(9) From an order, decision, or judgment denying a motion by the state to recuse or
 76 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; or

77 ~~(9)~~(10) From an order, decision, or judgment issued pursuant to subsection (c) of Code
 78 Section 17-10-6.2.

79 (b) In any instance in which any appeal is taken by and on behalf of the State of Georgia
 80 in a criminal case, the defendant shall have the right to cross appeal. Such cross appeal
 81 shall be subject to the same rules of practice and procedure as provided for in civil cases
 82 under Code Section 5-6-38.

83 (c) In any instance in which the defendant in a criminal cases applies for and is granted an
 84 interlocutory appeal as provided Code Section 5-6-34 or an appeal is taken pursuant to
 85 Code Section 17-10-35.1, the state shall have the right to cross appeal on any matter ruled
 86 on prior to the impaneling of a jury or the defendant being put in jeopardy. Such cross
 87 appeal shall be subject to the same rules of practice and procedure as provided for in civil
 88 cases under Code Section 5-6-38. The state shall not be required to obtain a certificate of
 89 immediate review for such cross appeal."

90 **SECTION 2.**

91 Said chapter is further amended by revising subsection (b) of Code Section 5-7-2, relating
 92 to certification required for immediate review of nonfinal orders, decisions, or judgments,
 93 as follows:

94 "(b) A certificate of immediate review shall not be required from an:

95 (1) Order, decision, or judgment suppressing or excluding ~~illegally seized~~ evidence as
 96 set forth in paragraph (4) or (5) of subsection (a) of Code Section 5-7-1; or

97 (2) Order, decision, or judgment described in paragraph (1) or (7) of subsection (a) of
 98 Code Section 5-7-1."

99 **SECTION 3.**

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

101 "5-7-6.

102 This chapter shall be liberally construed to effectuate the purposes stated in this chapter."

103 **SECTION 4.**

104 Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
 105 relating to schedules, offenses, and penalties for controlled substances, is amended by
 106 revising Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana,
 107 or methamphetamine and penalties, as follows:

108 "16-13-31.

109 (a)(1) Any person who knowingly sells, manufactures, delivers, or brings into this state
 110 or who is knowingly in possession of 28 grams or more of cocaine or of any mixture with
 111 a purity of 10 percent or more of cocaine, as described in Schedule II, in violation of this
 112 article commits the felony offense of trafficking in cocaine and, upon conviction thereof,
 113 shall be punished as follows:

114 (A) If the quantity of the cocaine or the mixture involved is 28 grams or more, but less
 115 than 200 grams, the person shall be sentenced to a mandatory minimum term of
 116 imprisonment of ten years and shall pay a fine of \$200,000.00;

117 (B) If the quantity of the cocaine or the mixture involved is 200 grams or more, but less
 118 than 400 grams, the person shall be sentenced to a mandatory minimum term of
 119 imprisonment of 15 years and shall pay a fine of \$300,000.00; and

120 (C) If the quantity of the cocaine or the mixture involved is 400 grams or more, the
 121 person shall be sentenced to a mandatory minimum term of imprisonment of 25 years
 122 and shall pay a fine of \$1 million.

123 (2) Any person who knowingly sells, manufactures, delivers, or brings into this state or
 124 who is knowingly in possession of any mixture with a purity of less than 10 percent of
 125 cocaine, as described in Schedule II, in violation of this article commits the felony
 126 offense of trafficking in cocaine if the total weight of the mixture multiplied by the
 127 percentage of cocaine contained in the mixture exceeds any of the quantities of cocaine
 128 specified in paragraph (1) of this subsection. Upon conviction thereof, such person shall
 129 be punished as provided in paragraph (1) of this subsection depending upon the quantity
 130 of cocaine such person is charged with knowingly selling, manufacturing, delivering, or
 131 bringing into this state or knowingly possessing.

132 (b) Any person who knowingly sells, manufactures, delivers, brings into this state, or has
133 possession of ~~4~~ four grams or more of any morphine or opium or any salt, isomer, or salt
134 of an isomer thereof, including heroin, as described in Schedules I and II, or ~~4~~ four grams
135 or more of any mixture containing any such substance in violation of this article commits
136 the felony offense of trafficking in illegal drugs and, upon conviction thereof, shall be
137 punished as follows:

138 (1) If the quantity of such substances involved is ~~4~~ four grams or more, but less than 14
139 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
140 five years and shall pay a fine of \$50,000.00;

141 (2) If the quantity of such substances involved is 14 grams or more, but less than 28
142 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
143 ten years and shall pay a fine of \$100,000.00; and

144 (3) If the quantity of such substances involved is 28 grams or more, the person shall be
145 sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine
146 of \$500,000.00.

147 (c) Any person who knowingly sells, manufactures, grows, delivers, brings into this state,
148 or has possession of a quantity of marijuana exceeding ~~10~~ ten pounds commits the offense
149 of trafficking in marijuana and, upon conviction thereof, shall be punished as follows:

150 (1) If the quantity of marijuana involved is in excess of ~~10~~ ten pounds, but less than
151 2,000 pounds, the person shall be sentenced to a mandatory minimum term of
152 imprisonment of five years and shall pay a fine of \$100,000.00;

153 (2) If the quantity of marijuana involved is 2,000 pounds or more, but less than 10,000
154 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of
155 seven years and shall pay a fine of \$250,000.00; and

156 (3) If the quantity of marijuana involved is 10,000 pounds or more, the person shall be
157 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
158 of \$1 million.

159 (d) Any person who knowingly sells, manufactures, delivers, or brings into this state 200
160 grams or more of methaqualone or of any mixture containing methaqualone, as described
161 in paragraph (6) of Code Section 16-13-25, in violation of this article commits the felony
162 offense of trafficking in methaqualone and, upon conviction thereof, shall be punished as
163 follows:

164 (1) If the quantity of the methaqualone or the mixture involved is 200 grams or more, but
165 less than 400 grams, the person shall be sentenced to a mandatory minimum term of
166 imprisonment of five years and shall pay a fine of \$50,000.00; and

167 (2) If the quantity of the methaqualone or the mixture involved is 400 grams or more, the
 168 person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and
 169 shall pay a fine of \$250,000.00.

170 (e) Any person who knowingly sells, delivers, or brings into this state or has possession
 171 of 28 grams or more of methamphetamine, amphetamine, or any mixture containing either
 172 methamphetamine or amphetamine, as described in Schedule II, in violation of this article
 173 commits the felony offense of trafficking in methamphetamine or amphetamine and, upon
 174 conviction thereof, shall be punished as follows:

175 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 176 substance involved is 28 grams or more, but less than 200 grams, the person shall be
 177 sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a
 178 fine of \$200,000.00;

179 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 180 substance involved is 200 grams or more, but less than 400 grams, the person shall be
 181 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
 182 of \$300,000.00; and

183 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 184 substance involved is 400 grams or more, the person shall be sentenced to a mandatory
 185 minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

186 (f) Any person who knowingly manufactures methamphetamine, amphetamine, or any
 187 mixture containing either methamphetamine or amphetamine, as described in Schedule II,
 188 in violation of this article commits the felony offense of trafficking methamphetamine or
 189 amphetamine and, upon conviction thereof, shall be punished as follows:

190 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 191 substance involved is less than 200 grams, the person shall be sentenced to a mandatory
 192 minimum term of imprisonment of ten years and shall pay a fine of \$200,000.00;

193 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 194 substance involved is 200 grams or more, but less than 400 grams, the person shall be
 195 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
 196 of \$300,000.00; and

197 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 198 substance involved is 400 grams or more, the person shall be sentenced to a mandatory
 199 minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

200 ~~(g)(1) Except as provided in paragraph (2) of this subsection and notwithstanding Code~~
 201 ~~Section 16-13-2, with respect to any person who is found to have violated this Code~~
 202 ~~section, adjudication of guilt or imposition of sentence shall not be suspended, probated,~~

203 ~~deferred, or withheld prior to serving the mandatory minimum term of imprisonment~~
 204 ~~prescribed by this Code section.~~

205 (2) The district attorney may move the sentencing court to impose a reduced or
 206 suspended sentence upon any person who is convicted of a violation of this Code section
 207 ~~and~~ who provides substantial assistance in the identification, arrest, or conviction of any
 208 of his or her accomplices, accessories, coconspirators, or principals. Upon good cause
 209 shown, the motion may be filed and heard in camera. The judge hearing the motion may
 210 impose a reduced or suspended sentence if he or she finds that the defendant has rendered
 211 such substantial assistance.

212 (2)(A) In the court's discretion, the judge may depart from the mandatory minimum
 213 sentence specified for a person who is convicted of a violation of this Code section as
 214 set forth in subparagraph (B) of this paragraph if the judge concludes that:

- 215 (i) The defendant was not a leader of the criminal conduct;
- 216 (ii) The defendant did not possess or use a weapon during the crime;
- 217 (iii) The criminal conduct did not result in a death or serious bodily injury to a person
 218 other than to a person who is a party to the crime;
- 219 (iv) The defendant has no prior felony conviction; and
- 220 (v) The interests of justice will not be served by the imposition of the prescribed
 221 mandatory minimum sentence.

222 (B) The sentencing departure ranges pursuant to subparagraph (A) of this paragraph
 223 shall be as follows:

- 224 (i) Any person convicted of violating paragraph (1) of subsection (b) or (d) of this
 225 Code section, two years and six months to five years imprisonment and a fine of not
 226 less than \$25,000.00 nor more than \$50,000.00;
- 227 (ii) Any person convicted of violating paragraph (1) of subsection (c) of this Code
 228 section, two years and six months to five years imprisonment and a fine of not less
 229 than \$50,000.00 nor more than \$100,000.00;
- 230 (iii) Any person convicted of violating paragraph (2) of subsection (c) of this Code
 231 section, three years and six months to seven years imprisonment and a fine of not less
 232 than \$125,000.00 nor more than \$250,000.00;
- 233 (iv) Any person convicted of violating subparagraph (a)(1)(A), paragraph (2) of
 234 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(A)
 235 of this Code section, or paragraph (1) of subsection (e) or (f) of this Code section, five
 236 to ten years imprisonment and a fine of not less than \$100,000.00 nor more than
 237 \$200,000.00;

238 (v) Any person convicted of violating paragraph (2) of subsection (b) of this Code
239 section, five to ten years imprisonment and a fine of not less than \$50,000.00 nor
240 more than \$100,000.00;

241 (vi) Any person convicted of violating subparagraph (a)(1)(B), paragraph (2) of
242 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(B)
243 of this Code section, or paragraph (2) of subsection (e) or (f) of this Code section,
244 seven years and six months to 15 years imprisonment and a fine of not less than
245 \$150,000.00 nor more than \$300,000.00;

246 (vii) Any person convicted of violating paragraph (3) of subsection (c) of this Code
247 section, seven years and six months to 15 years imprisonment and a fine of not less
248 than \$500,000.00 nor more than \$1 million;

249 (viii) Any person convicted of violating paragraph (2) of subsection (d) of this Code
250 section, seven years and six months to 15 years imprisonment and a fine of not less
251 than \$125,000.00 nor more than \$250,000.00;

252 (ix) Any person convicted of violating paragraph (3) of subsection (b) of this Code
253 section, 12 years and six months to 25 years imprisonment and a fine of not less than
254 \$250,000.00 nor more than \$500,000.00; and

255 (x) Any person convicted of violating subparagraph (a)(1)(C), paragraph (2) of
256 subsection (a), relating to the quantity of drugs specified in subparagraph (a)(1)(C)
257 of this Code section, or paragraph (3) of subsection (e) or (f) of this Code section,
258 12 years and six months to 25 years imprisonment and a fine of not less than
259 \$500,000.00 nor more than \$1 million.

260 (C) If a judge reduces the mandatory minimum sentence pursuant to this paragraph, the
261 judge shall specify on the record the circumstances for the reduction and the interests
262 served by such departure. Any such order shall be appealable by the State of Georgia
263 pursuant to Code Section 5-7-1.

264 (D) As used in this paragraph, the term:

265 (i) 'Leader' means a person who planned and organized others and acted as a guiding
266 force in order to achieve a common goal.

267 (ii) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1.

268 (3) In the court's discretion, the judge may depart from the mandatory minimum sentence
269 specified in this Code section for a person who is convicted of a violation of this Code
270 section when the prosecuting attorney and the defendant have agreed to a sentence that
271 is below such mandatory minimum.

272 (h) Any person who violates any provision of this Code section shall be punished as
273 provided for in the applicable mandatory minimum punishment and for not more than 30
274 years of imprisonment and by a fine not to exceed \$1 million.

275 (i) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to this Code
 276 section shall not be reduced by any earned time, early release, work release, leave, or other
 277 sentence-reducing measures under programs administered by the Department of
 278 Corrections, the effect of which would be to reduce the period of incarceration ordered by
 279 the sentencing court or any form of pardon, parole, or commutation of sentence by the State
 280 Board of Pardons and Paroles; provided, however, that during the final year of
 281 incarceration, a defendant so sentenced shall be eligible to be considered for participation
 282 in a Department of Corrections administered transitional center or work release program."

283 **SECTION 5.**

284 Said part is further amended by revising Code Section 16-13-31.1, relating to trafficking in
 285 ecstasy and penalties, as follows:

286 "16-13-31.1.

287 (a) Any person who knowingly sells, manufactures, delivers, brings into this state, or has
 288 possession of 28 grams or more of 3, 4-methylenedioxyamphetamine or 3,
 289 4-methylenedioxymethamphetamine, or any mixture containing 3,
 290 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine as described in
 291 Schedule I, in violation of this article commits the felony offense of trafficking in 3,
 292 4-methylenedioxyamphetamine or 3, 4-methylenedioxymethamphetamine and, upon
 293 conviction thereof, shall be punished as follows:

294 (1) If the quantity of such substance involved is 28 grams or more, but less than 200
 295 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
 296 three years but not more than 30 years and shall pay a fine of not less than \$25,000.00 nor
 297 more than \$250,000.00;

298 (2) If the quantity of such substance involved is 200 grams or more, but less than 400
 299 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
 300 five years but not more than 30 years and shall pay a fine of not less than \$50,000.00 nor
 301 more than \$250,000.00; and

302 (3) If the quantity of such substance involved is 400 grams or more, the person shall be
 303 sentenced to a mandatory minimum term of imprisonment of ten years but not more than
 304 30 years and shall pay a fine of not less than \$100,000.00 nor more than \$250,000.00.

305 (b)(1) In the court's discretion, the judge may depart from the mandatory minimum
 306 sentence specified for a person who is convicted of a violation of this Code section as set
 307 forth in paragraph (2) of this subsection if the judge concludes that:

308 (A) The defendant was not a leader of the criminal conduct;

309 (B) The defendant did not possess or use a weapon during the crime;

310 (C) The criminal conduct did not result in a death or serious bodily injury to a person
311 other than to a person who is a party to the crime;

312 (D) The defendant has no prior felony conviction; and

313 (E) The interests of justice will not be served by the imposition of the prescribed
314 mandatory minimum sentence.

315 (2) The sentencing departure ranges pursuant to paragraph (1) of this subsection shall be
316 as follows:

317 (A) Any person convicted of violating paragraph (1) of subsection (a) of this Code
318 section, one year and six months to 30 years imprisonment and a fine of not less than
319 \$12,500.00 nor more than \$250,000.00;

320 (B) Any person convicted of violating paragraph (2) of subsection (a) of this Code
321 section, two years and six months to 30 years imprisonment and a fine of not less than
322 \$25,000.00 nor more than \$250,000.00; and

323 (C) Any person convicted of violating paragraph (3) of subsection (a) of this Code
324 section, five to 30 years imprisonment and a fine of not less than \$50,000.00 nor more
325 than \$250,000.00;

326 (3) If a judge reduces the mandatory minimum sentence pursuant to this subsection, the
327 judge shall specify on the record the circumstances for the reduction and the interests
328 served by such departure. Any such order shall be appealable by the State of Georgia
329 pursuant to Code Section 5-7-1.

330 (4) As used in this subsection, the term:

331 (A) 'Leader' means a person who planned and organized others and acted as a guiding
332 force in order to achieve a common goal.

333 (B) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1.

334 (c) The district attorney may move the sentencing court to impose a reduced or suspended
335 sentence upon any person who is convicted of a violation of this Code section who
336 provides substantial assistance in the identification, arrest, or conviction of any of his or
337 her accomplices, accessories, coconspirators, or principals. Upon good cause shown, the
338 motion may be filed and heard in camera. The judge hearing the motion may impose a
339 reduced or suspended sentence if he or she finds that the defendant has rendered such
340 substantial assistance.

341 (d) In the court's discretion, the judge may depart from the mandatory minimum sentence
342 specified in this Code section for a person who is convicted of a violation of this Code
343 section when the prosecuting attorney and the defendant have agreed to a sentence that is
344 below such mandatory minimum.

345 (e) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to this Code
346 section shall not be reduced by any earned time, early release, work release, leave, or other

347 sentence-reducing measures under programs administered by the Department of
 348 Corrections, the effect of which would be to reduce the period of incarceration ordered by
 349 the sentencing court or any form of pardon, parole, or commutation of sentence by the State
 350 Board of Pardons and Paroles; provided, however, that during the final year of
 351 incarceration, a defendant so sentenced shall be eligible to be considered for participation
 352 in a Department of Corrections administered transitional center or work release program."

353 **SECTION 6.**

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

355 "16-13-54.1.

356 When an offense in this part measures a controlled substance or marijuana by weight or
 357 quantity, the defendant's knowledge of such weight or quantity shall not be an essential
 358 element of the offense, and the state shall not have the burden of proving that a defendant
 359 knew the weight or quantity of the controlled substance or marijuana in order to be
 360 convicted of an offense."

361 **SECTION 7.**

362 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 363 amended by revising paragraph (2) of subsection (a), subparagraphs (a)(5)(A) and (a)(5)(C),
 364 and adding a new paragraph to subsection (a) of Code Section 17-10-1, relating to fixing of
 365 sentence, to read as follows:

366 "(2) Active probation supervision shall terminate in all cases no later than two years from
 367 the commencement of active probation supervision unless specially extended or
 368 reinstated by the sentencing court upon notice and hearing and for good cause shown;
 369 provided, however, that in those cases involving the collection of fines, restitution, or
 370 other funds, the period of active probation supervision shall remain in effect for so long
 371 as any such obligation is outstanding, or until termination of the sentence, whichever first
 372 occurs, and for those cases involving a conviction under Chapter 15 of Title 16, the
 373 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation
 374 supervision shall remain in effect until the termination of the sentence, but shall not
 375 exceed five years unless as otherwise provided in this paragraph. Active probation
 376 supervision shall not be required for defendants sentenced to probation while the
 377 defendant is in the legal custody of the Department of Corrections or the State Board of
 378 Pardons and Paroles. ~~As used in this paragraph, the term: 'active probation supervision'~~
 379 ~~shall have the same meaning as the term 'active supervision' as set forth in Code Section~~
 380 ~~42-1-1."~~

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

393 "~~(C) As used in this paragraph, the terms 'active probation supervision' and~~
 394 ~~'administrative probation supervision' shall have the same meanings as the terms 'active~~
 395 ~~supervision' and 'administrative supervision,' respectively, as set forth in Code Section~~
 396 ~~42-1-1.~~"

397 "(7) As used in this subsection, the term:

398 (A) 'Active probation supervision' means the period of a probated sentence in which
 399 a probationer actively reports to his or her probation supervisor or is otherwise under
 400 the direct supervision of a probation supervisor.

401 (B) 'Unsupervised probation' means the period of a probated sentence that follows
 402 active probation supervision in which:

403 (i) All of the conditions and limitations imposed by the court remain intact;

404 (ii) A probationer may have reduced reporting requirements; and

405 (iii) A probation supervisor shall not actively supervise such probationer."

406

SECTION 8.

407 Said title is further amended in Code Section 17-10-6.1, relating to punishment for serious
 408 violent offenders, by revising subsection (b) and adding two new subsections to read as
 409 follows:

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

417 (2) Except as provided in subsection (e) of this Code section ~~Notwithstanding any other~~
 418 ~~provisions of law to the contrary~~, the sentence of any person convicted of the serious
 419 violent felony of:

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

421 (B) Rape;

422 (C) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4,
 423 unless subject to the provisions of paragraph (2) of subsection (d) of Code Section
 424 16-6-4;

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

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

427 shall, unless sentenced to life imprisonment, be a split sentence which shall include a
 428 mandatory minimum term of imprisonment of 25 years, followed by probation for life:
 429 ~~No, and no~~ and no portion of the mandatory minimum sentence imposed shall be suspended,
 430 stayed, probated, deferred, or withheld by the sentencing court ~~or reduced by any form~~
 431 ~~of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles.~~

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

439 "(e) In the court's discretion, the judge may depart from the mandatory minimum sentence
 440 specified in this Code section for a person who is convicted of a serious violent felony
 441 when the prosecuting attorney and the defendant have agreed to a sentence that is below
 442 such mandatory minimum.

443 (f) Any sentence imposed pursuant to this Code section shall not be reduced by any earned
 444 time, early release, work release, leave, or other sentence-reducing measures under
 445 programs administered by the Department of Corrections, the effect of which would be to
 446 reduce the period of incarceration ordered by the sentencing court or any form of pardon,
 447 parole, or commutation of sentence by the State Board of Pardons and Paroles; provided,
 448 however, that during the final year of incarceration, a defendant so sentenced shall be
 449 eligible to be considered for participation in a Department of Corrections administered
 450 transitional center or work release program."

451 **SECTION 9.**

452 Said title is further amended by revising subsection (c) of Code Section 17-10-6.2, relating
 453 to punishment for sexual offenders, as follows:

454 "(c)(1) In the court's discretion, the court may deviate from the mandatory minimum
 455 sentence as set forth in subsection (b) of this Code section, or any portion thereof, when
 456 the prosecuting attorney and the defendant have agreed to a sentence that is below such
 457 mandatory minimum or provided that:

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

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

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

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

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

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

471 (2) If the court deviates in sentencing pursuant to this subsection, the judge shall issue
 472 a written order setting forth the judge's reasons. Any such order shall be appealable by
 473 the defendant pursuant to Code Section 5-6-34, or by the State of Georgia pursuant to
 474 Code Section 5-7-1, unless the sentence imposed was pursuant to an agreement by the
 475 prosecuting attorney and the defendant."

476 **SECTION 10.**

477 Said title is further amended by revising subsection (b) of Code Section 17-10-7, relating to
 478 punishment for repeat offenders, as follows:

479 "(b)(1) As used in this subsection, the term 'serious violent felony' means a serious
 480 violent felony as defined in subsection (a) of Code Section 17-10-6.1.

481 (2) Except as provided in subsection (e) of Code Section 17-10-6.1, any Any person who
 482 has been convicted of a serious violent felony in this state or who has been convicted
 483 under the laws of any other state or of the United States of a crime which if committed
 484 in this state would be a serious violent felony and who after such first conviction
 485 subsequently commits and is convicted of a serious violent felony for which such person
 486 is not sentenced to death shall be sentenced to imprisonment for life without parole. Any

487 such sentence of life without parole shall not be suspended, stayed, probated, deferred,
 488 or withheld, and any such person sentenced pursuant to this paragraph shall not be
 489 eligible for any form of pardon, parole, or early release administered by the State Board
 490 of Pardons and Paroles or for any earned time, early release, work release, leave, or any
 491 other sentence-reducing measures under programs administered by the Department of
 492 Corrections, the effect of which would be to reduce the sentence of life imprisonment
 493 without possibility of parole, except as may be authorized by any existing or future
 494 provisions of the Constitution."

495 **SECTION 11.**

496 Said title is further amended by adding a new chapter to read as follows:

497 "CHAPTER 19

498 17-19-1.

499 (a) There is created the Georgia Council on Criminal Justice Reform for the purpose of
 500 conducting periodic comprehensive reviews of criminal laws, criminal procedure,
 501 sentencing laws, adult correctional issues, juvenile justice issues, enhancement of probation
 502 and parole supervision, better management of the prison population and of the population
 503 in the custody of the Department of Juvenile Justice, and other issues related to criminal
 504 and accountability courts. The Georgia Council on Criminal Justice Reform shall be
 505 responsible for establishing performance measures that track the implementation of
 506 criminal justice and juvenile justice reforms through the analysis of data collected under
 507 law and shall propose additional reforms to further the reduction of recidivism, the
 508 lowering of state expenses, and the maintenance of an effective and efficient Code that will
 509 promote public safety.

510 (b) As used in this chapter, the term 'council' means the Georgia Council on Criminal
 511 Justice Reform.

512 17-19-2.

513 (a) The Governor shall appoint all 15 members of the council which shall be composed of
 514 one member of the Senate, one member of the House of Representatives, one member who
 515 shall be either a Justice of the Supreme Court or a Judge of the Court of Appeals, one
 516 superior court judge, one juvenile court judge, one district attorney, one criminal defense
 517 attorney, one sheriff, the executive counsel to the Governor or his or her designee, the
 518 director of the Governor's Office for Children and Families or his or her designee, and five
 519 other members as determined by the Governor.

520 (b) Each member of the council shall be appointed to serve for a term of four years or until
521 his or her successor is duly appointed, except the members of the General Assembly, who
522 shall serve until completion of their current terms of office. A member may be appointed
523 to succeed himself or herself on the council. If a member of the council is an elected or
524 appointed official, the member, or his or her designee, shall be removed from the council
525 if the member no longer serves as such elected or appointed official.

526 (c) The Governor shall designate the chairperson of the council. The council may elect
527 other officers as it deems necessary. The chairperson of the council may designate and
528 appoint committees from among the membership of the council as well as appoint other
529 persons to perform such functions as he or she may determine to be necessary as relevant
530 to and consistent with this chapter. The chairperson shall only vote to break a tie.

531 (d) The council shall be attached for administrative purposes only to the Governor's Office
532 for Children and Families. The Governor's Office for Children and Families and the
533 Criminal Justice Coordinating Council shall provide staff support for the council. The
534 Governor's Office for Children and Families and the Criminal Justice Coordinating Council
535 shall use any funds specifically appropriated to it to support the work of the council.

536 17-19-3.

537 (a) The council may conduct meetings at such places and times as it deems necessary or
538 convenient to enable it to exercise fully and effectively its powers, perform its duties, and
539 accomplish the objectives and purposes of this chapter. The council shall hold meetings
540 at the call of the chairperson. The council shall meet not less than twice every year.

541 (b) A quorum for transacting business shall be a majority of the members of the council.

542 (c) Any legislative members of the council shall receive the allowances provided for in
543 Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the
544 amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or
545 transportation allowance authorized for state employees. Members of the council who are
546 state officials, other than legislative members, or state employees shall receive no
547 compensation for their services on the council, but they shall be reimbursed for expenses
548 incurred by them in the performance of their duties as members of the council in the same
549 manner as they are reimbursed for expenses in their capacities as state officials or state
550 employees. The funds necessary for the reimbursement of the expenses of state officials,
551 other than legislative members, and state employees shall come from funds appropriated
552 to or otherwise available to their respective departments. All other funds necessary to carry
553 out the provisions of this chapter shall come from funds appropriated to the Senate and the
554 House of Representatives.

555 17-19-4.

556 (a) The council shall have the following duties:

557 (1) To periodically, and at least every two years, review the conditions, needs, issues,
558 and problems related to criminal justice; issue a report on the same to the executive
559 counsel of the Governor, the Office of Planning and Budget, and the chairpersons of the
560 House Committee on Appropriations, the Senate Appropriations Committee, the House
561 Committee on Judiciary, and the Senate Judiciary Committee; and recommend any action
562 or proposed legislation which the council deems necessary or appropriate. Nothing
563 contained in the council's report shall be considered to authorize or require a change in
564 any law without action by the General Assembly;

565 (2) To evaluate and consider the best practices, experiences, and results of legislation in
566 other states with regard to children, adults, and families involved in the juvenile or
567 superior court or equivalent systems; and

568 (3) To identify and recommend whether and when any state law should be modified to
569 conform, whenever desirable, to federal legislation.

570 (b) The council shall have the following powers:

571 (1) To evaluate how the laws and programs affecting the criminal justice system in this
572 state are working;

573 (2) To request and receive data from and review the records of appropriate state agencies
574 and courts to the greatest extent allowed by state and federal law;

575 (3) To accept public or private grants, devises, and bequests;

576 (4) To authorize entering into contracts or agreements through the council's chairperson
577 necessary or incidental to the performance of its duties;

578 (5) To establish rules and procedures for conducting the business of the council; and

579 (6) To conduct studies, hold public meetings, collect data, or take any other action the
580 council deems necessary to fulfill its responsibilities.

581 (c) The council shall be authorized to retain the services of attorneys, consultants, subject
582 matter experts, economists, budget analysts, data analysts, statisticians, and other
583 individuals or organizations as determined appropriate by the council.

584 17-19-5.

585 This chapter shall be repealed effective June 30, 2018, unless continued in effect by the
586 General Assembly prior to that date."

587 **SECTION 12.**

588 Part 7 of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated,
 589 relating to HOPE scholarships and grants, is amended by revising Code Section 20-3-519.6,
 590 relating to HOPE GED vouchers, as follows:

591 "20-3-519.6.

592 Subject to the amounts appropriated by the General Assembly and provisions relating to
 593 the shortfall reserve in Code Section 50-27-13, a HOPE GED voucher in the amount of
 594 \$500.00 shall be available once to each student receiving a general educational
 595 development (GED) diploma awarded by the Department of Technical and Adult
 596 Education, now known as the Technical College System of Georgia, after June 30, 1993.
 597 Such voucher shall be issued to such student upon enrollment in any eligible postsecondary
 598 institution in Georgia within 24 months from the date the general educational development
 599 (GED) diploma was awarded to the student and may only be used to cover postsecondary
 600 costs of attendance at such institution; provided, however, that for an individual who
 601 becomes eligible for such voucher while he or she is incarcerated in a penal institution in
 602 this state, such voucher may be used by such individual within 24 months from the date of
 603 release from the penal institution."

604 **SECTION 13.**

605 Article 2 of Chapter 8 of Title 24 of the Official Code of Georgia Annotated, relating to
 606 admissions and confessions, is amended by revising Code Section 24-8-820, relating to
 607 testimony as to child's description of sexual contact or physical abuse, as follows:

608 "24-8-820.

609 A statement made by a child ~~under the age of 14 years~~ younger than 16 years of age
 610 describing any act of sexual contact or physical abuse performed with or on ~~the~~ such child
 611 by another or with or on another in the presence of such child shall be admissible in
 612 evidence by the testimony of the person to whom made if the ~~child is available to testify~~
 613 ~~in the proceedings and the court finds that the circumstances of the statement provide~~
 614 ~~sufficient indicia of reliability~~ proponent of such statement provides notice to the adverse
 615 party prior to trial of the intention to use such out-of-court statement and such child testifies
 616 at the trial, unless the adverse party forfeits or waives such child's testimony as provided
 617 in this title, and, at the time of the testimony regarding the out-of-court statements, the
 618 person to whom the child made such statement is subject to cross-examination regarding
 619 the out-of-court statements."

SECTION 14.

620
621 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
622 individual's criminal history record information, definitions, and privacy considerations, is
623 amended by revising paragraph (1) of subsection (j) and subsection (n) as follows:

624 "(j)(1) When an individual had a felony charges charge dismissed or nolle prossed or was
625 found not guilty of felony charges such charge but was convicted of a misdemeanor
626 offense or offenses arising out of the same underlying transaction or occurrence that was
627 not a lesser included offense of the felony charge, such individual may petition the
628 superior court in the county where the arrest occurred to restrict access to criminal history
629 record information for such the felony charges charge within four years of the arrest.
630 Such court shall maintain jurisdiction over the case for this limited purpose and duration.
631 Such petition shall be served on the arresting law enforcement agency and the
632 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days
633 of the filing of the petition. The court shall hear evidence and shall grant an order
634 restricting such criminal history record information if the court determines ~~the charges~~
635 in question did not arise out of the same underlying transaction or occurrence that the
636 misdemeanor conviction was not a lesser included offense of the felony charge and that
637 the harm otherwise resulting to the individual clearly outweighs the public interest in the
638 criminal history record information being publicly available."

639 "(n)(1) Except as provided in subsection (j) of this Code section, as As to arrests
640 occurring before July 1, 2013, an individual may, in writing, request the arresting law
641 enforcement agency to restrict the criminal history record information of an arrest,
642 including any fingerprints or photographs taken in conjunction with such arrest.
643 Reasonable fees shall be charged by the arresting law enforcement agency and the center
644 for the actual costs of restricting such records, provided that such fee shall not exceed
645 \$50.00.

646 (2) Within 30 days of receipt of such written request, the arresting law enforcement
647 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days
648 of receiving the request, the prosecuting attorney shall review the request to determine
649 if he or she agrees to the request meets the criteria set forth in subsection (h) of this Code
650 section for record restriction, and the prosecuting attorney shall notify the arresting law
651 enforcement agency of his or her decision within such 90 day period. If the prosecuting
652 attorney denies such request, he or she shall cite with specificity the reason for such
653 denial in writing and attach to such denial any relevant documentation in his or her
654 possession used to make such denial. There shall be a presumption that the prosecuting
655 attorney does not object to the request to restrict the criminal history record information
656 if he or she fails to respond to the request for a determination within the 90 day period set

657 forth in this paragraph. The arresting law enforcement agency shall inform the individual
 658 of the prosecuting attorney's decision, and, if record restriction is approved by the
 659 prosecuting attorney, the arresting law enforcement agency shall restrict the criminal
 660 history record information within 30 days of receipt of the prosecuting attorney's
 661 decision.

662 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal
 663 history record information, such individual may file a civil action in the superior court
 664 where the entity is located. A copy of the civil action shall be served on the entity and
 665 prosecuting attorney for the jurisdiction where the civil action is filed, and they may
 666 become parties to the action. A decision of the prosecuting attorney to decline a request
 667 to restrict access to criminal history record information shall ~~not~~ be upheld ~~if it is~~
 668 ~~determined~~ unless the individual demonstrates by clear and convincing evidence that the
 669 arrest is eligible for record restriction pursuant to subsection (h) of this Code section and
 670 the harm otherwise resulting to the privacy of the individual clearly outweighs the public
 671 interest in the criminal history record information being publicly available.

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

677 **SECTION 15.**

678 Article 3A of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to
 679 suspension of driver's license for certain drug offenses, is amended by revising subsections
 680 (a), (b), and (e) of Code Section 40-5-75, relating to suspension of license by operation of
 681 law, as follows:

682 "(a) Except as provided in Code Section 40-5-76, the ~~The~~ driver's license of any person
 683 convicted of any violation of Article 2 of Chapter 13 of Title 16, the 'Georgia Controlled
 684 Substances Act,' including, but not limited to, possession, distribution, manufacture,
 685 cultivation, sale, transfer of, trafficking in, the attempt or conspiracy to possess, distribute,
 686 manufacture, cultivate, sell, transfer or traffic in a controlled substance or marijuana, or the
 687 law of any other jurisdiction, shall by operation of law be suspended, and such suspension
 688 shall be subject to the following terms and conditions:

689 (1) Upon the first conviction of any such offense, with no arrest and conviction of and
 690 no plea of nolo contendere accepted to such offense within the previous five years, as
 691 measured from the dates of previous arrests for which convictions were obtained to the
 692 date of the current arrest for which a conviction is obtained, the period of suspension shall

693 be for not less than 180 days. At the end of 180 days, the person may apply to the
 694 department for reinstatement of his or her driver's license. Such license shall be
 695 reinstated only if the person submits proof of completion of a DUI Alcohol or Drug Use
 696 Risk Reduction Program and pays to the ~~Department of Driver Services~~ department a
 697 restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail. For
 698 purposes of this paragraph, a plea of nolo contendere by a person to a charge of any drug
 699 related offense listed in this subsection shall, except as provided in subsection (c) of this
 700 Code section, constitute a conviction;

701 (2) Upon the second conviction of any such offense within five years, as measured from
 702 the dates of previous arrests for which convictions were obtained to the date of the
 703 current arrest for which a conviction is obtained, the period of suspension shall be for
 704 three years, provided that after one year from the date of the conviction, the person may
 705 apply to the department for reinstatement of his or her driver's license by submitting proof
 706 of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the
 707 ~~Department of Driver Services~~ department a restoration fee of \$310.00 or \$300.00 when
 708 such reinstatement is processed by mail. For purposes of this paragraph, a plea of nolo
 709 contendere and all previous pleas of nolo contendere within such five-year period of time
 710 shall constitute a conviction; and

711 (3) Upon the third or subsequent conviction of any such offense within five years, as
 712 measured from the dates of previous arrests for which convictions were obtained to the date
 713 of the current arrest for which a conviction is obtained, such person's license shall be
 714 suspended for a period of five years. At the end of two years, the person may apply to the
 715 department for a three-year driving permit upon compliance with the following conditions:

716 (A) Such person has not been convicted or pleaded nolo contendere to any drug related
 717 offense, including driving under the influence, for a period of two years immediately
 718 preceding the application for such permit;

719 (B) Such person submits proof of completion of a licensed drug treatment program.
 720 Such proof shall be submitted within two years of the license suspension and prior to
 721 the issuance of the permit. Such licensed drug treatment program shall be paid for by
 722 the offender. The offender shall pay a permit fee of \$25.00 to the department;

723 (C) Such person submits proof of financial responsibility as provided in Chapter 9 of
 724 this title; and

725 (D) Refusal to issue such permit would cause extreme hardship to the applicant. For
 726 the purposes of this subparagraph, the term 'extreme hardship' means that the applicant
 727 cannot reasonably obtain other transportation, and, therefore, the applicant would be
 728 prohibited from:

- 729 (i) Going to his or her place of employment or performing the normal duties of his
 730 or her occupation;
- 731 (ii) Receiving scheduled medical care or obtaining prescription drugs;
- 732 (iii) Attending a college or school at which he or she is regularly enrolled as a
 733 student; or
- 734 (iv) Attending regularly scheduled sessions or meetings of support organizations for
 735 persons who have addiction or abuse problems related to alcohol or other drugs,
 736 which organizations are recognized by the commissioner.

737 At the end of five years from the date on which the license was suspended, the person
 738 may apply to the department for reinstatement of his or her driver's license by submitting
 739 proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying
 740 to the ~~Department of Driver Services~~ department a restoration fee of \$410.00 or \$400.00
 741 when such reinstatement is processed by mail. For purposes of this paragraph, a plea of
 742 nolo contendere and all previous pleas of nolo contendere within such five-year period
 743 of time shall constitute a conviction."

744 "(b) Except as provided in Code Section 40-5-76, whenever ~~Whenever~~ a person is
 745 convicted of possession, distribution, manufacture, cultivation, sale, transfer of, the attempt
 746 or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer a controlled
 747 substance or marijuana, or driving or being in actual physical control of any moving
 748 vehicle while under the influence of such substance in violation of subsection (b) of Code
 749 Section 16-13-2, subsection (a), (b), or (j) of Code Section 16-13-30, or Code Section
 750 16-13-33; paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391; or the law
 751 of any other jurisdiction, the court in which such conviction is had shall require the
 752 surrender to it of any driver's license then held by the person so convicted, and the court
 753 shall thereupon forward such license and a copy of its order to the department within ten
 754 days after the conviction. The periods of suspension provided for in this Code section shall
 755 begin on the date of surrender of the driver's license or on the date that the department
 756 processes the conviction or citation, whichever shall first occur."

757 "(e) Notwithstanding any other provision of this Code section or any other provision of this
 758 chapter, any person whose license is suspended pursuant to this Code section shall not be
 759 eligible for early reinstatement of his or her license and shall not be eligible for a limited
 760 driving permit, but such person's license shall be reinstated only as provided in this Code
 761 section or Code Section 40-5-76."

762 **SECTION 16.**

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

764 "40-5-76.
 765 A judge presiding in a drug court division or mental health court division may order the
 766 department to restore a defendant's driver's license that has been or should be suspended
 767 pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited
 768 driving permit in accordance with the provisions set forth in subsections (c) and (d) of
 769 Code Section 40-5-64 or with whatever conditions the court determines to be appropriate
 770 under the circumstances as a reward or sanction to the defendant's behavior in such court
 771 division. The court shall determine what fees, if any, shall be paid to the department for
 772 such reward or sanction, provided that such fee shall not be greater than the fee normally
 773 imposed for such services."

774 **SECTION 17.**

775 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 776 in Code Section 42-1-1, relating to definitions, by repealing paragraphs (1) and (2) and
 777 redesignating paragraphs (3) through (9) as paragraphs (1) through (7), respectively.

778 **SECTION 18.**

779 Said title is further amended in subsection (a) of Code Section 42-8-35, relating to terms and
 780 conditions of probation, by deleting "and" at the end of paragraph (15), by replacing the
 781 period with "; and" at the end of paragraph (16), and by adding a new paragraph (17) to read
 782 as follows:

783 "(17) Pay for the cost of drug screening. The Department of Corrections shall assess and
 784 collect fees from the probationer for such screening at levels set by regulation of the
 785 Department of Corrections."

786 **SECTION 19.**

787 Said title is further amended in Code Section 42-9-43, relating to information to be
 788 considered by the State Board of Pardons and Paroles generally, by redesignating subsections
 789 (b) through (e) as subsections (c) through (f), respectively, and by adding a new subsection
 790 (b) to read as follows:

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

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

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

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

797 (ii) Has such limited physical or mental ability, strength, or capacity that he or she
 798 poses an extremely low risk of physical threat to others or to the community.
 799 (C) 'Necessary daily life function' means eating, breathing, dressing, grooming,
 800 toileting, walking, or bathing.
 801 (2) The board may issue a medical reprieve to an entirely incapacitated person suffering
 802 a progressively debilitating terminal illness in accordance with Article IV, Section II,
 803 Paragraph II of the Constitution."

804 **SECTION 20.**

805 Code Section 49-5-183.1 of the Official Code of Georgia Annotated, relating to notice to
 806 alleged child abuser of classification, procedures, notification to division, and children under
 807 14 years of age not required to testify, is amended by revising subsection (i) as follows:
 808 "(i) No child ~~under the age of 14~~ younger than 16 years of age shall be compelled to appear
 809 to testify at any hearing held pursuant to this Code section. If a child ~~under the age of 14~~
 810 younger than 16 years of age testifies voluntarily, such testimony shall be given in
 811 compliance with procedures analogous to those contained in Code Section 17-8-55.
 812 Nothing in this article shall prohibit introducing a child's statement in a hearing held
 813 pursuant to this Code section if the statement meets the criteria of Code Section 24-8-820."

814 **SECTION 21.**

815 This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on
 816 or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute
 817 in effect at the time of such offense.

818 **SECTION 22.**

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