

11-8-2016

SB 367 - Comprehensive Reform for Offenders Entering, Proceeding Through, and Leaving the Criminal Justice System

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Recommended Citation

W. S. McPhillip, Andrew A. Palmer & Oren Snir, *SB 367 - Comprehensive Reform for Offenders Entering, Proceeding Through, and Leaving the Criminal Justice System*, 33 GA. ST. U. L. REV. 139 (2016).

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COURTS

To Provide for Comprehensive Reform for Offenders Entering, Proceeding Through, and Leaving the Criminal Justice System so as to Promote an Offender's Successful Reentry into Society, Benefit the Public, and Enact Reforms Recommended by the Georgia Council on Criminal Justice Reform; Amend Title 15 of the Official Code of Georgia Annotated, Relating to Courts, so as to Create Operating Under the Influence Court Divisions and Family Treatment Court Divisions; Provide for Assignment of Cases, Planning Groups, Work Plans, Standards and Practices, Staffing and Expenses, Records, Fees, Grants, and Donations; Provide for Oversight by the Council of Accountability Court Judges of Georgia; Change the Composition of the Council of Accountability Court Judges of Georgia; Provide for Record Restriction in Accountability Courts under Certain Circumstances; Provide for Considerations Relative to the Detention of Children under the Age of 14; Authorize a State or Local Governing Authority to Contract for Services for Pretrial Intervention and Diversion Programs; Provide for the Collection of Fees for and Expenditures of Funds from the County Drug Abuse Treatment Education Fund Relative to Operating Under the Influence and Family Treatment Court Divisions; Amend Titles 20, 42, and 49 of the Official Code of Georgia Annotated, Relating to Education, Penal Institutions, and Social Services, Respectively, so as to Provide for Students Incarcerated in Department of Corrections Facilities or Incarcerated or Committed to Department of Juvenile Justice Facilities to Receive Educational Services through a State Charter School; Provide for State Funding for the Education of Such Students in the Same Manner as for Other Students Enrolled in the State Charter School; Amend Title 20 of the Official Code of Georgia Annotated, Relating to Education, so as to Provide for Matters Relating to School Discipline and Disrupting the Operation of Public Schools; Amend Chapter 5 of Title 40 of the Official Code of Georgia Annotated, Relating to Drivers' Licenses, so as to Create Better Opportunities for Defendants to Regain Driving Privileges; Provide for a Pauper's Affidavit for a Partial Waiver of Driver's License Reinstatement and Restoration Fees; Provide for

Concurrent Driver's License Suspensions and Revocations under Certain Circumstances; Change Provisions Relating to Determining the Length of Certain Driver's License Revocations; Limit Eligibility for Indefinitely Renewable Limited Driving Permits; Provide for Certain Drivers' Licenses to be Automatically Reinstated; Provide for Procedure; Allow Operating Under the Influence Court Divisions to Restore or Suspend an Operating Under the Influence Court Division Participant's Driver's License or Issue a Participant a Limited Driving Permit or Ignition Interlock Device Limited Driving Permit under Certain Circumstances; Amend Title 42 of the Official Code of Georgia Annotated, Relating to Penal Institutions, so as to Clarify Responsibilities of the Board of Community Supervision and the Department of Community Supervision; Provide for an Offender Transition and Reentry Unit and Misdemeanor Probation Unit within the Department of Community Supervision; Amend Chapter 8 of Title 42, Article 2 of Chapter 7 of Title 17, and Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, Relating to Probation, Commitment Hearings, and the Georgia Crime Information Center, Respectively, so as to Clarify First Offender Status and Provide Duties, Obligations, and Responsibilities for the Clerk of Court, the Department of Community Supervision, Probation Officers Serving Pursuant to Article 6 of Chapter 8 of Title 42, and the Department of Corrections; Specify Entities to whom First Offender Information Shall be Provided; Change Provisions Relating to First Offender Dispositions and the Release of Records Thereof; Provide for the Reporting of Cases Dismissed Prior to Filing an Accusation or Indictment; Provide for Procedure; Enact Reforms Relating to Criminal Record Keeping and Dissemination; Clarify Duties and Responsibilities for Criminal Record Keeping and Dissemination; Clarify Provisions Relating to Record Restriction; Allow Record Restriction for Certain First Offenders Who Were under 21 Years of Age and Accused of Certain Alcohol Related Violations; Amend Title 42 of the Official Code of Georgia Annotated, Relating to Penal Institutions, so as to Change Provisions Relating to Agreements for Probation Services; Provide for Preliminary Requirements for Revocations Based Solely on Failure to Pay

Fines, Statutory Surcharges, or Probation Supervision Fees or Solely on Failure to Report; Provide for Procedure; Provide for Early Termination of Probation and Review of Certain Misdemeanor Probation Cases under Certain Circumstances; Change Provisions Relating to Parole Eligibility for Certain Offenders; Repeal Obsolete References to Pretrial Diversion Programs that are No Longer Operated by the Department of Corrections or the Department of Community Supervision; Amend Chapter 1 of Title 43 of the Official Code of Georgia Annotated, Relating to General Provisions Applicable to Professions and Businesses, so as to Require Professional Licensing Boards to Consider Certain Factors Relating to Felonies Before Denying a License to an Applicant or Revoking a License and to Provide for Probationary Licenses for Participants in Accountability Courts; Amend Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, Relating to General Provisions for Public Assistance, so as to Provide for Eligibility for Food Stamps under Certain Circumstances; Amend Code Section 49-4A-2 of the Official Code of Georgia Annotated, Relating to the Creation of the Board of Juvenile Justice, so as to Provide for Rules and Regulations Governing the Transfer of Probation Supervision of Certain Juvenile Offenders; Amend the Official Code of Georgia Annotated so as to Conform Provisions and Correct Cross-References; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes.

CODES SECTIONS: O.C.G.A. §§ 10-1-393.5 (amended); 15-1-18 (amended); 15-1-19, -20 (new); 15-11-11, -15 (amended); 15-11-70 (new); 15-11-505, -710 (amended); 15-18-80 (amended); 15-21-100, -101 (amended); 16-8-14, -14.1 (amended); 16-11-131, -135 (amended); 17-7-32 (amended); 17-10-1, -3 (amended); 20-2-133, -759, -1181, -1183 (amended); 20-2-2084.1 (new); 20-2-2090, -2114 (amended); 35-3-33, -34, -34.1, -35, -36, -37

(amended); 40-5-9 (new); 40-5-22.1, -61, -62, -63, -64, -75, -76, -121 (amended); 42-1-14 (amended); 42-2-5.1, -11, -15 (amended); 42-3-2, -3, -5, -6, -7, -10 (amended); 42-3-30, -31, -32, -33, -34, -35 (amended); 42-8-34, -34.1, -35.5, -36, -60, -61, -62, -62.1, -63, -63.1, -64, -65, -66, -100, -101, -102, -103 (amended); 42-8-103.1 (new); 42-8-105, -106, -106.1, -107, -108, -109.2, -109.3, -109.4, -111 (amended); 42-9-45 (amended); 43-1-19 (amended); 49-4A-2, -12 (amended); 49-4-22 (new).

BILL NUMBER:

SB 367

ACT NUMBER:

460

GEORGIA LAWS:

2016 Ga. Laws 443

SUMMARY:

The Act provides comprehensive reform for offenders entering, proceeding through, and leaving the criminal justice system. It expands accountability courts and pretrial intervention and diversion programs. The Act provides for students incarcerated in Department of Corrections facilities or incarcerated or committed to Department of Juvenile Justice facilities to receive educational services through a state charter school. It also revises matters and procedures related to school discipline and the regaining of driving privileges for those convicted of certain crimes. In addition, the Act clarifies the responsibilities of, and provides for reorganization within, the Board of Community Supervision and

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Department of Community Supervision. Next, the Act revises first offender treatment and record restriction and changes provisions relating to misdemeanor probation services. The Act also revises the State Board of Pardons and Parole's authority regarding certain drug or alcohol offenders. In addition, the Act revises requirements for professional licensing boards to consider certain factors relating to felonies before denying a license to an applicant or revoking a license. The Act also revises eligibility for food stamps under certain circumstances. Finally, the Act provides rules and regulations for governing the transfer of probation supervision of certain juvenile offenders.

EFFECTIVE DATE:

Effective July 1, 2016, except for Part IX of the Act, which is effective on April 27, 2016

History

The Governor's Special Council On Criminal Justice Reform

Governor Nathan Deal (R) and the Georgia General Assembly began revising the state's Criminal Justice Code in 2011, and created a special council, which later became known as the Georgia Council on Criminal Justice Reform (the Council), to research and provide guidance on Georgia's penal problems.¹ The Council is "a part of the Governor's multipronged approach at looking at the criminal justice

1. Ga. Council On Criminal Justice Reform, Report Of The Georgia Council On Criminal Justice Reform 3 (2016), https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/GA%20Council%20on%20Criminal%20Justice%20Reform_2016%20Report_Final.pdf [hereinafter Council's Report].

system.”² The Governor and legislature tasked the Council with guiding the state’s efforts for criminal justice reform by using interagency data to identify Georgia’s most urgent penal problems, and researching modern penological approaches to address them.³ The most pressing problem facing the Council was the rapid growth of Georgia’s prison population.⁴ The Council responded by researching measures to reduce crime and recidivism, and by researching measures to strengthen community-based supervision in lieu of prison sentences.⁵

Since 2011, based primarily on the Council’s findings, the Georgia General Assembly has adopted a three-stage series of transformative sentencing and correctional improvements in adult supervision, juvenile justice, and offender reentry.⁶ Collectively, this legislation is a product of the Governor’s “multipronged approach,” which the Governor analogizes to a “three-legged stool.”⁷ The three legs of the stool are adult criminal justice reform, juvenile criminal justice reform, and reentry and transition services.⁸ And as pointed out by Tracy BeMent, a three-legged stool only works if all three legs are in place.⁹

The Council’s First Phase

During the Council’s first phase, which began in 2011, it studied and responded to “unprecedented growth” in Georgia’s incarceration rates.¹⁰ The Council advised policy recommendations that “prioritized prison beds for violent-career criminals,” and expanded alternative sentencing measures for those convicted of less serious crimes.¹¹

2. Telephone Interview with Tracy J. BeMent, District Court Administrator, Tenth Judicial Administrative District, and current member of the Georgia Council on Criminal Justice Reform (May 13, 2016), at 0 min., 29 sec. [hereinafter BeMent Interview].

3. See Council’s Report, *supra* note 1, at 3.

4. *Id.*

5. See *id.* at 3–4.

6. See *id.* at 3–5.

7. BeMent Interview, *supra* note 2, at 0 hr., 0 min., 29 sec.

8. *Id.*

9. *Id.*

10. Council’s Report, *supra* note 1, at 3.

11. *Id.* at 4.

The Council's Second Phase

The Council's second phase began in 2013, and focused on controlling the budget of Georgia's juvenile justice system by reducing juvenile recidivism.¹² The Council proposed a package of juvenile justice recommendations designed to divert lower level offenders away from secure detention and into evidence-based community programs.¹³ In 2013, Governor Deal and the Georgia General Assembly responded positively to the Council's work by codifying the Council's existence as the Georgia Council on Criminal Justice Reform in House Bill (HB) 349.¹⁴ Pursuant to HB 349, the Council operates under a five-year mandate, and is charged with proposing measures to improve public safety through better oversight of the adult and juvenile correctional systems.¹⁵

The Council's Third Phase

The Council's third phase began in 2014 when it turned its attention to offender reentry and recommended the Georgia Prisoner Reentry Initiative ("GA-PRI") as the platform for the implementation of substantial prisoner reentry initiatives.¹⁶ The GA-PRI has two main objectives:

[T]o improve public safety by reducing crimes committed by former offenders, thereby reducing the number of crime victims, and secondly, to boost success rates of Georgians leaving prison by providing them with a seamless plan of services and supervision, beginning at the time of their incarceration and continuing through their reintegration in the community.¹⁷

12. *Id.*

13. *Id.* An evidence based program is "... a program that has been documented with evidence, i.e. through a scientific or an evaluation process, and has been shown to be effective." BeMent Interview, *supra* note 2, at 0 hr., 27 min., 12 sec.

14. Council's Report, *supra* note 1 at 12.

15. *Id.*

16. *Id.* at 4.

17. *Id.*

The GA-PRI is an ongoing initiative, with completion scheduled for 2018.¹⁸ As with most initiatives introduced as part of the reforms, the GA-PRI has tangible metrics and targets—specifically, the ultimate reduction of offenders convicted of new felonies by eleven percent within five years of release.¹⁹

Previous Criminal Justice Reform Bills

Georgia has taken a deliberate, phased, and targeted approach to designing and implementing criminal justice reforms. House Bill (HB) 1176, passed during the 2012 legislative session,²⁰ and was the state's first comprehensive criminal justice reform bill enacted based on the Council's recommendations.²¹ HB 1176 focused on reducing state spending by reserving prison for violent career criminals, while expanding probation, dependency courts, mental health courts, and sentencing alternatives for those convicted of less violent crimes.²² HB 1176 passed the General Assembly unanimously and Governor Deal signed it into law on May 2, 2012.²³

The General Assembly continued its criminal justice reform efforts in 2013 by adopting measures to reduce juvenile recidivism and through those actions control Georgia's juvenile justice system budget.²⁴ Titled the Juvenile Justice Reform bill, House Bill (HB) 242 contained measures designed to divert lower-risk juvenile offenders away from secure detention and into community programs proven to help reduce juvenile recidivism.²⁵ HB 242 unanimously passed the Georgia General Assembly and Governor Deal signed it into law on May 2, 2013.²⁶

18. *Id.* at 5.

19. *Id.*

20. Georgia General Assembly, HB 1176, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/1176>.

21. Council's Report, *supra* note 1, at 4.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

Mounting Evidence of Success

Thus far, the data and other evidence collected after implementation of the Council's recommendations supports the assertion that Georgia's criminal justice reform efforts are benefitting Georgia taxpayers by reducing the state's incarceration rates.²⁷ Georgia's adult prison population has declined from 54,895 in July 2012, to 51,822 in December 2015.²⁸ New prison commitments decreased from a peak of 21,655 in 2009, to 18,139 in 2015.²⁹ Prior to the 2011 adult systems reforms, Georgia's rate of new prison commitments was projected to grow by eight percent over five years.³⁰ Data suggests that between 2009 and 2016, more non-violent offenders were diverted away from incarceration, as demonstrated by a nine percent reduction in incarceration rates of non-violent offenders compared to incarceration rates of violent offenders and sex offenders.³¹

Georgia's juvenile justice system is responding to the criminal justice reform efforts as well, with steady decreases in the number of youth in secure confinement and those awaiting placement in secure confinement.³² Although the program has been successful to date, the reforms are a deliberate process that requires continuous improvement and consideration to ensure enduring success.³³

The Council's Fourth Phase: 2016 Adult System Recommendations

The Council entered its fourth phase in 2016, during which it maintained the commitment to phasing in the GA-PRI.³⁴ Additionally, the Council made a number of recommendations that spanned the range of both adult and juvenile criminal justice

27. Council's Report, *supra* note 1, at 5.

28. *Id.*

29. *Id.* at 6.

30. *Id.* at 15.

31. *Id.* at 16.

32. *See id.* at 34.

33. Telephone Interview with Carey Miller, Policy Advisor, Office of Governor Nathan Deal (May 4, 2016), at 31 min., 12 sec. [hereinafter Miller Interview].

34. Council's Report, *supra* note 1, at 39

reform.³⁵ The Council's 2016 proposals were embodied in Senate Bill (SB) 367, which "generally does three things. The legislation . . . provides some new initiatives; secondly, it's a continuation of the work on prior bills; and third, it's some minor clean-up provisions relative to the codes that are applicable."³⁶ SB 367 passed the Georgia General Assembly and was signed into law by Governor Deal on April 27, 2016.³⁷

Adult System Recommendations

Fortifying the First Offender Act

The General Assembly enacted the First Offender Act, known as Georgia's "second chance law" in 1968.³⁸ The First Offender Act was intended to give chosen first offenders a second "chance to learn from their mistake and move on with their lives without the burden of a conviction."³⁹ The rationale for the first offender program is that "[u]nfortunately, people make mistakes, and if it's once-in-a-lifetime mistake or a mistake early on in your life, . . . we want to try and give folks an opportunity to have a do-over."⁴⁰ Mounting evidence revealed, however, that the First Offender Act was not functioning as intended.⁴¹ One critical shortfall was that over time, the private background investigation industry's research techniques outpaced the established methods of expunging and sealing the records of first offenders who qualified for protection under the First Offender Act.⁴² Private companies stored and gave access to information on first offenders' successfully completed sentences notwithstanding the established methods of expunging and sealing these records.⁴³

35. *See id.* at 7–10.

36. Telephone Interview with Sen. John F. Kennedy (R-18th) (Apr. 20, 2016), at 1 min., 25 sec. [hereinafter Kennedy Interview].

37. Act 460, 2016 Ga. Laws 443 (providing comprehensive reform for offenders entering, proceeding through, and leaving the criminal justice system).

38. Council's Report, *supra* note 1, at 7.

39. *Id.*

40. BeMent Interview, *supra* note 2, at 11 min., 46 sec.

41. *See* Council's Report, *supra* note 1, at 8.

42. *Id.*

43. *Id.*

Even though the First Offender Act was intended to give first offenders a second chance, the Council found that some employers still based hiring and retention decisions on cases adjudicated under the First Offender Act.⁴⁴ Therefore, the Council recommended measures to fortify the First Offender Act in order to make it work as intended—to allow individuals to have a job, and a meaningful job at that.⁴⁵ First, the Council recommended the statutory creation of a process under which a completed first offender sentence is automatically discharged.⁴⁶ Additionally, the Council recommended the adoption of several measures to ensure the records of any first offender who successfully completes a sentence are sealed and remain sealed.⁴⁷

Lifting the Lifetime Food Stamp Ban for Drug Offenders

In 2016, the Council continued its commitment to helping offenders reenter society. First, the Council recommended lifting the lifetime food stamp ban for felony drug offenders.⁴⁸ Representative Rich Golick (R-40th) reasoned: “we have an interest in ensuring that offenders at least have the ability to apply for food stamps, because if they can’t apply, then they lose the potential benefit, and losing this benefit will contribute to the likelihood that they may reoffend.”⁴⁹ In addition to helping decrease the likelihood of recidivism, lifting the food stamp ban will send the state an additional 10.4 million dollars per year in federal food stamp benefits.⁵⁰ The House Judiciary Non-Civil Committee added this provision as the result of a simple question:⁵¹ “how is it that . . . violent felons can apply for food stamps, . . . but a drug addict can’t?”⁵² Second, the Council recommended extending “ban the box” protections to certain

44. *Id.*

45. BeMent Interview, *supra* note 2 at 0 hr., 11 min., 46 sec.

46. Council’s Report, *supra* note 1, 21.

47. *Id.*

48. *Id.* at 22.

49. Interview with Rep. Rich Golick (R-40th) (Apr. 27, 2016), at 1 min., 30 sec. [hereinafter Golick Interview].

50. Council’s Report, *supra* note 1, at 22.

51. SB 367 (HCS), 2016 Ga. Gen. Assemb.

52. Golick Interview, *supra* note 51, at 1 min., 18 sec.

professional licensing applicants with felony criminal records.⁵³ The Council's intent is that this measure will prevent professional licensing boards from denying licenses to felony applicants except where the underlying felony is related to the practice for which the applicant seeks licensure.⁵⁴

Ensuring Fairness in Misdemeanant Probation

The Council also recommended reforming Georgia's misdemeanor probation laws to increase fairness in misdemeanor cases where the probationer has only failed to pay a fine or report to his or her probation officer.⁵⁵ In addition, the Council proposed establishing hearing requirements that must be satisfied before misdemeanor probationers can be arrested solely for failure to pay fines, fees, or surcharges, as well as measures to reduce the use of pre-hearing incarceration for failure-to-pay misdemeanor probation violators.⁵⁶

Drivers' License Suspensions

The Council recommended significant changes to Georgia's laws related to license suspension. First, the Council recommended eliminating statutory mandates requiring that license suspensions under a variety of Georgia statutes run consecutively to any other type of license suspension.⁵⁷ Instead, the Council proposed that such suspensions should run concurrently rather than consecutively. Further, the Council recommended that time served under court ordered sentences, including time served under a limited permit, should count towards fulfilling an offender's suspension period.⁵⁸

Alcohol Monitoring and Driving Under the Influence Laws

The Council also recommended making specific changes to Georgia's driving under the influence (DUI) and alcohol monitoring

53. Council's Report, *supra* note 1, at 32.

54. *Id.*

55. See Council's Report, *supra* note 1, at 24–25.

56. *Id.* at 24.

57. *Id.* at 30.

58. *Id.*

laws. First, the Council recommended amending the Georgia code provision that requires DUI license suspensions to run consecutively to all other suspension types.⁵⁹ The Council also recommended allowing first time DUI offenders to apply for an interlock device permit instead of automatic license suspension.⁶⁰ In addition, the Council recommended that persons in custody or otherwise serving court ordered sentences have time served credited towards their license suspension.⁶¹ Lastly, the Council recommended the creation of a DUI accountability court and a family dependency treatment court to channel alcohol offenders away from the traditional criminal justice system and towards a treatment-based proceeding.⁶²

Juvenile Justice Recommendations

The Council proposed several juvenile justice recommendations in 2016.⁶³ First, the Council recommended “statutory language that would restrict secure detention for all youth ages thirteen and under, except for those charged with the most serious offenses . . . where a clear public safety issue exists.”⁶⁴ In addition, the Council proposed amending the code to require that school districts develop and implement a system of progressive discipline.⁶⁵ This system must be utilized and sworn to in the juvenile complaint before the complaint is filed in the juvenile court system.⁶⁶

Bill Tracking of SB 367

Introduction and Consideration by the Senate

Senators John Kennedy (R-18th), Butch Miller (R-49th), Mike Dugan (R-30th), Burt Jones (R-25th), Greg Kirk (R-13th), and

59. *Id.*

60. *Id.* at 31.

61. Council’s Report, *supra* note 1, at 30.

62. *Id.* at 26–27.

63. *See id.* at 35–38.

64. *Id.* at 36.

65. *Id.* at 37.

66. *Id.*

Hunter Hill (R-6th) sponsored SB 367 in the Senate.⁶⁷ On February 11, 2016, the Senate read the bill for the first time and President Pro Tempore David Shafter (R-48th) referred it to the Judiciary Non-Civil Committee.⁶⁸ On February 19, 2016, the Judiciary Non-Civil Committee favorably reported SB 367, and the Senate read the bill for a second time on February 22, 2016.⁶⁹ The Senate read the bill for a third time on February 25, 2016, and then adopted the bill by a vote of 53 to 0.⁷⁰

Consideration by the House of Representatives

Representative Chuck Efstration (R-104th) sponsored SB 367 in the House.⁷¹ The House read the bill for the first on February 26, 2016, and for a second time on February 29, 2016.⁷² The House Judiciary Non-Civil Committee favorably reported the bill by Committee substitute on March 14, 2016.⁷³

The House Committee made three changes to the bill. First, based on the Council's report detailing Georgia's annual loss of \$10.4 million in food stamp benefits, the House amended the bill to provide a provision lifting the lifetime food stamp ban for felony drug offenders.⁷⁴ Second, the House Committee amended the bill by removing the Department of Community Supervision's (DCS) ability to sanction agencies' for non-compliance with the bill from a list of DCS's powers.⁷⁵ Finally, the House Committee amended the bill to empower the Board of Community Supervision to enforce the newly enacted probation guidelines by "impos[ing] sanctions for non-compliance with this article or the board's rules and regulations."⁷⁶

67. Georgia General Assembly, SB 367, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/367>.

68. State of Georgia Final Composite Status Sheet, SB 367, May 5, 2016.

69. *Id.*

70. *Id.*; Georgia Senate Voting Record, SB 367 (Feb. 25, 2016).

71. Georgia General Assembly, SB 367, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/367>.

72. State of Georgia Final Composite Status Sheet, SB 367, May 5, 2016.

73. *Id.*

74. Compare SB 367, as introduced, 2016 Ga. Gen. Assemb., with SB 367 (HCS), § 11-1, p. 81, ll. 2838-60, 2016 Ga. Gen. Assemb.

75. Compare SB 367, as introduced, § 5-2, pp. 35-36, ll. 1234-41, 2016 Ga. Gen. Assemb., with SB 367 (HCS), § 5-2, p. 36, ll. 1236-37, 2016 Ga. Gen. Assemb.

76. Compare SB 367, as introduced, § 7-7, p. 64, 2016 Ga. Gen. Assemb., with SB 367 (HCS), § 7-

The House read SB 367 for a third time on March 16, 2016, and adopted the Committee substitute by a vote of 166 to 1.⁷⁷ The Senate agreed to the House Committee Substitute on March 24, 2016, by a vote of 46 to 0, and Governor Deal (R) signed the bill on April 27, 2016.⁷⁸

The Act: SB 367

Accountability Courts

Section 1-1 of the Act amends the definition of “accountability court”,⁷⁹ by clarifying that “state, superior, or juvenile court[s]” may each have an accountability court division.⁸⁰ It also updates the definition to include the newly authorized operating under the influence court and family treatment court divisions.⁸¹

Operating Under the Influence Divisions

Section 1-2 creates a new Code section 15-1-19 authorizing the establishment of operating under the influence court divisions.⁸² Any superior, state, or juvenile court with jurisdiction over cases involving driving a motor vehicle or watercraft under the influence of alcohol or drugs may establish “an operating under the influence court division to provide an alternative to the traditional judicial system for disposition.”⁸³ Provided they meet the eligibility criteria, defendants may have courts assign their cases to the operating under the influence court division either: (1) “[p]rior to the entry of sentence” with the consent of the prosecutor; (2) “[a]s part of the sentence in a case; or” (3) “[u]pon consideration of a petition to revoke probation.”⁸⁴

7, p. 64, ll. 2240–41, 2016 Ga. Gen. Assemb.

77. Georgia House of Representatives Voting Record, SB 367 (Mar. 16, 2016).

78. Georgia Senate Voting Record, SB 367 (Mar.24, 2016).

79. 2016 Ga. Laws 443, § 1-1, at 445.

80. O.C.G.A. § 15-1-18(a)(1) (Supp. 2016).

81. *Id.*

82. 2016 Ga. Laws 443, § 1-2, at 445.

83. O.C.G.A § 15-1-19(a)(2) (Supp. 2016).

84. O.C.G.A. § 15-1-19(a)(3).

Each operating under the influence court division must establish a planning group to develop a work plan that includes policies and procedures, means to identify and reduce risk, and targeted focus on moderate and high-risk offenders.⁸⁵ “The planning group shall include the judges, prosecuting attorneys, public defenders, community supervision officers, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, and persons having expertise in the field of substance abuse.”⁸⁶ The Council of Accountability Court Judges of Georgia is responsible for “establish[ing] standards and practices for operating under the influence court divisions,”⁸⁷ “providing technical assistance to operating under the influence court divisions,”⁸⁸ and providing the divisions with other oversight and advisory assistance.⁸⁹ Courts may specially designate prosecutor[s] and public defenders,⁹⁰ a clerk of court,⁹¹ and community supervision and probation officers to work in operating under the influence divisions.⁹² In addition to using state fund for their operating budgets,⁹³ operating under the influence court divisions may “accept grants, donations, and other proceeds from outside sources”⁹⁴ Money received by participants “as payment for substance abuse treatment and services” are considered fees, not court costs or fines.⁹⁵

Each division is responsible for establishing “criteria which define successful completion of the . . . program.”⁹⁶ Successful completion of the program results in modification or reduction of a sentence,⁹⁷ not an outright “dismissal of any offense involving or arising from a violation of Code [s]ection 40-6-391 or 52-7-12.”⁹⁸ If a participant does not violate conditions of participation and is not terminated from the program, statements made “as part of participation in such

85. O.C.G.A. § 15-1-19(a)(4) (Supp. 2016).

86. O.C.G.A. § 15-1-19(a)(4).

87. O.C.G.A. § 15-1-19(a)(5)(A).

88. O.C.G.A. § 15-1-19(a)(5)(B).

89. O.C.G.A. § 15-1-19(a)(5)(C)-(F).

90. O.C.G.A. § 15-1-19(a)(6).

91. O.C.G.A. § 15-1-19(a)(7).

92. O.C.G.A. § 15-1-19(a)(8).

93. O.C.G.A. § 15-1-19(a)(10).

94. O.C.G.A. § 15-1-19(f).

95. O.C.G.A. § 15-1-19(e).

96. O.C.G.A. § 15-1-19(b)(1).

97. O.C.G.A. § 15-1-19(b)(3).

98. O.C.G.A. § 15-1-19(b)(2).

court division, or any report made by the staff of such court division or program connected to such court division, regarding a participant's substance usage shall not be admissible as evidence against the participant."⁹⁹ If a participant is terminated from the program or violates his or her conditions, "the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant's case."¹⁰⁰ Upon request, participants must provide operating under the influence court division staff with "all records relevant to the treatment of the . . . participant."¹⁰¹ The division must keep the records confidential, and they are not subject to open record requests, subpoenas, or discovery, and are in no way available to the public.¹⁰²

Section 1-3 creates a new Code section 15-1-20 restricting the dissemination of criminal history for accountability court participants.¹⁰³ When a participant completes a drug court, mental health court, veterans court, or family treatment court program, judges now have the discretion to restrict dissemination of the participant's criminal record by the GCIC for the case assigned to the accountability court.¹⁰⁴ After restriction, the information shall only be available to: (1) "criminal justice agencies for law enforcement or criminal investigative purposes"; (2) judicial officials; (3) the Judicial Qualifications Commission; (4) prosecutors or public defenders who attest that they need the information for criminal proceedings; (5) pursuant to a court order; or (6) by the program participant, with a court order.¹⁰⁵

Concurrent Jurisdiction of Juvenile Courts

Section 1-4 of the Act amends Code section 15-11-11, related to the concurrent jurisdiction of juvenile courts.¹⁰⁶ The section adds subsection (5) to Code Section 15-11-11 and grants juvenile courts

99. O.C.G.A. § 15-1-19(c).

100. *Id.*

101. O.C.G.A. § 15-1-19(d).

102. *Id.*

103. 2016 Ga. Laws 443, § 1-3, at 449–50.

104. O.C.G.A. § 15-1-20(b) (Supp. 2016).

105. O.C.G.A. § 15-1-20(c).

106. 2016 Ga. Laws 443, § 1-5, at 450.

concurrent jurisdiction to hear “[a]ny criminal case transferred to the court pursuant to subsection (d) of Code section 15-11-15.”¹⁰⁷

Section 1-5 amends Code section 15-11-15, relating to transfers from the superior court by amending subsection (c) and adding subsection (d).¹⁰⁸ The amendments to subsection (c) allow the juvenile court to transfer jurisdiction of questions relating to “custody, support, or custody and support” back to the referring superior court at “any time prior to the determination of any such question.”¹⁰⁹ Subsection (d) allows the superior court to transfer criminal cases where the “accused is in jeopardy of having his or her parental rights terminated due to criminal charges”¹¹⁰ to a family treatment court division of the juvenile court if the prosecutor and accused agree to the transfer.¹¹¹ The juvenile court can transfer back to the superior court at any time.¹¹²

Family Treatment Court Divisions

Section 1-6 of the Act creates Code section 15-11-70, authorizing any juvenile court to establish family treatment court divisions.¹¹³ Family treatment court divisions are “an alternative to the traditional judicial system for the disposition of dependency cases and for assisting superior courts with criminal cases referred [under the newly created provisions of Code section 15-11-15, *supra*].”¹¹⁴ Family treatment court divisions have four goals:

- (A) Reduce alcohol or drug abuse and addiction for respondents in dependency proceedings;
- (B) Improve permanency outcomes for families when dependency is based in part on alcohol or drug use and addiction;

107. O.C.G.A. § 15-1-11(5) (Supp. 2016).

108. 2016 Ga. Laws 443, § 1-5, at 450.

109. O.C.G.A. § 15-11-15(c) (Supp. 2016).

110. O.C.G.A. § 15-11-15(d).

111. *Id.*

112. *Id.*

113. 2016 Ga. Laws 443, § 1-6, at 451–54.

114. O.C.G.A. § 15-11-70(a)(2) (Supp. 2016).

- (C) Increase the personal, familial, and societal accountability of respondents in dependency proceedings; and
- (D) Promote effective intervention and use of resources among child welfare personnel, law enforcement agencies, treatment providers, community agencies, and the courts.¹¹⁵

As with other accountability court divisions, cases may be transferred “[p]rior to the entry of the sentence” with the consent of the prosecutor, “[a]s part of a sentence in a case; or . . . [u]pon consideration of a petition to revoke probation.”¹¹⁶

Both the establishing courts and Council of Accountability Court Judges of Georgia have management and oversight responsibilities over family treatment court divisions.¹¹⁷ Each division must create a planning group consisting of judges, attorneys, law enforcement officers, and other interested parties with “expertise in services available to families in dependency proceedings.”¹¹⁸ The planning group is responsible for creating a work plan to implement the “standards and practices”¹¹⁹ developed by the Council of Accountability Court Judges of Georgia.¹²⁰ In addition to developing standards and practices, the Council of Accountability Court Judges of Georgia provides technical assistance, and “create[s] and manage[s] a certification and peer review process to ensure family treatment court divisions are adhering to . . . standards and practices”¹²¹ State funding for a family court division is conditioned on “attaining a certification or a waiver by the Council of Accountability Court Judges” after July 1, 2017.¹²² Courts may specially designate prosecutor[s] and public defenders,¹²³ a clerk of court,¹²⁴ and community supervision and probation officers to work

115. *Id.*

116. O.C.G.A. § 15-11-70(a)(3)(A)-(C).

117. O.C.G.A. § 15-11-70(a)(4), (5).

118. O.C.G.A. § 15-11-70(a)(4).

119. *Id.*

120. O.C.G.A. § 15-11-70(a)(5)(A).

121. O.C.G.A. § 15-11-70(a)(5)(B), (C).

122. O.C.G.A. § 15-11-70(a)(5)(D).

123. O.C.G.A. § 15-11-70 (a)(6).

124. O.C.G.A. § 15-11-70 (a)(7).

in operating under the influence divisions.¹²⁵ Family treatment court divisions are funded through a combination of state and county funds, federal grants, and private donations.¹²⁶

Family treatment court divisions are responsible for “establish[ing] criteria which define the successful completion of the . . . program” and communicating successful completion to the referring superior court judge if applicable.¹²⁷ Statements made by participants and reports made by staff are inadmissible against participants “in any legal proceeding or prosecution, unless the participant violates the conditions of participation, or participation is terminated.¹²⁸ If the participant violates a condition or is terminated from the program, “the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant’s case.”¹²⁹ State and local government agencies must provide family treatment court divisions with access to all records relevant to the treatment of the family court division participant.¹³⁰

Detention of Children

Section 1-7 of the Act amends the criteria that juvenile courts must use when determining whether detention of an alleged delinquent child is warranted.¹³¹ It adds subsection (b) to Code section 15-11-505 that specifically enumerates the crimes that constitute a “serious delinquent act” for which detention is warranted.¹³² For children older than thirteen, the juvenile court must “take[] into account subsection (b),”¹³³ but for children under the age of thirteen, if they did not commit one of the acts enumerated in subsection (b), “there shall be a presumption that such child should not be detained.”¹³⁴

125. O.C.G.A. § 15-11-70 (a)(8).

126. O.C.G.A. § 15-11-70(a)(10).

127. O.C.G.A. § 15-11-70(b).

128. O.C.G.A. § 15-11-70(c).

129. *Id.*

130. O.C.G.A. § 15-11-70(d).

131. 2016 Ga. Laws 443, § 1-7, at 455–56.

132. O.C.G.A. § 15-11-505(b)(1) (Supp. 2016).

133. O.C.G.A. § 15-11-505(a).

134. O.C.G.A. § 15-11-505(b)(2).

Exchange of Information

Section 1-8 amends Code section 15-11-710, “relating to exchange of information” between “[g]overnmental entities and state, county, municipal, or consolidated governments, boards, or agencies”¹³⁵ Section 1-8 amends the statute to allow governmental entities and agencies to exchange information not held as confidential “which may aid a governmental entity in the assessment, treatment, intervention, or rehabilitation of a child notwithstanding,”¹³⁶ Code sections 15-1-19 and 15-11-70.¹³⁷

The Role of District Attorneys in Pretrial Diversion

Section 1-9 amends subsection (a) of Code section 15-18-80, relating to policy and procedure for Pretrial Intervention and Diversion Programs.¹³⁸ Code section 15-18-80 now allows district attorneys or solicitors to enter into written contracts with “any entity or individual” to monitor program participants’ compliance with a Pretrial Intervention and Diversion Program.¹³⁹

Fines for Boating Under the Influence

Section 1-10 amends subsection (a) of Code Section 15-21-100, relating to imposition of additional penalties for certain offenses.¹⁴⁰ Code section 15-21-100 now imposes an additional fifty percent fine for any violation of Code section 52-7-12, boating under the influence.¹⁴¹

County Drug Abuse Treatment and Education Fund

Section 1-11 amends subsection (b) of Code section 15-21-101, relating to collection of fines and authorized expenditures of funds

135. 2016 Ga. Laws 443, § 1-8, at 455–56.

136. *Id.*

137. O.C.G.A. § 15-11-710(b) (Supp. 2016).

138. 2016 Ga. Laws 443, § 1-9, at 456.

139. O.C.G.A. § 15-18-80(a) (Supp. 2016).

140. 2016 Ga. Laws 443, § 1-10 at 456.

141. O.C.G.A. § 15-21-100(a)(1)(D) (Supp. 2016).

from the County Drug Abuse Treatment and Education Fund.¹⁴² The changes to subsection (b) allow counties to use funds from their County Drug Abuse Treatment and Education Fund on OUI and family treatment court divisions.¹⁴³

Education for Incarcerated Children

Section 2-1 amends paragraphs (1) and (8) of subsection (b) of Code section 20-2-133, relating to free public instruction for elementary and secondary education, specifically for incarcerated children.¹⁴⁴ Pursuant to the Act, local school districts are no longer obligated to educate children committed to the Department of Juvenile Justice's custody and receiving education services there.¹⁴⁵ Paragraph (8) adds the State Charter Schools Commission to the group of agencies that develop binding procedures for education of children in Department of Juvenile Justice custody.¹⁴⁶

Section 2-2 creates Code section 20-2-2084.1.¹⁴⁷ Code section 20-2-2084.1 authorizes state charter schools to contract with the Department of Juvenile Justice or Department of Correction to deliver education services to incarcerated children.¹⁴⁸

Section 2-3 revises Code section 20-2-2090, relating to "collaborative efforts on matters related to authorization of state charter schools and administration."¹⁴⁹ Code section 20-2-2090 now includes charter schools established under Code section 20-2-2084.1 within the purview of State Charter Schools Commission.¹⁵⁰

Section 2-4 amends subsection (d) of Code section 20-2-2014, regarding scholarship qualifications for special needs students.¹⁵¹ Code section 20-2-2014 makes students enrolled in state charter

142. 2016 Ga. Laws 443, § 1-11, at 456–57.

143. O.C.G.A. § 15-21-101(b)(3)-(4) (Supp. 2016).

144. 2016 Ga. Laws 443, § 2-1, at 457–58.

145. O.C.G.A. § 20-2-133(b)(1) (Supp. 2016).

146. O.C.G.A. § 20-2-133(b)(8).

147. 2016 Ga. Laws 443, § 2-2, at 458.

148. O.C.G.A. § 20-2-8041.1 (Supp. 2016).

149. 2016 Ga. Laws 443, § 2-3, at 459.

150. O.C.G.A. § 20-2-2090 (Supp. 2016).

151. 2016 Ga. Laws 443, § 2-4, at 459.

schools operated on behalf of the Department of Juvenile Justice ineligible for scholarship programs for special needs students.¹⁵²

Section 2-5 amends Code section 42-2-5.1, relating to the Department of Corrections (DOC) as a school district for school-age children.¹⁵³ Code section 42-2-5.1 now places DOC district schools operated by a state charter school pursuant to Code section 20-2-2084.1 under the control of the State Charter Schools Commission.¹⁵⁴

Section 2-6 revises Code section 49-4A-12, as it relates to the Department of Juvenile Justice as a special school district.¹⁵⁵ Code section 49-4A-12 now places schools within the Department of Juvenile Justice school district under the control of the State Charter Schools Commission.¹⁵⁶

School Discipline

Section 3-1 amends Code section 20-2-759, as it relates to education.¹⁵⁷ Section 3-1 gives the State Board of Education responsibility for making rules and regulations that establish minimum qualifications and continuing education requirements for hearing officers, disciplinary hearing officers, tribunals, and panels that hear discipline matters.¹⁵⁸

Section 3-2 amends Code section 20-2-1181, relating to disruption or interference with the operation of public schools relabeling the language of the prior law as subsection (a) and adding subsection (b).¹⁵⁹ Subsection (b) provides an exception to the general rule laid out in subsection (a) that persons who are convicted of intentionally or recklessly disrupting the operation of public schools “shall be guilty of a misdemeanor of a high and aggravated nature.”¹⁶⁰ Specifically, paragraph (2) of subsection (b) requires local boards of education to develop progressive discipline systems prior to initiating

152. O.C.G.A. § 20-2-2014 (Supp. 2016).

153. 2016 Ga. Laws 443, § 2-5, at 459–60.

154. O.C.G.A. § 42-2-5.1 (Supp. 2016).

155. 2016 Ga. Laws 443, § 2-6, at 460–61.

156. O.C.G.A. § 49-4A-12(b)(2) (Supp. 2016).

157. 2016 Ga. Laws 443, § 3-1, at 461.

158. *Id.*

159. 2016 Ga. Laws 443, § 3-2, at 461–62.

160. O.C.G.A. § 20-2-1181(a) (Supp. 2016).

a complaint against a child accused of violating this Code section.¹⁶¹ Paragraph (1) gives “complaint” the same meaning as defined in Code section 15-11-2, “the initial document setting out the circumstances that resulted in a child being brought before the court.”¹⁶²

Paragraphs (3) and (4) of subsection (b) provide specific information that must be included in a local school board’s complaint seeking court intervention in a discipline matter.¹⁶³ Complaints against a child must show that the local board first attempted to “[r]esolve the expressed problem through available educational approaches”¹⁶⁴ and engagement with the child’s family, but such efforts failed to resolve the problem.¹⁶⁵

In addition, when a local board initiates a complaint against “a child who is eligible or suspected to be eligible for services under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973,” the complaint must show that the board has: (1) determined or suspects that a child is eligible for the above mentioned federal programs;¹⁶⁶ (2) reviewed and made necessary modifications to the child’s Individualized Education Plan;¹⁶⁷ (3) “sought to resolve the expressed problem through available educational approaches;”¹⁶⁸ and (4) attempted to engage the child’s family, but failed to resolve the problem.¹⁶⁹

Section 3-3 amends Code section 20-2-1183.¹⁷⁰ Code section 20-2-1183 now requires local school systems and law enforcement officials to have a written agreement to “establish the role of law enforcement and school employees in school disciplinary matters and ensure coordination and cooperation among officials, agencies, and programs involved in school discipline and public protection”

161. O.C.G.A. § 20-2-1181(b)(2).

162. O.C.G.A. § 20-2-1181(b)(1); O.C.G.A. § 15-11-2(14) (2015).

163. O.C.G.A. § 20-2-1181(b)(3)-(4).

164. O.C.G.A. § 20-2-1181(b)(2)(A).

165. O.C.G.A. § 20-2-1181(b)(2)(B).

166. O.C.G.A. § 20-2-1181(b)(4)(A).

167. O.C.G.A. § 20-2-1181(b)(4)(B).

168. O.C.G.A. § 20-2-1181(b)(4)(C).

169. O.C.G.A. § 20-2-1181(b)(4)(D).

170. 2016 Ga. Laws 443, § 3-3, at 462–63.

whenever a local school system assigns or employs law enforcement officers in their schools.¹⁷¹

Driving Privileges

Section 4-1 creates Code section 40-5-9 relating to drivers' licenses.¹⁷² Code section 40-5-9 allows indigent drivers to file pauper's affidavits for reinstatement of their drivers' licenses.¹⁷³ Filing a pauper's affidavit reduces the license reinstatement or restoration fee by fifty percent.¹⁷⁴

Section 4-2 amends Code section 40-5-22.1 relating specifically to reinstatement of drivers' licenses of children under sixteen years of age convicted of driving under the influence.¹⁷⁵ Section 4-2 eliminates "possession of marijuana or a controlled substance in violation of Code section 16-13-30" and "possession of a dangerous drug in violation of Code section 16-13-72" from the list of convictions that require suspending a child's ability to apply for or receive a drivers' license.¹⁷⁶

Section 4-3 amends subsection (e) of Code section 40-5-61, relating to surrender and return of licenses, and adds a new subsection, (f).¹⁷⁷ The amendment to subsection (e) clarifies that the period of revocation or suspension of a driver's license "may begin on the date a person is sentenced for an offense that also results in the suspension or revocation of his or her driving privileges."¹⁷⁸ Subsection (f) provides that time served under the aforementioned sentence "shall" count towards fulfilling an individual's revocation or suspension period.¹⁷⁹

Section 4-4 amends Code section 40-5-62 relating to revocation periods and conditions to restore or issue a driver's license, by inserting a new subsection, labeled subsection (b), between the old

171. O.C.G.A. § 20-2-1183 (Supp. 2016).

172. 2016 Ga. Laws 443, § 4-1, at 463.

173. O.C.G.A. § 40-5-9(a) (Supp. 2016).

174. O.C.G.A. § 40-5-9(b).

175. 2016 Ga. Laws 443, § 4-2, at 463–64.

176. O.C.G.A. § 40-5-22.1 (Supp. 2016).

177. 2016 Ga. Laws 443, § 4-3, at 464.

178. O.C.G.A. § 40-5-61(e)(3) (Supp. 2016).

179. O.C.G.A. § 40-5-61(f).

law's previously existing provisions.¹⁸⁰ The new subsection (b) provides that “[w]hen a person serving a sentence has his or her driver’s license or driving privileges concurrently revoked with the imposition of his or her sentence,” such time served “shall” count towards fulfilling that individual’s suspension period.¹⁸¹

Section 4-5 amends paragraph (3) of subsection (a) of Code section 40-5-63, relating to periods of suspension.¹⁸² This section makes no substantive changes to the law, but amends the language to correctly reference the revised subsections of Code section 40-5-62.¹⁸³

Section 4-6 amends subsections (c), (c.1), and (e) of Code section 40-5-64, relating to limited driving permits for certain offenders.¹⁸⁴ Subsection (c) now includes the inability to attend an accountability court program in the list of extreme hardships that may justify issuing a limited driving permit.¹⁸⁵ Similarly in subsection (c.1), the Act adds the following to a list of permissible driving purposes for individuals with an “ignition interlock device limited driving permit”: (1) obtaining regularly scheduled medical care or prescription drugs;¹⁸⁶ (2) attending a court ordered driver education, alcohol or drug program;¹⁸⁷ (3) attending court or reporting to a community supervision officer or probation officer;¹⁸⁸ (4) transporting any family member to work, school, or to obtain medical care or prescription medication;¹⁸⁹ and (5) attending any activity, program, or treatment ordered by an accountability court.¹⁹⁰ Finally, Section 4-6 clarifies that the provisions of subsection (e) of Code Section 40-5-64 apply to “limited driving” permits, rather than standard permits.¹⁹¹

180. 2016 Ga. Laws 443, § 4-4, at 464–65. Section 4-4 re-labels what was subsection (b) under the prior law, relating to reissuing licenses to habitual violators, as subsection (c) under the 2016 law. *Id.*

181. O.C.G.A. § 40-5-62 (Supp. 2016).

182. 2016 Ga. Laws 443, § 4-5, at 465.

183. O.C.G.A. § 40-5-62(a)(3).

184. 2016 Ga. Laws 443, § 4-6, at 465–68.

185. O.C.G.A. § 40-5-64(c)(8) (Supp. 2016).

186. O.C.G.A. § 40-5-64(c.1)(2)(B).

187. O.C.G.A. § 40-5-64(c.1)(2)(E).

188. O.C.G.A. § 40—5—64(c.1)(2)(F).

189. O.C.G.A. § 40—5—64(c.1)(2)(G).

190. O.C.G.A. § 40-5-64(c.1)(2)(H).

191. O.C.G.A. § 40-5-64(e).

Section 4-7 amends Code section 40-5-75, relating to the suspension of licenses by operation of law.¹⁹² Section 4-7 adds language to subsection (a), paragraph (3) providing that suspensions imposed under the paragraph for a third conviction in five years “shall run concurrently with and shall be counted toward the fulfillment of any period of revocation imposed under Code section 40-5-58 and 40-5-6, provided that such revocation arose from the same act for which the suspension was imposed.”¹⁹³ Additionally, Section 4-7 adds new language at the end of subsection (a)(3)(D) providing that the restoration fee paid to reinstate licenses suspended under that paragraph will also count towards satisfying the restoration fee required by Code section 40-5-62.¹⁹⁴

Section 4-7 also removes the previous language of subsection (g) of Code section 40-5-75 and replaces it with a retroactivity provision that authorizes the Department of Driver Services to reinstate driver’s licenses suspended under Code section 4-5-75 for controlled substance violations under Article 2 of Chapter 13 of Title 16, or the equivalent laws of another jurisdiction prior to July 1, 2015.¹⁹⁵ However, the provision does not authorize the reinstatement of licenses suspended for violations under certain provisions of Code Section 40-6-391 prohibiting driving under the influence of drugs or a combination of drugs and alcohol, unless ordered by a drug, mental health, or other accountability court.¹⁹⁶

Section 4-8 amends Code section 40-5-76, relating to the restoration or suspension of a defendant’s driver’s license.¹⁹⁷ Amendments to subsections (a) and (b) allow OUI court division judges, as well judges in any other court, to order the Department of Driver Services (DDS) to reinstate a driver’s license previously suspended under Code section 40-5-75, or issue an ignition interlock device limited driving permit in accordance with Code section 40-5-64.¹⁹⁸ Section 4-8 also creates two new subsections of Code section

192. 2016 Ga. Laws 443, § 4-7, at 468–71.

193. O.C.G.A. § 40-5-75(a)(3) (Supp. 2016).

194. O.C.G.A. § 40-5-75(a)(3)(D).

195. 2016 Ga. Laws 443, § 4-7, at 468–71.

196. *Id.* at 1075–80.

197. 2016 Ga. Laws 443, § 4-8, at 471–72.

198. O.C.G.A. § 40-5-76(a) (Supp. 2016).

40-5-76.¹⁹⁹ Subsection (c) requires DDS to note on an individual's driving record when that individual's license was suspended or reinstated, or whether the individual was issued a limited driving or ignition interlock device limited driving permit.²⁰⁰ Subsection (d) requires DDS to credit time with a limited driving permit or interlock device limited driving permit towards "fulfillment of the period of suspension for which such permit was issued."²⁰¹

Section 4-9 amends paragraph (1) of subsection (b) of Code section 40-5-121, relating to driving while a license is suspended or revoked.²⁰² The law requires the DDS to "impose an additional" six-month suspension when it receives a record of a conviction under Code section 40-5-121, rather than merely extending the suspension by the same amount.²⁰³

Reorganization Within the Board and Department of Community Supervision

Section 5-1 amends subsections (a), (b), and (j) of Code section 42-3-2, relating to the creation of the Board of Community Supervision.²⁰⁴ The additions to subsection (a) serve to transfer the powers, functions, and duties of the Governor's Office of Transition, Support, and Reentry with regard to reentry services to the Board of Community Supervision and DCS.²⁰⁵ Changes to subsection (b) increase the Board of Community Supervision's membership from nine to eleven members and mandate that the Governor appoint one board member who owns or is employed by a private probation supervision company, and another who is employed by a county, municipality, or consolidated government that provides probation services.²⁰⁶

199. O.C.G.A. § 40-5-76(c)-(d).

200. O.C.G.A. § 40-5-76(c).

201. O.C.G.A. § 40-5-76(d).

202. 2016 Ga. Laws 443, § 4-9, at 472.

203. O.C.G.A. § 40-5-121(b)(1) (Supp. 2016).

204. 2016 Ga. Laws 443, § 5-1, at 472-74.

205. O.C.G.A. § 42-3-2(a) (Supp. 2016). Section 5-1 amends subsection (j) of Code Section 42-3-2 by removing references to the Governor's Office of Transition, Support, and Reentry. *Id.*

206. O.C.G.A. § 42-3-2(b).

Section 5-2 amends subsection (a) of Code section 42-3-3, which lists the primary responsibilities of DCS.²⁰⁷ The law now requires DCS to supervise “juvenile offenders released from restrictive custody,”²⁰⁸ regulate entities and individuals that provide probation services,²⁰⁹ review uniform professional standards for private probation officers and contract standards for private probation contracts,²¹⁰ produce an annual summary report,²¹¹ and administer “laws, rules, and regulations related to misdemeanor probation supervision.”²¹²

Section 5-3 amends subsection (a) of Code section 42-3-5, relating to the administrative functions of the DCS.²¹³ Subsection (a) now requires the Commissioner of DCS to “establish an offender transition and reentry unit to coordinate successful offender reentry in [the] state, reduce recidivism, enhance public safety, and . . . reinvest[] in evidence based, community centered services.”²¹⁴

Section 5-4 amends subsection (e) of Code section 42-3-6, relating to rules and regulations.²¹⁵ Specifically, additions to subsection (e) clarify that rules and regulations previously adopted by the Governor’s Office of Transition, Support, and Reentry and relating to functions transferred from that office to DCS, remain in full force and effect as rules and regulations of DCS until altered or superseded by the DCS board.²¹⁶

Section 5-5 amends subsection (a) of Code section 42-3-7, relating to transfer of prior appropriations, personnel, equipment, and facilities.²¹⁷ Code section 42-3-7 provides the general rule that agencies that transferred functions to DCS must also transfer appropriations, personnel, equipment, and facilities for those

207. 2016 Ga. Laws 443, § 5-2, at 474.

208. OCGA § 42-3-3(a)(4) (Supp. 2016).

209. O.C.G.A. § 42-3-3(a)(8).

210. O.C.G.A. § 42-3-3(a)(9).

211. O.C.G.A. § 42-3-3(a)(10).

212. O.C.G.A. § 42-3-3(a)(11).

213. 2016 Ga. Laws 443, § 5-3, at 474–75.

214. O.C.G.A. § 42-3-5(a) (Supp. 2016).

215. 2016 Ga. Laws 443, § 5-4, at 475.

216. O.C.G.A. § 42-3-6(e)(6) (Supp. 2016).

217. 2016 Ga. Laws 443, § 5-5, at 475–76.

functions to DCS.²¹⁸ Subsection (a) includes the Governor's Office of Transition, Support, and Reentry among a list of agencies that must comply with this general rule.²¹⁹

Section 5-6 creates Code section 42-3-10.²²⁰ The Code section establishes procedures to appeal a sanction imposed by the Board of Community Supervision.²²¹ Additionally, for any actions at law or equity against the board or its members brought as a result of any "omissions or acts done in a member's official capacity or under color thereof shall be brought in the superior court of the county where the offices of the board are located."²²²

First Offender Treatment, Record Restriction, and Cross-References

Section 6A-1 amends Code section 42-8-60, relating to probation of first-time offenders.²²³ This Code section requires courts imposing a first-time offender sentence to state the prospective effective date of the defendant's exoneration of guilt in the sentencing order.²²⁴ This section also allows the court to enter an adjudication of guilt and proceed to sentence the defendant²²⁵ if the defendant violates the terms of a first offender sentence²²⁶ or commits another crime during the first offender period,²²⁷ or the court determines that the defendant was or is not eligible for first offender sentencing.²²⁸ Additionally, if a defendant successfully completes the terms of his or her probation, is released by the court prior to the termination of probation, or is released from confinement and parole, then the defendant shall be exonerated of guilt and discharged as a matter of law.²²⁹ Within thirty days of completion of active probation supervision, DCS or the

218. O.C.G.A. § 42-3-7(a) (Supp. 2016).

219. O.C.G.A. § 42-3-7(a).

220. 2016 Ga. Laws 443, § 5-6, at 476.

221. O.C.G.A. § 42-3-10(a) (Supp. 2016).

222. O.C.G.A. § 42-3-10(b).

223. 2016 Ga. Laws 443, § 6A-1, at 477-80.

224. O.C.G.A. § 42-8-60(c)(1) (Supp. 2016).

225. O.C.G.A. § 42-8-60(d).

226. O.C.G.A. § 42-8-60(d)(1).

227. O.C.G.A. § 42-8-60(d)(2).

228. O.C.G.A. § 42-8-60(d)(3).

229. O.C.G.A. § 42-8-60(e).

governing authority must notify the clerk of the appropriate court of the defendant's completed probation.²³⁰ DOC failure to notify the court within thirty days of the defendant's completed term of sentence, which was incarceration only, results in exoneration.²³¹

Section 6A-1 also amends Code section 42-8-62, related to the clerk of the court's responsibility to transmit a first-time offender's sentence and other records to the Georgia Crime Information Center (GCIC) within thirty days of filing or notice.²³² Section 6A-1 creates Code section 42-8-62.1,²³³ and grants the court discretion to order restricted dissemination of the defendant's first offender records,²³⁴ criminal file,²³⁵ and law enforcement agency records of the arrest.²³⁶ Before dissemination, however, courts are required to weigh the public's interest in releasing such records and the possible harm to the defendant's privacy.²³⁷ Individuals exonerated of guilt and discharged prior to July 1, 2016, can petition the court for an order to seal and make their criminal file unavailable to the public.²³⁸ Within ninety days of a defendant filing to seal his or her records the court must order the records sealed and unavailable if it finds by a preponderance of the evidence that exoneration of guilt has been granted, and the harm to a defendant's privacy outweighs the public's interest in having access to a defendant's criminal records.²³⁹ Upon a court's order to seal the records, the clerk of court must comply with the order within sixty days;²⁴⁰ law enforcement agencies must comply within thirty days.²⁴¹

Section 6A-1 also amends Code section 42-8-63, relating to discharge and disqualifying individuals for employment.²⁴² Code section 42-8-63 now explicitly states that a discharge "shall not be used to disqualify an individual . . . for employment or appointment

230. O.C.G.A. § 42-8-60(f)(1).

231. O.C.G.A. § 42-8-60(g).

232. 2016 Ga. Laws 443, § 6A-1, at 480–81.

233. 2016 Ga. Laws 443, § 6A-1, at 481–2.

234. O.C.G.A. § 42-8-62.1(b)(1)(A) (Supp. 2016).

235. O.C.G.A. § 42-8-62.1(b)(1)(B).

236. O.C.G.A. § 42-8-62.1(b)(1)(C).

237. O.C.G.A. § 42-8-62.1(b)(2).

238. O.C.G.A. § 42-8-62.1(c).

239. O.C.G.A. § 42-8-62.1(d).

240. O.C.G.A. § 42-8-62.1(e).

241. O.C.G.A. § 42-8-62.1(f).

242. 2016 Ga. Laws 443, § 6A-1, at 482.

to office in either the public or private sector.”²⁴³ In addition, Section 6A-1 revises Code section 42-8-63.1 relating to the limited circumstances for which a discharge may be used to disqualify an individual for employment.²⁴⁴ Code section 42-8-63.1 now allows a discharge to disqualify employment within the following categories: public and private school, day care, and child welfare agencies,²⁴⁵ long-term care facilities,²⁴⁶ and providers of services for mentally ill or developmentally disabled individuals.²⁴⁷

Section 6A-1 also amends Code section 42-8-65, relating to subsequent prosecution of a first-time offender for another offense.²⁴⁸ The amendment provides a list of situations in which the records of the GCIC showing treatment as a first-time offender shall be modified.²⁴⁹ Now, the GCIC’s records shall be modified only when a court enters: (1) an adjudication of guilt for the offense for which the offender has been sentenced as a first offender;²⁵⁰ (2) an order modifying the original sentence;²⁵¹ or (3) an order correcting an exoneration of guilt and discharge.²⁵² Subsection (c) of Code section 42-8-65 was also amended and now states that “any individual sentenced pursuant to subsection (a) or (k) of Code section 42-8-60 shall not be deemed to have been convicted during such sentence, and records thereof shall only be disseminated by the GCIC.”²⁵³ Under the amended subsection, the GCIC may only disseminate such records “to criminal justice agencies; as authorized by subsection (c) of Code section 35-3-37 [related to the inspection, purging, modification, or supplementing of criminal records at the request of the individual who believes his or her criminal records are inaccurate or incomplete]; and as authorized by subparagraph (a)(1)(B) of Code

243. O.C.G.A. § 42-8-63 (Supp. 2016).

244. 2016 Ga. Laws 443, § 6A-1, at 482–83.

245. O.C.G.A. § 42-8-63.1(b)(1) (Supp. 2016).

246. O.C.G.A. § 42-8-63.1(b)(2).

247. O.C.G.A. § 42-8-63.1(b)(3).

248. 2016 Ga. Laws 443, § 6A-1, at 483–84.

249. *Id.*

250. O.C.G.A. § 42-8-65(b)(1) (Supp. 2016).

251. O.C.G.A. § 42-8-65(b)(2).

252. O.C.G.A. § 42-8-65(b)(3).

253. O.C.G.A. § 42-8-65(c)(1).

sections 35-3-34 and 35-3-35 [related to the responsibilities an issuing center has when disseminating first offender records].”²⁵⁴

Finally, Section 6A-1 amends Code section 42-8-66, related to the ability to petition the superior court for first offender treatment if the convicted individual was not informed he or she was eligible for such treatment.²⁵⁵ While this section does not make any substantial changes to Code section 42-8-66, the court is now required to send a copy of any order issued pursuant to this Code section to the GCIC and Department of Driver Services (DDS).²⁵⁶ Upon receipt of any such order, GCIC and DDS must modify their records accordingly.²⁵⁷

The Georgia Crime Information Center’s Dissemination of Dispositions

Section 6B-1 amends Code section 17-7-32, relating to the disposition of commitment forms, warrants, and other papers.²⁵⁸ The amendment requires prosecutors who decide to dismiss a case prior to filing an accusation or seeking indictment to file a notice with the clerk of court.²⁵⁹ In addition, the clerk must transmit the notice to the GCIC within thirty days of notice.²⁶⁰ Further, subparagraph (b)(2) explicitly states that it does not prevent a prosecuting attorney who has probable cause to seek charges against an accused.²⁶¹

Section 6B-2 amends Code section 35-3-33, relating to the powers of the GCIC.²⁶² Section 6B-2 requires that GCIC make the final disposition of offenses, the sentencing information and conditions, orders modifying earlier dispositions, and orders relating to probation available to all federal, and state and local criminal justice agencies.²⁶³ Section 6B-2 also adds paragraph (17) to Code section 35-3-33, and requires the GCIC to “notify the appropriate clerk of court that a defendant has completed his or her first offender sentence

254. *Id.*

255. 2016 Ga. Laws 443, § 6A-1, at 484.

256. O.C.G.A. § 42-8-65(e).

257. *Id.*

258. 2016 Ga. Laws 443, § 6B-1, at 485.

259. O.C.G.A. § 17-7-32(b)(1) (Supp. 2016).

260. *Id.*

261. O.C.G.A. § 17-7-32(b)(2).

262. 2016 Ga. Laws 443, § 6B-2, at 485–86.

263. O.C.G.A. § 35-3-33(a)(10) (Supp. 2016).

or was exonerated of guilt within five days of such completion or exoneration.”²⁶⁴

Section 6B-3 amends Code section 35-3-34, relating to disclosure and dissemination of criminal records to private persons and businesses.²⁶⁵ Section 6B-3 amends subparagraph (a)(1)(B)(i) of Code section 35-3-34, and prohibits the GCIC from providing records of arrests, charges, or sentences when the individual has been sentenced as a first offender and exonerated without adjudication of guilt, or has been sentenced.²⁶⁶ Section 6B-3 also adds subparagraph (a)(1)(B)(ii) prohibiting the GCIC from providing records of arrest, charges, or sentences except as specifically authorized by Code section 42-8-63.1 when an individual has completed active probation supervision.²⁶⁷ Finally, this section adds subparagraph (a)(1)(B)(iii) authorizing the GCIC to provide records of arrest, charges, or sentences when an individual has not completed active probation supervision.²⁶⁸

Section 6B-4 amends Code section 35-3-34.1, relating to circumstances when an exonerated first offender’s criminal record may be disclosed.²⁶⁹ Code section 35-3-34.1 now provides the GCIC with authorization to disclose a first offender’s records to employers and other entities under the conditions set forth in Code section 42-8-63.1.²⁷⁰

Section 6B-5 amends Code section 35-3-35 as it relates to disclosure and dissemination of criminal records to public agencies and political subdivisions.²⁷¹ This section amends subparagraph (a)(1)(B)(i) of Code section 35-3-35 and restricts disclosure and dissemination of an individual’s criminal information when a defendant has been sentenced except as specifically authorized by Code section 42-8-63.1.²⁷² Section 6B-5 adds subparagraph (a)(1)(B)(ii) and prohibits the GCIC from releasing an individual’s

264. O.C.G.A. § 35-3-33(a)(17).

265. 2016 Ga. Laws 443, § 6B-3, at 486.

266. O.C.G.A. § 35-3-34(a)(1)(B)(i) (Supp. 2016).

267. O.C.G.A. § 35-3-34(a)(1)(B)(ii).

268. O.C.G.A. § 35-3-34(a)(1)(B)(iii).

269. 2016 Ga. Laws 443, § 6B-4, at 486–87.

270. O.C.G.A. § 35-3-34.1 (Supp. 2016).

271. 2016 Ga. Laws 443, § 6B-5, at 487.

272. O.C.G.A. § 35-3-35(a)(1)(B)(i) (Supp. 2016).

criminal information after he or she has completed active probation, except as authorized by Code section 42-8-63.1.²⁷³ This section also adds subparagraph (a)(1)(B)(iii) and authorizes the GCIC to provide records of arrest, charges, or sentences if an individual is still under active probation supervision.²⁷⁴ Finally, Section 6B-5 adds subparagraph (a)(1)(D) to Code section 35-5-35, and states that “the [GCIC] shall not provide records of arrest, charges, or dispositions when access has been restricted pursuant to Code sections 15-1-20, 35-3-37, or 42-8-62.1.”²⁷⁵

Section 6B-6 amends Code section 35-3-6, relating to the duties of state criminal agencies regarding fingerprints, photographs, and other identifying data.²⁷⁶ The section adds clerks of court, private probation officers, the Georgia Superior Court Clerks’ Cooperative Authority, and State Board of Pardons and Paroles to the list of agencies that must furnish the Center with any data deemed necessary to carry out its responsibilities.²⁷⁷

Section 6B-7 amends Code section 35-3-37, relating to review of an individual’s criminal history record information.²⁷⁸ The section adds “governmental agencies or licensing and regulating agencies pursuant to Code section 35-3-35” to the list of agencies that criminal history record information is available to under paragraph (a)(6) of Code section 35-3-37.²⁷⁹ Section 6B-7 also amends subparagraph (h)(1)(A)(i) of Code section 35-3-37 and requires law enforcement agencies to notify the GCIC when a record is to be restricted within thirty days of the decision to restrict, and mail a notice to the accused within seven days of notifying the GCIC.²⁸⁰ Section 6B-7 also adds language to subparagraph (h)(1)(A)(ii)(III), and states that if the GCIC does not receive notice of a charging instrument within 30 days of the time periods set forth in Code section 35-3-37, the record will be restricted for noncriminal justice purposes and sealed.²⁸¹

273. O.C.G.A. § 35-3-35(a)(1)(B)(ii).

274. O.C.G.A. § 35-3-35(a)(1)(B)(iii).

275. O.C.G.A. § 35-3-35(a)(1)(D).

276. 2016 Ga. Laws 443, § 6B-6, at 488.

277. O.C.G.A. § 35-3-36(b) (Supp. 2016).

278. 2016 Ga. Laws 443, § 6B-7, at 488–90.

279. O.C.G.A. § 35-3-37(a)(6) (Supp. 2016).

280. O.C.G.A. § 35-3-37(h)(1)(A)(i).

281. O.C.G.A. § 35-3-37(h)(1)(A)(ii)(III).

Finally, this section amends paragraph (h)(5) of Code section 35-3-37 and allows individuals arrested on fugitive from justice warrants to petition the superior court to restrict access to their criminal history record information related to the warrant.²⁸²

Section 6B-8 amends Code section 42-8-36, relating to the duty of probationers to inform their probation officer of their residence, whereabouts, and tolling.²⁸³ Section 6B-8 amends paragraph (3) of Code section 42-8-36 and requires the clerk of court to transmit a probation tolling order to the GCIC within thirty days of filing the order.²⁸⁴

Section 6B-9 revises subsection (d) of Code section 42-8-105, relating to a probationer's obligation to keep his or her probation officer informed of certain information.²⁸⁵ Section 6B-9 requires the clerk of court, or the judge of any court where there is no clerk of court, to transmit a probation tolling order to the GCIC within thirty days of filing the order.²⁸⁶

Section 6C-1 amends Code section 10-1-393.5, relating to prohibited telemarketing, Internet activities, and home repair, by adding subparagraph (b.1)(1)(B)(i).²⁸⁷ The Section adds Code sections 15-1-20 and 42-8-62.1 as Code sections which may prohibit access to an individual's case or charges.²⁸⁸

Finally, Section 6C-2 amends subsection (f) of Code section 16-11-131, relating to possession of firearms by convicted felons and first offender probationers.²⁸⁹ The amendment to Code section 16-11-131 changes the term "guilt" to "guilt as a matter of law."²⁹⁰

Misdemeanor Probation Services

Section 7-1 amends Code section 42-8-100, relating to definitions for county and municipal probation, by adding the definition of

282. O.C.G.A. § 35-3-37(h)(5).

283. 2016 Ga. Laws 443, § 6B-8, at 490–91.

284. O.C.G.A. § 42-8-36(a)(3) (Supp. 2016).

285. 2016 Ga. Laws 443, § 6B-9, at 491.

286. O.C.G.A. § 42-8-105(d) (Supp. 2016).

287. 2016 Ga. Laws 443, § 6C-1, at 491.

288. O.C.G.A. § 10-1-393.5(b.1)(1)(B)(i) (Supp. 2016).

289. 2016 Ga. Laws 443, § 6C-2, at 491.

290. O.C.G.A. § 16-11-31(f) (Supp. 2016).

“DCS” as subsection (2).²⁹¹ “DCS” is now defined in this subsection as the “Department of Community Supervision.”²⁹²

Section 7-2 revises subsection (a)(1) of Code section 42-8-101, relating to agreements for probation services.²⁹³ The request and express written consent of the chief judge of any court is now required for the governing authority of such county or municipality to enter into a contract with a private probation service.²⁹⁴ The county’s governing authority or municipality, not its chief judge, is now responsible for negotiating and approving the final contract.²⁹⁵ County governing authorities and municipalities are further authorized to set up the probation systems, but only upon the request of, and with written consent from, the chief judge²⁹⁶ or municipal court judge.²⁹⁷

Section 7-3 amends subsection (f) of Code section 42-8-102, relating to probation, supervision, and revocation.²⁹⁸ The Act adds new language that allows a probationer whose probation has been revoked on the sole basis of failure to pay fines, statutory surcharges, or probation supervision fees, to have a hearing on such issue and not be subject to a prehearing arrest warrant.²⁹⁹ The Act also adds subsection (f)(3) to Code section 42-8-102 to establish the minimum requirements of an affidavit that probation officers must prepare for the court when the sole basis for probation revocation is failure to report as directed.³⁰⁰ The probation officer must submit this affidavit with a request for an arrest warrant, and the court may then issue a warrant for the arrest of the probationer.³⁰¹

Section 7-4 amends Code section 42-8-103, relating to pay-only probation, by revising subsection (b) and adding a new subsection (d).³⁰² In subsection (b), when pay-only probation is imposed and all

291. 2016 Ga. Laws 443, § 7-1, at 492.

292. O.C.G.A. § 42-8-100(2) (Supp. 2016).

293. 2016 Ga. Laws 443, § 7-2, at 492–93.

294. O.C.G.A. § 42-8-101(a)(1), (b)(1) (Supp. 2016).

295. O.C.G.A. § 42-8-101(a)(2), (b)(2).

296. O.C.G.A. § 42-8-101(a)(2).

297. O.C.G.A. § 42-8-101(b)(2).

298. 2016 Ga. Laws 443, § 7-3, at 493–95.

299. O.C.G.A. § 42-8-102(f)(2)(A) (Supp. 2016).

300. O.C.G.A. § 42-8-102(f)(3).

301. O.C.G.A. § 42-8-102(f)(3)(C).

302. 2016 Ga. Laws 443, § 7-4, at 495.

finer and statutory charges are paid in full, the probation officer must submit an order to the court terminating the probated sentence within thirty days.³⁰³ The new subsection (d) allows the court to terminate probation or discharge from further supervision, if the defendant has moved that he or she has an inability to pay or other mitigating factors, and the court is satisfied that its action would be in the best interests of justice and the welfare of society.³⁰⁴

Section 7-5 creates Code section 42-8-103.1, relating to the discharge from further supervision or termination of probation in the best interest of justice.³⁰⁵ When a defendant is serving consecutive misdemeanor sentences, the defendant can motion the court for discharge from further supervision or otherwise terminate probation, but only after twelve months from the time the sentence was entered and every four months after that.³⁰⁶ In order to grant this motion, the court must be satisfied that its action would be in the best interest of justice and the welfare of society.³⁰⁷

For any defendant serving consecutive misdemeanor sentences, the probation officer shall review the case after twelve months of probation supervision if the defendant paid all fines, surcharges, and restitution, and has completed all tests, evaluations, and rehabilitation programs, to determine if the officer recommends early termination of probation.³⁰⁸ The officer must review the case in the same manner every four months thereafter until termination, expiration, or other disposition of the case.³⁰⁹ If the officer recommends early termination, he or she shall immediately submit an order to the court.³¹⁰

Section 7-6 amends Code section 42-8-105, relating to the probationer's obligation to keep an officer informed of his address and contact information.³¹¹ The Act eliminates the provision in subsection (b)(1)(D) allowing probation officers to advise the

303. O.C.G.A. § 42-8-103(b) (Supp. 2016).

304. O.C.G.A. § 42-8-103(d).

305. 2016 Ga. Laws 443, § 7-5, at 495-96.

306. O.C.G.A. § 42-8-103.1(a) (Supp. 2016).

307. *Id.*

308. O.C.G.A. § 42-8-103.1(b).

309. *Id.*

310. *Id.*

311. 2016 Ga. Laws 443, § 7-6, at 496.

probationer that the officer will seek a tolling order if the probationer does not report by telephone.³¹²

Section 7-7 revises Code section 42-8-106, relating to the creation of the advisory council.³¹³ The Act adds new language to subsection (a) of Code section 42-8-106 to specifically allow the judicial advisory committee to “provide advice and consultation to the board and DCS” on issues relating to this article.³¹⁴ In addition, Section 7-7 removed language that provided for the board’s responsibility in this code section to review the uniform professional standards for probation officers and contract standards for private probation contracts, and to produce an annual summary report.³¹⁵

Section 7-8 revises subsection (d) of Code section 42-8-107 as it relates to uniform professional standards and uniform contract standards, by removing the language that provided for the board’s responsibility to review uniform professional standards and uniform contract and agreement standards.³¹⁶

Providing for Miscellaneous Cross-References

Section 8-6 amends Code section 42-8-35.5, relating to confinement in probation diversion centers.³¹⁷ The Act eliminates the ability of courts to require probationers sentenced to one year of probation to satisfactorily complete a program in a probation diversion center.³¹⁸

Parole Board Authority Regarding Certain Drug Offenders

Section 9-1 amends Code section 42-9-45, relating to the State Board of Pardons and Paroles general rule-making authority.³¹⁹ Section 9-1 provides that inmates serving sentences of at least six years for violations of Code section 16-13-30(c),(e), or (l), relating to

312. O.C.G.A. § 42-8-105(b)(1)(D) (Supp. 2016).

313. 2016 Ga. Laws 443, § 7-7, at 496–98.

314. O.C.G.A. § 42-8-106 (Supp. 2016).

315. O.C.G.A. § 42-8-106.1 (Supp. 2016).

316. 2016 Ga. Laws 443, § 7-8, at 498–99.

317. 2016 Ga. Laws 443, § 8-6, at 504.

318. *Id.*

319. 2016 Ga. Laws 443, § 9-1, at 504–506.

possession of controlled substances, and Code section 17-10-7, relating to repeat offenders, can be eligible for parole if they have never been convicted of: a serious violent felony,³²⁰ any crime where they have had to register as a sex offender,³²¹ certain types of aggravated assault,³²² felon in possession of a firearm,³²³ or using a weapon during commission of a felony.³²⁴ Inmates can further be eligible for parole if they: complete at least six years of a sentence;³²⁵ are classified as a low risk for recidivism;³²⁶ are classified as not more than medium security risk;³²⁷ completed criminogenic programming requirements;³²⁸ have not been guilty of any serious disciplinary infractions in the twelve months preceding consideration;³²⁹ and have a high school diploma or GED diploma, or for disabled or illiterate individuals, have completed a job skills training program, a literacy program, an adult basic education program, or faith based program.³³⁰

Professional Licensing Considerations

Section 10-1 amends Code section 43-1-19, relating to grounds for refusing to grant or revoking licenses and probationary licenses.³³¹ The new language allows applicants to provide proof of completion of any accountability court treatment program as part of their application for licensure or renewal.³³² In addition, the Act forbids professional licensing boards from refusing to grant a license to an applicant on the basis of a conviction or arrest, charge, or sentence for a felony unless the felony directly relates to the occupation for

320. O.C.G.A. § 42-9-45(b)(4)(A)(i) (Supp. 2016).

321. O.C.G.A. § 42-9-45(b)(4)(A)(ii).

322. O.C.G.A. § 42-9-45(b)(4)(A)(iii).

323. O.C.G.A. § 42-9-45(b)(4)(A)(v).

324. O.C.G.A. § 42-9-45(b)(4)(A)(iv).

325. O.C.G.A. § 42-9-45(b)(4)(B).

326. O.C.G.A. § 42-9-45(b)(4)(C).

327. O.C.G.A. § 42-9-45(b)(4)(D).

328. O.C.G.A. § 42-9-45(b)(4)(E).

329. O.C.G.A. § 42-9-45(b)(4)(F).

330. O.C.G.A. § 42-9-45(b)(4)(G).

331. 2016 Ga. Laws 443, § 10-1, at 506–12.

332. O.C.G.A. § 43-1-19(p)(1) (Supp. 2016).

which the license is sought or held,³³³ and establishes standards for determining whether or not a felony relates to the occupation.³³⁴

Food Stamps

Section 11-1 creates Code section 49-4-22, relating to general provisions for public assistance.³³⁵ The Act bars an individual imprisoned for any state or federal law, which includes an element of possession, use, or distribution of a controlled substance that would qualify as a felony within the state, from eligibility for the federal Supplemental Nutrition Assistance Program.³³⁶ If the individual was not sentenced to imprisonment, he or she retains eligibility for the aforementioned program provided that she or she remains compliant with the conditions of probation.³³⁷ Additionally, after confinement, an individual shall be eligible for the program if he or she remains compliant with the imposed conditions of probation or parole.³³⁸

Youthful Probation Supervision

Section 12-1 amends Code section 49-4A-2, relating to the creation of the Board of Juvenile Justice.³³⁹ The Act allows the Board of Juvenile Justice to adopt rules and regulations governing the transfer of children who are at least seventeen years of age and released from restrictive custody for adjudication of a Class A or B designated felony act.³⁴⁰

Analysis

On April 27, 2016, Governor Deal signed Senate Bill 367 into law.³⁴¹ The law seeks to reduce incarceration costs while giving first-

333. O.C.G.A. § 43-1-19(q)(1).

334. O.C.G.A. § 43-1-19(q)(2).

335. 2016 Ga. Laws 443, § 11-1, at 512–13.

336. O.C.G.A. § 49-4-22(a) (Supp. 2016).

337. *Id.*

338. *Id.*

339. 2016 Ga. Laws 443, § 12-1, at 513.

340. O.C.G.A. § 49-4A-2(6) (Supp. 2016).

341. *Governor Nathan Deal Signs SB 367*, Ga. Justice Project (Apr. 29, 2016), <http://www.gjp.org/news/governor-nathan-deal-signs-sb-367>.

time offenders an opportunity at reform through less punitive measures.³⁴² However, because this Act must adequately serve the public interest, its ultimate success will turn on whether it reduces incarceration rates without increasing crime.

How SB 367 Differs from Other First Offender Legislation

Georgia's SB 367 is groundbreaking amongst states in terms of the scope of its judicial expungement, sealing, and set-asides for first-time offenders. Maine, Michigan, Mississippi, New Jersey, New Mexico, North Carolina, North Dakota, Rhode Island, and South Carolina have all passed some form of first-time offender legislation.³⁴³ Unlike Georgia, almost all of these states limit their first-time offender laws to offenders under twenty-one years of age.³⁴⁴

In Maine, records of convictions for Class E crimes that were committed by an offender between eighteen and twenty-one years of age may be sealed after four years if the person avoids conviction of any other offenses and has no charges pending.³⁴⁵ Michigan offers a set-aside for first-time felony offenders with no more than two prior misdemeanors and for offenders with two misdemeanors but no felonies.³⁴⁶ Mississippi provides expungement of first-time offender misdemeanors and some minor felonies.³⁴⁷ Under New Jersey law, first-time offender low-level drug offenses committed at age twenty-one or younger may be expunged after one year.³⁴⁸ New Mexico allows expungement of first-time offender convictions of drug possession if the offender is eighteen or under at time of offense.³⁴⁹ North Carolina allows expungement of first-time offender felonies and misdemeanors committed under age eighteen or twenty-years of

342. See Council's Report, *supra* note 1, at 3.

343. See Margaret Love, *50-State Comparison Judicial Expungement, Sealing, and Set-aside, Collateral Consequences Res. Ctr.*, <http://ccresourcecenter.org/wp-content/uploads/2016/03/Chart-4-Judicial-Expungement-Sealing-Set-aside.pdf> (last updated July 2016).

344. See *id.*

345. Me. Rev. Stat. Ann. tit. 15, § 2251 (2015).

346. Mich. Comp. Laws § 780.621 (2015).

347. Miss. Code Ann. § 99-19-71 (2015).

348. N.J. Stat. Ann. § 2C:52-5 (1987).

349. N.M. Stat. Ann. § 30-31-28(D) (1972).

age.³⁵⁰ North Dakota allows first-time offender marijuana possession to be sealed upon court motion if not subsequently conviction within two years.³⁵¹ After five to ten years of the offense, Rhode Island seals the records of nonviolent first-time offenders.³⁵² South Carolina allows expungement for first-time offenders involved in passing off fraudulent checks,³⁵³ alcohol education program,³⁵⁴ and failure to stop for law enforcement signal offenses.³⁵⁵

Issues Unresolved by the Bill

Elimination of Mandatory Minimum Sentencing for Other Crimes

In 2012, passage of HB 1776 increased judges' ability to exercise their discretion in sentencing persons convicted of drug possession and purchasing offenses.³⁵⁶ Additionally, in 2013 the legislature adopted the Council's 2011 and 2012 recommendations granting statutory authority for judicial discretion of drug trafficking and certain serious violent felonies under specific circumstances.³⁵⁷ Despite those changes, the Council seeks further reform of mandatory minimums across other crimes, including the seven deadly sins because mandatory minimum sentencing has resulted in sentencing inequities.³⁵⁸ Additionally, the Council seeks to eliminate mandatory non-parole eligible prison sentences for certain classes of crimes.³⁵⁹ The Council views mandatory non-parole eligible prison sentences as de facto mandatory minimum sentences.³⁶⁰ The Act, however, does not incorporate these recommended reforms.

350. N.C. Gen. Stat. § 15A-145 (2015).

351. N.D. Cent. Code § 19-03.1-23(9) (2015).

352. R.I. Gen. Laws § 12-1.3-1 (1997).

353. S.C. Code Ann. § 34-11-90(e) (2000).

354. S.C. Code Ann. § 17-22-530(A) (2007).

355. S.C. Code Ann. § 56-5-750(F) (2016).

356. Council's Report, *supra* note 1, at 52.

357. *Id.* at 52-53.

358. *Id.* at 53.

359. *Id.*

360. *Id.* at 54.

Increased Probation Supervision

As of 2014, Georgia ranks first nationally in the number of adult offenders on probation and the number of probationers per capita.³⁶¹ To reduce the probation population the Council proposes the following: (1) adjusting the classification, penalties, and punishment of traffic offenses; (2) addressing offender indigence as it relates to the state's collection of fines, fees and surcharges in felony and misdemeanor cases; (3) using a validated risk and needs assessment tool to focus on probationers most likely to re-offend and to create a model tailored to meet their criminogenic needs; and (4) analyzing probation term lengths and their effect on public safety in light of data suggesting that longer probation terms have little effect on recidivism.³⁶² The Georgia legislature did not fully incorporate all of these recommendations into the Act, leaving room to address these concerns through future legislation.

Criminal justice reform is one of Governor Deal's top priorities, and one on which he has bipartisan support.³⁶³ The issue has also received national attention, and is one of few issues that are able to generate bipartisan cooperation in the United States Congress.³⁶⁴ The General Assembly will likely continue to pass criminal justice reform measures in the near future, provided the data continues to show that the reforms are effective.

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361. Council's Report, *supra* note 1, at 54.

362. *Id.* at 55.

363. Rachel Lu, *Justice Reform: Georgia's Bipartisan Cinderella Story*, *The Federalist* (Mar. 26, 2015), <http://thefederalist.com/2015/03/26/justice-reform-georgias-bipartisan-cinderella-story/>.

364. Seung Min Kim, *Compromise Struck on Criminal Justice Reform*, *Politico* (Apr. 28, 2016), <http://www.politico.com/story/2016/04/criminal-justice-reform-senate-222577>.