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SB 174 - Probation and Early Release


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CRIMINAL PROCEDURE

Sentence and Punishment: Provide for Reform for Individuals Supervised under Accountability Courts, the Department of Community Supervision, and the State Board of Pardons and Paroles and Enact Reforms Recommended by the Georgia Council on Criminal Justice Reform; Amend Title 15 and Section 6 of Chapter 3 of Title 49 of the Official Code of Georgia Annotated, Relating to Courts and Functions of a County or District Department of Family and Children Services, respectively, so as to Require Veterans Court Divisions to Adhere to the same Policies, Procedures, and Standards as other Accountability Courts; Change Provisions Relating to Family Treatment Court Divisions; Provide for Protocols Involving Family Treatment Court Divisions; Amend Article 1 of Chapter 10 of Title 17, Title 42, and Section 54 of Chapter 1 of Title 51 of the Official Code of Georgia Annotated, Relating to the Procedure for Sentencing and the Imposition of Punishment, Penal Institutions, and the Program and Treatment Completion Certificate, respectively, so as to Provide for a Behavioral Incentive Date under certain Circumstances; Change Provisions Relating to active Probation Supervision; Provide for the Use of Updated Evaluation Tools; Provide for Matters Related to Probation; Provide for the Board of Community Supervision to Issue Program and Treatment Completion Certificates; Create certain rebuttable Presumptions pertinent to Individuals Issued such Certificates; Modify Provisions Relating to the Confidentiality of Records and Information Held by the State Board of Pardons and Paroles under certain Circumstances; Allow Community Supervision Officers to Provide Supervision to Defendants in certain Accountability Courts under certain Circumstances; Provide for Definitions; Allow the Prosecuting Attorney and Victim of a Crime to Submit Information to the State Board of Pardons and Paroles relative to Its Consideration of the Parole or conditional Release of an Inmate; Require that Conditions of Probation be Imposed as Conditions of Parole when a Defendant is Serving a split Sentence; Provide for Notice of certain Hearings;

Clarify Provisions Relating to Commutation; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 15-1-17 (amended); 15-11-70 (amended), -212 (amended); 17-10-1 (amended), 42-2-11 (amended); 42-3-2 (amended); 42-5-36 (amended); 42-8-21 (amended), -27, -34, -37 (amended); 42-9-41 (amended), -42, -43, -44, -46, -52, -53 (amended), -61 (new); 49-3-6 (amended); 51-1-54 (amended)
BILL NUMBER:	SB 174
ACT NUMBER:	226
GEORGIA LAWS:	2017 Ga. Laws 585
SUMMARY:	The Act amends Georgia's probation laws by shortening the amount of time offenders spend on probation, providing local supervision, and creating a more efficient use of resources within the criminal justice system. The Act permits the transfer from parole to probation and the use of local supervision for certain offenders. The Act also allows for early release of probationers who meet the terms of their probation. The Act creates a process to automatically generate a request for early termination of probation for certain low-level offenses after the offender successfully completes three years of probation.
EFFECTIVE DATE:	July 1, 2017

History

In response to Georgia's high recidivism rates, state spending on corrections, and the growing prison population, the Georgia General

Assembly and Governor Nathan Deal (R) “decided to put their faith in a new criminal justice approach.”¹ In 2011, Governor Deal signed House Bill (HB) 265, “a resolution that created the bipartisan, inter-branch Special Council on Criminal Justice Reform for Georgians (Special Council).”² Among other things, the Special Council focused on ways to “[a]ddress the growth of the state’s prison population, contain corrections costs, and increase efficiencies and effectiveness that result in better offender management.”³ The Special Council conducted “an exhaustive review of the adult correctional system to better understand its shortcomings and the dynamics driving prison growth.”⁴ From this review, the Special Council set forth a package of recommended policy changes later embodied in HB 1176.⁵ The General Assembly unanimously passed HB 1176 and on May 2, 2012, Governor Deal signed it into law.⁶

After the successful legislative reform of the adult correctional system, the Governor asked the Special Council to focus on Georgia’s juvenile justice system.⁷ At the time, the juvenile justice system relied heavily on “expensive, out-of-home facilities” that failed to help turn around the lives of thousands of Georgia’s troubled youth.⁸ The Special Council conducted an intensive review of data and collected testimonies from a variety of stakeholders to “produce[] a package of recommendations [that] focus[ed] out-of-home placements on high-risk youth and divert[ed] lower level juveniles into community programs” known for reducing recidivism.⁹ HB 242, which embodied many of these recommendations, passed the General Assembly unanimously, and Governor Deal signed the bill into law on May 2, 2013.¹⁰

1. Justice Michael P. Boggs & Carey A. Miller, Report of the Georgia Council on Criminal Justice Reform 3 (2017), https://dcs.georgia.gov/sites/dcs.georgia.gov/files/related_files/site_page/Report%20of%20the%20Georgia%20Council%20on%20Criminal%20Justice%20Reform%202017.pdf.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 4.

6. Georgia Senate Voting Record, HB 1176, #775 (Mar. 27, 2012); Georgia House of Representatives Voting Record, HB 1176, #807 (Mar. 29, 2012); State of Georgia Final Composite Status Sheet, HB 1176, May 10, 2012.

7. Boggs & Miller, *supra* note 1, at 4.

8. *Id.*

9. *Id.*

10. Georgia House of Representatives Voting Record, HB 242, Vote #118 (Feb. 28, 2013); Georgia

In May 2013, Governor Deal also signed HB 349.¹¹ This Act created the Georgia Council on Criminal Justice Reform (Council).¹² The Act statutorily attached the Council to the Governor's Office for Children and Families (Office) for administrative purposes.¹³ As a result, the Office fills the staffing and funding needs of the Council.¹⁴ Governor Deal appointed the initial fifteen members of the Special Council to five-year terms on the new Council.¹⁵ The members' five-year terms allow more time and exposure to develop an expertise on Georgia's criminal justice system.¹⁶ The longer tenure of members, coupled with the more permanent form, provides the Council the opportunity to address larger and more complex issues within Georgia's criminal justice system.¹⁷

The Council focused their 2016–2017 efforts on improving Georgia's felony probation system.¹⁸ Georgia has the highest felony probation rate in the nation.¹⁹ With one-in-sixteen adults in the state currently serving probation, Georgia's felony probation rate is almost four times the national average.²⁰ Additionally, Georgia offenders spend more than double the amount of time on probation than offenders in other states.²¹ The Council, led by two subcommittees focusing on probation and sentencing, spent months reviewing Georgia's probation, prison, sentencing, and arrest data.²² During this time, the Council gathered comments from a wide range of professionals and stakeholders in the criminal justice system and

House of Representatives Voting Record, HB 242, Vote #373 (Mar. 25, 2013); Georgia Senate Voting Record, HB 242, Vote #207 (Mar. 21, 2013); State of Georgia Final Composite Status Sheet, HB 242, May 1, 2014.

11. State of Georgia Final Composite Status Sheet, HB 242, May 1, 2014.

12. 2013 Ga. Laws 222, § 11, at 235.

13. *Id.*

14. *See id.*

15. Justice Michael P. Boggs & W. Thomas Worthy, Report of the Georgia Council on Criminal Justice Reform 5 (2015), https://dcs.georgia.gov/sites/dcs.georgia.gov/files/related_files/site_page/2014-2015-GA-Council-on-Criminal-Justice-Reform.pdf.

16. *Id.*

17. *Id.*; Boggs & Miller, *supra* note 1, at 5.

18. Boggs & Miller, *supra* note 1, at 8.

19. *Id.*

20. Teresa Wiltz, *Doing Less Time: Some States Cut Back on Probation*, Pew Charitable Trusts (Apr. 26, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/04/26/doing-less-time-some-states-cut-back-on-probation>.

21. *Id.*

22. *Id.*

examined the state’s policies and practices related to probation and sentencing.²³ They then analyzed the data and identified problems within Georgia’s felony probation system.²⁴ HB 174 embodies the Council’s recommendations for addressing these problems and reforming Georgia’s felony probation system.²⁵

The Council identified two primary factors contributing to Georgia’s high felony probation rate.²⁶ First, Georgia courts frequently require criminal defendants to serve probation, either in lieu of incarceration or as part of a “split” sentence, which consists of a combination of imprisonment and probation.²⁷ Second, Georgia courts frequently impose relatively long felony probation terms.²⁸ In addition, the Council also discovered the probation sentences did not effectively prevent recidivism.²⁹ For example, within the recidivist population, the Council found a high rate of recidivism during the first year of probation.³⁰ This highlights the importance of focusing resources on the first year of probation, something Georgia probation officers are unable to do because of their heavy caseloads.³¹ The lengthy probation sentences of low-risk probationers contribute to these heavy caseloads, and outstanding fines and fees prevent these probationers from transitioning to unsupervised probation.³²

In light of these findings, the subcommittees developed recommendations for reform, which the Council unanimously approved.³³ Multiple organizations also provided input on possible reforms, including the criminal defense bar, the Southern Center for Human Rights, and the Prosecuting Attorneys’ Council.³⁴ Additionally, in order to improve probation practices, leading to a reduction in recidivism, the Council identified five goals:

23. *Id.*

24. *Id.* at 8–9.

25. *See Boggs & Miller, supra* note 1, at 10.

26. *Id.* at 9.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *See Boggs & Miller, supra* note 1, at 9–10.

32. *Id.*

33. *Id.* at 9.

34. *Id.* at 21–22. Additional organizations that provided input on possible reforms include the state Department of Community Supervision (DCS), the Department of Corrections (GDC), the Association of County Commissioners of Georgia, and the State Board of Pardons and Paroles. *Id.*

1) Use probation, programming, and treatment to reduce recidivism among people convicted of a non-violent felony property or drug offense for the first time.

....

2) Enable the reduction of lengthy probation sentences for certain offenses as an incentive for good behavior while a person is on probation.

....

3) Focus supervision resources on people at the beginning of their supervision terms to reduce caseloads and deliver more meaningful supervision.

....

4) Improve the cost-effectiveness of responses to probation and parole violations.

....

5) Improve the handling, tracking, and equitable administration of legal financial obligations in both felony and misdemeanor probation.³⁵

The policy goals and recommendations developed by the Council serve as a foundation for Senate Bill (SB) 174.³⁶

Proponents of SB 174, including its sponsor, Senator John Kennedy (R-18th), believe SB 174 provides a “very thoughtful way to move forward with [criminal justice] reforms . . . [by] addressing some areas that had not been addressed prior to this year.”³⁷ In addition to the legislation passed over the last six years, proponents attribute the substantive nature of the bill to Governor Deal’s desire to truly remodel and recast Georgia’s criminal justice system.³⁸ Although a Republican governor leads this initiative, it receives overwhelming bipartisan support because it appeals to both fiscal conservatives concerned with the rising costs of criminal justice and social justice advocates concerned with the number of people

35. *Id.* at 28–30.

36. *See id.* at 10.

37. Telephone Interview with Sen. John Kennedy (R-18th) and Carey Miller, Deputy Executive Counsel and Policy Advisor for the Office of the Governor of Georgia at 11 min. (Apr. 18, 2017) (on file with Georgia State University Law Review) [hereinafter Kennedy & Miller interview].

38. *See id.* at 9 min., 36 sec.

incarcerated.³⁹ Due to the lack of previous models for this type of criminal justice reform, the authors of SB 174 did not style the bill after any other statutes.⁴⁰ Instead, they simultaneously combined a number of policy and reform initiatives into SB 174.⁴¹

Bill Tracking of SB 174

Consideration and Passage by the Senate

Senator John Kennedy (R-18th) sponsored SB 174 in the Senate.⁴² Senators Butch Miller (R-49th), P. K. Martin IV (R-9th), Larry Walker III (R-20th), David Shafer (R-48th), and Mike Dugan (R-30th) co-sponsored the bill.⁴³ The Senate first read SB 174 on February 15, 2017.⁴⁴ The Senate assigned SB 174 to the Senate Judiciary Committee.⁴⁵ The Committee amended the bill in part and favorably reported the bill by substitute on February 24, 2017.⁴⁶

The Committee substitute included most of the text of the introduced bill, with minor modifications.⁴⁷ The Senate Committee merely modified the names of the House and Senate Committees listed to receive annual reports in Sections 2-2 and 2-3.⁴⁸ The modification replaced the “House Committee on State Properties and the Senate State Institutions and Property Committee” with the “House Committee on Judiciary and the Senate Judiciary Committee.”⁴⁹ The Senate read the bill for the second time on

39. See Wiltz, *supra* note 20.

40. Naomi Shavin, *A Republican Governor Is Leading the Country's Most Successful Prison Reform*, *New Republic* (Mar. 31, 2015), <https://newrepublic.com/article/121425/gop-governor-nathan-d-eal-leading-us-prison-reform>.

41. *Id.*

42. Georgia General Assembly, SB 174, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/174>.

43. *Id.*

44. State of Georgia Final Composite Status Sheet, SB 174, May 11, 2017.

45. *Id.*

46. *Id.*

47. Compare SB 174, as introduced, 2017 Ga. Gen. Assemb., with SB 174 (SCS), 2017 Ga. Gen. Assemb.

48. Compare SB 174, as introduced, §§ 2-2, p. 9, ll. 288–89, 2-3, p. 10, ll. 314–15, 2017 Ga. Gen. Assemb., with SB 174 (SCS), §§ 2-2, p. 9, ll. 288–89, 2-3, p. 10, ll. 314–15, 2017 Ga. Gen. Assemb.

49. Compare SB 174, as introduced, §§ 2-2, p. 9, ll. 288–89, 2-3, p. 10, ll. 314–15, 2017 Ga. Gen. Assemb., with SB 174 (SCS), §§ 2-2, p. 9, ll. 288–89, 2-3, p. 10, ll. 314–15, 2017 Ga. Gen. Assemb.

February 27, 2017, and a third time on March 1, 2017.⁵⁰ The Senate passed the Senate Committee substitute of SB 174 on March 1, 2017, with a vote of 55 to 0.⁵¹

Consideration and Passage by the House

Representative Chuck Efstrotation (R-104th) sponsored SB 174 in the House.⁵² The House read the bill for the first time on March 3, 2017, and subsequently committed it to the Judiciary Non-Civil Committee.⁵³ The House read the bill for the second time on March 6, 2017.⁵⁴ On March 20, 2017, the House Judiciary Non-Civil Committee favorably reported the bill by substitute.⁵⁵

The House Committee substitute included most of the introduced bill's text.⁵⁶ However, the Committee moved language within the bill, changed the text of a few subsections, and removed certain language altogether.⁵⁷ The Committee removed the language awarding state funds for family treatment court divisions found in Section 1-2 of the bill, beginning at line 108.⁵⁸ The Committee also moved the entire list of "nonviolent offenses" found in Section 2-1 of the bill, beginning at line 173, to Section 2-5 of the Committee substitute, beginning at line 314, and relabeled the list as "qualified offence[s]."⁵⁹

Additionally, the House Committee inserted the definition and use of "serious offense" and "serious violent felony" in Section 2-4, beginning at line 298.⁶⁰ The new language in this section requires reports regarding an inmate's the record of conduct to include any

50. State of Georgia Final Composite Status Sheet, SB 174, May 11, 2017.

51. Georgia Senate Voting Record, SB 174, Vote #118 (Mar. 1, 2017).

52. Georgia General Assembly, SB 174, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/174>.

53. State of Georgia Final Composite Status Sheet, SB 174, May 11, 2017.

54. *Id.*

55. *Id.*

56. Compare SB 174 (SCS), 2017 Ga. Gen. Assemb., with SB 174 (HCS), 2017 Ga. Gen. Assemb.

57. Compare SB 174 (SCS), 2017 Ga. Gen. Assemb., with SB 174 (HCS), 2017 Ga. Gen. Assemb.

58. Compare SB 174 (SCS), § 1-2, p. 4, ll. 108–12, 2017 Ga. Gen. Assemb., with SB 174, § 1-2, p. 4, l. 108, (HCS), 2017 Ga. Gen. Assemb.

59. Compare SB 174 (SCS), § 2-1, pp. 6–7, ll. 173–219, 2017 Ga. Gen. Assemb., with SB 174 (HCS), § 2-5, pp. 10–11, ll. 314–52, 2017 Ga. Gen. Assemb.

60. Compare SB 174 (SCS), § 2-4, p. 11, ll. 358–65, 2017 Ga. Gen. Assemb., with SB 174 (HCS), § 2-4, p. 9, ll. 298–301, 2017 Ga. Gen. Assemb.

information pertaining to that inmate serving a sentence for a serious violent felony.⁶¹ Neither of these additions substantively changes this subsection.⁶² Instead, they add clarity to the existing language.⁶³ The Committee substitute also inserted a retroactive clause in Section 2-8 of the bill, making the revisions applicable to previous cases where a person received a probated sentence of three or more years.⁶⁴ Similar to the changes above, this addition did not alter the effect of the subsection.⁶⁵

The House read the bill for the third time on March 24, 2017.⁶⁶ The House passed the Committee substitute of SB 174 on March 24, 2017, by a vote of 156 to 0.⁶⁷ The House transmitted the bill to the Senate.⁶⁸ On March 30, 2017, the Senate agreed to the House version of the bill, as amended, by a vote of 50 to 0.⁶⁹ The Senate sent the bill to Governor Deal on April 10, 2017; the Governor signed the bill into law on May 9, 2017, and the bill went into effect on July 1, 2017.⁷⁰

The Act

The Act amends the following portions of the Official Code of Georgia Annotated: Title 15 and Section 6 of Chapter 3 of Title 49, relating to courts and the functions of a county or district department of family and children services; Article 1 of Chapter 10 of Title 17, Title 42, and Section 54 of Chapter 1 of Title 51, relating to the procedure for sentencing and imposition of punishment, penal institutions, and the Program and Treatment Completion

61. Compare SB 174 (SCS), § 2-4, p. 11, ll. 361–65, 2017 Ga. Gen. Assemb., with SB 174 (HCS), § 2-4, p. 9, ll. 305–10, 2017 Ga. Gen. Assemb.

62. Compare SB 174 (SCS), § 2-4, p. 11, ll. 354–65, 2017 Ga. Gen. Assemb., with SB 174 (HCS), § 2-4, p. 9, ll. 294–310, 2017 Ga. Gen. Assemb.

63. Compare SB 174 (SCS), § 2-4, p. 11, ll. 354–65, 2017 Ga. Gen. Assemb., with SB 174 (HCS), § 2-4, p. 9, ll. 294–310, 2017 Ga. Gen. Assemb.

64. Compare SB 174 (SCS), § 2-7, pp. 13–14, ll. 439–50, 2017 Ga. Gen. Assemb., with SB 174 (HCS), § 2-8, p. 13, ll. 426–39, 2017 Ga. Gen. Assemb.

65. Compare SB 174 (SCS), § 2-7, pp. 13–14, ll. 439–50, 2017 Ga. Gen. Assemb., with SB 174 (HCS), § 2-8, p. 13, ll. 426–39, 2017 Ga. Gen. Assemb.

66. State of Georgia Final Composite Status Sheet, SB 174, May 11, 2017.

67. Georgia House of Representatives Voting Record, SB 174, Vote #314 (Mar. 30, 2017).

68. See State of Georgia Final Composite Status Sheet, SB 174, May 11, 2017.

69. Georgia Senate Voting Record, SB 174, Vote #330 (Mar. 30, 2017).

70. O.C.G.A. § 1-3-4(a)(1) (2017); State of Georgia Final Composite Status Sheet, SB 174, May 11, 2017.

Certificate.⁷¹ The overall purpose of the Act is to enact reforms recommended by the Georgia Council on Criminal Justice Reform, specifically targeting reform for individuals supervised under probation or parole.⁷²

Section 1-1

Section 1-1 of the Act revises paragraph (4) of subsection (b) of Code section 15-1-17, which relates to veterans court divisions.⁷³ The Act adds language requiring the Council of Accountability Court Judges of Georgia provide technical assistance to the veterans court divisions to assist them in implementing practices and policies published by the Council of Accountability Court Judges of Georgia.⁷⁴ The Act also requires the Council of Accountability Court Judges of Georgia create and manage a certification and peer review process to ensure that veterans court divisions adhere to these practices and policies.⁷⁵ This addition makes the certification a condition to veterans court divisions' receipt of state-appropriated funds.⁷⁶ Further, the addition requires the Council of Accountability Court Judges of Georgia to conduct a performance peer review every three years in order to improve the policies and practices of the veterans court divisions and the certification and recertification process.⁷⁷

Section 1-2

Section 1-2 of the Act revises paragraph (4) of subsection (a) and subparagraph (a)(5)(C) of Code section 15-11-70, which relates to the establishment of family treatment court.⁷⁸ The Act maintains all of the original language of the Code section, but adds Division of Family and Children Services (DFCS) employees to the list of

71. 2017 Ga. Laws 585, at 585–86.

72. See Boggs & Miller, *supra* note 1, at 8–13.

73. 2017 Ga. Laws 585, § 1-1, at 586–87.

74. O.C.G.A. § 15-1-17(b)(4)(B) (Supp. 2017).

75. O.C.G.A. § 15-1-17(b)(4)(C) (Supp. 2017).

76. O.C.G.A. § 15-1-17(b)(4)(D) (Supp. 2017).

77. O.C.G.A. § 15-1-17(b)(4)(F) (Supp. 2017).

78. 2017 Ga. Laws 585, § 1-2, at 587–88.

individuals used in a planning group.⁷⁹ Additionally, the Act adds language requiring the Council of Accountability Court Judges of Georgia create a certification process for courts to demonstrate their need for additional state grant funds for one or more part-time judges to operate a family treatment court division.⁸⁰

Section 1-3

Section 1-3 of the Act further revises subsection (a) of Code section 15-11-70, which relates to the establishment of family treatment court divisions.⁸¹ The Act adds a new paragraph that reads, “A court instituting a family treatment court division shall comply with periodic review process as required by Code [s]ection 15-11-216.”⁸²

Section 1-4

Section 1-4 of the Act further revises subsection (f) of Code section 15-11-212, which relates to the disposition of a dependent child.⁸³ The Act adds the completion of a family treatment court program as an option to regaining legal custody of a dependent child.⁸⁴ Additionally, the Act modifies the requirements to regain legal custody of a dependent child by increasing the requisite number negative drug screenings from six to twelve consecutive months.⁸⁵

Section 1-5

Section 1-5 of the Act revises subsection (a) of Code section 49-3-6, which relates to the functions of a county or district department of family and children services.⁸⁶ The Act changes prior language, which required an investigation of child abuse *and* neglect,

79. *Id.*

80. O.C.G.A. § 15-11-70(a)(5)(C) (Supp. 2017).

81. 2017 Ga. Laws 585, § 1-3, at 588.

82. O.C.G.A. § 15-11-70(a)(11) (Supp. 2017).

83. 2017 Ga. Laws 585, § 1-4, at 588.

84. O.C.G.A. § 15-11-212(f) (Supp. 2017).

85. O.C.G.A. § 15-11-212(f)(1) (Supp. 2017).

86. 2017 Ga. Laws 585, § 1-5, at 588–89.

to require investigation of child abuse *or* neglect.⁸⁷ Additionally, the Act requires counties with family treatment courts to establish a written protocol to assess cases involving substantial reports of abuse or neglect in order to evaluate the potential need for substance abuse treatment.⁸⁸

Section 2-1

Section 2-1 of the Act revises paragraphs (1) and (2) of subsection (a) and subsection (b) of Code section 17-10-1, which relates to sentencing.⁸⁹ The Act grants power and authority to suspend or probate all or any part of a sentence under Article 6 of Chapter 3 of Title 42.⁹⁰ Additionally, the Act requires the court include a behavioral incentive date in its sentencing order that does not exceed three years from the sentencing date.⁹¹ The behavioral incentive date provides the possibility of early release for a defendant without prior felony convictions and sentenced solely to probation, as long as the defendant remained compliant for the first three years of probation and paid all restitution.⁹² The Act also removes “fines” and “other funds” from the list of obligations that a sentencing court may consider when terminating active probation supervision.⁹³ Finally, the Act allows for a community supervision officer to request the commutation of all or part of a probationer’s fine to community services hours.⁹⁴

Section 2-2

Section 2-2 of the Act revises subsection (c) of Code section 42-2-11, which relates to the powers and duties of the Board of Corrections.⁹⁵ The Act requires the revalidation of risk and needs

87. O.C.G.A. § 49-3-6(a)(1) (Supp. 2017).

88. O.C.G.A. § 49-3-6(a)(4) (Supp. 2017).

89. 2017 Ga. Laws 585, § 2-1, at 589–90.

90. O.C.G.A. § 17-10-1(a)(1)(A) (Supp. 2017).

91. O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2017).

92. *See* O.C.G.A. § 17-10-1 (Supp. 2017).

93. 2017 Ga. Laws 585, § 2-1, at 589–90.

94. O.C.G.A. § 17-10-1(d) (Supp. 2017).

95. 2017 Ga. Laws 585, § 2-2, at 590–91.

assessment instruments used to guide decisions related to preparing inmates for release into society.⁹⁶ The revalidation must occur by January 1, 2019, and every five years thereafter.⁹⁷ Additionally, the Act replaces the House Committee on State Properties and the Senate State Institutions and Property with the House Committee on Judiciary and Senate Judiciary Committee, respectively, as recipients of annual reports on inmate treatment and outcome.⁹⁸ Finally, the Act requires the board to evaluate and publish a public report on their findings regarding the quality of programming used at all department facilities, except state prisons.⁹⁹ These evaluations must occur by January 1, 2019, and every five years thereafter.¹⁰⁰

Section 2-3

Section 2-3 of the Act revises subsections (g) through (j) and adds a new subsection to Code section 42-3-2, which relates to the creation and duties of the Board of Community Supervision.¹⁰¹ Again, the Act requires the revalidation of any risk and assessment instrument and replaces the House Committee on State Properties and the Senate State Institutions and Property with the House Committee on Judiciary and Senate Judiciary Committee, respectively, as recipients of annual reports on the effect of treatment on the probationer's or parolee's recidivism.¹⁰² Additionally, the Act requires the board to evaluate the quality of programming utilized at probation reporting centers and publicly publish its report.¹⁰³ The major change to this section is the granting of authority to the board to provide educational programs for probationers.¹⁰⁴ This addition allows the board to structure programs geared towards encouraging gainful employment and requires the board to award certificates to probationers who attend and complete these programs.¹⁰⁵

96. O.C.G.A. § 42-2-11(c)(2)(B) (Supp. 2017).

97. *Id.*

98. 2017 Ga. Laws 585, § 2-2, at 591.

99. O.C.G.A. § 42-2-11(c)(2)(C) (Supp. 2017).

100. *Id.*

101. 2017 Ga. Laws 585, § 2-3, at 591–92.

102. O.C.G.A. § 42-3-2(g)(2) (Supp. 2017).

103. O.C.G.A. § 42-3-2(g)(3) (Supp. 2017).

104. 2017 Ga. Laws 585, § 2-3, at 591–92.

105. *See* O.C.G.A. § 42-3-2(h)(1)–(2) (Supp. 2017).

Section 2-4

Section 2-4 of the Act revises subsections (c) of Code section 42-5-36, which relates to the penalties for breach, the classified nature of department investigation reports, the custodians of records, and the confidentiality of certain identifying information and information supplied by inmates.¹⁰⁶ The Act defines “[s]erious offense” and “[s]erious violent felony” and sets forth conditions permitting the disclosure of inmate information and files.¹⁰⁷

Section 2-5

Section 2-5 of the Act adds a new paragraph to Code section 42-8-21, which relates to the definitions for the state-wide probation system.¹⁰⁸ The Act provides a specific list of offenses defined as “[q]ualified offense[s].”¹⁰⁹ Under the Act, the offenses found on this list may allow for commutation of a sentence if certain requirements are met.¹¹⁰

Section 2-6

Section 2-6 of the Act revises Code section 42-8-27, which relates to the duties of community supervision officers.¹¹¹ The Act outlines the types of defendants that community supervision officers are authorized to supervise.¹¹²

Section 2-7

Section 2-7 of the Act revises subsection (e) of Code section 42-8-34, which relates to sentencing hearings and determinations.¹¹³

106. 2017 Ga. Laws 585, § 2-4, at 592–93.

107. O.C.G.A. § 42-5-36(c)(1)(A)–(B) (Supp. 2017).

108. 2017 Ga. Laws 585, § 2-5, at 593–94.

109. O.C.G.A. § 42-8-21(3)(A)–(T) (Supp. 2017).

110. *See* O.C.G.A. § 42-9-52(c) (Supp. 2017).

111. 2017 Ga. Laws 585, § 2-6, at 594.

112. *See* O.C.G.A. § 42-8-27 (Supp. 2017).

113. 2017 Ga. Laws 585, § 2-7, at 594–95.

The Act provides the court with guidelines when considering whether to include financial terms as a condition of the probation sentence.¹¹⁴

Section 2-8

Section 2-8 of the Act revises Code section 42-8-37, which relates to the effect of terminating the probated portion of a sentence and the review of probated sentences.¹¹⁵ The Act requires the probation officer to review cases with “a probated sentence of three years or more . . . after service or three years on probation.”¹¹⁶ The Georgia Council on Criminal Justice Reform proposed this change because data indicates that a probationer’s chances of recidivism decrease tremendously after completing three years of probation with no violations.¹¹⁷

This amendment also requires the Department of Community Service submit a report to the court giving a complete status on the probationer’s compliance with the conditions of probation, the status of payments toward restitution, fines and fees, and any arrests other than minor traffic offenses.¹¹⁸ Additionally, it makes this amendment retroactive and applicable to any cases in which a defendant received a probated sentence of three years or more.¹¹⁹ This amendment rewards good behavior and allows an automatic avenue for the probationer’s early release from supervision without the added expense of retaining legal counsel.¹²⁰

Section 2-9

Section 2-9 of the Act revises Code section 42-9-41, which relates to the duty of the State Board of Pardons and Paroles to obtain and record information on individuals placed on probation or subject to investigations, rules, and relief.¹²¹ The Act maintains all of the

114. See O.C.G.A. § 42-8-34(e) (Supp. 2017).

115. 2017 Ga. Laws 585, § 2-8, at 595–96.

116. O.C.G.A. § 42-8-37(c)(1) (Supp. 2017).

117. See Kennedy & Miller Interview, *supra* note 37, at 22 min., 50 sec.

118. O.C.G.A. § 42-8-37(d) (Supp. 2017).

119. O.C.G.A. § 42-8-37(c)(2) (Supp. 2017).

120. See Kennedy & Miller Interview, *supra* note 37, at 23 min., 47 sec.

121. 2017 Ga. Laws 585, § 2-9, at 596–97.

original language of the Code section and adds a requirement providing the rules created by the Board cannot conflict with Code section 42-9-61.¹²²

Section 2-10

Section 2-10 of the Act revises subsections (c), (d), and (e) to Code section 42-9-42, which relates to conditions and prerequisites, public access to information, violation of parole, and the procedure for granting relief from a sentence.¹²³ The Act requires the board to include all terms of probation imposed by the sentencing court in the parole conditions of a person serving a split sentence.¹²⁴ Additionally, it adds the termination of supervision, as provided in Code section 42-9-52, to the ways that a parolee may be released from the board's legal custody.¹²⁵ The Act removes the board's ability to require the advance payment of up to twenty-four months of the supervision fee prior to parole or conditional release.¹²⁶ Finally, the Act makes conditional releases subject to penalty and adds any Department of Corrections facility, probation detention center, or board-approved residential substance abuse treatment facility to the list of places the board may assign custody for violation of terms.¹²⁷

Section 2-11

Section 2-11 of the Act revises Code section 42-9-43, which relates to the information the board should generally consider, the conduct of investigation and examination, and the determination of whether to grant relief.¹²⁸ The Act amends the list of pertinent information the board must obtain when considering a case to include "[a] report of the conduct of record of the person serving a sentence for a serious violent felony, as such term is defined in Code [s]ection

122. *Id.*

123. 2017 Ga. Laws 585, § 2-10, at 597.

124. O.C.G.A. § 42-9-42(d)(1) (Supp. 2017).

125. *Id.*

126. 2017 Ga. Laws 585, § 2-10, at 597.

127. O.C.G.A. § 42-9-42(e) (Supp. 2017).

128. 2017 Ga. Laws 585, § 2-11, at 598–600.

17-10-6.1, who is in custody of the Department of Corrections.”¹²⁹ Additionally, the Act allows the board to take into account victim statements and recommendations of the district attorney of the sentencing circuit when considering an inmate for parole and conditional release.¹³⁰

Section 2-12

Section 2-12 of the Act revises Code section 42-9-44, which relates to the terms and conditions of parole, the adoption of general and special rules, the violation of parole, and the right of certain parolees to obtain a high school diploma or a general educational development (GED) diploma.¹³¹ The Act makes this Code section applicable to the terms and conditions of parole or conditional release and requires the board’s conditions include all terms of probation imposed by the sentencing court for any person serving a split sentence.¹³² Additionally, the Act removes the language “[t]his subsection shall apply to paroles granted on or after July 1, 1995,” making the education conditions required under subsection (b) applicable to all paroles and conditional releases.¹³³

Section 2-13

Section 2-13 of the Act revises Code section 42-9-46, which relates to cases in which an inmate fails to serve time required for automatic initial consideration.¹³⁴ The Act lists the parties the board must contact regarding an inmate’s early parole consideration and any related hearing dates.¹³⁵ It requires the board to provide the parties timely notice of these considerations or hearings so they may file an objection or express their views and recommendations.¹³⁶ In the event that the board grants early parole over the objection of one

129. O.C.G.A. § 42-9-43(a)(2) (Supp. 2017).

130. O.C.G.A. § 42-9-43(d)(1) (Supp. 2017).

131. 2017 Ga. Laws 585, § 2-12, at 600–01.

132. *See* O.C.G.A. § 42-9-44(a) (Supp. 2017).

133. 2017 Ga. Laws 585, § 2-12, at 600–01.

134. 2017 Ga. Laws 585, § 2-13, at 601.

135. O.C.G.A. § 42-9-46 (Supp. 2017).

136. *Id.*

of the parties, the Act requires the board to issue and serve the party with a statement explaining why it granted parole.¹³⁷

Section 2-14

Section 2-14 of the Act revises Code section 42-9-52, which relates to parole discharge, the earned-time allowance, the granting of pardons, commutations, and the remission of fines, forfeitures, or penalties.¹³⁸ The Act requires a twelve-month review by the board to consider commutation of a parolee's sentence or of a conditional releasee serving a split sentence for a qualified offense.¹³⁹ However, this review occurs only after the parolee or conditional releasee successfully completes twelve consecutive months of parole supervision.¹⁴⁰ Finally, the Act allows the board to consider whether a person is serving a split sentence when determining whether to grant a pardon or relief regarding the sentence or conditions of probation.¹⁴¹

Section 2-15

Section 2-15 of the Act revises Code section 42-9-53, which relates to the preservation of documents, the classification of information and documents, the divulgence of confidential state secrets, and the conduct of hearings.¹⁴² The Act adds "conditional releases," in subsection (a), to the list of actions conducted by the board that require document preservation.¹⁴³ In subsection (b), the Act amends the list of items "classified as confidential state secrets" to read "reports, files, records, and information" and also grants the board authorization to disclose information provided in their decision for parole or conditional release.¹⁴⁴

137. *Id.*

138. 2017 Ga. Laws 585, § 2-14, at 601–02.

139. O.C.G.A. § 42-9-52(c) (Supp. 2017).

140. *Id.*

141. *Id.*

142. 2017 Ga. Laws 585, § 2-15, at 602–03.

143. O.C.G.A. § 42-9-53(a) (Supp. 2017).

144. O.C.G.A. § 42-9-53(b) (Supp. 2017).

Section 2-16

Section 2-16 of the Act adds Code section 42-9-61 to Title 42 of the Official Code of Georgia.¹⁴⁵ The addition of this section creates a new procedural mechanism for the prosecuting attorney and the person being considered for parole or conditional release to receive a report from the board regarding its final decision.¹⁴⁶

Section 2-17

Section 2-17 of the Act revises subsections (a) and (b) of Code section 51-1-54, which relates to the Program and Treatment Completion Certificate.¹⁴⁷ The Act adds Code section 42-3-2 to the definition of “Program and Treatment Completion Certificate” in subsection (a).¹⁴⁸ Additionally, the Act replaces the “Department of Corrections” with “Board of Corrections or the Board of Community Supervision” in subsection (b).¹⁴⁹

*Analysis**Recommendation for Rebuttal Presumption of Probation*

The Act aims to reduce Georgia’s prison population and recidivism rate.¹⁵⁰ To reduce the overall prison population, the Council recommended creating a rebuttable presumption of probation for people convicted of a non-violent property or drug offense for the first time.¹⁵¹ The Council recommended this rebuttable presumption could be overcome by a preponderance of the evidence.¹⁵² The Council projected that without several reforms—a rebuttable presumption of probation; additional funding for accountability

145. 2017 Ga. Laws 585, § 2-16, at 603.

146. O.C.G.A. § 42-9-61 (Supp. 2017).

147. 2017 Ga. Laws 585, § 2-17, at 603.

148. O.C.G.A. § 51-1-54(a) (Supp. 2017).

149. O.C.G.A. § 51-1-54(b) (Supp. 2017).

150. See Boggs & Miller, *supra* note 1, at 22.

151. *Id.* at 28.

152. *Id.*

courts; a thirty person limit on probation officer caseloads; and state-funded vouchers for re-entry programs and services—Georgia’s prison population would grow from 52,618 prisoners in 2018 to 53,514 prisoners in 2022.¹⁵³ However, the Council projected these reform would reduce Georgia’s prison population to 49,747 prisoners by 2022.¹⁵⁴ The Act, however, does not implement all of the Council’s recommendations.¹⁵⁵

Courts’ Discretion to Sentence First-Time, Non-Violent Offenders to Imprisonment

The bill, as introduced in the Senate, required courts impose a sentence of probation for first-time, non-violent felonies unless the court found by a preponderance of the evidence that prison was necessary.¹⁵⁶ The bill, as introduced in the Senate, also defined a list of non-violent felonies.¹⁵⁷ The Act, however, does not create a rebuttable presumption of probation for first-time, non-violent felonies.¹⁵⁸ Council Co-Chair Carey Miller explained that this language was removed from the bill because it created the mistaken impression that courts could *never* order prison sentences for first-time, non-violent felonies.¹⁵⁹ He also explained that the list of non-violent felonies was removed from the bill because including it created the mistaken impression that crimes not enumerated should become presumptive prison sentences.¹⁶⁰

Because of these changes, Georgia courts are not required by statute to presumptively impose a sentence of probation for all first-time, non-violent felonies.¹⁶¹ However, the impact of previous Council-recommended reforms enacted by the General Assembly indicates that a rebuttable presumption of probation may not be essential to reducing Georgia’s overall prison population.¹⁶²

153. *Id.* at 28, 30.

154. *Id.* at 28.

155. Compare O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2017), with Boggs & Miller, *supra* note 1, at 28.

156. SB 174, as introduced, § 2-1, p. 7, ll. 220–24, 2017 Ga. Gen. Assemb.

157. *Id.* § 2-1, pp. 6–7, ll. 173–219.

158. See O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2017).

159. Kennedy & Miller Interview, *supra* note 37, at 26 min., 13 sec.

160. *Id.* at 27 min., 21 sec.

161. See O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2017).

162. See *supra* text accompanying notes 155–59.

The Act's Effect on Georgia's Prison Population

Before the Act passed, Georgia judges sentenced approximately 88% of first-time property and drug offenders, excluding first-degree burglary and drug trafficking, to probation.¹⁶³ In effect, courts generally treated first-time, non-violent offenses as presumptively probationary. Georgia's prison population declined from 54,895 prisoners in July 2012 to 52,962 prisoners in January 2017, and the percentage of non-violent offenders in the prison population fell from 36% in 2013 to 33% in 2016.¹⁶⁴ An Urban Institute study credits much of Georgia's success reducing the prison population to Council recommendations enacted by HB 1176 in 2012.¹⁶⁵ The study found that, following HB 1176, prison commitments for burglary, theft, shoplifting, forgery, and drug possession declined by 13%, and the lengths of sentences for these offenses also declined.¹⁶⁶ Finally, the study observed that other enacted recommendations of the Council contributed to positive outcomes, including annual prison commitments falling about 17% between 2010 and 2016.¹⁶⁷ Although the Act does not implement the Council's recommendation of presumptive probation for first-time, non-violent felonies, Georgia's overall prison population, and the proportion of non-violent offenders incarcerated, may continue to decline.

163. Kennedy & Miller Interview, *supra* note 37, at 27 min., 2 sec.

164. Greg Dozier, Ga. Dep't of Corrs., Georgia Department of Corrections AFY 17 & FY 18 Budget Request 2, 5 (2017), http://www.house.ga.gov/budget/Documents/2017_Session/Corrections_Joint_%20Appropriations_Committee_Jan_2017.pdf.

165. Elizabeth Pelletier et al., Urban Inst., Assessing the Impact of Georgia's Sentencing Reforms 2–3, 12 (2017), http://www.urban.org/sites/default/files/publication/91731/ga_policy_assessment.pdf.

Among other things, HB 1176: (1) split burglary into two offenses, first degree and second degree; (2) created third and fourth degree forgery offenses; (3) increased the felony theft threshold amount and further tiered punishment for theft by the amount taken; (4) tiered drug possession sentences for schedule I and II narcotics by the amount of drugs rather than just the number of prior convictions; (5) increased the felony shoplifting threshold amount to \$500; and (6) increased the fraud threshold sentencing amounts. *Id.* at 4, 14.

166. *Id.* at 1–2.

167. *Id.* at 13.

Recommendation for Probation Termination After Three Years

To reduce the recidivism rate, the Council made two recommendations that would end probation for some non-violent offenders after three years.¹⁶⁸ First, the Council recommended that probation for first-time, non-violent offenders end after no more than three years if an individual satisfies the following conditions: (1) remains in compliance, (2) achieves case plan objectives, (3) has no new arrests, (4) has paid all restitution, and (5) the prosecuting attorney does not object.¹⁶⁹ The Council also recommended that the Department of Community Supervision (DCS) be required to petition the court for early termination of probation after *any* person sentenced for a non-violent property or drug offense serves three years on supervision and (1) has complied with the general and special conditions of probation, (2) has no new arrests, and (3) has paid all restitution.¹⁷⁰ The Council projected that without these reforms, Georgia's probation population would increase from 169,810 probationers in 2017 to 178,691 probationers in 2022.¹⁷¹ However, the Council projected implementing these two reforms would decrease the probation population to 134,861 probationers in Fiscal Year (FY) 2022.¹⁷² Reducing the number of people on probation should reduce recidivism because it enables DCS to focus limited resources on the highest-risk offenders, providing them with more intensive supervision.¹⁷³ For example, the Council estimated that by FY 2022, about 140 probation officers supervising low-risk offenders could be reassigned to supervise offenders more likely to recidivate.¹⁷⁴

Courts May Still Continue Probation Beyond Three Years

Section 2-1 of the Act implements the Council's first recommendation, and Section 2-8 implements the second

168. *See supra* text accompanying notes 161–62.

169. Boggs & Miller, *supra* note 1 at 28–29.

170. *Id.* at 29.

171. *Id.* at 27.

172. *Id.*

173. *See id.*

174. *Id.*

recommendation.¹⁷⁵ The Council recommended that probation essentially end automatically after three years if the offender met the specified conditions.¹⁷⁶ However, the General Assembly softened this requirement by adding language to clarify that the court retains discretion to decline terminating probation after three years if it determines this “would be in the best interest of justice and the welfare of society.”¹⁷⁷ Although DCS is required to provide the court an order to terminate probation for first-time, non-violent offenders who meet the conditions if the prosecutor does not object, the court is free to deny this order if it finds doing so is in “the best interest of justice and the welfare of society.”¹⁷⁸ Furthermore, although DCS is required to file a petition to terminate probation for any non-violent offender who meets the conditions, the court is again free to deny the order if it finds doing so is in “the best interest of justice and the welfare of society.”¹⁷⁹ As a result, a court could keep a person who meets all of the conditions specified in the Act on probation for longer than three years.¹⁸⁰ This would undermine the Council’s goal of reducing recidivism because probation officers would have higher caseloads, and DCS would not be able to shift resources away from low-risk offenders to higher-risk offenders. It remains to be seen how frequently courts will keep offenders on probation for more than three years given the discretion granted by the Act.¹⁸¹

Support for Terminating Probation After Three Years

Courts hesitant to terminate probation for non-violent offenses after three years should be reassured by research finding that shortening supervision terms does not negatively impact public safety.¹⁸² The United States Sentencing Commission found that most re-arrests occur within the first two years of an inmate re-entering the

175. See O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2017); O.C.G.A. § 42-8-37(c)–(d) (Supp. 2017).

176. See Boggs & Miller, *supra* note 1, at 28–29.

177. O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2017); see also SB 174, as introduced, § 2-1, pp. 7–8, ll. 230–40, 2017 Ga. Gen. Assemb.

178. O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2017).

179. O.C.G.A. § 42-8-37(d)(1)–(2) (Supp. 2017).

180. See O.C.G.A. § 42-8-37(d)(2) (Supp. 2017).

181. See Pelletier et al., *supra* note 165, at 13.

182. See *supra* text accompanying notes 175–77, 179–80.

community.¹⁸³ The study found that 17% of offenders were re-arrested within the first year, 11% within the second year, and only 7% in the third year.¹⁸⁴ By the eighth year, only 2% of offenders were re-arrested.¹⁸⁵ The median time from release to the first re-arrest was twenty-one months.¹⁸⁶ The Council based its recommendations to terminate probation after three years upon this and other research.¹⁸⁷ In addition, a study from the Administrative Office of the United States Courts found offenders who served their entire supervision term were re-arrested at a rate nearly twice that of offenders who received early termination.¹⁸⁸ Moreover, only 6% of offenders whose probation was terminated early were re-arrested for a felony, compared to 12% of offenders who served their entire term.¹⁸⁹ In short, reducing the length of probation for non-violent offenders does not lead to more crime and might actually reduce future crime. Accordingly, in most cases courts can confidently use the discretion granted by the Act and find it in best interest of justice and the welfare of society to end probation after three years.

The experience of other states with shortened probation times corroborates this conclusion.¹⁹⁰ Since 2007, at least seven other states—Texas, Vermont, Hawaii, Alabama, Michigan, South Dakota, and Louisiana—enacted policy reforms to reduce probation terms.¹⁹¹ In 2012, Missouri began allowing probationers to shorten their time on probation by thirty days for every full calendar month they

183. See Kim Steven Hunt & Robert Dumville, U.S. Sentencing Comm'n, *Recidivism Among Federal Offenders: A Comprehensive Overview* 16 (2016), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

184. *Id.*

185. *Id.*

186. *Id.*

187. Kennedy & Miller Interview, *supra* note 37, at 22 min., 50 sec.

188. Laura M. Baber & James L. Johnson, *Early Termination of Supervision: No Compromise to Community Safety*, 77 Fed. Prob. 17, (2013), http://www.uscourts.gov/sites/default/files/fedprob_3rd_proofs_sept13_082213e.pdf.

189. *Id.* at 18.

190. See *supra* text accompanying notes 183–86.

191. See The Pew Charitable Trs., 31 States Reform Criminal Justice Through Justice Reinvestment 2 (2016), http://www.pewtrusts.org/~media/assets/2016/01/pspp_jriformmatrixoverview.pdf?la=en; Aviva Shen, *Louisiana takes Major Step to Reduce Its Prison Population*, ThinkProgress (June 6, 2017, 6:48 PM), <https://thinkprogress.org/louisiana-passes-criminal-justice-reform-666a9c7a2eee>; Wiltz, *supra* note 20.

comply with the conditions of their sentences.¹⁹² Although the Act takes a different approach than that of Missouri, the impact of Missouri's reform demonstrates that shortening probation time reduces the number of probationers without harming public safety.¹⁹³ Over three years, more than 36,000 people shortened their probation or parole sentences by an average of fourteen months.¹⁹⁴ In addition, Missouri's earned compliance credits did not lead to more crime: people who earned credits were subsequently convicted of new crimes at the same rate as those discharged prior to the policy.¹⁹⁵ Missouri's results suggest the Council correctly predicted that terminating probation early after three years will reduce the probation population without harming public safety. Furthermore, even though the Act gives courts discretion to decline terminating probation after three years, courts should consider research findings and the experiences of other states that suggest terminating probation early does not lead to increased recidivism.

Building on the Act by Reducing Offender Re-incarcerations for Technical Violations

While Georgia has made significant progress in the past seven years, it still maintains the eighth-highest incarceration rate in the country, the highest felony probation rate in the country, and the state spends over \$1.27 billion annually on corrections and community supervision.¹⁹⁶ Georgia's three-year recidivism rate is 26.4% and has remained around that level since 2003.¹⁹⁷ Furthermore, the majority of offenders who returned to prison did so for committing a technical

192. The Pew Charitable Trs., *Missouri Shortens Parole and Probation Times, Protects Public Safety* 1 (2016), http://www.pewtrusts.org/~media/assets/2016/08/missouri_policy_shortens_probation_and_parole_terms_protects_public_safety.pdf?la=en.

193. *See id.* at 7.

194. *Id.*

195. *Id.*

196. Boggs & Miller, *supra* note 1, at 8; Governor Nathan Deal & Teresa A. MacCartney, Office of Planning & Budget, *State of Georgia Budget in Brief: Amended Fiscal Year 2017 and Fiscal Year 2018* 117, 122,

https://opb.georgia.gov/sites/opb.georgia.gov/files/related_files/site_page/Budget%20in%20Brief%20A%20FY17%20-%20FY18%20%28Final%29.pdf.

197. Ga. Dep't of Corrs., *3-Year Felony Reconviction Rate for Fiscal Years FY 2003 to FY 2013* (2017), <http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/3-Year-Reconviction-Fiscal-Years.pdf>.

violation of their release, not for committing a new crime.¹⁹⁸ As a next step to reform probation, the Council could focus on reducing the number of people returned to prison for technical violations.

The Council should look to successful reforms in Oregon and Missouri as examples of how to tackle this challenge. Oregon experienced the largest decline in recidivism rate of any state from 1999 to 2004, dropping by 32%.¹⁹⁹ Only 3.3% of offenders released in 2004 returned to prison for technical violations.²⁰⁰ Probation officers use a sanctioning grid to impose swift, certain consequences for violations in a consistent manner across counties.²⁰¹ The consequences are graduated and include a short stay in jail.²⁰² As a result, probationers are rarely sent back to prison in Oregon.²⁰³

Missouri took a similar approach.²⁰⁴ In 2004, Missouri's recidivism rate was 54.4%, and it ranked highest among states for the proportion of released offenders imprisoned for a technical violation.²⁰⁵ By 2009, Missouri's recidivism rate reached a low of 36.4%.²⁰⁶ Missouri uses a risk assessment tool to set supervision levels.²⁰⁷ Similar to Oregon, officers can impose a variety of consequences ranging from verbal reprimands, modifying conditions, electronic monitoring, residential drug treatment, or jail time.²⁰⁸ As a next step to reduce recidivism and the overall prison population, the Council should investigate reforms similar to those in Missouri and Oregon that reduce the number of offenders returning to prison for technical violations of their release.

198. The Pew Ctr. on the States, *State of Recidivism: The Revolving Door of America's Prisons* 14 (2011), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2011/pewstateofrecidivism.pdf. Among Georgia prisoners released in 2004, 65% did not return to prison within three years, 28% were re-incarcerated for technical violations, and 7% were re-incarcerated for committing a new crime. *Id.*

199. *Id.* at 20.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *See supra* text accompanying notes 199–200.

205. The Pew Ctr. on the States, *supra* note 198, at 22–23.

206. *Id.* at 23.

207. *Id.*

208. *Id.*

To a large extent, Georgia’s judges will determine whether the probation reforms in the Act successfully reduce Georgia’s prison population and reduce the recidivism rate. If judges continue to treat first-time, non-violent felonies as presumptively probationary, past experience suggests that Georgia’s overall prison population will continue to decline. If judges rely on the research discussed above and use the discretion granted by the Act to terminate probation after three years in most cases, Georgia’s probation population and recidivism rate will likely decline further. By finding it in “the best interest of justice and the welfare of society” to extend probation beyond three years only in exceptional circumstances, courts can ensure the Act accomplishes the Council’s goals. The Council and the General Assembly can further reduce the probation population and recidivism rate by implementing reforms that reduce the number of probationers returned to prison for technical violations of their release conditions. If this Act is any indication, Georgia legislators may continue bipartisan efforts to reduce recidivism and improve parole effectiveness in the state.

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