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SB 407 - Sentencing and Punishment

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CRIMINAL PROCEDURE

Sentence and Punishment: 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 and Chapter 6A of Title 35 of the Official Code of Georgia Annotated, Relating to Courts and the Criminal Justice Coordinating Council, Respectively, so as to Provide for the Electronic Filing in Criminal Cases and Data Collection and Exchange in Criminal and Certain Juvenile Cases; Provide for Definitions; Establish the Criminal Case Data Exchange Board under the Criminal Justice Coordinating Council and Provide for Its Membership, Terms, Compensation, and Duties; Provide for Confidentiality of Data; Require Certain Court Filings to be Filed Electronically and in Writing; Provide for Exceptions; Change Provisions Relating to Electronic Filings and Payments; Provide for Fees; Provide for a Definition; Provide for Policies and Procedures; Amend Code Section 9-11-5 and Chapter 1 of Title 15 of the Official Code of Georgia Annotated, Relating to Service and Filing of Pleadings Subsequent to the Original Complaint and Other Papers and General Provisions Relating to Courts, Respectively, so as to Change Provisions Relating to the Electronic Service of Pleadings; Provide for Contracts with Electronic Filing Service Providers; Provide for the Judicial Council of Georgia to Develop a Misdemeanor Citation Form; Allow Misdemeanors to be Prosecuted in State Courts by Use of Citations; Amend Title 17, Code Section 35-3-37, Chapter 5 of Title 40, Title 42, and Code Section 43-1-19 of the Official Code of Georgia Annotated, Relating to Criminal Procedure, Review of an Individual's Criminal History Record Information, Driver's Licenses, Penal Institutions, and Grounds for Refusing to Grant or Revoking Professional Licenses, Respectively, so as to Change Provisions Relating to the Use of Citations and Setting Bail; Clarify Matters Relating to Sentencing, Record Restriction, First Offender Treatment, Pay-Only Probation, and the Use of Community

Service; Allow the Department of Driver Services to Issue Certain Types of Licenses and Permits under Certain Conditions; Expand the Types of Activities and Organizations that Can be Used by the Court in Ordering Community Service and Clarify Provisions Relating Thereto; Require Time Frames for Certain Organizations that Can be Used by the Court in Ordering Community Service and Clarify Provisions Relating Thereto; Require Time Frames for Certain Actions Involving Probation Supervision; Allow Different Levels of Courts to Consider Retroactive Petitions for First Offender Sentencing; Amend an Act Relating to the Effect of a Confinement Sentence when Guilt has not been Adjudicated, Approved March 20, 1985 (Ga. L. 1985, P. 380), so as to Repeal a Contingency Based upon an Amendment to the Constitution; Clarify the Effect that a Misdemeanor Conviction Involving Moral Turpitude or First Offender Punishment Will Have on a Professional License; Amend Chapter 2 of Title 31 and Chapter 4 of Title 49 of the Official Code of Georgia Annotated, Relating to the Department of Community Health and Public Assistance, Respectively, so as to Change Provisions Relating to the Department's Duties and Responsibilities; Change Provisions Relating to Providing Assistance to Inmates Who are Eligible for Medicaid; Amend Title 16 of the Official Code of Georgia Annotated, Relating to Crimes and Offenses, so as to Increase Certain Penalties Relating to the Theft of, the Use of an Altered Identification Mark on, or the Transfer to Certain Individuals of a Firearm; Change Provisions Relating to Possession of Firearms by Convicted Felons and First Offender Probationers; Change Provisions Relating to Authorizing the Release of Information from the Prescription Drug Monitoring Program Database; Amend Article 2 of Chapter 4 of Title 20 and Chapter 8 of Title 20 of the Official Code of Georgia Annotated Relating to Technical and Adult Education and to Campus Policemen, Respectively, so as to Revise the Powers of Arrest of Campus Policemen Who Are Regular Employees of the Technical College System of Georgia; Amend Chapter 69 of Title 36 of the Official Code of Georgia Annotated, Relating to Mutual Aid Regarding Local Government, so as to Permit Campus Policemen of the Technical College System of Georgia to Render Mutual Aid under Certain Conditions;

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LEGISLATIVE REVIEW

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Provide for the Public Safety Director or Chief of Police of any Institution with the Technical College System of Georgia to Enter into Mutual Aid Agreements with Local Governments under Certain Conditions; Repeal Conflicting Laws; And for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 9-11-5 (amended);
 15-1-22 (new); 15-5-21.1(new);
 15-6-11, -61 (amended); 15-7-5, -42
 (amended); 15-11-64 (amended);
 16-8-12 (amended); 16-9-70
 (amended); 16-11-113, -131
 (amended); 16-13-60 (amended);
 17-4-23 (amended); 17-6-1, -12
 (amended); 17-10-1, -8 (amended);
 20-4-39 (new); 20-8-4 (amended);
 35-6A-2 (amended), -13, -14 (new);
 36-36-2, -4, -5, -6, -7, -8 (amended);
 36-69-3 (amended); 31-2-1, -4
 (amended); 40-5-22, -76 (amended);
 42-3-50, -51, -52, -53, -54 (amended);
 42-8-34, -37, -62., -66, -102, -103, -105
 (amended); 43-1-19 (amended);
 49-4-31, -32, -51, -52, -80, -81
 (amended)

BILL NUMBER: SB 407

ACT NUMBER: 416

GEORGIA LAWS: 2018 Ga. Laws 550

SUMMARY: The Act provides comprehensive reform for offenders entering, proceeding through, and leaving the criminal justice system. The Act requires all superior court clerks to provide an electronic filing option, and it requires juvenile court clerks to collect and report certain data about juvenile offenders to the Juvenile Data Exchange. In addition, the Act creates

the Criminal Justice Coordinating Council and the Criminal Case Data Exchange Board. The Act also changes the grounds for granting and revoking professional licenses and drivers' licenses to offenders and modifies the provisions relating to issuing citations and setting bail. Inmates of any public institution may now be eligible for medical care assistance through the Department of Community Health, and campus policemen and security personnel may make arrests for offenses committed on any Technical College System of Georgia campus.

EFFECTIVE DATE: July 1, 2018

History

House Bill 265: The Beginning

In 2011, Governor Nathan Deal (R) and the Georgia General Assembly embarked on a journey of comprehensive criminal justice reform to combat the state's increasing incarceration rate and its stagnant recidivism rate, which hovered around thirty percent.¹ "Resolving to improve public safety, hold offenders accountable, and curb prison spending," the General Assembly passed, and the Governor signed, House Bill (HB) 265,² which created the bipartisan, interbranch Special Council on Criminal Justice Reform for Georgians ("the Special Council").³ The Governor and legislature directed the Special Counsel's fifteen members to: (1) analyze the State's increasing incarceration rate and correctional costs and propose strategies for more effective offender management; (2) reinvest any savings into programs to reduce crimes and recidivism

1. MICHAEL P. BOGGS & CAREY A. MILLER, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 3 (Feb. 2018).

2. *Id.* at 17.

3. *Id.*

rates; and (3) strengthen community-based supervision, sanctions, and services.⁴

HB 1176: Prioritizing Prison for Violent, Career Criminals

In its first year, the Special Council examined sentencing and corrections data in partnership with the Public Safety Performance Project of the Pew Charitable Trusts (“Pew”) and consulted with “prosecutors, sheriffs, crime victim advocates, judges, county officials, and other stakeholders” to identify Georgia’s most pressing penal concerns.⁵ From there, the Special Council released its findings and recommendations in a report, “propos[ing] a broad range of data-driven reforms that prioritized prison beds for violent, career criminals while strengthening probation, drug courts, and other sentencing alternatives for nonviolent individuals.”⁶ The House of Representatives incorporated many of the Special Council’s policy proposals in HB 1176⁷ at the Governor’s request.⁸ The General Assembly passed HB 1176 unanimously, and Governor Deal signed it into law on May 2, 2012.⁹

HB 242: Reforming the Juvenile Justice System

The following year, Governor Deal extended the Special Council’s term and directed it to focus its efforts on reforming Georgia’s juvenile justice system.¹⁰ Prior to the reforms, Georgia’s juvenile justice system cost taxpayers roughly three hundred million dollars a year and had produced disappointing results, maintaining a 50 to 65% recidivism rate since 2003.¹¹ Again, the Special Council analyzed sentencing and correctional data to determine how best to reduce juvenile recidivism.¹² The House incorporated many of the

4. *Id.* at 14.

5. *Id.* at 3–4.

6. *Id.*

7. 2012 Ga. Laws 899.

8. BOGGS & MILLER, *supra* note 1, at 3–4.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

Special Counsel's recommendations in HB 242.¹³ The General Assembly unanimously passed the bill, and Governor Deal signed it into law on May 2, 2013.¹⁴ HB 242 increased the availability of treatment programs for juveniles, including mental health treatment, substance abuse counseling, and family therapy.¹⁵ HB 242 also gave judges more discretion to keep juveniles out of state confinement facilities, reduced mandatory minimum confinement periods, and encouraged counties to reduce the number of committed juveniles by creating an incentive grant program.¹⁶ Governor Deal considered HB 242 "a milestone" and expressed his hope that "the legislation would help more of Georgia's most troubled kids avoid a downward spiral into adult prison."¹⁷

HB 349: Focusing on Reentry

In 2013, the General Assembly and Governor Deal reconfigured the Special Council to become the Georgia Council on Criminal Justice Reform ("the Council") with the passage of HB 349 in March 2013.¹⁸ Throughout 2013, the Council researched the "strong link between successful reentry [into society] and recidivism reduction" and concluded that Georgia's many agencies and programs needed to collaborate more to provide prisoners the necessary tools for success.¹⁹ To that end, the Council launched the Georgia Prisoner Reentry Initiative ("GA-PRI"), and Governor Deal created the Governor's Office of Transition, Support, and Reentry.²⁰ The GA-PRI was a five-year plan supported by \$60 million in state and federal funds as well as private grants to transform the state's approach to recidivism; the plan had two main objectives: (1) to improve public safety by reducing the state's recidivism rate and (2) to provide the necessary services and supervision to prisoners for

13. 2013 Ga. Laws 294.

14. BOGGS & MILLER, *supra* note 1, at 3–4.

15. *Id.* at 58.

16. *Id.*

17. *Id.* at 4.

18. BOGGS & MILLER, *supra* note 1, at 5.

19. *Id.*

20. *Id.*

successful reintegration.²¹ In a single year, the GA-PRI expanded from six community pilot sites to seventeen sites across the state.²²

Senate Bill 174: Improving Felony Probation

In 2016, the Council began its work to improve Georgia's felony probation system, which had the highest felony probation rate of all fifty states with nearly 206,000 people on felony probation prior to the reforms.²³ The Council diagnosed the problems as two-fold: (1) Georgia's history of lengthy felony probation terms and (2) the courts' imposition of felony probation in lieu of incarceration.²⁴ Senate Bill (SB) 174—which the General Assembly unanimously approved in 2017—codified many of the Council's subsequent recommendations.²⁵ SB 174 required judges to either waive fines or convert them into community service hours for felony sentences when the individual was indigent or faced significant financial hardship.²⁶ SB 174 also sought to reduce officer caseloads and costs by shifting low-risk individuals to unsupervised probation after the first two years of their probation terms, and it required the Department of Community Supervision to file a petition for early termination of probation sentences in certain cases of good behavior.²⁷

SB 367: Continuing the Good Work

On April 27, 2016, Governor Deal signed SB 367 into law,²⁸ representing one of the General Assembly's latest efforts in Georgia's criminal justice reform package.²⁹ According to Senator

21. *Id.*

22. *Id.*

23. *Id.* at 6.

24. BOGGS & MILLER, *supra* note 1, at 6.

25. *Id.* at 42.

26. *Id.* at 44.

27. *Id.* at 42.

28. See Georgia General Assembly, SB 367, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/367> (copy on file with Georgia State University Law Review).

29. 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, 153 (2016).

John F. Kennedy (R-18th), SB 367 had three main purposes: “[First, it] provide[d] some new initiatives; [second], it [was] a continuation of the work on prior bills; and third, [there were] some minor cleanup provisions relative to the Codes that are applicable.”³⁰ SB 367 revised the procedures for regaining driving privileges and professional licenses and obtaining food stamps.³¹ The bill also modified Code sections relating to misdemeanor probation services and supervision.³²

Mounting Evidence of Success

Georgia’s criminal justice reform efforts have earned the state widespread acclaim due to the mounting evidence of its success.³³ Georgia’s prison population has dropped from its peak of 54,895 inmates in 2012 to 52,962 inmates in 2017, which is well below the 60,000 inmates that were predicted by 2018 prior to the reform efforts.³⁴ Georgia’s jail backlog fell from 5,338 people in 2009 to 925 people in 2017, and it is, as of 2018, at its lowest since 2002.³⁵ Georgia’s overall prison commitments decreased by 18.6% from 2009 to 2017, with the commitments of African-American males dropping by 29.7% and the commitments of African-American females dropping by 38.2% during that period.³⁶ In 2017, the number of African-Americans committed to prison was the lowest it has been since 1987.³⁷ Total commitments of youth dropped by 46% since 2014 when the Governor and legislature focused their efforts on juvenile justice reform.³⁸

The decrease in Georgia’s prison population allowed the state to reinvest its \$68 million in savings back into the criminal justice system to fund “accountability courts, vocational and on-the-job training, the reentry initiative, and Residential Substance Abuse

30. *Id.* at 148 (citing Telephone Interview with Sen. John F. Kennedy (R-18th) (Apr. 20, 2016), at 1 min., 25 sec.).

31. *Id.* at 142–43.

32. *Id.*

33. BOGGS & MILLER, *supra* note 1, at 3.

34. *Id.* at 7.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

Treatment facilities and programs.”³⁹ Georgia now has 149 accountability courts operating in all forty-nine judicial circuits.⁴⁰ In 2017, these courts served approximately 9,100 individuals and averted nearly \$75 million in incarceration costs.⁴¹ These accountability courts include adult drug courts, DUI courts, mental health courts, family treatment courts, veterans’ treatment courts, and juvenile accountability courts.⁴²

Bill Tracking of SB 407

Introduction and Consideration by the Senate

Senators Brian Strickland (R-17th), Larry Walker III (R-20th), Jesse Stone (R-23rd), Butch Miller (R-49th), P. K. Martin IV (R-9th), and John F. Kennedy (R-18th) sponsored SB 407 in the Senate.⁴³ On February 12, 2018, the Senate read the bill for the first time, and Senator Miller, as President Pro Tempore, referred it to the Senate Committee on Judiciary.⁴⁴ On February 22, 2018, the Senate Committee favorably reported SB 407 by Committee substitute.⁴⁵

The Senate Committee made several changes to the bill. Section 1-6 expanded the Criminal Case Data Exchange Board from three to four members, adding a county commissioner as the fourth member.⁴⁶

The Senate added language to Section 2-3, which specifies that nothing in the subsection supersedes the legal requirements for a custodial arrest or fingerprinting.⁴⁷ New subsection (c) requires judicial officers to issue an arrest warrant for accused individuals who receive a citation in violation of Code sections 16-7-21, 16-8-14, 16-8-14.1, or 16-13-30 for failing to appear.⁴⁸

39. BOGGS & MILLER, *supra* note 1, at 7.

40. *Id.* at 8.

41. *Id.*

42. *Id.*

43. See Georgia General Assembly, SB 407, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/407> [<https://perma.cc/WU9R-5PJY>] [hereinafter SB 407 Bill Tracking].

44. State of Georgia Final Composite Status Sheet, SB 407, Mar. 29, 2018.

45. *Id.*

46. SB 407 (SCS), § 1-6, p. 4, ll. 123–24, 2018 Ga. Gen. Assemb.

47. *Id.* § 2-3, p. 7, ll. 218–19.

48. *Id.* § 2-3, pp. 7–8, ll. 226–34.

Additionally, Section 2-4 changes “least restrictive” bail conditions to only to those “reasonably necessary” to ensure court appearances and protect the public’s safety.⁴⁹ Section 2-4 also reinstates language prohibiting the use of the bail schedule for offenses involving acts of family violence.⁵⁰ This section also changed the definition of “bail.”⁵¹

In Section 2-5, the Senate added language that allows a court to issue an order for arrest for any person who fails to appear for trial without an excused absence from the court.⁵²

Section 2-6 added language which provides that when the court orders education advancement, the court will determine how many hours the defendant must complete.⁵³ If the court determines that a defendant cannot pay or has a significant financial hardship, the court may waive the fine and impose a theoretical fine, but the defendant must then pay the statutory surcharges associated with the theoretical fine.⁵⁴ Additionally, the section removes defendants who were released from confinement within the preceding twelve months and were incarcerated for more than thirty days before release from the list of defendants presumed to have significant financial hardship.⁵⁵

Section 2-8 removed the previous Section 2-8 in its entirety.⁵⁶ Sections 2-11 and 2-15 were both added, which allow the court to change certain fines and fees to community service, disabled person assistance, or educational advancement.⁵⁷ Section 4-2 added language that treats the use of firearms with altered identification marks to commit criminal offenses differently than the use of non-firearms with altered identification marks.⁵⁸

49. *Id.* § 2-4, p. 8, ll. 245–47.

50. *Id.* § 2-4, p. 9, ll. 277–85.

51. *Compare* SB 407, as introduced, § 2-4, p. 9, l. 301, 2018 Ga. Gen. Assemb., with SB 407 (SCS), § 2-4, p. 10, ll. 310–12, 2018 Ga. Gen. Assemb.

52. SB 407 (SCS), § 2-5, p. 10, ll. 326–29, 2018 Ga. Gen. Assemb.

53. *Id.* § 2-6, p. 12, ll. 402–04.

54. *Id.* § 2-6, pp. 12–13, ll. 408–16.

55. *Compare* SB 407, as introduced, § 2-6, p. 12, ll. 398–406, 2018 Ga. Gen. Assemb., with SB 407 (SCS), § 2-6, p. 13, ll. 417–23, 2018 Ga. Gen. Assemb.

56. *Compare* SB 407, as introduced, § 2-8, p. 13, ll. 420–34, 2018 Ga. Gen. Assemb., with SB 407 (SCS), § 2-8, p. 13, ll. 437–46, 2018 Ga. Gen. Assemb.

57. SB 407 (SCS), § 2-11, p. 19, ll. 638–47, 2018 Ga. Gen. Assemb.; SB 407 (SCS), § 2-15, pp. 20–21, ll. 685–93, 2018 Ga. Gen. Assemb.

58. SB 407 (SCS), § 4-2, p. 28, ll. 934–42, 2018 Ga. Gen. Assemb.

The Senate read the bill for the second time on February 23, 2018, and for the third time on February 26, 2018.⁵⁹ Prior to the Senate's vote on the Committee substitute, Senator Michael Williams (R-27th) offered to amend SB 407 by striking "any misdemeanor violation of Code [s]ection 16-7-21, 16-8-14, 16-8-14.1 or 16-13-30" at lines 201–202 and replacing it with "any misdemeanor violation of Code [s]ection 16-13-30, 16-7-21 provided the act does not involve damage to property, or 16-18-14 and 16-18-14.1 provided that the property which was subject to the theft or fraud is \$100.00 or less in value."⁶⁰ The amendment did not pass.⁶¹ The Senate passed the Committee substitute of SB 407 on February 26, 2018, by a vote of 53 to 0.⁶²

Consideration by the House of Representatives

Representative Chuck Efstoration (R-104th) sponsored SB 407 in the House.⁶³ The House read the bill for the first time on February 28, 2018,⁶⁴ and for a second time on March 1, 2018.⁶⁵ The House Judiciary Committee favorably reported the bill by Committee substitute on March 23, 2018.⁶⁶ The House Committee made significant changes to the bill, beginning with changes to the title description.⁶⁷

The House Committee added Sections 1-1(b) and 1-3(b) to require electronic filing in civil cases on and after July 1, 2018.⁶⁸ Sections 1-1(b)(2) and 1-3(b)(2) address fees associated with these filings.⁶⁹ Sections 1-1(b)(3) and 1-3(b)(3) provide that these requirements do not apply to filings for pauper's affidavits; validations of bonds; or pleadings or documents under seal, presented to the court in camera

59. State of Georgia Final Composite Status Sheet, SB 407, Mar. 29, 2018.

60. Failed Senate Floor Amendment to SB 407, introduced by Sen. Michael Williams (R-27th), Feb. 26, 2018.

61. *Id.*

62. *See* SB 407 Bill Tracking, *supra* note 43.

63. *Id.*

64. State of Georgia Final Composite Status Sheet, SB 407, Mar. 29, 2018.

65. *Id.*

66. *Id.*

67. SB 407 (HCS), p. 1, ll. 10–17, 20–21, 24, 42–52, 2018 Ga. Gen. Assemb.

68. *Id.* § 1-1, p. 3, ll. 63–69; *id.* § 1-3, p. 6, ll. 152–58.

69. *Id.* § 1-1, p. 3, ll. 70–89; *id.* § 1-3, pp. 5–6, ll. 161–78.

or ex parte, or under other restrictions.⁷⁰ The requirements also do not affect filings made physically at the courthouse, during a state of emergency, or prior to the start of the mandatory electronic filing.⁷¹ Sections 1-1(b)(4) and 1-3(b)(4) authorize the Judicial Council of Georgia to “make and publish in print or electronically such statewide minimum standards and rules as it deems necessary to carry out this Code section.”⁷²

The House Committee also added Part 1, Section 1A-1, which provides that when an attorney electronically files a pleading in a case, the attorney “shall be deemed to have consented to be served electronically with future pleadings” for the case unless the attorney files a rescission of consent.⁷³ Section 1A-2 of Part 1 prohibits court clerks from entering into any exclusive agreements or contracts with electronic service providers.⁷⁴

Section 2-3 removes the following language from subsection (a)(1): “or any misdemeanor violation of Code [s]ection 16-7-21, 16-8-14, 16-8-14.1, or 16-13-30.”⁷⁵ Section 2-3, subsection (a)(2) authorizes law enforcement officers to arrest people who commit misdemeanor violations under Code sections 16-7-21, 16-8-14, 16-8-14.1, and 16-13-30 when the officer witnesses the violation, receives information about a violation, or learns of the violation from another officer who witnessed it or received information about it.⁷⁶ When law enforcement officers make arrests under the amended statute, they must “ensure that the accused’s fingerprints are obtained” and check the arrestee’s criminal record with the Federal Bureau of Investigation and the Georgia Crime Information Center.⁷⁷ If the accused fails to appear at the time and place specified in the citation without a sufficient excuse, the court must issue a warrant for the accused to be brought before the court to answer for the

70. *Id.* § 1-1, p. 3, ll. 90–94; SB 407 (HCS), § 1-3, p. 6, ll. 179–82, 2018 Ga. Gen. Assemb.

71. *Id.* § 1-1, p. 3–4, ll. 95–103; *id.* § 1-3, p. 6, ll. 183–91.

72. *Id.* § 1-1, p. 4, ll. 104–07; *id.* § 1-3, p. 6, ll. 192–95.

73. *Id.* § 1A-1, p. 9, ll. 283–91.

74. SB 407 (HCS), § 1A-2, p. 9, ll. 297–304, 2018 Ga. Gen. Assemb.

75. Compare SB 407 (SCS), § 2-3, p. 7, ll. 201–02, 2018 Ga. Gen. Assemb., with SB 407 (HCS), § 2-3, p. 10, l. 342, 2018 Ga. Gen. Assemb.

76. Compare SB 407 (SCS), § 2-3, p. 7, ll. 218–19, 2018 Ga. Gen. Assemb., with SB 407 (HCS), § 2-3, p. 11, ll. 349–53, 2018 Ga. Gen. Assemb.

77. SB 407 (HCS), § 2-3, p. 11, ll. 353–58, 2018 Ga. Gen. Assemb.

misdemeanor charge and the failure to appear.⁷⁸ Then the accused may then “make a reasonable bond to appear on a given day” before the court.⁷⁹ Subsection (a)(3) requires that all responding officers’ names be listed on the citation for any arrest concerning the operation of a motor vehicle.⁸⁰

Section 2-6(d)(3) reinstates the language “through community service” from the previous version.⁸¹ Section 2-6(d)(4) added the following language, which summarized subsection (d)(5) that had been removed: “When determining significant financial hardship, the court may consider whether the defendant is indigent and whether the defendant or his or her dependents has a developmental disability or is totally and permanently disabled.”⁸²

Section 2-8 clarifies which court an individual must petition to restrict access to his criminal history record.⁸³ An individual who had a felony charge dismissed or “*nolle prossed*” or was found not guilty must petition the court in which the individual was accused or convicted.⁸⁴ If the charge was dismissed, the individual must instead petition the superior court in the county where the individual’s arrest occurred.⁸⁵

Section 2-11 specifies that an “agency” includes those educational institutions and religious organizations “that are nonprofit corporations or are qualified as tax exempt under 26 U.S.C. § 501(c)(3), as it existed on March 1, 2018.”⁸⁶ This Section also adds and defines “educational advancement,” which is often included as an alternative to community service.⁸⁷

Section 4-5 authorizes the Department of Corrections (“DOC”) to provide requested prescription information to federal and state law enforcement and prosecutorial officials upon their receipt of grand jury subpoenas, administrative subpoenas, or civil investigative

78. *Id.* § 2-3, p. 11, ll. 367–71.

79. *Id.* § 2-3, p. 11, ll. 371–72.

80. *Id.* § 2-3, p. 11, ll. 359–66.

81. *Id.* § 2-6, p. 16, l. 540.

82. *Id.* § 2-6, p. 17, ll. 559–62.

83. SB 407 (HCS), § 2-8, p. 17–19, ll. 579–636, 2018 Ga. Gen. Assemb.

84. *Id.* § 2-8, p. 17, ll. 582–86.

85. *Id.* § 2-8, p. 17, ll. 586–88.

86. *Id.* § 2-11, p. 21, ll. 715–17, 2018 Ga. Gen. Assemb.

87. *Id.* § 2-11, p. 23–24, ll. 804, 819.

demands in addition to search warrants.⁸⁸ Section 4-5 revises paragraph (5)(A), which now only allows the DOC to provide requested prescription information to “not more than two individuals who are members per shift or rotation of the prescriber’s or dispenser’s staff.”⁸⁹ Paragraph (8) of subsection (c) provides that the DOC may also provide requested prescription information “[t]o a prescription drug monitoring program operated by a government entity in another state or an electronic medical records system operated by a prescriber or health care facility,” provided that the facility meets certain requirements.⁹⁰

Section 5-1 replaces the existing language to authorize campus policemen and other full-time security personnel of the Technical College System of Georgia to make arrests for offenses committed on or within five hundred feet of that college’s property.⁹¹

Sections 5-2, 5-3, and 5-4 insert “or the Technical College System of Georgia” after “University System of Georgia” each time the phrase occurs in the following Code sections: 36-36-2; 36-36-4; and 36-36-5, -6, -7, and -8.⁹² This insertion expands the applicability of the Sections to all public technical colleges in Georgia. Part VI, Section 6-1 repeals all laws in conflict with the Act.⁹³

The House read the bill for the third time on March 27, 2018.⁹⁴ Representatives Christian Coomer (R-14th), Rich Golick (R-40th), and Chuck Efstrotation offered to amend the Committee substitute by replacing “superior” with “state” on line 170, and by replacing lines 544 through 564 with the following:

A defendant shall be required to serve the number of hours in community service which equals the number derived by dividing the amount owed by the defendant, including moneys assessed by a provider of probation services, by the federal minimum hourly wage or by the amount specified by the court. If the court orders educational advancement, the court shall determine the numbers of

88. *Id.* § 4-5, pp. 35–36, ll. 1182–99.

89. SB 407 (HCS), § 4-5, pp. 35–36, ll. 1207–08, 2018 Ga. Gen. Assemb.

90. *Id.* § 4-5, p. 36, ll. 1238–42.

91. *Id.* § 5-1, p. 37, ll. 1245–52.

92. *Id.* § 5-2, p. 37, l. 1260; *id.* § 5-3, pp. 37–39, ll. 1260, 1281, 1288, 1308, 1312, 1319; *id.* § 5-4, p. 39, ll. 1328–39.

93. SB 407 (HCS), § 6-1, p. 39, l. 1342, 2018 Ga. Gen. Assemb.

94. State of Georgia Final Composite Status Sheet, SB 407, Mar. 29, 2018.

hours required to be completed. Prior to or subsequent to sentencing, a defendant, or subsequent to sentencing, a community supervision officer, may request that the court make all or any portion of the amount owed by the defendant be satisfied under this subsection. At the time of sentencing, the court may waive the imposition of a fine, exclusive of the payment of statutory surcharges, upon a determination that a defendant has a significant financial hardship or inability to pay or other extenuating factors exist that prohibit payment or collection of such fine. When determining significant financial hardship, the court may consider whether the defendant is indigent and whether the defendant or his or her dependents has a developmental disability or is totally and permanently disabled. If the court waives the imposition of a fine under this paragraph, it shall instead impose a theoretical fine and the defendant shall be required to pay the statutory surcharges associated therewith.⁹⁵

The House adopted the amendment. The House passed the Committee substitute of SB 407 on March 27, 2018, by a vote of 170 to 0.⁹⁶

Reconsideration by the Senate and House of Representatives

The House transmitted the bill back to the Senate on March 27, 2018.⁹⁷ Senator Bill Cowsert (R-46th) attempted to amend the House substitute by striking lines 145 through 206 from the bill, but his amendment failed.⁹⁸ The Senate agreed to the House Committee substitute as amended on March 29, 2018, by a vote of 49 to 2.⁹⁹ However, the Senate made some amendments to the bill. The first amendment clarified the fees associated with electronic filing.¹⁰⁰ Additionally, it changed the July 1, 2018, date for implementing the mandatory shift to electronic filing, to January 1, 2019.¹⁰¹ It also

95. SB 407 (HCSFA), 2018 Ga. Gen. Assemb.

96. See SB 407 Bill Tracking, *supra* note 43.

97. State of Georgia Final Composite Status Sheet, SB 407, Mar. 29, 2018.

98. Failed Senate Floor Amendment to SB 407, introduced by Sen. Bill Cowsert (R-46th), Mar. 29, 2018.

99. Georgia Senate Voting Record, SB 407, Vote #772 (Mar. 29, 2018).

100. SB 407 (SFA), p. 3, ll. 78–81, 2018 Ga. Gen. Assemb.

101. *Id.*

added language to the bill's preamble.¹⁰² Lastly, the bill added the following language: "This subsection may have an effective date between July 1, 2018, and December 31, 2018, when by court rule or standing order, the court commences mandatory electronic filing prior to January 1, 2019."¹⁰³ The House agreed to the Senate amendments on March 29, 2018, by a vote of 172 to 0,¹⁰⁴ and Governor Nathan Deal (R) signed the bill on May 7, 2018.¹⁰⁵

The Act

Mandatory Electronic Filing

Sections 1-1 and 1-3 amend Code sections 15-6-11 and 15-7-5, respectively, by requiring all superior courts to provide for electronic filing of pleadings and other related documents in civil and criminal cases starting January 1, 2019.¹⁰⁶ Revised Code sections 15-6-11 and 15-7-5 authorize each court's electronic service provider to charge a one-time filing fee not to exceed \$30.00 per filer, per party; a supplemental fee of \$5.00 for each additional filing after the party's first ten electronic filings in civil actions; and a convenience fee not to exceed 3.5% plus a payment services fee of thirty cents per transaction.¹⁰⁷ The clerk of superior court retains \$2.00 from the one-time filing fee and submits it to the county's governing authority.¹⁰⁸ Attorneys and pro se litigants are allowed free, unlimited access to view and download any electronically filed pleadings and documents related to their civil actions.¹⁰⁹ The amendments to Code sections 15-6-11 and 15-7-5 do not apply to filings for pauper's affidavits; validations of bonds; or pleadings or documents under seal, presented to the court *in camera* or *ex parte*, or under other restrictions.¹¹⁰ The

102. *Id.*

103. *Id.*

104. Video Recording of Senate Proceedings at 1 hr., 0 min., 54 sec. (Mar. 29, 2018) (remarks by Jan Jones), <https://www.youtube.com/watch?v=LsOIT7S-foQ&feature=youtu.be> [<https://perma.cc/8HHT-UMN9>] [hereinafter Video Recording of Senate Proceedings].

105. See SB 407 Bill Tracking, *supra* note 43.

106. 2018 Ga. Laws 550, § 1-1, at 551–53; 2018 Ga. Laws 550, § 1-3, at 554–55.

107. O.C.G.A. §§ 15-6-11(b)(2)(A), 15-7-5(b)(2)(A) (Supp. 2018).

108. O.C.G.A. §§ 15-6-11(b)(2)(B), 15-7-5(b)(2)(B) (Supp. 2018).

109. O.C.G.A. §§ 15-6-11(b)(2)(C), 15-7-5(b)(2)(C) (Supp. 2018).

110. O.C.G.A. §§ 15-6-11(b)(3)(A)(i), 15-7-5(b)(3)(A)(i) (Supp. 2018).

amendments also do not affect filings made physically at the courthouse, during a state of emergency, or prior to the start of the mandatory electronic filing.¹¹¹

Section 1-2 amends Code section 15-6-61 to mandate that the automated criminal case management system, in which the superior court clerks log all criminal accusations and indictments, be maintained in accordance with rules promulgated by the Criminal Case Data Exchange Board.¹¹² The superior court clerks must collect and may transmit all electronically collected data to the Georgia Superior Court Clerks' Cooperative Authority and to the Council of Superior Court Clerks of Georgia.¹¹³

Section 1A-1 amends Code section 9-11-5.¹¹⁴ When an attorney electronically files a pleading in a case, the attorney “shall be deemed to have consented to be served electronically with future pleadings” for the case unless the attorney files a rescission of consent as set forth in Code section 9-11-5(f)(2).¹¹⁵ Section 1A-2 adds Code section 15-1-22, which prohibits court clerks from entering into any exclusive agreements or contracts with electronic service providers.¹¹⁶ However, court clerks are not required to enter into agreements or contracts with more than one electronic service provider.¹¹⁷

Mandatory Juvenile Delinquent Data Collection

Section 1-4 adds a new subsection to Code section 15-11-64, which requires juvenile court clerks to collect and transmit data on each alleged delinquent child pursuant to the rules created by the Judicial Council of Georgia.¹¹⁸ The Judicial Council of Georgia must make and publish statewide minimum standards for the data

111. O.C.G.A. §§ 15-6-11(b)(3)(A)(ii)–(iv), 15-7-5(b)(3)(A)(ii)–(iv) (Supp. 2018).

112. 2018 Ga. Laws 550, § 1-2, at 553–54.

113. O.C.G.A. § 15-6-11(18) (Supp. 2018).

114. 2018 Ga. Laws 550, § 1A-1, at 558.

115. O.C.G.A. § 15-7-5(f)(4) (Supp. 2018).

116. 2018 Ga. Laws 550, § 1A-2, at 558.

117. O.C.G.A. § 15-1-22 (Supp. 2018).

118. 2018 Ga. Laws 550, § 1-4, at 556.

collection.¹¹⁹ The juvenile court clerks must then develop and enact policies and procedures to meet these standards.¹²⁰

Criminal Case Data Exchange Board

Section 1-5 amends Code section 35-6A-2 by clarifying that “Board” means the Criminal Case Data Exchange Board and that “Council” means the Criminal Justice Coordinating Council, within Chapter 6A of Title 35.¹²¹

Section 1-6 adds two new Code sections, 35-6A-13 and 35-6A-14.¹²² Code section 35-6A-13 creates the Criminal Case Data Exchange Board.¹²³ The board consists of the following fifteen members: the directors of the Criminal Justice Coordinating Council, the Georgia Crime Information Center, the Office of Planning and Budget, the Administrative Office of the Courts, and the Georgia Public Defender Council; the commissioners of administrative services, corrections, and community supervision; the executive director of the Georgia Technology Authority; the executive counsel of the Governor; a representative of the Prosecuting Attorneys’ Council of the State of Georgia; a superior court judge; a clerk of a superior court; a sheriff, and a county commissioner.¹²⁴ The last four members may not serve on the board beyond the time they hold the office which initially made them eligible to serve on the board.¹²⁵

Upon any member’s death, resignation, disqualification, or removal, his or her vacancy will be filled in the same way as the original appointment, and the successor will serve the rest of the original member’s term.¹²⁶ The members must select a chairperson and have the discretion to elect other officers and committees among themselves.¹²⁷ Although members serve without compensation, they

119. O.C.G.A. § 15-11-64(c) (Supp. 2018).

120. *Id.*

121. 2018 Ga. Laws 550, § 1-5, at 556.

122. 2018 Ga. Laws 550, § 1-6, at 556–57.

123. O.C.G.A. § 35-6A-13(a) (Supp. 2018).

124. O.C.G.A. § 35-6A-13(a)(1)–(2) (Supp. 2018).

125. O.C.G.A. § 35-6A-13(a)(2).

126. O.C.G.A. § 35-6A-13(b) (Supp. 2018).

127. O.C.G.A. § 35-6A-13(e) (Supp. 2018).

may receive reimbursement for travel and other expenses necessarily incurred through their service on the board.¹²⁸

Code section 35-6A-14 outlines the Criminal Case Data Exchange Board's duties.¹²⁹ The board meets whenever and wherever its members determine is "necessary or convenient to perform its duties."¹³⁰ The board also meets at the request of its chairperson, the council's chairperson, or the Governor.¹³¹ The board must (1) promulgate rules regarding electronic criminal case filings and the exchange criminal case data, (2) assist in developing and reviewing Georgia's criminal case data exchange and management system, (3) provide regular advice to the council's director, and (4) perform its duties as required by federal law or regulation.¹³² The Georgia Crime Information Center is responsible for providing public access to criminal case information exchange data.¹³³ The Georgia Technology Authority may not release any of the collected data.¹³⁴

Misdemeanor Bail Reform

Section 2-1 adds Code section 15-5-21.1, which requires the Judicial Council of Georgia to "develop a uniform misdemeanor citation and complaint form for use by all law enforcement officials who are empowered to arrest individuals for misdemeanors and local ordinance violations."¹³⁵ The standardized form serves as the citation, summons, accusation, or other such documentation of the charged offense.¹³⁶

Section 2-2 amends Code section 15-7-42 by adding a subsection, which states that "[t]he prosecution of misdemeanors may proceed by accusation as provided in Code Section 17-7-71, citation or citation and arrest as provided for by law, or summons."¹³⁷

128. O.C.G.A. § 35-6A-13(f) (Supp. 2018).

129. O.C.G.A. § 35-6A-14(a) (Supp. 2018).

130. O.C.G.A. § 35-6A-14(a)(1) (Supp. 2018).

131. *Id.*

132. O.C.G.A. § 35-6A-14(a)(3)–(6) (Supp. 2018).

133. O.C.G.A. § 35-6A-14(b) (Supp. 2018).

134. *Id.*

135. 2018 Ga. Laws 550, § 2-1, at 558.

136. O.C.G.A. § 15-5-21.1 (Supp. 2018).

137. 2018 Ga. Laws 550, § 2-2, at 559.

Section 2-3 amends Code section 17-4-23.¹³⁸ The statute now authorizes law enforcement officers to arrest people “accused of violating any law or ordinance governing the operation, licensing, registration, maintenance, or inspection of motor vehicles” or violating certain paragraphs of Code section 3-3-23(a).¹³⁹ Law enforcement officers may also arrest people accused of a misdemeanor violations under Code sections 16-7-21, 16-8-14, 16-8-14.1, or 16-13-30 when the officer witnesses the violation, receives information about the violation, or learns of the violation from another officer who witnesses or receives information about the violation.¹⁴⁰ When law enforcement officers make arrests under the amended statute, they must “ensure that the accused’s fingerprints are obtained” and check the accused’s criminal record with the Federal Bureau of Investigation and the Georgia Crime Information Center.¹⁴¹

Section 2-4 amends Code section 17-6-1 to include offenses in violation of local ordinances in the list of offenses that are bailable.¹⁴² The amended statute prohibits courts from imposing “excessive bail,” instructing them to impose only the conditions “reasonably necessary” to ensure attendance at court appearances and protect the public’s safety.¹⁴³ When determining bail, the statute also lists specific factors for the court to consider, such as the accused’s financial resources, financial obligations, and earnings, among other things.¹⁴⁴

Section 2-5 amends Code section 17-6-12.¹⁴⁵ Now, “other judge[s] sitting by designation under the express written authority” of an elected judge may enter written orders in support of releasing individuals on their own recognizance.¹⁴⁶ The amended statute also provides some leniency to accused individuals upon a finding of a sufficient excuse.¹⁴⁷

138. 2018 Ga. Laws 550, § 2-3, at 559–60.

139. O.C.G.A. § 17-4-23(a)(1) (Supp. 2018).

140. O.C.G.A. § 17-4-23(a)(2) (Supp. 2018).

141. *Id.*

142. 2018 Ga. Laws 550, § 2-4, at 560–62.

143. O.C.G.A. § 17-6-1(b)(1) (Supp. 2018).

144. O.C.G.A. § 17-6-1(f)(2) (Supp. 2018).

145. 2018 Ga. Laws 550, § 2-5, at 562.

146. O.C.G.A. § 17-6-12(b) (Supp. 2018).

147. O.C.G.A. § 17-6-12(d) (Supp. 2018).

Felony Probation Reform

Section 2-6 amends Code section 17-10-1.¹⁴⁸ Defendants convicted of felonies who had no prior felony convictions or were sentenced under subsection (a) or (c) of Code section 16-13-2 or Article 3 of Chapter 8 of Title 42 are eligible for early release from probation, provided they either received probation or a prison sentence of a year or less followed by probation for the underlying felony conviction.¹⁴⁹ However, defendants convicted of a crime requiring their registry as a sex offender must serve out their entire sentence unless and until a court orders their unsupervised probation.¹⁵⁰ Section 2-6 also adds definitions of “developmental disability,” “indigent,” “significant hardship,” and “totally and permanently disabled.”¹⁵¹

Code section 17-10-1 also lists other specific factors that the court must consider in setting bail, such the accused’s financial resources, financial obligations, and earnings, among other factors.¹⁵² When the court orders educational advancement, the court will determine how many hours the defendant must complete.¹⁵³ If the court determines that a defendant cannot pay or has a significant financial hardship, the court may waive the fine and impose a theoretical fine.¹⁵⁴ The defendant must then pay the statutory surcharges associated with the theoretical fine.¹⁵⁵ To determine whether a significant financial hardship exists, the courts may consider whether a defendant is indigent and whether the defendant or the defendant’s dependents have a developmental disability or a permanent disability.¹⁵⁶

Section 2-7 amends Code section 17-10-8 by capping the additional fine a judge may impose at \$100,000 upon a felony conviction and by clarifying that the judge may only impose an additional fine when the statutory fine amount is not set by law.¹⁵⁷

148. 2018 Ga. Laws 550, § 2-6, at 562–64.

149. O.C.G.A. § 17-10-1(a)(1)(B) (Supp. 2018).

150. O.C.G.A. § 17-10-1(a)(2)(A)(iii) (Supp. 2018).

151. 2018 Ga. Laws 550, § 2-6, at 563.

152. O.C.G.A. § 17-10-1(d)(2) (Supp. 2018).

153. O.C.G.A. § 17-10-1(d)(3) (Supp. 2018).

154. O.C.G.A. § 17-10-1(d)(4) (Supp. 2018).

155. *Id.*

156. *Id.*

157. 2018 Ga. Laws 550, § 2-7, at 564.

Section 2-8 amends Code section 35-3-37 by clarifying which court an individual must petition to restrict access to his or her criminal history record.¹⁵⁸ An individual who had a felony charge dismissed or *nolle prossed* or was found not guilty, but still received a misdemeanor conviction, must petition the court in which the individual was accused or convicted.¹⁵⁹ If the misdemeanor was dismissed, the individual must instead petition the superior court in the county where his arrest occurred.¹⁶⁰

Driving Privileges

Section 2-9 adds a new subsection to Code section 40-5-22.¹⁶¹ The Department of Driver Services (“DDS”) may issue a probationary license, a limited driving permit, or an ignition interlock device limited driving permit to any individual whose license has expired and who is eligible for such license under Code sections 40-5-58, -64.1, -75, or -76.¹⁶²

Section 2-10 amends Code section 40-5-76 by authorizing judges to order the DDS to issue an ignition interlock device limited driving permit to a defendant as set forth in subsections (c) and (e) of Code section 40-5-6.1 or with other conditions that the court deems appropriate.¹⁶³ A judge may also order the DDS to suspend or revoke a defendant’s license.¹⁶⁴ A defendant must pay any fine associated with reinstating his or her license unless the court waives the fee.¹⁶⁵ The court may order the DDS to issue a limited driving permit or ignition interlock device limited driving permit for one year with the possibility for renewal.¹⁶⁶

158. 2018 Ga. Laws 550, § 2-8, at 565–66.

159. O.C.G.A. § 35-3-37(j)(1) (Supp. 2018).

160. *Id.*

161. 2018 Ga. Laws 550, § 2-9, at 566.

162. O.C.G.A. § 40-5-22(e) (Supp. 2018).

163. 2018 Ga. Laws 550, § 2-10, at 566–67.

164. O.C.G.A. § 40-5-76(a)(1)(D) (Supp. 2018).

165. O.C.G.A. § 40-5-76(a)(2) (Supp. 2018).

166. O.C.G.A. § 40-5-76(a)(3) (Supp. 2018).

Community Service or Educational Advancement as a Condition of Probation

Section 2-11 amends Code sections 42-3-50, -51, -52, -53, and -54 by adding definitions for the following terms: “agency,” “community service,” “community service officer,” and “educational advancement.”¹⁶⁷ Section 2-11 removed paragraph (1) of subsection (c) of Code section 42-3-50 which referenced paragraph (1) of subsection (c) of Code section 42-3-52, which the Act also removed as discussed below.¹⁶⁸

Code section 42-3-51 clarifies that the court selects which agencies may participate in the court’s community service or educational programs.¹⁶⁹ Due to the amendments, community service officers and agency officers are not legally liable for their acts performed while an offender participates in an educational advancement program, unless their acts constitute gross negligence, recklessness, or willful misconduct.¹⁷⁰

Code section 42-3-52 provides that courts may order either community service or educational advancement—rather than just community service and instead of court-imposed fines—as a condition of parole for offenders convicted of traffic violations; ordinance violations; noninjurious, nondestructive, and nonviolent misdemeanors or felonies; and other violations as determined by the court.¹⁷¹ The court may confer with the prosecutor, defense counsel, community service or supervision officers, or other interested persons to determine the appropriateness of community service or educational advancement for an offender.¹⁷² Section 2-11 removed all paragraphs of subsection (c) of former Code section 42-3-52, which allowed certain offenders to fulfill their community service obligations by becoming live-in attendants for disabled persons.¹⁷³

Code sections 42-3-53, 42-3-54, and 42-8-34 include “educational advancement” everywhere “community service” is mentioned for

167. 2018 Ga. Laws 550, § 2-11, at 568–70.

168. 2018 Ga. Laws 550, § 2-11, at 568.

169. O.C.G.A. § 42-3-51(a)–(c) (Supp. 2018).

170. O.C.G.A. § 42-3-51(d) (Supp. 2018).

171. O.C.G.A. § 42-3-52(a) (Supp. 2018).

172. O.C.G.A. § 42-3-52(b) (Supp. 2018).

173. 2018 Ga. Laws 550, § 2-11, at 569.

consistency throughout the revised Code sections.¹⁷⁴ Additionally, subsection (b) of former Code section 42-3-52 was removed, which referenced live-in community service for disabled persons needing assistance.¹⁷⁵

Section 2-13 amends Code section 42-8-37 by providing that when the court receives an unopposed petition to terminate an offender's probation, the court must either issue an order as soon as possible or set a hearing within ninety days of receiving the unopposed petition.¹⁷⁶

Section 2-14 amends Code section 42-8-62.1 by adding that an offender may seek to limit access to his or her first offender sentencing information either at the time of sentencing or during the term of a sentence imposed before July 1, 2016.¹⁷⁷

Section 2-15 amends Code section 42-8-66 by adding a new subsection specifying that the offender may not be charged a fee for filing a petition pursuant to this Code section.¹⁷⁸

Section 2-16 amends Code section 42-8-102 to include "educational advancement" everywhere "community service" is mentioned for consistency throughout the revised Code sections.¹⁷⁹

Section 2-17 amends Code section 42-8-103 by capping the total maximum fee for a pay-only probation at three months of ordinary probation supervision fees, which may not exceed the contractual monthly rate agreed upon by the court and the service provider.¹⁸⁰ Upon the fee's collection, the probation officer must submit an order to terminate the offender's probation, and the court must issue the order within ninety days of its receipt.¹⁸¹

Section 2-18 amends Code section 42-8-105.¹⁸² If a probationer does not report to her probation officer as required, the officer must submit an affidavit setting forth both the probationer's failure to report and the officer's efforts to contact the probationer.¹⁸³ If the

174. O.C.G.A. §§ 42-3-53, 3-54, 42-8-34(e)(2) (Supp. 2018).

175. O.C.G.A. § 42-3-54 (Supp. 2018).

176. 2018 Ga. Laws 550, § 2-13, at 570.

177. 2018 Ga. Laws 550, § 2-14, at 570-71.

178. 2018 Ga. Laws 550, § 2-15, at 571.

179. 2018 Ga. Laws 550, § 2-16, at 571.

180. 2018 Ga. Laws 550, § 2-17, at 571-72.

181. O.C.G.A. § 42-8-103(b) (Supp. 2018).

182. 2018 Ga. Laws 550, § 2-18, at 572.

183. O.C.G.A. § 42-8-105(b)(2) (Supp. 2018).

probationer reports to her probation officer as required, the officer should not submit such an affidavit or seek a tolling order for the probationer's probation term.¹⁸⁴

Finally, Section 2-19 amends Section 3 to state: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval."¹⁸⁵

Revoking or Refusing to Grant Professional Licenses

Section 2-20 amends Code section 43-1-19.¹⁸⁶ A professional licensing board may revoke or refuse to grant a license to a person who has "been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude" when the sentence was imposed under Code section 42-8-3, another state's first offender laws, subsection (a) or (c) of Code section 16-13-2, or as a result of a plea of *nolo contendere* or some other adjudication of guilt.¹⁸⁷ However, unless the felony or crime of moral turpitude directly relates to the occupation for which the license is sought, a professional licensing board may not refuse to grant a license or revoke a license due to the applicant's or licensee's conviction of any felony or crime of moral turpitude; arrest, charge, or sentence related to such offense; sentence for such offense under Code section 42-8-3, another state's first offender laws, or under subsection (a) or (c) of Code section 16-13-2; or as a result of a plea of *nolo contendere* or some other adjudication of guilt.¹⁸⁸ Section 2-20 also amended the other subsections to include the language "felony or crime of moral turpitude" for consistency throughout the Code section.¹⁸⁹

Access to Healthcare for Inmates

Section 3-1 amends Code section 31-2-1.¹⁹⁰ In addition to being the "lead planning agency for all health issues in the state," the

184. *Id.*

185. 2018 Ga. Laws 550, § 2-19, at 572.

186. 2018 Ga. Laws 550, § 2-20, at 572–73.

187. O.C.G.A. § 43-1-19(4)(A) (Supp. 2018).

188. O.C.G.A. § 43-1-19(q)(1) (Supp. 2018).

189. 2018 Ga. Laws 550, § 2-20, at 572–73.

190. 2018 Ga. Laws 550, § 3-1, at 574.

Department of Community Health (DCH) must also “achieve determinations of Medicaid eligibility for inmates to attain services at long-term care facilities when he or she is being considered for parole.”¹⁹¹

Section 3-2 adds two new paragraphs at the end of subsection (d) of Code section 31-2-4.¹⁹² The DCH must work with the Department of Corrections and the State Board of Pardons and Paroles to create and implement procedures to determine Medicaid eligibility for inmates who are eligible for parole and who need long-term care services.¹⁹³ The DCH must “request federal approval for and facilitate the application of certificates of need for facilities capable of providing long-term care services, with Medicare as the primary funding source, to inmates who are eligible for such services and funding upon his or her release from a public institution.”¹⁹⁴

Section 3-3 amends Code section 49-4-31 by adding definitions for the following words: “assistance,” “medical institution,” and “public institution.”¹⁹⁵

Section 3-4 amends Code section 49-4-32 by removing former paragraph (3) of subsection (a), which prohibited inmates or patients of any public institution from being eligible for assistance or services provided by the DCH.¹⁹⁶ Section 3-4 also removes former subsection (c), which stated that final conviction of a crime or criminal offense constituted a forfeiture or suspension of the offender’s rights to assistance.¹⁹⁷ Sections 3-6 and 3-8 amend former subsection (b) of Code section 49-4-52 by adding subsection (c) to Code section 49-4-81.¹⁹⁸ Inmates who meet the necessary requirements may receive assistance if the public institution housing the inmate has entered into an agreement with the DCH to determine which inmates are eligible for assistance and services.¹⁹⁹ Under such an agreement, the public institution must pay the required fee to the DCH “to match

191. O.C.G.A. § 31-2-1(1) (Supp. 2018).

192. 2018 Ga. Laws 550, § 3-2, at 574.

193. O.C.G.A. § 31-2-4(d)(12) (Supp. 2018).

194. O.C.G.A. § 31-2-4(d)(13) (Supp. 2018).

195. 2018 Ga. Laws 550, § 3-3, at 574–75.

196. 2018 Ga. Laws 550, § 3-4, at 575.

197. 2018 Ga. Laws 550, § 3-4, at 575.

198. 2018 Ga. Laws 550, § 3-6, at 576.; 2018 Ga. Laws 550, § 3-8, at 576.

199. O.C.G.A. §§ 49-4-32(c), -52(b), -81(c) (Supp. 2018).

the federal matching funds as set forth in federal law for the services rendered.”²⁰⁰

Sections 3-5 and 3-7 amend Code sections 49-4-51 and 49-4-80, respectively, by changing the definition of “assistance” and adding definitions for “medical institution” and “public institution.”²⁰¹

Illegal Use or Possession of Firearms by Convicted Felons and Probationers

Section 4-1 amends Code section 16-8-12.²⁰² After the first violation for a theft-related offense, any subsequent theft-related offense of a “destructive device, explosive, or firearm” will result in a sentence of five to ten years in prison.²⁰³

Section 4-2 amends Code section 16-9-70 by adding the definition of the term “firearm.”²⁰⁴ Section 4-2 also adds paragraph (2) under subsection (c), which provides that a person convicted with the “criminal use of a firearm with an altered identification mark” is guilty of a felony and will be punished with one to ten years in prison for a first offense and five to ten years for any subsequent offense.²⁰⁵ Paragraph (1) of subsection (c) now covers all other offenses involving the criminal use of articles with altered identification marks, exclusive of firearms.²⁰⁶

Section 4-3 amends Code section 16-11-113.²⁰⁷ Subsection (a) of that Code section makes it a felony, punishable by one to five years in prison for a first offense and five to ten years for any subsequent offense, to knowingly “attempt to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm” to an individual who is not the actual buyer, who is serving probation as a felony first offender under Code section 42-8-3, who is serving probation for a felony under subsection (a) or (c) of Code section

200. O.C.G.A. §§ 49-4-32(c), -52(b), -81(c) (Supp. 2018).

201. 2018 Ga. Laws 550, § 3-5, at 575–76.; 2018 Ga. Laws 550, § 3-7, at 576.

202. 2018 Ga. Laws 550, § 4-1, at 577.

203. O.C.G.A. § 16-8-12(a)(6)(B) (Supp. 2018).

204. 2018 Ga. Laws 550, § 4-2, at 577.

205. *Id.*

206. O.C.G.A. § 16-9-70(c)(1) (Supp. 2018).

207. 2018 Ga. Laws 550, § 4-3, at 578.

16-13-2, or who was convicted of a felony by another Georgia court or a court of any other state.²⁰⁸

Section 4-4 amends Code section 16-11-131.²⁰⁹ Revised subsections (b) and (f) now include any individual who is on a probation for a felony under either subsection (a) or (c) of Code section 16-13-2.²¹⁰ Revised subsections (b) and (b.1) provide that the first offense under Code section 16-11-131 is punishable by one to ten years imprisonment, and any subsequent offense is punishable for five to ten years.²¹¹

Release of Requested Prescription Information

Section 4-5 amends Code section 16-13-60.²¹² Paragraph (3) of subsection (c) authorizes the DOC to provide requested prescription information to federal and state law enforcement and prosecutorial officials upon its receipt of grand jury subpoenas, administrative subpoenas, or civil investigative demands in addition to search warrants.²¹³ Section 4-5 removes subsections (i) through (iv) under paragraph (5)(A) of subsection (c). Revised paragraph (5)(A) now only allows the DOC to provide requested prescription information to “not more than two individuals who are members per shift or rotation of the prescriber’s or dispenser’s staff.”²¹⁴ New paragraph (8) of subsection (c) provides that the DOC may also provide requested prescription information to a prescription drug monitoring program operated by a government entity in another state or an electronic medical records system operated by a prescriber or health care facility,” provided that the facility meets certain requirements.²¹⁵

208. O.C.G.A. § 16-11-113(a) (Supp. 2018).

209. 2018 Ga. Laws 550, § 4-4, at 578–79.

210. O.C.G.A. §§ 16-11-131(b), (f) (Supp. 2018).

211. O.C.G.A. § 16-11-131(b).

212. 2018 Ga. Laws 550, § 4-5, at 579–80.

213. O.C.G.A. § 16-13-60(c)(3) (Supp. 2018).

214. 2018 Ga. Laws 550, § 4-5, at 579–80.

215. O.C.G.A. § 16-13-60(c)(8) (Supp. 2018).

Expanding the Authority of Campus Police and Security Personnel

Section 5-1 adds new Code section 20-4-39.²¹⁶ Campus policemen and fulltime security personnel of the Technical College System of Georgia may make arrests for offenses committed on or within five hundred feet of a college's property.²¹⁷ Additionally, sections 5-2, 5-3, and 5-4 insert "or the Technical College System of Georgia" after "University System of Georgia" each time it appears in the following Code sections: 20-8-4;²¹⁸ 36-69-3;²¹⁹ and 36-36-2, -4, -5, -6, -7, and -8.²²⁰

Analysis

On May 7, 2018, Governor Nathan Deal (R) signed SB 407 into law.²²¹ The bill made many changes to the existing penal code, but the new law primarily focuses on reducing Georgia's recidivism rate by promoting each offender's successful reentry into society. This Act affects many different statutes throughout the Georgia Code and places the finishing touches on Governor Deal's seven-year sweeping criminal reform.

Electronic Filing

One of the most contested issues with SB 407 is the new requirement for electronic filing in Georgia courts.²²² The mandate that all cases filed after January 1, 2019, must be filed electronically applies not only to criminal matters but also civil filings.²²³ This aspect of the Act poses concerns for many legislators as to why this

216. 2018 Ga. Laws 550, § 5-1, at 580.

217. O.C.G.A. § 20-4-39 (Supp. 2018).

218. 2018 Ga. Laws 550, § 5-2, 580.

219. 2018 Ga. Laws 550, § 5-3, at 581–82.

220. 2018 Ga. Laws 550, § 5-4, at 582.

221. Press Release, Office of the Governor, Deal Signs Misdemeanor Bail Reform Legislation (May 7, 2018), <https://gov.georgia.gov/press-releases/2018-05-07/deal-signs-misdemeanor-bail-reform-legislation> [https://perma.cc/2G84-U43D].

222. Video Recording of Senate Proceedings at 4 hr., 18 min., 35 sec. (Mar. 29, 2018) (remarks by Sen. Bill Cowsert (R-46th)), <https://livestream.com/accounts/26021522/events/7940809/videos/172512641> [https://perma.cc/L62P-Y9ZY] [hereinafter Senate Proceedings Video].

223. O.C.G.A. § 15-6-11(a), (b)(1) (Supp. 2018).

civil justice issue, which had previously been hung up in a House Conference Committee, is now piggybacked onto a monumental criminal reform bill that has bipartisan support.²²⁴ Another concern is whether all state courts can make the appropriate changes to accommodate the new electronic filing requirements by the statutory deadline.²²⁵ These changes will burden state courts that do not already have the necessary equipment to facilitate electronic filing.²²⁶ Although a filing fee is standard procedure, the minimum \$30.00 imposed on each party greatly increases the costs of filing.²²⁷

Educational Advancement

The Act makes great strides in facilitating an offender's reentry into society. It adds educational advancement as an option that an offender may choose as part of the probation requirements.²²⁸ This addition provides offenders with a significant opportunity to avoid recidivism by giving them a chance to better their lives through education. While the Act leaves it to the judge's discretion to determine which offenders should receive placement in an educational advancement program, the Act fails to provide the judges with guidelines to make these determinations.²²⁹

Finally, even though the Georgia Council on Criminal Justice Reform dissolved as of July 2018,²³⁰ the newly created Criminal Case Data Exchange Board can continue its work as needed to provide continued dialogue on future reform. To further decrease recidivism, the board can focus future efforts on the relationship between mental illness and incarceration.²³¹ With the culmination of a seven-year criminal reform, Governor Deal has reached his goal of "improv[ing] the fairness and effectiveness of [Georgia's] justice

224. Senate Proceedings Video, *supra* note 224, at 4 hr., 16 min., 33 sec. (remarks by Sen. Bill Cowsert (R-46th) and Sen. Mike Dugan (R-30th)).

225. *Id.* at 4 hr., 18 min., 35 sec. (remarks by Sen. Bill Cowsert (R-46th)).

226. *Id.*

227. *Id.*

228. O.C.G.A. § 42-3-5(a) (Supp. 2018).

229. *See* O.C.G.A. § 42-3-52(b)-(d) (Supp. 2018).

230. Boggs & Miller, *supra* note 1, at 13.

231. *Id.*

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system while ensuring taxpayers received the best possible public safety return on their investment.”²³²

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232. *Id.* at 12.