

HOUSE BILL 485¹: CRIMINAL PROCEDURE; IMPOSITION OF THE DEATH
PENALTY IN THIS STATE; REPEAL

Amending O.C.G.A. § 17-10-1; § 5-5-40; § 5-6-11; § 5-6-34; § 5-6-38; § 5-6-41; § 5-6-43; § 5-6-45; § 5-7-5; § 9-14-4; § 9-14-42; § 9-14-47; § 9-14-48; § 5-6-43§ 15-1-9; § 15-3-3; § 15-12-142; § 15-12-160; § 15-12-164; § 15-12-165; § 16-1-3; § 16-4-6; § 16-4-7; § 16-4-8; § 16-5-1; § 16-5-40; § 16-5-44; § 16-8-41; § 16-10-70; § 16-11-1; § 16-11-221; § 17-3-1; § 17-5-56; § 17-6-1; § 15-12-142; § 17-7-50; § 17-7-70; § 17-7-95; § 17-7-131; § 17-7-171; § 17-8-4; § 17-8-5; § 17-8-31; § 17-8-73; § 17-9-3; § 17-10-1; § 17-10-2; § 17-10-6; § 17-10-7; § 17-10-9; § 17-10-16; § 17-12-5; § 17-12-12; § 17-13-34; § 17-13-36; § 17-16-2; § 17-17-12; § 17-17-13; § 24-13-60; § 24-13-93; § 42-1-3; § 42-5-20; § 42-5-21; § 42-5-51; § 42-5-64; § 42-5-85; § 42-7-2; § 42-8-34; § 42-9-20; § 42-9-42; § 15-12-142

First signature: Representative Beth Moore (95th)

Co-Sponsors: Representative Bill Werkheiser (157th), Representative Scott Holcomb (81st), Representative Billy Mitchell (88th), Representative Gregg Kennard (102nd), William Boddie (62nd)

Summary: “A BILL to be entitled an Act to amend the Official Code of Georgia Annotated, so as to repeal the imposition of the death penalty in this state; to repeal references to procedures related to capital cases; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.”²

Status: House Second Readers.³

TEXT OF HOUSE BILL 485⁴

SECTION 1.

¹ H.B. 485 (Non-Civil Judiciary Committee), 156th Gen. Assemb., 1st Reg. Sess. (Ga. 2021), available at <https://www.legis.ga.gov/api/legislation/document/20212022/197842> (last visited Oct. 9, 2021).

² 2020-2021 Regular Session H.B. 485, *Criminal procedure; imposition of the death penalty in this state; repeal*, GA. GEN. ASSEMB., available at <https://www.legis.ga.gov/legislation/59757> (last visited Feb. 22, 2022) [hereinafter H.B. 485 Status Sheet].

³ *Id.*

⁴ H.B. 485.

Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of punishment, is amended by adding a new Code section to read as follows:

"17-10-1.5.

Notwithstanding any other provision of law to the contrary, on and after the effective date of this Code section, the imposition of capital punishment is prohibited in this state. The sentence of any person under sentence of death on the effective date of this Code section shall be commuted to a sentence of life without parole."

SECTION 2.

Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended by revising Code Section 5-5-40, relating to time of motion for new trial generally, amendments, extension of time for filing transcript, time of hearing, priority to cases in which death penalty imposed, appeal not limited to grounds urged, and new trial on court's own motion, as follows:

"5-5-40.

- (a) All motions for new trial, except in extraordinary cases, shall be made within 30 days of the entry of the judgment on the verdict or entry of the judgment where the case was tried without a jury.
- (b) The motion may be amended any time on or before the ruling thereon.
- (c) Where the grounds of the motion require consideration of the transcript of evidence or proceedings, the court may in its discretion grant an extension of time, ~~except in cases where the death penalty is imposed,~~ for the preparation and filing of the transcript, which may be done any time on or before the hearing; or the court may in its discretion hear and determine the motion before the transcript of evidence and

proceedings is prepared and filed.

(d) The grounds of the motion need not be approved by the court.

(e) The motion may be heard at any time; but, where it is not heard at the time specified in the order, it shall stand for hearing at such time as the court by order at any time may prescribe, unless sooner disposed of.

~~(f) Motions for new trial in cases in which the death penalty is imposed shall be given priority.~~

~~(g)~~ On appeal, a party shall not be limited to the grounds urged in the motion or any amendment thereof.

~~(h)~~(g) The court also shall be empowered to grant a new trial on its own motion within 30 days from entry of the judgment, except in criminal cases where the defendant was acquitted."

SECTION 3.

Said title is further amended by revising Code Section 5-6-11, relating to issuance of remittitur in cases involving death penalty, as follows:

"5-6-11.

~~In all cases where the Supreme Court of Georgia has affirmed the imposition of the death penalty in a case or has affirmed the denial of a petition for a writ of habeas corpus in any case in which the death penalty has been imposed, the remittitur shall not issue from that court for at least 90 days from the date of the court's decision, or from the date of the court's denial of a motion for a rehearing, if such motion is timely filed, whichever is later; provided, however, that this Code section shall not apply where the defendant has previously applied for a writ of habeas corpus which has been denied and the denial thereof has been affirmed by the Supreme Court of Georgia, or where the writ has~~

~~been granted but the grant thereof has been reversed by the Supreme Court of Georgia. Reserved."~~

SECTION 4.

Said title is further amended in Code Section 5-6-34, relating to judgments and rulings deemed directly appealable, procedure for review of judgments, orders, or decisions not subject to direct appeal, scope of review, and hearings in criminal cases involving a capital offense for which death penalty is sought, by revising subsection (c) as follows:

~~"(c) In criminal cases involving a capital offense for which the death penalty is sought, a hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall be a review of pretrial proceedings by the Supreme Court prior to a trial before a jury. Review of pretrial proceedings, if ordered by the trial court, shall be exclusively as provided by Code Section 17-10-35.1 and no certificate of immediate review shall be necessary. Reserved."~~

SECTION 5.

Said title is further amended by revising Code Section 5-6-38, relating to time of filing notice of appeal, cross appeal, record and transcript for cross appeal, division of costs, and appeals in capital offense cases for which death penalty is sought, as follows:

"5-6-38.

(a) A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of; but when a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the notice shall be filed within 30 days after the entry of the order granting, overruling, or

otherwise finally disposing of the motion. In civil cases, the appellee may institute cross appeal by filing notice thereof within 15 days from service of the notice of appeal by the appellant; and the appellee may present for adjudication on the cross appeal all errors or rulings adversely affecting him or her; and in no case shall the appellee be required to institute an independent appeal on his or her own right, although the appellee may at his or her option file an independent appeal. The notice of cross appeal shall set forth the title and docket number of the case, the name of the appellee, the name and address of his or her attorney, and a designation of any portions of the record or transcript designated for omission by the appellant and which the appellee desires included and shall state that the appellee takes a cross appeal. In all cases where the notice of appeal did not specify that a transcript of evidence and proceedings was to be transmitted as a part of the record on appeal, the notice of cross appeal shall state whether such transcript is to be filed for inclusion in the record on appeal. A copy of the notice of cross appeal shall be served on other parties of record in the manner prescribed by Code Section 5-6-32.

(b) Where a cross appeal is filed, only one record and, where specified, only one transcript of evidence and proceedings need be prepared and transmitted to the appellate court; but the cross appellant may, at his or her election, require that such a separate record (and transcript, if required) be transmitted. Where a cross appeal is filed and only one record (and transcript, where required) is sent up, the court shall by order provide for the division of costs therefor between the parties if they are unable to do so by agreement.

~~(c) Notwithstanding subsection (a) of this Code section, where either the state or the defendant wishes to appeal any judgment, ruling, or~~

~~order in the pretrial proceedings of a criminal case involving a capital offense for which the death penalty is sought, such appeal shall be brought as provided in Code Section 17-10-35.1."~~

SECTION 6.

Said title is further amended in Code Section 5-6-41, relating to reporting, preparation, and disposition of transcript, correction of omissions or misstatements, preparation of transcript from recollections, filing of disallowed papers, filing of stipulations in lieu of transcript, and reporting at party's expense, by revising subsection (e) as follows:

"(e) Where a civil or criminal trial is reported by a court reporter and the evidence and proceedings are transcribed, the reporter shall complete the transcript and file the original and one copy thereof with the clerk of the trial court, together with the court reporter's certificate attesting to the correctness thereof. ~~In criminal cases where the accused was convicted of a capital felony, an additional copy shall be filed for the Attorney General, for which the court reporter shall receive compensation from the Department of Law as provided by law.~~ The original transcript shall be transmitted to the appellate court as a part of the record on appeal; and one copy will be retained in the trial court, both as referred to in Code Section 5-6-43. Upon filing by the reporter, the transcript shall become a part of the record in the case and need not be approved by the trial judge."

SECTION 7.

Said title is further amended in Code Section 5-6-43, relating to preparation and transmittal of record on appeal by court clerk, retention of copy by clerk, furnishing at no cost to Attorney General in capital

cases, and notification where defendant confined to jail, by revising subsection (b) as follows:

~~"(b) Where the accused in a criminal case was convicted of a capital felony, the clerk shall likewise furnish, at no cost, the Attorney General with an exact copy of the record on appeal. Reserved."~~

SECTION 8.

Said title is further amended in Code Section 5-6-45, relating to operation of notice of appeal as supersedeas in criminal cases, bond, and review, by revising subsection (a) as follows:

"(a) In all criminal cases, the notice of appeal filed as provided in Code Sections 5-6-37 and 5-6-38 shall serve as supersedeas in all cases where ~~a sentence of death has been imposed or where~~ the defendant is admitted to bail. If the sentence is bailable, the defendant may give bond in an amount prescribed by the presiding judge, with security approved by the clerk, conditioned upon the defendant's personal appearance to abide the final judgment or sentence of the court. If the judgment or sentence is or includes a fine which is unconditionally required to be paid, and is not required to be paid over a period of probation, nor as a condition of a suspended or probated sentence, nor as an alternative sentence, the bond may also be conditioned upon payment of the fine at the time the defendant appears to abide the final judgment or sentence."

SECTION 9.

Said title is further amended by revising Code Section 5-7-5, relating to

right of accused to bail and amount of bail reviewable by appellate court, as follows:

"5-7-5.

In the event the state files an appeal as authorized in this chapter, the accused shall be entitled to be released on reasonable bail pending the disposition of the appeal, ~~except in those cases punishable by death.~~ The amount of the bail, to be set by the court, shall be reviewable on direct application by the court to which the appeal is taken."

SECTION 10.

Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus, is amended by revising Code Section 9-14-4, relating to petition for writ, verification, and to whom presented, as follows:

"9-14-4.

The petition for the writ of habeas corpus ~~must~~ shall be verified by the oath of the applicant or some other person in his or her behalf. It may be presented to the judge of the superior court of the circuit in which the illegal detention exists who may order the party restrained of his or her liberty to be brought before him or her from any county in his or her circuit, or it may be presented to the judge of the probate court of the county, except in cases of capital felonies or in which a person is held for extradition under warrant of the Governor."

SECTION 11.

Said chapter is further amended in Code Section 9-14-42, relating to grounds for writ and waiver of objection to jury composition, by revising subsection (c) as follows:

"(c) Any action brought pursuant to this article shall be filed within one year in the case

of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four years in the case of a felony, ~~other than one challenging a conviction for which a death sentence has been imposed or challenging a sentence of death~~, from:

(1) The judgment of conviction becoming final by the conclusion of direct review or the expiration of the time for seeking such review; provided, however, that any person whose conviction has become final as of July 1, 2004, regardless of the date of conviction, shall have until July 1, 2005, in the case of a misdemeanor or until July 1, 2008, in the case of a felony to bring an action pursuant to this Code section;

(2) The date on which an impediment to filing a petition which was created by state action in violation of the Constitution or laws of the United States or of this state is removed, if the petitioner was prevented from filing such state action;

(3) The date on which the right asserted was initially recognized by the Supreme Court of the United States or the Supreme Court of Georgia, if that right was newly recognized by said courts and made retroactively applicable to cases on collateral review; or

(4) The date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence."

SECTION 12.

Said chapter is further amended by revising Code Section 9-14-47, relating to time for answer and hearing, as follows:

"9-14-47.

~~Except as otherwise provided in Code Section 9-14-47.1 with respect to petitions challenging for the first time state court proceedings resulting in a sentence of death, within~~ Within 20 days after the filing and docketing of a petition under this article or within such further time as the court may set, the respondent shall answer or move to dismiss the petition. The court shall set the case for a hearing on the issues within a reasonable time after the filing of defensive pleadings."

SECTION 13.

Said chapter is further amended by repealing Code Section 9-14-47.1, relating to petitions challenging for the first time state court proceedings resulting in death sentence, in its entirety.

SECTION 14.

Said chapter is further amended in Code Section 9-14-48, relating to hearing, evidence, depositions, affidavits, determination of compliance with procedural rules, and disposition, by revising subsection (e) as follows:

"(e) A petition, ~~other than one challenging a conviction for which a death sentence has been imposed or challenging a sentence of death,~~ may be dismissed if there is a particularized showing that the respondent has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows by a preponderance of the evidence that it is based on grounds of which he or she could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the respondent occurred. This subsection shall apply only to convictions had before July 1, 2004."

SECTION 15.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising Code Section 15-1-9.1, relating to requesting judicial assistance from other courts, as follows:

"15-1-9.1.

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

(1) 'Administrative judge' means a superior court judge or senior judge of the superior court elected within an administrative district as provided by Code Section 15-5-4.

(2) 'Chief judge' means the judge most senior in time of service or, if applicable, the judge to whom the administrative duties of a court have been assigned.

(3) 'Judge' includes Justices, judges, senior judges, magistrates, and every other such judicial officer of whatever name existing or created.

(4) 'Part-time judge' means a judge who serves on a continuing or periodic basis but who is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

(b)(1) If assistance is needed from a judge outside of the county, a superior court judge of this state or the chief judge of a class of courts other than an appellate court may make a request for judicial assistance in the court served by said requesting judge to the administrative judge of the judicial administrative district in which said requesting judge's court is located, if any of the following circumstances arises:

(A) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

(B) A judge of the requesting court is unable to preside because of

disability, illness, or absence;

(C) A judge of the requesting court is unable to preside because such judge is performing ordered military duty as such term is defined in Code Section 38-2-279; or

(D) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges.

(2) If assistance is needed from a judge from the same county, the chief judge of any court within such county of this state may make a written request for assistance to the chief judge of any other court within such county, a senior judge of the superior court, a retired judge, or a judge emeritus of any court within the county. The request by the chief judge may be made if any of the following circumstances arises:

(A) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

(B) A judge of the requesting court is unable to preside because of disability, illness, or absence;

(C) A judge of the requesting court is unable to preside because such judge is performing ordered military duty as such term is defined in Code Section 38-2-279;

(D) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges; or

(E) A majority of the judges of the requesting court determines that the business of the court requires the permanent assistance of an additional judge or additional judges. If the requesting court is a state or superior court, the assisting judge or assisting judges may hear and decide matters otherwise in the exclusive jurisdiction of

the state or superior court without regard to time, type of case, or limitations contained in the rules of such state or superior court; provided, however, that a chief magistrate or magistrate may serve as a permanent assisting judge only in counties having a population of 180,000 or more according to the United States decennial census of 1990 or any future such census.

~~(3) When a petition for habeas corpus is filed challenging for the first time state court proceedings resulting in a death sentence, the clerk of the superior court acting on behalf of the chief judge shall make a request for judicial assistance to the president of The Council of Superior Court Judges of Georgia. Within 30 days of receipt of a request for judicial assistance, the president of The Council of Superior Court Judges of Georgia shall, under guidelines promulgated by the executive committee of said council, assign the case to a judge of a circuit other than the circuit in which the conviction and sentence were imposed.~~

~~(4) In petitions under this article challenging for a second or subsequent time a state court proceeding resulting in a death sentence, the chief judge of the court where the petition is filed may make a request for judicial assistance to the president of The Council of Superior Court Judges of Georgia upon certifying that the business of the court will be impaired unless assistance is obtained. Within 30 days of receipt of a request for judicial assistance, the president of The Council of Superior Court Judges of Georgia shall, under guidelines promulgated by the executive committee of said council, assign the case to a judge of a circuit other than the circuit in which the conviction and sentence were imposed.~~

(c) A chief judge of a requesting court or assisting court shall be

presumed to act with the consent of all judges of the court. However, if a judge of a court shall insist, all judges of that court shall vote upon whether to ratify the action taken by the chief judge under this Code section.

(d)(1) If the chief judge is unable because of disability, illness, or absence to make a request for assistance, a majority of the judges of the court may make such a request for him or her. If a court is served by only one judge who, himself or herself, is unable to make a request because of disability, illness, or absence, or when the judge or judges of the court fail to procure assistance in the event of the absence, illness, disability, or disqualification of one of the judges, and it is satisfactorily made to appear to the Governor that any regular or special term of any court will not be held or continued in session because of such failure to procure assistance, the Governor shall request the administrative judge of the judicial administrative district within which district the court in need of assistance lies to assign another judge to hold the regular or special term of such court. However, no judge shall be named or assigned to hold court when the time fixed by law for holding the term of court conflicts with the holding of any regular or special term already called by ~~him~~ such judge in his or her own court.

(2) If a vacancy shall occur in the judicial office for which the Governor has had to request assistance from the administrative judge of the judicial administrative district in a situation wherein the conditions exist as provided in paragraph (1) of this subsection, the Governor may appoint a judge of a court of record as an interim judge to fill temporarily such vacancy until the vacancy is permanently filled as provided by law.

(e) The administrative judge of the district receiving a request for assistance shall designate a judge to preside as requested. The designated judge may consent to preside in the requesting court provided he or she is otherwise qualified to serve as a judge in the requesting court. The qualifications of residency within a particular political or geographic subdivision of the state shall not apply to a designated judge. The designation shall be made in writing and delivered to the judge requesting assistance.

(f) The written designation shall identify the court in need of assistance, the county where located, the time period covered, the specific case or cases for which assistance is sought if applicable, and the reason that assistance is needed. The written designation shall be filed and recorded on the minutes of the clerk of the court requesting assistance. Any amendment to the designation shall be written, filed, and recorded as is the original designation.

(g) A judge rendering assistance in accordance with this Code section shall discharge all the duties and shall exercise all of the powers and authority of a judge of the court in which he or she is presiding.

(h) The governing authority responsible for funding the operation of the requesting court shall bear the expenses of the judge rendering assistance in accordance with this Code section, except that such judges presiding in the appellate or superior courts in accordance with this Code section shall be compensated by state funds appropriated or otherwise available for the operation of these courts.

(i) Senior judges of the superior courts, senior judges appointed pursuant to Code Section 15-1-9.3, part-time judges, and retired judges or judges emeritus of the state courts shall receive the amount of compensation and payment for expenses as provided by Code Section

15-1-9.2. All other judges rendering assistance in accordance with this Code section shall be entitled to actual travel and lodging expenses but shall not be entitled to any additional compensation for this assistance.

(j) The court reporter, support personnel, facilities, equipment, and supplies necessary to perform the duties requested shall be provided to any judge rendering assistance in accordance with this Code section by the requesting court, unless otherwise agreed.

(k) In the event that the judge requesting assistance is a superior court judge other than a chief judge, then a copy of the assignment shall also be filed with the chief judge of the court to be assisted.

(l) As an alternative to the other provisions of this Code section, any judge other than a superior court judge may, under the circumstances described in subparagraph (b)(1)(B) or (b)(1)(C) of this Code section, request judicial assistance from any other judge who is not a superior court judge and who is otherwise qualified; and the judge so requested may agree to so serve. When one judge serves in the court of another pursuant to this subsection, a written designation by the requesting judge shall be filed and recorded on the minutes in the same general manner as provided for in subsection (f) of this Code section and the provisions of subsection (h) of this Code section shall apply with respect to the payment of expenses. The provisions of this subsection are supplementary to the provisions of the other subsections of this Code section.

(m) This Code section shall be supplementary to other laws relating to the authorization of replacement judges.

~~(n) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed~~

~~once the state has filed a notice of its intention to seek the death penalty; provided, however, that a senior judge may be assigned, designated, or preside in such a case if the judge had previously been assigned or designated and presided over such case while serving as an elected superior court judge prior to attaining senior judge status."~~

SECTION 16.

Said title is further amended by revising Code Section 15-1-9.2, relating to senior judge of superior courts, as follows:

"15-1-9.2.

(a) The office of senior judge of the superior courts is created, and judges of the superior courts or former judges of the superior courts may become senior judges as follows:

(1) Any judge of the superior courts who retires pursuant to the provisions of Chapter 8 or Chapter 23 of Title 47 and any such judge who receives a disability retirement benefit under such chapter may become a senior judge beginning on the effective date of the judge's retirement; and

(2) Any judge of the superior courts, whether or not said judge is a member of the retirement system created by Chapter 23 of Title 47, who ceases holding office as a judge of the superior courts and who has at least ten years of service as a judge of the superior courts at the time of ceasing to hold office and who is not eligible for appointment to the office of senior judge under any other law of this state may become a senior judge.

(a.1) Notwithstanding the provisions of subsection (a) of this Code section, any Justice of the Supreme Court of Georgia, Judge of the Court of Appeals, superior court judge, state court judge, magistrate court

judge, or juvenile court judge who ceases holding office as a judge and who has a total of ten years of service in any combination of such offices or a total of nine years of service in any combination of such offices plus at least one year of service as chairperson of the State Board of Workers' Compensation may become a senior judge. Said combination must include at least five years' service as a Justice of the Supreme Court, Judge of the Court of Appeals, or judge of the superior court or at least five years as total served in combination as Justice of the Supreme Court, Judge of the Court of Appeals, or judge of the superior court.

(a.2) Senior judge status as provided in this Code section shall be acquired by a qualified former judge's applying to the Governor for appointment as senior judge. The Governor shall appoint each qualified applicant as a senior judge.

(b) The chief judge of any appellate or superior court of this state may make a written request for assistance to a senior judge. The request by the chief judge may be made if one of the following circumstances arise:

- (1) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;
- (2) A judge of the requesting court is unable to preside because of disability, illness, or absence; or
- (3) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges as provided for in Code Section 15-1-9.1.

(c) An active judge may call upon a senior judge to serve in an emergency or when the volume of cases or other unusual circumstances cause such service to be necessary in order to provide for the speedy and

efficient disposition of the business of the circuit.

(d)(1) Senior judges serving as judges of an appellate or superior court under this Code section or any other provision of law shall receive compensation from state funds for each day of service, in the amount of the annual state salary of a judge of the applicable court, divided by 235. In addition to such compensation, such senior judges shall receive their actual expenses or, at the judge's option, in the event of service outside the county of the judge's residence, the same per diem expense authorized by law for members of the General Assembly and shall receive mileage at the same rate as other state employees for such services. Such compensation, expenses, and mileage shall be paid from state funds appropriated or otherwise available for the operation of the appellate or superior courts, upon a certificate by the senior judge as to the number of days served or the expenses and mileage. Such compensation shall not affect, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits, when applicable, of such judge.

(2) Senior judges serving as judges of any court other than an appellate or superior court under this Code section or any other provision of law shall receive compensation for each day of service, in the amount of the annual salary of a judge of the applicable court, divided by 235. In addition to such compensation, such senior judges shall receive their actual expenses or, at the judge's option, in the event of service outside the county of the judge's residence, the same per diem expense authorized by law for members of the General Assembly and shall receive mileage at the same rate as state employees for such services. Such compensation, expenses, and mileage shall be paid from funds appropriated or otherwise available

for the operation of the applicable court, upon a certificate by the senior judge as to the number of days served or the expenses and mileage. Such compensation shall not affect, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits, when applicable, of such judge.

~~(e) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty; provided, however, that a senior judge may be assigned, designated, or preside in such a case if the judge had previously been assigned or designated and presided over such case while serving as an elected superior court judge prior to attaining senior judge status."~~

SECTION 17.

Said title is further amended by revising Code Section 15-1-9.3, relating to senior judge of state court, probate court, or juvenile court, and capital cases, as follows:

"15-1-9.3.

(a)(1) Any state court judge or juvenile court judge who retires pursuant to the provisions of Chapter 23 of Title 47 after having served for ten or more years in any combination of service as a judge of a state court or juvenile court may be appointed a senior judge of the type of court from which the judge retired.

(2) Any state court or juvenile court judge, whether or not said judge is a member of the retirement fund created by Chapter 23 of Title 47, who ceases holding office as a judge and who has at least ten years in any combination of service as judge of a state court or juvenile court

at the time of ceasing to hold office and who is not eligible for appointment to the office of senior judge under any other law of this state may be appointed as a senior judge as provided in this Code section.

(3) No judge of a state court or juvenile court who retires because of disability pursuant to the provisions of Chapter 23 of Title 47 shall be eligible for appointment as a senior judge pursuant to the provisions of this Code section.

(4) In this paragraph, 'probate court' has the same meaning as set out in paragraph (2) of Code Section 15-9-120. Any judge of the probate court who ceases holding office as a judge of the probate court after serving as such for at least ten years and who has not been appointed to the office of senior judge under any other law of this state may be appointed as a senior judge as provided in this Code section.

(b) Upon becoming eligible for appointment pursuant to the provisions of this Code section, a judge who ceases to hold office may become a senior judge and in that capacity may be called upon to serve as a justice or judge in any court of this state.

(c) Senior judge status shall be acquired by a qualified former judge's applying to the Governor for appointment as senior judge. The Governor shall appoint each qualified applicant as a senior judge.

(d) The judge of any court of this state may make a written request for assistance to a senior judge. The request by the judge may be made if one of the following circumstances arise:

- (1) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;
- (2) A judge of the requesting court is unable to preside because of disability, illness, or absence; or

(3) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges as provided for in Code Section 15-1-9.1.

(e) An active judge may call upon a senior judge to serve in an emergency or when the volume of cases or other unusual circumstances cause such service to be necessary in order to provide for the timely and efficient disposition of the business of the court.

(f) A senior judge shall receive compensation and expenses as provided in subsection (d) of Code Section 15-1-9.2.

~~(g) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty; provided, however, that a senior judge may be assigned, designated, or preside in such a case if the judge had previously been assigned or designated and presided over such case while serving as an elected superior court judge prior to attaining senior judge status."~~

SECTION 18.

Said title is further amended by revising Code Section 15-3-3, relating to jurisdiction over certain crimes, as follows:

"15-3-3.

Pursuant to Article VI, Section V, Paragraph III of the Constitution of this state, the Court of Appeals shall have jurisdiction of the trial and correction of errors of law in cases involving the crimes of armed robbery, rape, and kidnapping ~~wherein the death penalty has not been imposed."~~

SECTION 19.

Said title is further amended in Code Section 15-12-142, relating to separation and confinement, by revising subsection (a) as follows:

"(a) At any time during the trial of a civil or criminal case, ~~except in capital cases,~~ either before or during jury deliberation, the judge may, in his or her discretion, allow the jury to be separated and the members thereof to be dispersed under appropriate instructions."

SECTION 20.

Said title is further amended by revising Code Section 15-12-160.1, relating to impanelling jurors for criminal trials and choosing and summoning prospective jurors if necessary to fill panel, as follows:

"15-12-160.1.

On and after July 1, 2012, when any person stands indicted for a felony, the court shall have impaneled 30 jurors from which the defense and prosecution may strike jurors; ~~provided, however, that in any case in which the state announces its intention to seek the death penalty, the court shall have impaneled 42 jurors from which the defense and state may strike jurors.~~ If, for any reason, after striking from the panel there remain fewer than 12 qualified jurors to try the case, the clerk shall choose and cause to be summoned such numbers of persons who are competent prospective jurors as may be necessary to provide a full panel or successive panels. In making up the panel or successive panels, the clerk shall choose the names of prospective trial jurors in the same manner as prospective trial jurors are chosen and cause such persons to be summoned."

SECTION 21.

Said title is further amended in Code Section 15-12-164, relating to questions on voir dire and setting aside juror for cause, by revising subsection (a) as follows:

"(a) On voir dire examination in a felony trial, the jurors shall be asked the following questions:

(1) 'Have you, for any reason, formed and expressed any opinion in regard to the guilt or innocence of the accused?' If the juror answers in the negative, the question in paragraph (2) of this subsection shall be propounded to him or her;

(2) 'Have you any prejudice or bias resting on your mind either for or against the accused?' If the juror answers in the negative, the question in paragraph (3) of this subsection shall be propounded to him or her;

(3) 'Is your mind perfectly impartial between the state and the accused?' If the juror answers this question in the affirmative, ~~he~~ the juror shall be adjudged and held to be a competent juror in all cases ~~where the authorized penalty for the offense does not involve the life of the accused; but when it does involve the life of the accused, the question in paragraph (4) of this subsection shall also be put to him;~~

~~(4) 'Are you conscientiously opposed to capital punishment?' If the juror answers this question in the negative, he shall be held to be a competent juror."~~

SECTION 22.

Said title is further amended by revising Code Section 15-12-165, relating to number of peremptory challenges, as follows:

"15-12-165.

Every person accused of a felony may peremptorily challenge nine of the jurors impaneled to try him or her. The state shall be allowed the same number of peremptory challenges allowed to the accused; ~~provided, however, that in any case in which the state announces its intention to seek the death penalty, the accused may peremptorily challenge 15 jurors and the state shall be allowed the same number of peremptory challenges.~~"

SECTION 23.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended in Code Section 16-1-3, relating to definitions, by revising paragraph (5) as follows:

"(5) 'Felony' means a crime punishable ~~by death~~, by imprisonment for life, or by imprisonment for more than 12 months."

SECTION 24.

Said title is further amended by revising Code Section 16-4-6, relating to penalties for criminal attempt, as follows:

"16-4-6.

(a) A person convicted of the offense of criminal attempt to commit a crime punishable ~~by death or~~ by life imprisonment shall be punished by imprisonment for not less than one year nor more than 30 years.

(b) A person convicted of the offense of criminal attempt to commit a felony, other than a felony punishable by ~~death or~~ life imprisonment, shall be punished by imprisonment for not less than one year nor more than one-half the maximum period of time for which he or she could have been sentenced if he or she had been convicted of the crime attempted, by one-half the maximum fine to which he or she could have

been subjected if he or she had been convicted of the crime attempted, or both.

(c) A person convicted of the offense of criminal attempt to commit a misdemeanor shall be punished as for a misdemeanor."

SECTION 25.

Said title is further amended in Code Section 16-4-7, relating to criminal solicitation, by revising subsection (b) as follows:

"(b) A person convicted of the offense of criminal solicitation to commit a felony shall be punished by imprisonment for not less than one nor more than three years. A person convicted of the offense of criminal solicitation to commit a crime punishable ~~by death or~~ by life imprisonment shall be punished by imprisonment for not less than one nor more than five years."

SECTION 26.

Said title is further amended by revising Code Section 16-4-8, relating to conspiracy to commit a crime, as follows:

"16-4-8.

A person commits the offense of conspiracy to commit a crime when he or she together with one or more persons conspires to commit any crime and any one or more of such persons does any overt act to ~~effect~~ affect the object of the conspiracy. A person convicted of the offense of criminal conspiracy to commit a felony shall be punished by imprisonment for not less than one year nor more than one-half the maximum period of time for which he or she could have been sentenced if he or she had been convicted of the crime conspired to have been

committed, by one-half the maximum fine to which he or she could have been subjected if he had been convicted of such crime, or both. A person convicted of the offense of criminal conspiracy to commit a misdemeanor shall be punished as for a misdemeanor. A person convicted of the offense of criminal conspiracy to commit a crime punishable ~~by death~~ ~~or~~ by life imprisonment shall be punished by imprisonment for not less than one year nor more than ten years."

SECTION 27.

Said title is further amended in Code Section 16-5-1, relating to murder, malice murder, felony murder, and murder in the second degree, by revising paragraph (1) of subsection (e) as follows:

"(e)(1) A person convicted of the offense of murder shall be punished ~~by death~~, by imprisonment for life without parole, or by imprisonment for life."

SECTION 28.

Said title is further amended in Code Section 16-5-40, relating to kidnapping, by revising subsection (d) as follows:

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

- (1) Imprisonment for not less than ten nor more than 20 years if the kidnapping involved a victim who was 14 years of age or older;
- (2) Imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, if the kidnapping involved a victim who is less than 14 years of age;
- (3) Life imprisonment ~~or death~~ if the kidnapping was for ransom; or
- (4) Life imprisonment ~~or death~~ if the person kidnapped received bodily

injury."

SECTION 29.

Said title is further amended in Code Section 16-5-44, relating to hijacking an aircraft, by revising subsection (c) as follows:

"(c) A person convicted of the offense of hijacking an aircraft shall be punished by ~~death or~~ life imprisonment."

SECTION 30.

Said title is further amended in Code Section 16-6-1, relating to rape, by revising subsection

(b) as follows:

"(b) A person convicted of the offense of rape shall be punished ~~by death,~~ by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

SECTION 31.

Said title is further amended in Code Section 16-8-41, relating to armed robbery, robbery by intimidation, and taking controlled substance from pharmacy in course of committing offense, by revising subsection (b) as follows:

"(b) A person convicted of the offense of armed robbery shall be punished by ~~death or~~ imprisonment for life or by imprisonment for not less

than ten nor more than 20 years."

SECTION 32.

Said title is further amended in Code Section 16-10-70, relating to perjury, by revising subsection (b) as follows:

"(b) A person convicted of the offense of perjury shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than ten years, or both. A person convicted of the offense of perjury that was a cause of another's being imprisoned shall be sentenced to a term not to exceed the sentence provided for the crime for which the other person was convicted. ~~A person convicted of the offense of perjury that was a cause of another's being punished by death shall be punished by life imprisonment.~~"

SECTION 33.

Said title is further amended in Code Section 16-11-1, relating to treason, by revising subsection (b) as follows:

"(b) A person convicted of the offense of treason shall be punished ~~by death or~~ by imprisonment for life or for not less than 15 years."

SECTION 34.

Said title is further amended in Code Section 16-11-221, relating to penalties regarding domestic terrorism, by revising paragraph (1) of subsection (a) as follows:

"(1) If death results to any individual, ~~by death,~~ by imprisonment for life without parole, or by imprisonment for life;"

SECTION 35.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended in Code Section 17-3-1, relating to limitation on prosecutions generally, by revising subsection (b) as follows:

"(b) Except as otherwise provided in Code Section 17-3-2.1, prosecution for other crimes punishable by ~~death or~~ life imprisonment shall be commenced within seven years after the commission of the crime except as provided by subsection (d) of this Code section; provided, however, that prosecution for the crime of forcible rape shall be commenced within 15 years after the commission of the crime."

SECTION 36.

Said title is further amended in Code Section 17-5-56, relating to maintenance of physical evidence containing biological material, by revising subsection (b) as follows:

"(b) ~~In a case in which the death penalty is imposed, the evidence shall be maintained until the sentence in the case has been carried out.~~ Evidence in all felony cases that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the crime shall be maintained for the period of time that the crime remains unsolved or until the sentence in the case is completed, whichever occurs last."

SECTION 37.

Said title is further amended in Code Section 17-6-1, relating to where offenses bailable, procedure, schedule of bails, and appeal bonds, by

revising subsection (h) as follows:

"(h) Except in cases in which life imprisonment ~~or the death penalty~~ may be imposed, a judge of the superior court by written order may delegate the authority provided for in this Code section to any judge of any court of inquiry within such superior court judge's circuit. However, such authority may not be exercised outside the county in which said judge of the court of inquiry was appointed or elected. The written order delegating such authority shall be valid for a period of one year, but may be revoked by the superior court judge issuing such order at any time prior to the end of that one-year period."

SECTION 38.

Said title is further amended by revising Code Section 17-7-50, relating to right to grand jury hearing within 90 days where bail refused and right to have bail set absent hearing within 90 day period, as follows:

"17-7-50.

Any person who is arrested for a crime and who is refused bail shall, within 90 days after the date of confinement, be entitled to have the charge against him or her heard by a grand jury having jurisdiction over the accused person; ~~provided, however, that if the person is arrested for a crime for which the death penalty is being sought, the superior court may, upon motion of the district attorney for an extension and after a hearing and good cause shown, grant one extension to the 90 day period not to exceed 90 additional days; and, provided, further, that if such extension is granted by the court, the person shall not be entitled to have the charge against him or her heard by the grand jury until the expiration of such extended period. In the event no grand jury considers the charges against the accused person within the 90 day period of~~

~~confinement or within the extended period of confinement where such an extension is granted by the court, the accused shall have bail set upon application to the court."~~

SECTION 39.

Said title is further amended by revising Code Section 17-7-50.1, relating to time for presentment of child's case to a grand jury and exception, as follows:

"17-7-50.1.

(a) Any child who is charged with a crime that is within the jurisdiction of the superior court, as provided in Code Section 15-11-560 or 15-11-561, who is detained shall within 180 days of the date of detention be entitled to have the charge against him or her presented to the grand jury. The superior court shall, upon motion for an extension of time and after a hearing and good cause shown, grant one extension to the original 180 day period, not to exceed 90 additional days.

(b) If the grand jury does not return a true bill against the detained child within the time limitations set forth in subsection (a) of this Code section, the detained child's case shall be transferred to the juvenile court and shall proceed thereafter as provided in Chapter 11 of Title 15.

~~(c) The provisions of this Code section shall not apply to any case in which the prosecuting attorney files notice with the court that the detained child is a codefendant to a case in which an adult is charged with committing the same offense and the state has filed a notice of its intention to seek the death penalty."~~

SECTION 40.

Said title is further amended by revising Code Section 17-7-70, relating to trial upon accusations in felony cases and trial upon accusations of felony and misdemeanor cases in which guilty plea entered and indictment waived, as follows:

"17-7-70.

(a) In all felony cases, ~~other than cases involving capital felonies,~~ in which defendants have been bound over to the superior court, are confined in jail or released on bond pending a commitment hearing, or are in jail having waived a commitment hearing, the district attorney shall have authority to prefer accusations, and such defendants shall be tried on such accusations, provided that defendants going to trial under such accusations shall, in writing, waive indictment by a grand jury.

(b) Judges of the superior court may open their courts at any time without the presence of either a grand jury or a trial jury to receive and act upon pleas of guilty in misdemeanor cases and in felony cases, except those punishable by ~~death or~~ life imprisonment, when the judge and the defendant consent thereto. The judge may try the issues in such cases without a jury upon an accusation filed by the district attorney where the defendant has waived indictment and consented thereto in writing and counsel is present in court representing the defendant either by virtue of his or her employment or by appointment by the court."

SECTION 41.

Said title is further amended in Code Section 17-7-95, relating to plea of nolo contendere in noncapital felony cases, imposition of sentence, use of plea in other proceedings, use of plea to effect civil disqualifications, and imposition of sentence upon plea deemed jeopardy, by revising subsection (a) as follows:

"(a) The defendant in all criminal cases ~~other than capital felonies~~ in any court of this state, whether the offense charged is a felony or a misdemeanor, may, with the consent and approval of the judge of the court, enter a plea of nolo contendere instead of a plea of guilty or not guilty."

SECTION 42.

Said title is further amended by revising Code Section 17-7-131, relating to proceedings upon plea of insanity or mental incompetency at time of crime, as follows:

"17-7-131.

(a) For purposes of this Code section, the term:

(1) 'Insane at the time of the crime' means meeting the criteria of Code Section 16-3-2 or 16-3-3. However, the term shall not include a mental state manifested only by repeated unlawful or antisocial conduct.

(2) 'Intellectual disability' means having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period.

(3) 'Mentally ill' means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. However, the term 'mental illness' shall not include a mental state manifested only by repeated unlawful or antisocial conduct.

(b)(1) In all cases in which the defense of insanity, mental illness, or intellectual disability is interposed, the jury, or the court if tried by it, shall find whether the defendant is:

(A) Guilty;

(B) Not guilty;

(C) Not guilty by reason of insanity at the time of the crime;

(D) Guilty but mentally ill at the time of the crime, but the finding of guilty but mentally ill shall be made only in felony cases; or

(E) Guilty but with intellectual disability, but the finding of intellectual disability shall be made only in felony cases.

(2) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but with intellectual disability shall not be accepted until the defendant has undergone examination

by a licensed psychologist or psychiatrist and the court has examined the psychological or psychiatric reports, held a hearing on the issue of the defendant's mental condition, and is satisfied that there is a factual basis that the defendant was mentally ill at the time of the offense or has intellectual disability to which the plea is entered.

(2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be accepted and the defendant adjudicated not guilty by reason of insanity by the court without a jury until the defendant has undergone examination by a licensed psychologist or psychiatrist and the court has examined the psychological or psychiatric reports, has held a hearing on the issue of the defendant's mental condition, and the court is satisfied that the defendant was insane at the time of the crime according to the criteria of Code Section 16-3-2 or 16-3-3.

(3) In all cases in which the defense of insanity, mental illness, or intellectual disability is interposed, the trial judge shall charge the jury, in addition to other appropriate charges, the following:

(A) I charge you that should you find the defendant not guilty by reason of insanity at the time of the crime, the defendant will be committed to a state mental health facility until such time, if ever,

that the court is satisfied that he or she should be released pursuant to law.

(B) I charge you that should you find the defendant guilty but mentally ill at the time of the crime, the defendant will be placed in the custody of the Department of Corrections which will have responsibility for the evaluation and treatment of the mental health needs of the defendant, which may include, at the discretion of the Department of Corrections, referral for temporary hospitalization at a facility operated by the Department of Behavioral Health and Developmental Disabilities.

(C) I charge you that should you find the defendant guilty but with intellectual disability, the defendant will be placed in the custody of the Department of Corrections, which will have responsibility for the evaluation and treatment of the mental health needs of the defendant, which may include, at the discretion of the Department of Corrections, referral for temporary hospitalization at a facility operated by the Department of Behavioral Health and Developmental Disabilities.

(c) In all criminal trials in any of the courts of this state wherein an accused shall contend that he or she was insane, mentally ill, or intellectually disabled at the time the act or acts charged against him or her were committed, the trial judge shall instruct the jury that they may consider, in addition to verdicts of 'guilty' and 'not guilty,' the additional verdicts of 'not guilty by reason of insanity at the time of the crime,' 'guilty but mentally ill at the time of the crime,' and 'guilty but with intellectual disability.'

(1) The defendant may be found 'not guilty by reason of insanity at the time of the crime' if he or she meets the criteria of Code Section 16-3-

2 or 16-3-3 at the time of the commission of the crime. If the court or jury should make such finding, it shall so specify in its verdict.

(2) The defendant may be found 'guilty but mentally ill at the time of the crime' if the jury, or court acting as trier of facts, finds beyond a reasonable doubt that the defendant is guilty of the crime charged and was mentally ill at the time of the commission of the crime. If the court or jury should make such finding, it shall so specify in its verdict.

(3) The defendant may be found 'guilty but with intellectual disability' if the jury, or court acting as trier of facts, finds beyond a reasonable doubt that the defendant is guilty of the crime charged and is with intellectual disability. If the court or jury should make such finding, it shall so specify in its verdict.

(d) Whenever a defendant is found not guilty by reason of insanity at the time of the crime, the court shall retain jurisdiction over the person so acquitted and shall order such person to be detained in a state mental health facility, to be selected by the Department of Behavioral Health and Developmental Disabilities, for a period not to exceed 30 days from the date of the acquittal order, for evaluation of the defendant's present mental condition. Upon completion of the evaluation, the proper officials of the mental health facility shall send a report of the defendant's present mental condition to the trial judge, the prosecuting attorney, and the defendant's attorney, if any.

(e)(1) After the expiration of the 30 days' evaluation period in the state mental health facility, if the evaluation report from the Department of Behavioral Health and Developmental Disabilities indicates that the defendant does not meet the inpatient commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the trial judge

may issue an order discharging the defendant from custody without a hearing.

(2) If the defendant is not so discharged, the trial judge shall order a hearing to determine if the defendant meets the inpatient commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37. If such criteria are not met, the defendant must be discharged.

(3) The defendant shall be detained in custody until completion of the hearing. The hearing shall be conducted at the earliest opportunity after the expiration of the 30 days' evaluation period but in any event within 30 days after receipt by the prosecuting attorney of the evaluation report from the mental health facility. The court may take judicial notice of evidence introduced during the trial of the defendant and may call for testimony from any person with knowledge concerning whether the defendant is currently a mentally ill person in need of involuntary treatment, as defined by paragraph (12) of Code Section 37-3-1, or a person with a developmental disability, as defined in paragraph (8) of Code Section 37-1-1, who presents a substantial risk of imminent harm to himself or herself or others. The prosecuting attorney may cross-examine the witnesses called by the court and the defendant's witnesses and present relevant evidence concerning the issues presented at the hearing.

(4) If the judge determines that the defendant meets the inpatient commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the judge shall order the defendant to be committed to the Department of Behavioral Health and Developmental Disabilities to receive involuntary treatment under Chapter 3 of Title 37 or to receive services under Chapter 4 of Title 37. The defendant is entitled to the following rights specified below and shall be notified in writing of

these rights at the time of his or her admission for evaluation under subsection (d) of this Code section. Such rights are:

- (A) A notice that a hearing will be held and the time and place thereof;
 - (B) A notice that the defendant has the right to counsel and that the defendant or his or her representatives may apply immediately to the court to have counsel appointed if the defendant cannot afford counsel and that the court will appoint counsel for the defendant unless he or she indicates in writing that he or she does not desire to be represented by counsel;
 - (C) The right to confront and cross-examine witnesses and to offer evidence;
 - (D) The right to subpoena witnesses and to require testimony before the court in person or by deposition from any person upon whose evaluation the decision of the court may rest;
 - (E) Notice of the right to have established an individualized service plan specifically tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title 37 and Chapter 4 of Title 37; and
 - (F) A notice that the defendant has the right to be examined by a physician or a licensed clinical psychologist of his or her own choice at his or her own expense and to have that physician or psychologist submit a suggested service plan for the patient which conforms with the requirements of Chapter 3 of Title 37 or Chapter 4 of Title 37, whichever is applicable.
- (5)(A) If a defendant appears to meet the criteria for outpatient involuntary treatment as defined in Part 3 of Article 3 of Chapter 3 of Title 37, which shall be the criteria for release on a trial basis in the community in preparation for a full release, the court may order

a period of conditional release subject to certain conditions set by the court. The court is authorized to appoint an appropriate community service provider to work in conjunction with the Department of Behavioral Health and Developmental Disabilities to monitor the defendant's compliance with these conditions and to make regular reports to the court.

(B) If the defendant successfully completes all requirements during this period of conditional release, the court shall discharge the individual from commitment at the end of that period. Such individuals may be referred for community mental health, developmental disabilities, or substance abuse services as appropriate. The court may require the individual to participate in outpatient treatment or any other services or programs authorized by Chapter 3, 4, or 7 of Title 37.

(C) If the defendant does not successfully complete any or all requirements of the conditional release period, the court may:

- (i) Revoke the period of conditional release and return the defendant to a state hospital for inpatient services; or
- (ii) Impose additional or revise existing conditions on the defendant as appropriate and continue the period of conditional release.

(D) For any decision rendered under subparagraph (C) of this paragraph, the defendant may request a review by the court of such decision within 20 days of the order of the court.

(E) The Department of Behavioral Health and Developmental Disabilities and any community services providers, including the employees and agents of both, providing supervision or treatment during a period of conditional release shall not be held criminally

or civilly liable for any acts committed by a defendant placed by the committing court on a period of conditional release.

(f) A defendant who has been found not guilty by reason of insanity at the time of the crime and is ordered committed to the Department of Behavioral Health and Developmental Disabilities under subsection (e) of this Code section may only be discharged from that commitment by order of the committing court in accordance with the procedures specified in this subsection:

(1) Application for the release of a defendant who has been committed to the Department of Behavioral Health and Developmental Disabilities under subsection (e) of this Code section upon the ground that he or she does not meet the civil commitment criteria under Chapter 3 of Title 37 or Chapter 4 of Title 37 may be made to the committing court, either by such defendant or by the superintendent of the state hospital in which the said defendant is detained;

(2) The burden of proof in such release hearing shall be upon the applicant. The defendant shall have the same rights in the release hearing as set forth in subsection (e) of this Code section; and

(3) If the finding of the court is adverse to release in such hearing held pursuant to this subsection on the grounds that such defendant does meet the inpatient civil commitment criteria, a further release application by the defendant shall not be heard by the court until 12 months have elapsed from the date of the hearing upon the last preceding application. The Department of Behavioral Health and Developmental Disabilities shall have the independent right to request a release hearing once every 12 months.

(g)(1) Whenever a defendant is found guilty but mentally ill at the time of a felony or guilty but has intellectual disability, or enters a plea

to that effect that is accepted by the court, the court shall sentence him or her in the same manner as a defendant found guilty of the offense; ~~except as otherwise provided in subsection (j) of this Code section.~~ A defendant who is found guilty but mentally ill at the time of the felony or guilty but has intellectual disability shall be committed to an appropriate penal facility and shall be evaluated then treated, if indicated, within the limits of state funds appropriated therefor, in such manner as is psychiatrically indicated for his or her mental illness or intellectual disability.

(2) If at any time following the defendant's conviction as a guilty but mentally ill or guilty but with intellectual disability offender it is determined that a temporary transfer to the Department of Behavioral Health and Developmental Disabilities is clinically indicated for his or her mental illness or intellectual disability, then the defendant shall be transferred to the Department of Behavioral Health and Developmental Disabilities pursuant to procedures set forth in regulations of the Department of Corrections and the Department of Behavioral Health and Developmental Disabilities. In all such cases, the legal custody of the defendant shall be retained by the Department of Corrections. Upon notification from the Department of Behavioral Health and Developmental Disabilities to the Department of Corrections that hospitalization at a Department of Behavioral Health and Developmental Disabilities facility is no longer clinically indicated for his or her mental illness or intellectual disability, the Department of Corrections shall transfer the defendant back to its physical custody and shall place such individual in an appropriate penal institution.

(h) If a defendant who is found guilty but mentally ill at the time of a

felony or guilty but with intellectual disability is placed on probation under the 'State-wide Probation Act,' Article 2 of Chapter 8 of Title 42, the court may require that the defendant undergo available outpatient medical or psychiatric treatment or seek similar available voluntary inpatient treatment as a condition of probation. Persons required to receive such services may be charged fees by the provider of the services.

(i) In any case in which the defense of insanity is interposed or a plea of guilty but mentally ill at the time of the felony or a plea of guilty but with intellectual disability is made and an examination is made of the defendant pursuant to Code Section 17-7-130.1 or paragraph (2) of subsection (b) of this Code section, upon the defendant's being found guilty or guilty but mentally ill at the time of the crime or guilty but with intellectual disability, a copy of any such examination report shall be forwarded to the Department of Corrections with the official sentencing document. The Department of Behavioral Health and Developmental Disabilities shall forward, in addition to its examination report, any records maintained by such department that it deems appropriate pursuant to an agreement with the Department of Corrections, within ten business days of receipt by the Department of Behavioral Health and Developmental Disabilities of the official sentencing document from the Department of Corrections.

~~(j)(1) In the trial of any case in which the death penalty is sought which commences on or after July 1, 1988, should the judge find in accepting a plea of guilty but mentally retarded, or the jury or court find in its verdict that the defendant is guilty of the crime charged but mentally retarded, the death penalty shall not be imposed and the court shall sentence the defendant to imprisonment for life.~~

~~(2) In the trial of any case in which the death penalty is sought which commences on or after July 1, 2017, should the judge find in accepting a plea of guilty but with intellectual disability, or the jury or court find in its verdict that the defendant is guilty of the crime charged but with intellectual disability, the death penalty shall not be imposed and the court shall sentence the defendant to imprisonment for life."~~

SECTION 43.

Said title is further amended in Code Section 17-7-171, relating to time for demand for speedy trial in capital cases, discharge and acquittal where no trial held before end of two court terms of demand, and counting of terms in cases in which death penalty is sought, by revising subsection (c) as follows:

~~"(c) In cases involving a capital offense for which the death penalty is sought, if a demand for speedy trial is entered, the counting of terms under subsection (b) of this Code section shall not begin until the convening of the first term following the completion of pretrial review proceedings in the Supreme Court under Code Section 17-10-35.1. Reserved."~~

SECTION 44.

Said title is further amended in Code Section 17-8-4, relating to procedure for trial of jointly indicted defendants, right of defendants to testify for or against one another, order of separate trials, acquittal or conviction where offense requires joint action or concurrence, and number of strikes allowed defendants, by revising subsection (a) as follows:

~~"(a) When two or more defendants are jointly indicted for a capital offense, any defendant so electing shall be separately tried unless the state shall~~

~~waive the death penalty. When indicted for a capital felony when the death penalty is waived, or for a felony less than capital, or for a misdemeanor,~~ such defendants may be tried jointly or separately in the discretion of the trial court. In any event, a jointly indicted defendant may testify for another jointly indicted defendant or on behalf of the state. When separate trials are ordered in any case, the defendants shall be tried in the order requested by the state. If the offense requires joint action and concurrence of two or more persons, acquittal or conviction of one defendant shall not operate as acquittal or conviction of others not tried."

SECTION 45.

Said title is further amended in Code Section 17-8-5, relating to recordation of testimony in felony cases, entering testimony on minutes of court where guilty verdict found, preparation of transcript where death sentence imposed, and preparation of transcript where mistrial results in felony case, by revising subsection (a) as follows:

"(a) On the trial of all felonies the presiding judge shall have the testimony taken down and, when directed by the judge, the court reporter shall exactly and truly record or take stenographic notes of the testimony and proceedings in the case, except the argument of counsel. In the event of a verdict of guilty, the testimony shall be entered on the minutes of the court or in a book to be kept for that purpose. ~~In the event that a sentence of death is imposed, the transcript of the case shall be prepared within 90 days after the sentence is imposed by the trial court. Upon petition by the court reporter, the Chief Justice of the Supreme Court of Georgia may grant an additional period of time for preparation of the transcript, such period not to exceed 60 days. The requirement that a transcript be prepared~~

~~within a certain period in cases in which a sentence of death is imposed shall not inure to the benefit of a defendant."~~

SECTION 46.

Said title is further amended in Code Section 17-8-31, relating to grounds for granting of continuances, party, leading attorney, or material witness in attendance on active duty as member of National Guard or component of armed forces of the United States, and setting bail in certain cases, by revising subsection (d) as follows:

"(d) In any case in which the court grants the state a continuance pursuant to subsection (c) of this Code section, the defendant shall have bail set upon application to the court, except in those cases punishable by ~~death or~~ imprisonment for life without parole. In any case in which the defendant is accused of committing a serious violent felony, as defined by subsection (a) of Code Section 17-10-6.1, the court shall consider but shall not be required to set bail."

SECTION 47.

Said title is further amended by revising Code Section 17-8-73, relating to time limits on closing argument in noncapital and capital felony cases, as follows:

"17-8-73.

In felony cases ~~other than those involving capital felonies~~, counsel shall be limited in their closing arguments to one hour for each side. ~~In cases involving capital felonies, counsel shall be limited to two hours for each side."~~

SECTION 48.

Said title is further amended by revising Code Section 17-9-3, relating to recommendations for mercy in capital cases other than those of homicide, effect of no recommendation for mercy in capital cases generally, and where defendant under age of 17 at time of commission of offense, as follows:

"17-9-3.

~~In all capital cases, other than those of homicide, when the verdict is 'guilty,' with a recommendation for mercy, it shall be legal and shall mean imprisonment for life. When the verdict is 'guilty,' without a recommendation for mercy, it shall be legal and shall mean that the convicted person shall be sentenced to death. When it is shown that a person convicted of a capital offense without a recommendation for mercy had not reached his seventeenth birthday at the time of the commission of the offense, the punishment of such person shall not be death but shall be imprisonment for life. Reserved.~~"

SECTION 49.

Said title is further amended in Code Section 17-10-1, relating to fixing of sentence, suspension or probation of sentence, change in sentence, eligibility for parole, prohibited modifications, and exceptions, by revising paragraph (1) of subsection (a) as follows:

"(a)(1)(A) Except in cases in which life imprisonment, or life without parole, ~~or the death penalty~~ may be imposed, upon a verdict or plea of guilty in any case involving a misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence shall prescribe a determinate sentence for a specific number of months or years which shall be within the minimum and maximum sentences prescribed by

law as the punishment for the crime. The judge imposing the sentence is granted power and authority to suspend or probate all or any part of the entire sentence under such rules and regulations as the judge deems proper, including service of a probated sentence in the sentencing options system, as provided by Article 6 of Chapter 3 of Title 42, and including the authority to revoke the suspension or probation when the defendant has violated any of the rules and regulations prescribed by the court, even before the probationary period has begun, subject to the conditions set out in this subsection; provided, however, that such action shall be subject to the provisions of Code Sections 17-10-6.1 and 17-10-6.2.

(B) When a defendant with no prior felony conviction is convicted of felony offenses or is charged with felony offenses and is sentenced pursuant to subsection (a) or (c) of Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42, and the court imposes a sentence of probation or not more than 12 months of imprisonment followed by a term of probation, the court shall include a behavioral incentive date in its sentencing order that does not exceed three years from the date such sentence is imposed. Within 60 days of the expiration of such incentive date, if the defendant has not been arrested for anything other than a nonserious traffic offense as defined in Code Section 35-3-37, has been compliant with the general and special conditions of probation imposed, and has paid all restitution owed, the Department of Community Supervision shall notify the prosecuting attorney and the court of such facts. The Department of Community Supervision shall provide the court with an order to terminate such defendant's probation which the court shall execute unless the court or the prosecuting attorney requests a hearing on

such matter within 30 days of the receipt of such order. The court shall take whatever action it determines would be for the best interest of justice and the welfare of society."

SECTION 50.

Said title is further amended in Code Section 17-10-1.2, relating to oral victim impact statement, presentation of evidence, cross-examination and rebuttal by defendant, effect of noncompliance, and no creation of cause of action or right of appeal, by revising subsection (a) as follows:

~~"(a)(1) In all cases in which the death penalty may be imposed, subsequent to an adjudication of guilt and in conjunction with the procedures in Code Section 17-10-30, the court shall allow evidence from the family of the victim, or such other witness having personal knowledge of the victim's personal characteristics and the emotional impact of the crime on the victim, the victim's family, or the community. Except as provided in paragraph (4) of this subsection, such evidence shall be given in the presence of the defendant and of the jury and shall be subject to cross-examination.~~

~~(2) The admissibility of the evidence described in paragraph (1) of this subsection and the number of witnesses other than immediate family who may testify shall be in the sole discretion of the judge and in any event shall be permitted only in such a manner and to such a degree as not to inflame or unduly prejudice the jury. As used in this paragraph, the term 'immediate family' means the victim's spouse, child, parent, stepparent, grandparent, grandchild, sibling, stepbrother, stepsister, mother in law, father in law, sister in law, or brother in law and the spouses of any such individuals.~~

~~(3)(1) In all cases other than those in which the death penalty may be~~

~~imposed, prior~~ Prior to fixing of the sentence as provided for in Code Section 17-10-1 or the imposing of life imprisonment as mandated by law, and before rendering the appropriate sentence, including any order of restitution, the court shall allow the victim, as such term is defined in Code Section 17-17-3, the family of the victim, or such other witness having personal knowledge of the crime to testify about the impact of the crime on the victim, the family of the victim, or the community. Except as provided in paragraph ~~(4)~~(2) of this subsection, such evidence shall be given in the presence of the defendant and shall be subject to cross-examination. The admissibility of the testimony and evidence in support of such testimony shall be in the sole discretion of the judge and in any event shall be permitted only in such a manner as to allow for cross-examination by the defendant and to such a degree as not to unduly prejudice the defendant. If the judge excludes the testimony or evidence in support of such testimony, the state shall be allowed to make a proffer of such testimony or evidence.

~~(4)~~(2) Upon a finding by the court specific to the case and the witness that the witness would not be able to testify in person without showing undue emotion or that testifying in person will cause the witness severe physical or emotional distress or trauma, evidence presented pursuant to this subsection may be in the form of, but not limited to, a written statement or a prerecorded audio or video statement, provided that such witness is subject to cross-examination and the evidence itself will not be available to the jury during deliberations. Photographs of the victim may be included with any evidence presented pursuant to this subsection.

~~(5)~~(3) If the accused has been convicted of a serious violent felony as defined in Code Section 17-10-6.1, attempted murder or attempted

kidnapping, or any violation of Code Section 16-5-90, 16-5-91, 16-7-82, 16-7-84, or 16-7-86, and the victim or a representative of the victim is not present at the presentence hearing, it shall be the duty of the court to inquire of the prosecuting attorney whether or not the victim has been notified of the presentence hearing as provided in Code Section 17-17-5. If the court finds that the prosecuting attorney has not made a reasonable attempt to notify the victim, the presentence hearing shall be recessed in order to provide the victim the opportunity to attend prior to sentence being imposed; provided, however, that prior to recessing the presentence hearing, the court shall allow the state or the accused to call any witnesses who were subpoenaed and are present at such presentence hearing. Following any such testimony, the presentence hearing shall be recessed and the victim shall be notified of the date, time, and location when the presentence hearing shall resume."

SECTION 51.

Said title is further amended by revising Code Section 17-10-2, relating to conduct of presentence hearings in felony cases and effect of reversal for error in presentence hearing, as follows:

"17-10-2.

(a)(1) ~~Except in cases in which the death penalty may be imposed, upon~~
Upon the return of a verdict of 'guilty' by the jury in any felony case, the judge shall dismiss the jury and shall conduct a presentence hearing at which the only issue shall be the determination of punishment to be imposed. In the hearing the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or nolo

contendere of the accused, or the absence of any prior conviction and pleas.

(2) The judge shall also hear argument by the accused or the accused's counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. ~~Except in cases where the death penalty may be imposed, the~~ The prosecuting attorney shall open and conclude the argument. ~~In cases where the death penalty may be imposed, the prosecuting attorney shall open and the accused or the accused's counsel shall conclude the argument.~~

(3) Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence to be imposed under advisement. The judge shall fix a sentence within the limits prescribed by law.

~~(b) In cases in which the death penalty may be imposed, the judge, when sitting without a jury, in addition to the procedure set forth in subsection (a) of this Code section, shall follow the procedures provided for in Code Section 17-10-30.~~

~~(c) In all cases tried by a jury in which the death penalty may be imposed, upon a return of a verdict of 'guilty' by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. The hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided for in subsection (a) of this Code section. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in Code Section 17-10-30, exist and whether to recommend mercy for the accused. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.~~

~~(d)~~(b) If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment."

SECTION 52.

Said title is further amended in Code Section 17-10-6.1, relating to punishment for serious violent offenders, by revising subsection (c) as follows:

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

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

~~(3)~~(2) For a first conviction of a serious violent felony in which the accused has been sentenced to imprisonment for life without parole,

that person shall not be eligible for any form of parole or early release administered by the State Board of Pardons and Paroles or for any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections.

~~(4)~~(3) Except as otherwise provided in this subsection, any sentence imposed for the first conviction of any serious violent felony shall be served in its entirety as imposed by the sentencing court and shall not be reduced by any form of parole or early release administered by the State Board of Pardons and Paroles or by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court; provided, however, that during the final year of incarceration an offender so sentenced shall be eligible to be considered for participation in a department administered transitional center or work release program."

SECTION 53.

Said title is further amended in Code Section 17-10-7, relating to punishment of repeat offenders and punishment and eligibility for parole of persons convicted of fourth felony offense, by revising paragraph (2) of subsection (b) as follows:

"(2) Except as provided in subsection (e) of Code Section 17-10-6.1, any person who has been convicted of a serious violent felony in this state or who has been convicted under the laws of any other state or of the United States of a crime which if committed in this state would be a serious violent felony and who after such first conviction subsequently commits

and is convicted of a serious violent felony ~~for which such person is not sentenced to death~~ shall be sentenced to imprisonment for life without parole. Any such sentence of life without parole shall not be suspended, stayed, probated, deferred, or withheld, and any such person sentenced pursuant to this paragraph shall not be eligible for any form of pardon, parole, or early release administered by the State Board of Pardons and Paroles or for any earned time, early release, work release, leave, or any other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the sentence of life imprisonment without possibility of parole, except as may be authorized by any existing or future provisions of the Constitution."

SECTION 54.

Said title is further amended in Code Section 17-10-9.1, relating to voluntary surrender to county jail or correctional institution and release of defendant, by revising subsection (e) as follows:

~~"(e) The provisions of this Code section shall not apply to any defendant convicted of a capital felony. Reserved."~~

SECTION 55.

Said title is further amended by revising Code Section 17-10-16, relating to sentence to imprisonment for life without parole authorized and ineligibility for parole or leave programs, as follows:

"17-10-16.

~~(a) Notwithstanding any other provision of law, a person who is convicted of an offense committed after May 1, 1993, for which the~~

~~death penalty may be imposed under the laws of this state may be sentenced to death, imprisonment for life without parole, or life imprisonment as provided in Article 2 of this chapter.~~

~~(b) Notwithstanding any other provision of law, any person who is convicted of an offense for which the death penalty may be imposed and who is sentenced to imprisonment for life without parole shall not be eligible for any form of parole during such person's natural life unless the State Board of Pardons and Paroles or a court of this state shall, after notice and public hearing, determine that such person was innocent of the offense for which the sentence of imprisonment for life without parole was imposed. Such person shall not be eligible for any work release program, leave, or any other program administered by the Department of Corrections the effect of which would be to reduce the term of actual imprisonment to which such person was sentenced. Reserved."~~

SECTION 56.

Said title is further amended by repealing Code Section 17-10-16.1, relating to seeking death penalty not prerequisite to life without parole sentence, in its entirety.

SECTION 57.

Said title is further amended in Chapter 10, relating to sentence and punishment, by deleting the designation of Article 1, relating to procedure for sentencing and imposition of punishment, and by repealing Article 2, relating to the death penalty generally, and Article 3, relating to mentally incompetent to be executed, in their entirety.

SECTION 58.

Said title is further amended in Chapter 11, relating to assessment and payment of costs of criminal proceedings, by deleting the designation of Article 1, relating to general provisions, and by repealing Article 2, relating to reimbursement of counties for expenses of capital felony prosecutions, in its entirety.

SECTION 59.

Said title is further amended in Code Section 17-12-5, relating to the director of the Public Defender Standards Council, qualifications, powers, and responsibilities, by revising paragraph (1) of subsection (b) as follows:

"(b)(1) The director shall work with and provide support services and programs for circuit public defender offices and other attorneys representing indigent persons in criminal or juvenile cases in order to improve the quality and effectiveness of legal representation of such persons and otherwise fulfill the purposes of this chapter. Such services and programs shall include, but shall not be limited to, technical, research, and administrative assistance; educational and training programs for attorneys, investigators, and other staff; assistance with the representation of indigent defendants with mental disabilities; assistance with the representation of juveniles; ~~assistance with death penalty cases;~~ and assistance with appellate advocacy."

SECTION 60.

Said title is further amended by revising Code Section 17-12-12, relating to the Georgia capital defender division, duties, responsibilities, and management, as follows:

"17-12-12.

~~(a) The Georgia capital defender division shall represent all indigent persons charged with a capital felony for which the death penalty is being sought in any court in this state and shall be the successor to the Office of the Georgia Capital Defender created by Article 6 of this chapter as it existed on June 30, 2008. Any assets or resources of the Office of the Georgia Capital Defender shall be transferred to the council. The Georgia capital defender division shall serve all counties of this state.~~

~~(b) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be an indigent person who has requested the assistance of counsel, the court in which the charges are pending shall notify the Georgia capital defender division, and the division shall assume the defense of such person except as provided in Code Section 17-12-12.1.~~

~~(c) No person shall be assigned the primary responsibility of representing an indigent person accused of a capital offense for which the death penalty is sought unless such person is authorized to practice law in this state and is otherwise competent to counsel and defend a person charged with a capital felony.~~

~~(d) The Georgia capital defender division or appointed counsel's defense of a defendant in a case in which the death penalty is sought shall include all proceedings in the trial court and any appeals to the Supreme Court of Georgia. Neither the Georgia capital defender division nor appointed counsel shall assist with any petition for a writ of habeas corpus in federal court.~~

~~(e) The director shall be responsible for management of the Georgia capital defender division; provided, however, that the director may~~

~~delegate day-to-day operations of the division to the capital defender.~~
Reserved."

SECTION 61.

Said title is further amended by repealing Code Section 17-12-12.1, relating to payment of attorney in event of conflict of interest in capital cases, number of attorneys appointed, county governing authority's financial responsibility, and expenses, in its entirety.

SECTION 62.

Said title is further amended by revising Code Section 17-13-34, relating to arrest without warrant of a person charged with a crime in another state, as follows:

"17-13-34.

The arrest of a person may be lawfully made by any peace officer or private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by ~~death or~~ imprisonment for a term exceeding one year, but when so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him or her under oath, setting forth the ground for the arrest, as provided in Code Section 17-13-33; and thereafter the answer of the accused shall be heard as if he or she had been arrested on a warrant."

SECTION 63.

Said title is further amended by revising Code Section 17-13-36, relating to granting of bail, as follows:

"17-13-36.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by ~~death or~~ life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the prisoner to bail by bond, with sufficient sureties, in such sum as he or she deems proper, conditioned for the prisoner's appearance before the judge or magistrate at a time specified in such bond and for the prisoner's surrender to be arrested upon the warrant of the Governor of this state."

SECTION 64.

Said title is further amended by revising Code Section 17-16-2, relating to applicability of article, as follows:

"17-16-2.

- (a) This article shall apply to all criminal cases in which at least one felony offense is charged in the event that at or prior to arraignment, or at such time as the court permits, the defendant provides written notice to the prosecuting attorney that such defendant elects to have this article apply to the defendant's case. When one defendant in a multidefendant case demands discovery under this article, the provisions of this article shall apply to all defendants in the case, unless a severance is granted.
- (b) Except as provided in subsection (c) of this Code section, this article shall not apply to juvenile court proceedings.
- (c) This article shall be deemed to have been automatically invoked, without the written notice provided for in subsection (a) of this Code section, when a defendant has sought discovery pursuant to Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' pursuant to Part 8 of Article 6 of Chapter 11 of Title 15, or pursuant to the Uniform Rules for the Juvenile Courts of Georgia where such discovery material is the same

as the discovery material that may be provided under this article when a written notice is filed pursuant to subsection (a) of this Code section.

(d) Except as provided under Code Section 17-16-8, this article is not intended to authorize discovery or inspection of attorney work product.

(e) This article shall apply also to all criminal cases in which at least one felony offense is charged which was docketed, indicted, or in which an accusation was returned prior to January 1, 1995, if both the prosecuting attorney and the defendant agree in writing that the provisions of this article shall apply to the case.

~~(f) Except as provided in paragraph (3) of subsection (b) of Code Section 17-16-4, if a defendant has elected to have the provisions of this article apply, the provisions of this article shall also apply to sentencing hearings and the sentencing phase of a death penalty trial."~~

SECTION 65.

Said title is further amended by revising Code Section 17-17-12, relating to notification to victim of accused's motion for new trial or appeal, release on bail of recognizance, appellate proceedings, and outcome of appeal, notifications regarding death penalty cases, and victim's rights retained at new trial or on appeal, as follows:

"17-17-12.

(a) Upon the written request of the victim, the prosecuting attorney shall notify the victim of the following:

- ~~(1)~~ That the accused has filed a motion for new trial, an appeal of his or her conviction, or an extraordinary motion for new trial;
- ~~(2)~~ Whether the accused has been released on bail or other recognizance pending the disposition of the motion or appeal;
- ~~(3)~~ The time and place of any appellate court proceedings relating

to the motion or appeal and any changes in the time or place of those proceedings; and

~~(4)~~ The result of the motion or appeal.

(b) The Attorney General shall notify the prosecuting attorney of the filing of collateral attacks on convictions of this state which are being defended by the Attorney General.

~~(b.1) In cases in which the accused is convicted of a capital offense and receives the death penalty, the Attorney General shall:~~

~~(1) Notify the prosecuting attorney and upon the written request of the victim notify the victim of the filing and disposition of all collateral attacks on such conviction which are being defended by the Attorney General, including, but not limited to, petitions for a writ of habeas corpus, and the time and place of any such proceedings and any changes in the time or place of those proceedings; and~~

~~(2) Provide the prosecuting attorney and upon the written request of the victim provide the victim with a report on the status of all pending appeals, collateral attacks, and other litigation concerning such conviction which is being defended by the Attorney General at least every six months until the accused dies or the sentence or conviction is overturned or commuted or otherwise reduced to a sentence other than the death penalty.~~

(c) In the event the accused is granted a new trial or the conviction is reversed or remanded and the case is returned to the trial court for further proceedings, the victim shall be entitled to request the rights and privileges provided by this chapter."

SECTION 66.

Said title is further amended by revising Code Section 17-17-13, relating

to notification to victim of impending parole, release for period exceeding 60 days, or pardon, and notice of hearing on request to commute death sentence, as follows:

"17-17-13.

The State Board of Pardons and Paroles shall give 20 days' advance notification to a victim whenever it considers making a final decision to grant parole, release a defendant for a period exceeding 60 days, or grant a pardon; and the board shall provide the victim with an opportunity to file a written objection to such action. ~~Within 72 hours of receiving a request to commute a death sentence, the State Board of Pardons and Paroles shall provide notification to a victim of the date set for hearing such request and provide such victim an opportunity to file a written response to such request.~~ No notification to the victim need be given unless the victim has expressed a desire for such notification and has provided the State Board of Pardons and Paroles with a current mailing or ~~e-mail~~ email address and telephone number. Failure of the victim to inform the board of a change of address or telephone number shall not void a decision of the board."

SECTION 67.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by revising Code Section 24-13-60, relating to order requiring prisoner's delivery to serve as witness or criminal defendant generally, expenses, and prisoner under death sentence as witness, as follows:

"24-13-60.

(a) When a prisoner confined in any state prison, county correctional institution, or other penal institution under the jurisdiction of the Board

of Corrections, ~~other than a prisoner under a death sentence~~, is needed as a witness in any judicial proceeding in any court of record in this state or when it is desired that such person stand trial on an indictment or accusation charging the prisoner with commission of a felony or misdemeanor, the judge of the court wherein the proceeding is pending shall be authorized to and shall issue an ex parte order, directed to the commissioner of corrections, requiring the prisoner's delivery to the sheriff of the county where the prisoner is desired as a witness or accused. The sheriff or his or her deputies shall take custody of the prisoner on the date named in the order, safely keep the prisoner pending the proceeding, and return him or her to the original place of detention after the prisoner's discharge by the trial judge.

(b) If the prisoner was desired as a witness by this state in a criminal proceeding or if the prisoner's release to the sheriff was for the purpose of standing trial on criminal charges, the county wherein the proceeding was pending shall pay all expenses of transportation and keeping, including per diem and mileage of the sheriff, jail fees, and any other proper expense approved by the trial judge.

(c) If the prisoner was desired as a witness by the accused in a criminal proceeding or by either party to a civil proceeding, the costs and expenses referred to in subsection (b) of this Code section shall be borne by the party requesting the prisoner as a witness. The court shall require a deposit of money sufficient to defray same, except where the judge, after examining into the matter, determines that the prisoner's presence is required by the interests of justice and that the party requesting it is financially unable to make the deposit, in which case the expenses shall be taxed as costs of court.

~~(d) If a prisoner under a death sentence is needed as a witness for either~~

~~the prosecution or the defense in any felony case, the requesting party may interview the proposed witness. Following such interview, the requesting party may move for a writ of habeas corpus ad testificandum. Such motion shall be accompanied by a proffer of the testimony of the proposed witness. The requesting party shall make such motion and proffer as soon as possible but shall not make such motion later than 20 days prior to the date of the trial. Nothing in this Code section shall limit the right of a party from presenting a material witness at a hearing or trial and to have compulsory process for that purpose."~~

SECTION 68.

Said title is further amended in Code Section 24-13-93, relating to criminal or grand jury proceedings in foreign state, certificate of need for prisoner's testimony, order by judge in requesting state, and applicability, by revising subsection (d) as follows:

"(d) This Code section shall not apply to any person in this state confined as insane or mentally ill ~~or under sentence of death.~~"

SECTION 69.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by revising Code Section 42-1-3, relating to defendant sentenced to death or life imprisonment not to be made trusty during time case on appeal and manner of confinement of defendant, as follows:

"42-1-3.

Any defendant who has been convicted of a felony and sentenced to

~~death or~~ life imprisonment shall not be made a trusty at any penal institution or facility in this state during the time that his or her case is on appeal. The defendant shall be confined in the same manner as other prisoners."

SECTION 70.

Said title is further amended by revising Code Section 42-5-20, relating to Alcohol or Drug Use Risk Reduction Program, as follows:

"42-5-20.

The department shall provide within the correctional system an Alcohol or Drug Use Risk Reduction Program. The program shall be made available to every person sentenced to the custody of the state whose criminal offense or history indicates alcohol or drug involvement; provided, however, that the provisions of this Code section shall not apply to ~~a person who has been sentenced to the punishment of death or~~ those deemed mentally incompetent."

SECTION 71.

Said title is further amended by revising Code Section 42-5-21, relating to Family Violence Counseling Program, as follows:

"42-5-21.

The department shall provide within the correctional system a Family Violence Counseling Program. The program shall be made available to every person sentenced to the custody of the state who committed an offense which has been identified to involve family violence as such term is defined in Code Section 19-13-1; provided, however, that the provisions of this Code section shall not apply to ~~a person who has been~~

~~sentenced to the punishment of death or to those deemed mentally incompetent."~~

SECTION 72.

Said title is further amended in Code Section 42-5-51, relating to jurisdiction over certain misdemeanor offenders, designation of place of confinement of inmates, reimbursement of county, and transfer of inmates to federal authority, by revising subsection (c) as follows:

"(c) After proper documentation is received from the clerk of the court, the department shall have 15 days to transfer an inmate under sentence to the place of confinement. If the inmate is not transferred within the 15 days, the department shall reimburse the county, in a sum not less than \$7.50 per day per inmate and in such an amount as may be appropriated for this purpose by the General Assembly, for the cost of the incarceration, commencing 15 days after proper documentation is received by the department from the clerk of the court; provided, however, that, subject to an appropriation of funds, local governing authorities that have entered into memorandums of understanding or agreement or that demonstrate continuous attempts to enter into memorandums of understanding or agreement with the federal government under Section 287(g) of the federal Immigration and Nationality Act shall receive an additional payment in the amount of 10 percent of the established rate paid for reimbursement for the confinement of state inmates in local confinement facilities. The reimbursement provisions of this Code section shall only apply to payment for the incarceration of felony inmates available for transfer to the department, ~~except inmates under death sentence awaiting transfer after their initial trial,~~ and shall not apply to inmates who were incarcerated under the custody of the commissioner at the time they were returned to the county

jail for trial on additional charges or returned to the county jail for any other purposes, including for the purpose of a new trial."

SECTION 73.

Said title is further amended by revising Code Section 42-5-64, relating to educational programming, as follows:

"42-5-64.

(a) The commissioner shall maintain an educational program within the state prison system to assist inmates in achieving at least a fifth-grade level on standardized reading tests. Inmates who test below the fifth-grade level and who have been sentenced to incarceration for a period of one year or longer shall be required by institutional staff to attend appropriate classes until they attain this level or until they are released from incarceration, whichever event occurs first; provided, however, that inmates who have remained in the educational program for 90 school days may voluntarily withdraw thereafter. The commissioner or his or her designee shall have the discretion to exclude certain inmates from the provisions of this subsection due to the inability of such inmates to benefit from an educational program for reasons which may include: custody status, ~~particularly of those inmates under a death sentence~~; mental handicap or physical illness; participation in a boot camp program; or possession of a general education diploma or high school diploma. The State Board of Pardons and Paroles shall incorporate satisfactory participation in such an educational program into the parole guidelines adopted pursuant to Code Section 42-9-40.

(b) For the purposes of this Code section, educational programming shall not apply to inmates who:

~~(1) Have been sentenced to death;~~

~~(2)~~(1) Have attained 50 years of age; or

~~(3)~~(2) Have serious learning disabilities.

(c) The commissioner shall provide additional educational programs in which inmates can voluntarily participate to further their education beyond the fifth-grade level.

(d) The commissioner shall utilize available services and programs within the Department of Education, and the Department of Education shall cooperate with the commissioner in the establishment of educational programs and the testing of inmates as required in this Code section.

(e) The commissioner shall be authorized to promulgate rules and regulations necessary to carry out the provisions of this Code section."

SECTION 74.

Said title is further amended in Code Section 42-5-85, relating to leave privileges of inmates serving murder sentences, by revising subsection (a) as follows:

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

(1) 'Aggravating circumstance' means that:

(A) The murder was committed by a person with a prior record of conviction for a capital felony;

(B) The murder was committed while the offender was engaged in the commission of ~~another capital felony~~, aggravated battery, burglary in any degree, or arson in the first degree;

(C) The offender, by his or her act of murder, knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the

lives of more than one person;

(D) The offender committed the murder for himself, herself, or another, for the purpose of receiving money or any other thing of monetary value;

(E) The murder of a judicial officer, former judicial officer, district attorney or solicitor-general, or former district attorney, solicitor, or solicitor-general was committed during or because of the exercise of his or her official duties;

(F) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person;

(G) The murder was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim;

(H) The murder was committed against any peace officer, corrections employee, or firefighter while engaged in the performance of his or her official duties;

(I) The murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement; or

(J) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement of himself, herself, or another.

(2) 'Murder' means a violation of Code Section 16-5-1."

SECTION 75.

Said title is further amended by revising Code Section 42-7-2, relating to definitions regarding treatment of youthful offenders, as follows:

"42-7-2.

As used in this chapter, the term:

- (1) 'Board' means the Board of Corrections.
- (2) 'Commissioner' means the commissioner of corrections.
- (3) 'Conviction' means a judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere in a felony case but excludes all judgments upon criminal offenses for which the maximum punishment provided by law is ~~death or~~ life imprisonment.
- (4) 'Court' means any court of competent jurisdiction other than a juvenile court.
- (5) 'Department' means the Department of Corrections.
- (6) 'Treatment' means corrective and preventative incarceration, guidance, and training designed to protect the public by correcting the antisocial tendencies of youthful offenders, which may include but is not limited to vocational, educational, and other training deemed fit and necessary by the department.
- (7) 'Youthful offender' means any male offender who is at least 17 but less than 25 years of age at the time of conviction and who in the opinion of the department has the potential and desire for rehabilitation."

SECTION 76.

Said title is further amended in Code Section 42-8-34, relating to hearings and determinations, payment of fees, fines, and costs, post-conviction, continuing jurisdiction, and transferal of probation supervision, by revising subsection (a) as follows:

"(a) Any court of this state which has original jurisdiction of criminal actions, except municipal courts and probate courts, in which the defendant in a criminal case has been found guilty upon verdict or plea or

has been sentenced upon a plea of nolo contendere, except for an offense punishable by ~~death or~~ life imprisonment, may, at a time to be determined by the court, hear and determine the question of the probation of such defendant."

SECTION 77.

Said title is further amended by revising Code Section 42-9-20, relating to general duties of the State Board of Pardons and Paroles, as follows:

"42-9-20.

(a) ~~In all cases in which the chairperson of the board or any other member designated by the board has suspended the execution of a death sentence to enable the full board to consider and pass on same, it shall be mandatory that the board act within a period not exceeding 90 days from the date of the suspension order.~~ In the cases which the board has power to consider, the board shall be charged with the duty of determining which inmates serving sentences imposed by a court of this state may be released on pardon or parole and fixing the time and conditions thereof. The board shall also be charged with the duty of determining violations of parole and taking action with reference thereto and making such investigations as may be necessary. It shall be the duty of the board personally to study the cases of those inmates whom the board has power to consider so as to determine their ultimate fitness for such relief as the board has power to grant. ~~The board by an affirmative vote of a majority of its members shall have the power to commute a sentence of death to one of life imprisonment.~~

(b) The board shall provide The Council of Superior Court Clerks of Georgia the data set forth in Code Section 15-12-40.1, without charge and in the electronic format requested."

SECTION 78.

Said title is further amended in Code Section 42-9-42, relating to procedure for granting relief from sentence, conditions and prerequisites, public access to information, and violation of parole, by revising subsection (a) as follows:

"(a) No person shall be granted clemency, pardon, parole, or other relief from sentence except by a majority vote of the board. ~~A majority of the members of the board may commute a death sentence to life imprisonment, as provided in Code Section 42-9-20.~~"

SECTION 79.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 80.

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

SPONSOR'S RATIONALE

Representative Beth Moore sponsors this Bill to repeal the death penalty in Georgia.⁵ Under Georgia law, murder, rape, and kidnapping, airplane hijacking, treason, or armed robbery.⁶ Georgia's first known execution was in 1735.⁷ Since 1735, the state executed 950 prisoners until a moratorium on execution was issued in 1972.⁸ The complex issue of the

⁵ *Id.*

⁶ O.C.G.A. § 17-10-30

⁷ See *Georgia, History of the Death Penalty*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/georgia> (last visited Nov. 30, 2021).

⁸ *Id.* In 1972, the United States Supreme Court issued a nationwide moratorium on the death penalty on a decision in a case originating from Georgia. *Furman v. Georgia*, 408 U.S. 238 (1972).

modern death penalty began forming in Georgia in 1976 after the moratorium ended.⁹ In the years since the moratorium ended, Georgia has executed 76 individuals in total.¹⁰

Representative Bill Werkheiser believes Georgia should “join the growing number of states which have realized the death penalty does not deter crime, eliminates any chance of redemption, and, from a conservative fiscal stance does not make sense.”¹¹

Georgia’s death penalty may predominately affect lower-status and mentally disabled people.¹² The law is rooted in racial discrimination.¹³ Disadvantaged groups, such as the intellectually disabled or racial minorities, receive the death penalty as a punishment for their crimes more often than white people.¹⁴ In support of this Bill Representative Moore stated “[t]he death sentence may be given more frequently to those with serious mental

⁹ See *Furman v. Georgia*, 408 U.S. 238 (1972). In 1972, the United States Supreme Court combined two cases from Georgia and one from Texas to declare in *Furman v. Georgia* the death penalty was unconstitutional. *Id.* However, just four years later, in 1976 the Supreme Court justices used the case of Troy Leon Gregg to establish capital punishment was constitutional for Georgia and the rest of the country under specific circumstances, effectively reviving capital punishment. See also *Gregg v. Georgia*, 428 U.S. 153 (1976). In a 7-2 majority, the U.S. Supreme Court ruled the imposition of the death penalty was not cruel and unusual. *Id.* The *Gregg* case overturned *Furman* and allowed states that wanted the death penalty to use it as a punishment again. *Id.*

¹⁰ *History of the Death Penalty*, *supra* note 7. Georgia utilizes the lethal injection method of capital punishment. *Id.*

¹¹ Georgia Bulletin Staff, *Support Grows for Bi-partisan Effort to Repeal Georgia’s Death Penalty*, THE GEORGIA BULLETIN, (Mar. 3, 2021), <https://georgiabulletin.org/news/2021/03/support-grows-for-bi-partisan-effort-to-repeal-georgias-death-penalty/>.

¹² *Id.*

¹³ See generally James D. Unnever et al., *Race, Racism, and Support for Capital Punishment*, 37 CRIME & JUST. 45 (2008). There is a racial disparity in support of the death penalty. White people are more likely to support capital punishment. *Id.*

¹⁴ See *Race and the Death Penalty*, Am. Civ. Liberties Union, https://www.prisonpolicy.org/scans/aclu_dp_factsheet4.pdf (last visited April 14, 2022). (“Approximately 35% of those executed since 1976 have been black, even though blacks constitute only 12% of the population. The odds of receiving a death sentence are nearly four times higher if the defendant is black than if he or she is white.”); See also *Race and the Death Penalty*, Am. Civ. Liberties Union, <https://www.aclu.org/other/race-and-death-penalty> (last visited April 14, 2022). (“In the Okmulgee Judicial District of Georgia, District Attorney Joseph Briley tried 33 capital cases between 1974 and 1994. Twenty-four of the cases were against black defendants.”); See also generally Lauren Sudeall Lucas, *An Empirical Assessment of Georgia’s Beyond a Reasonable Doubt Standard to Determine Intellectual Disability in Capital Cases*, 33 GA. ST. U.L. REV. 553 (2017). (“Georgia stands alone as the only state to require that a defendant claiming constitutional exemption from the death penalty based on intellectual disability, must prove that disability beyond a reasonable doubt at the guilt phase of a capital trial.”)

illnesses and intellectual disabilities...and those who experience racial and economic disparities, and it is used more often on poor, Black defendants.”¹⁵

Representative Moore worries the death penalty limits the ability for exonerations because “a human life is lost every time someone is executed, whether or not they were guilty of a crime.”¹⁶ Additionally, those with a family member on death row are more likely to have severe depression.¹⁷

Representative Moore based her decision to advocate against the death penalty on the United States Supreme Court’s ruling against Georgia’s death penalty in 1972.¹⁸ In *Furman*, Justice Marshall wrote the death sentence amounts to cruel and unusual punishment and is incompatible with the evolving standards of decency in a contemporary society.¹⁹

Representative Werkheiser believes the death penalty does not make conservative fiscal sense.²⁰ The death penalty costs Georgian taxpayers far more than a sentence of life without parole.²¹ A death penalty case can be up to 70% more expensive to try than a life in prison case.²² This is because of the costs attributed to pre-trial, jury selection, the actual trial, appeals, and

¹⁵ *Supra* Georgia Bulletin Staff, note 11.

¹⁶ Telephone Interview with Beth Moore, Georgia Representative, 96th District (Sept. 1, 2021)(“The execution process takes years, if not decades, and during the time between sentencing and execution, many connections, reparations, and other interpersonal relationships are made between the inmate and the community.”).

¹⁷ Ronnie K. Stephens, *The Cost of Federal Executions in Trump’s Last Year a Lingering Burden*, INTERROGATING JUSTICE (Feb. 11, 2021), <https://interrogatingjustice.org/death-sentences/the-cost-of-federal-executions-trump/>.

¹⁸ See Telephone Interview *supra* note 16. See *Furman v. Georgia*, 408 U.S. 238 (1972).

¹⁹ *Id.* at 329. The opinion in *Furman* has since been overturned. *Gregg v. Georgia*, 428 U.S. 153 (1976). The standard of evaluation for mental disability with respect to capital punishment also puts citizens at risk for unfair execution. See *Young v. State*, 312 Ga. 71 (2021). In Georgia, the standard of proof for proving mental disability is beyond a reasonable doubt, and the burden rests on the defendant. *Id.* So, if a defendant truly is mentally disabled or incompetent, they could still be put to death if they cannot prove beyond a reasonable doubt their mental disability. *Georgia Inmate Appeals Intellectual Disability Claim to U.S. Supreme Court* (May 13, 2013), <https://deathpenaltyinfo.org/news/intellectual-disability-georgia-inmate-appeals-intellectual-disability-claim-to-u-s-supreme-court>. Georgia is the only state that has a more substantial burden for proving mental disability than by a clear and convincing evidence. *Id.*

²⁰ Georgia Bulletin Staff, *supra* note 11. See generally Randolph N. Jonakait & Larry Eger, *The Fiscal Crisis as an Opportunity for Criminal Justice Reform: Defenders Building Alliances with Fiscal Conservatives*, 28 GA. ST. U.L. REV. 1161 (2013).

²¹ See generally *Decision to Seek the Death Penalty in One Case Costs Georgia More Than \$3 Million*, DEATH PENALTY INFO. CTR. (July 24, 2009), <https://deathpenaltyinfo.org/news/decision-to-seek-the-death-penalty-in-one-case-costs-georgia-more-than-3-million>. In the 2008 trial where Brian Nichols offered to plead guilty to avoid the death penalty but was refused by prosecutors, the case cost Georgian taxpayers over three million dollars in total. *Id.* See also Stevens, *supra* note 17.

²² See Stevens, *supra* note 17.

incarcerating the person until their execution.²³ Another cost of the death penalty is the cost of liability for police wrongdoing and prosecutorial misconduct associated with the wrongful or threatened use of the death penalty.²⁴ Georgia's COVID-19 budget cuts have brought renewed scrutiny to these costs.²⁵

In addition to representatives' support, supporters of this Bill include the archdiocese of Innocence Project, Georgia Defense Lawyer's Association, Georgia Interfaith Public Policy Center, Conservatives Concerned about the Death Penalty and the Episcopal Diocese of Atlanta.²⁶

Archbishop of Atlanta, Gregory Hartmayer, supported the Bill's efforts by issuing a statement on how the "death penalty is contrary to Catholic teaching" and "fails to recognize the dignity and sanctity of human life."²⁷ Archbishop Hartmayer stated "the death penalty has a history of being unjustly and disproportionately used against minorities as well as people with intellectual disabilities or mental illness in Georgia."²⁸

²³ See *Studies Consistently Find that the Death Penalty is More Expensive than Alternative Punishments*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/policy-issues/costs> (last visited Oct. 10, 2021). The costs associated with trying a capital case are exorbitant compared to trying a non-capital case. *Id.* Almost all death penalty recipients will not be able to afford their own attorney and will need to utilize the services of a public defender's office, and the state pays for the prosecution as well. *Id.* Capital cases are much more complicated in subject matter; they can last four times longer than non-capital cases. *Id.* The accused's pre-trial and pre-execution incarceration also leaves a larger bill for county taxpayers than life in prison would. *Id.* To minimize mistakes in the judicial process, every prisoner is also allowed several appeals, adding another lengthy and costly link to the chain. *Id.*

²⁴ See *Hidden Costs: Liability Judgments for Wrongful Capital Prosecutions Cost Taxpayers in Death-Penalty States Hundreds of Millions of Dollars*, DEATH PENALTY INFO. CTR. (July 15, 2021), <https://deathpenaltyinfo.org/news/hidden-costs-liability-judgments-for-wrongful-capital-prosecutions-cost-taxpayers-in-death-penalty-states-hundreds-of-millions-of-dollars>.

²⁵ See Jill Nolin, *Georgia GOP Lawmaker Makes Budget Argument to Abolish Death Penalty*, GEORGIA RECORDER (August 14, 2020), <https://georgiarecorder.com/2020/08/14/georgia-gop-lawmaker-makes-budget-argument-to-abolish-death-penalty/>. Georgia cut 10% from its budget due to COVID-19. *Id.* However, this argument may not be as strong soon, as Governor Kemp recently allocated \$110 million to the judiciary to help with the backlog of cases resulting from COVID-19. Haley Garrett, *Gov. Kemp Dedicates Over \$100M to Help Judicial Case Backlog, Crackdown on Crime*, FOX 28 SAVANNAH (Oct. 28, 2021), <https://fox28media.com/news/local/gov-kemp-dedicates-over100m-to-help-judicial-case-backlog-crackdown-on-crime>.

²⁶ See Georgia Bulletin Staff, *supra* note 11.

²⁷ *Archbishop Hartmayer Speaks in Support of House Bill 485*, THE GEORGIA BULLETIN (Mar. 3, 2021), <https://georgiabulletin.org/news/2021/03/archbishop-hartmayer-speaks-in-support-of-house-bill-485>.

²⁸ *Id.*

The Southern Center for Human Rights represents clients in Georgia and Alabama faced with the death penalty.²⁹ The SCHR supports the repeal of the death penalty because “[t]he death penalty is levied not against the ‘worst of the worst’, but against our country’s most marginalized and vulnerable community members.”³⁰

Georgia Innocence Project supports the repeal because the organization believes the death penalty is “unfixable, unjustly applied, and regularly used as a tool to convict the innocent.”³¹

Republican Representative Brett Harrell of Conservatives Concerned About the Death Penalty believes the six wrongful death sentences which have since been repealed are an uncorrectable failure of the government.³²

OPPOSITION’S RATIONALE

More Americans favor than oppose the death penalty.³³ 60% of American adults support the death penalty.³⁴ Though support for the death penalty has waned since its original height in the 1970s, Georgia’s legislature has attempted to pass bills like HB 485 and have failed each time.³⁵ This failure in Georgia can be attributed to support from the United States Supreme Court, both the United States and Georgia Constitutions, the

²⁹ *Death Penalty*, THE S. CTR. FOR HUMAN RIGHTS, <https://www.schr.org/death-penalty/> (last visited Feb. 6, 2022).

³⁰ *Id.*

³¹ Clare Gilbert, *The Death Penalty: Unfixable, Unjustly Applied, and Regularly Used as a Tool to Convict the Innocent*, GA. INNOCENCE PROJECT (Sep. 21, 2021), <https://www.georgiainnocenceproject.org/2021/09/21/the-death-penalty-unfixable-unjustly-applied-and-regularly-used-as-a-tool-to-convict-the-innocent>.

³² *What Georgia Conservatives and Libertarians are Saying*, CONSERVATIVES CONCERNED ABOUT THE DEATH PENALTY, <https://conservativesconcerned.org/in-the-states/georgia/> (last visited Feb. 4, 2022).

³³ *See Most Americans Favor the Death Penalty Despite Concerns About its Administration*, PEW RSCH. CTR. (June 2, 2021), <https://www.pewresearch.org/politics/2021/06/02/most-americans-favor-the-death-penalty-despite-concerns-about-its-administration/>. Only twelve states have executed someone since the start of 2015. *See* Eric Berger, *Courts, Culture, and the Lethal Injection Stalemate*, 62 WM. & MARY L. REV. 1, 7 (2020). It is a risky political game for state officials to pursue executions. *Id.* at 9.

³⁴ *Most Americans Favor the Death Penalty Despite Concerns About its Administration*, *supra* note 33. This 60% includes 27% of the population who strongly support the death penalty. *Id.* On the other hand, 39% of adults oppose the death penalty. *Id.*

³⁵ *See infra* Exhibit 1. The number of death penalty sentences that have been handed down over the years has waned. *See also* H.B. 702 (Non-Civil Judiciary Committee), 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), *available at* <https://www.legis.ga.gov/legislation/56364> (last visited April 15, 2022); *also* H.B. 916 (Non-Civil Judiciary Committee), 155th Gen. Assemb., 2nd Reg. Sess. (Ga. 2020), *available at* <https://www.legis.ga.gov/legislation/57332> (last visited April 15, 2022).

Supreme Court of Georgia, political figures, and a majority of the citizenry.³⁶ Another argument in the opposition to *repeal* the death penalty is Georgia may be more suited for a *reform* in the current political climate.³⁷

In an interview with Senator Moore, she explained one aspect of Georgians support for the death penalty stems from the religious idiom ‘an eye for an eye,’ or in other words, those who commit the most heinous crimes deserve to die.³⁸ While the number of death sentences handed down has gotten smaller nearly every year, the general support for the death penalty is strongly associated with a belief that when someone commits murder, the death penalty is morally justified.³⁹ Some may also believe the death penalty is the only way to stop a person’s violence, either in or out of jail.⁴⁰

Support for the death penalty has also become a partisan stronghold with over 75% of Republicans and Independents saying they support sentences including the death penalty.⁴¹ Governor Kemp has supported the

³⁶ Though the support is present, it seems like a taboo thing to discuss or support on the record, but there are a significant number of Georgian citizens, district attorneys, and political figures supporting the death penalty. I was able to speak to a couple of sources that explained their opinions and reasons for those opinions regarding their support of the death penalty, but refused to go on the record. According to ISideWith, a website that keeps a running tab on voters’ opinions state by state, Georgia voters overwhelmingly support the death penalty with 76% of voters voting ‘yes’ on ‘Do you support the death penalty?’ *Do You Support the Death Penalty?*, ISIDEWITH, <https://www.isidewith.com/poll/49841143/9333310> (last visited Nov. 10, 2021). The United States Supreme Court has upheld a state’s power to implement capital punishment multiple times. *See, e.g.,* *Bucklew v. Precythe*, 587 U.S. (2019) (holding that Missouri’s method of capital punishment did not violate the Eighth Amendment). Georgia’s Supreme Court has also upheld the constitutionality of death by lethal injection. *Ledford v. State*, 289 Ga. 70, 709 S.E.2d 239 (2011). There is a reluctance to remove the death penalty following from the belief that there are already adequate protections, such as the Eighth Amendment, protecting those charged with the death penalty. *Id.* Georgia Superior Courts have implemented standards for special qualifications attorneys must meet before handling a death penalty case. Assignment of Cases to Private Attorneys. Ga. Sup. Ct. R. 29.8.

³⁷ Morgan Eipper, Comment, *Implementation of The Federal Death Penalty Procedure in Georgia--A Proposal To Reduce Irreparable Miscarriages Of Justice*, 14 JOHN MARSHALL L.J. (“Georgia’s unsuccessful venture in repealing the death penalty leaves only one other option...death penalty reforms in order to reduce the racial disparity and the unfettered prosecutorial discretion in the applicable of the death penalty.”)

³⁸ Telephone Interview with Rep. Beth Moore, *supra* note 15.

³⁹ *Id.* *See also infra* Exhibit 1.

⁴⁰ *See Henry v. State*, 278 Ga. 617, 604 S.E.2d 826 (2004). Arguing for a sentence of the death penalty to prevent future dangerous behavior by the defendant in prison must be based on evidence suggesting that the defendant will be dangerous in prison. *Id.* Arguments addressing future dangerousness are not improper if based on evidence adduced at trial. *Id.*

⁴¹ *See Most Americans Favor the Death Penalty Despite Concerns About its Administration*, *supra* note 33. “Just over three-quarters of Republicans and Independents who lean toward the Republican Party (77%) say they favor the death penalty for persons convicted of murder, including 40% who strongly favor it.” *Id.*

administration of the death penalty.⁴² Generally, support stems from the belief the death penalty may be the only way to prevent dangerous criminals from committing more crimes or the death penalty serves as an indispensable deterrent to crime.⁴³

Proponents of the death penalty argue it may be the only way for a victim or victim's family to feel safe and move on with their lives.⁴⁴ Pro-death penalty advocates may believe advocating for victims and murderers at the same time is mutually exclusive and shows disrespect to the victims.⁴⁵

Prosecutors also are interested in keeping the death penalty because prosecutors want to look tough on crime to secure reelection and believe having the death penalty as a bargaining tool is necessary to do their jobs.⁴⁶ For example, Fani Willis, Fulton County's newest district attorney, promised she would not seek the death penalty in cases during her campaign.⁴⁷ Less than a year later, District Attorney Willis sought the death penalty against 22-year-old Robert Long, going against her previous campaign promises.⁴⁸

IMPLICATIONS IN GEORGIA

Regardless of the existence of a visible opposition or not, this Bill has been introduced into the Georgia legislature during multiple sessions with no changes by both members of the Republican and Democrat parties yet has never gotten out of an assigned committee for a vote, much less passed.⁴⁹

⁴² See Jill Nolin, *Kemp Wants Death Penalty in Anti-Gang Law Amid Public Defender Cuts*, GA. RECORDER, (Jan. 31, 2020), <https://georgiarecorder.com/2020/01/31/kemp-wants-death-penalty-in-anti-gang-law-amid-public-defender-cuts>. Governor Kemp supports the expansion of the death penalty law in Georgia. *Id.*

⁴³ See generally David Muhlhausen, *The Death Penalty Deters Crime and Saves Lives*, THE HERITAGE FOUND. (June 27, 2007), <https://www.heritage.org/testimony/the-death-penalty-deters-crime-and-saves-lives>.

⁴⁴ Nancy Berns, *Contesting the Victim Card: Closure Discourse and Emotion in Death Penalty Rhetoric*, 50 THE SOC. QUARTERLY 383, 388 (2009).

⁴⁵ *Id.*

⁴⁶ Zoom interview with Professor Michael Mears, Atlanta's John Marshall Law School ("The death penalty is a placebo pill that prosecutors give to the public to prove that they are *tough on crime*."); see also given by opinions from an anonymous source.

⁴⁷ See *Atlanta to Join List of Cities that Won't Seek New Death Sentences*, DEATH PENALTY INFO. CTR. (June 3, 2020), <https://deathpenaltyinfo.org/news/atlanta-to-join-list-of-cities-that-wont-look-for-new-death-sentences>.

⁴⁸ Donesha Aldridge, *Before Holding Position, Fulton DA Said She Wouldn't Seek Death Penalty. Here's the Case that Changed Her Mind*, 11 ALIVE (May 12, 2021, 12:52 AM), <https://www.11alive.com/article/news/local/robert-aaron-long-fulton-county-case-district-attorney-seeks-death-penalty/85-7afe8821-65fb-491f-8d50-b5d6928674fc>.

⁴⁹ Telephone Interview with Representative Beth Moore, *supra* note 16. The problem is that if a Democrat sponsors the Bill, it is very rare to find a Republican to co-sponsor unless they have some personal connection to repealing the death penalty. *Id.* As the current political

During the 2019-2020 session, a similar Bill was sponsored by three former Republican state representatives.⁵⁰

A repeal of Georgia's current death penalty law could save taxpayer money, eliminate the chance of an unfair or botched execution, and save citizens' lives.⁵¹ The ones affected by this bill will be those on death row, those who know someone on death row, or those who pay taxes.⁵² Repealing the death penalty would remove the chance of someone who is innocent being executed for a crime they did not commit, restoring Georgia's ability to conform with the Blackstone ratio.⁵³

Eliminating the death penalty would eliminate the costly appeals process and save taxpayer money.⁵⁴ Life in prison can be up to ten times cheaper than the execution process.⁵⁵ A 2015 Washington study showed each death penalty case costs an average of \$1 million *more* than a similar case where the death penalty is not sought.⁵⁶ With the passing of this Bill, Georgians can expect less of their paid tax dollars will be used for the handling of capital cases.⁵⁷

situation in the Georgia House sits, representatives across the line do not want to work with each other because they think collaboration with the other side may hurt chances for reelection. *Id.* See also *supra* note 35.

⁵⁰ See Nolin, *supra* note 25. Rep. Brett Harrell, a Republican, said he thinks the House of Representatives is shy about a dozen votes of advancing a Bill that would abolish the death penalty. *Id.* Rep. Brett Harrell sponsored HB 702 of the 2019-2020 session, a mirror of HB 485. *Id.*

⁵¹ *The Case Against the Death Penalty*, ACLU, <https://www.aclu.org/other/case-against-death-penalty> (last visited Feb. 5, 2022). See also Jeffrey E. Stern, *The Cruel and Unusual Execution of Clayton Lockett*, THE ATLANTIC (June 2015), <https://www.theatlantic.com/magazine/archive/2015/06/execution-clayton-lockett/392069>. In December of 2011, Oklahoma performed a botched execution that lasted nearly 50 minutes on Clayton Lockett. *Id.* The results of an autopsy "suggested that Lockett's struggles against his restraints had been so violent that he caused blunt-impact injuries," while Lockett's lawyer for characterizes the tragedy as "human experimentation." *Id.*

⁵² Telephone Interview with Beth Moore, *supra* note 16.

⁵³ See 4 WILLIAM BLACKSTONE, COMMENTARIES *352 ("It is better that ten guilty persons escape than one innocent suffer.").

⁵⁴ See *Hidden Costs: Liability Judgments for Wrongful Capital Prosecutions Cost Taxpayers in Death-Penalty States Hundreds of Millions of Dollars*, *supra* note 24.

⁵⁵ *Which is Cheaper: Execution or Life in Prison Without Parole?*, HG.ORG, <https://www.hg.org/legal-articles/which-is-cheaper-execution-or-life-in-prison-without-parole-31614> (last visited Oct. 10, 2020).

⁵⁶ *An Analysis of the Economic Costs of Seeking the Death Penalty in Washington State*, DEATH PENALTY INFO. CTR. (last visited Dec. 17, 2021), <https://deathpenaltyinfo.org/policy-issues/costs/summary-of-states-death-penalty>.

⁵⁷ See *Hidden Costs: Liability Judgments for Wrongful Capital Prosecutions Cost Taxpayers in Death-Penalty States Hundreds of Millions of Dollars*, *supra* note 24.

Moreover, removing the death penalty would put an end to the difficult calculus of determining mental disability and could potentially save a mentally disabled person from being executed unfairly.⁵⁸

The repeal of the death penalty also ensures Georgia does not have to deal with the possibility of a botched execution.⁵⁹ Furthermore, the State will no longer have to search for suppliers for the elusive chemicals used in the executions.⁶⁰ In March 2011, the DEA seized Georgia's supply of execution drugs, because the supplier of the drug was not FDA approved and potentially in violation of the Controlled Substances Act.⁶¹

If the Georgia General Assembly passes HB 484, then Georgia would join the number of states outlawing capital punishment.⁶² Abolishing the death penalty will affect the social fabric of Georgia by stopping the abrupt killing of convicted people on death row.⁶³ If the death penalty were repealed, 38 Georgians would have their death sentences commuted to life in prison instead.⁶⁴

⁵⁸ See *Young v. State*, 312 Ga. 71, 860 S.E.2d 746 (2021); see also Ed Pilkington, *Georgia Again Plans to Execute Intellectually Disabled Inmate*, THE GUARDIAN (Jan. 27, 2015, 12:17 PM), <https://www.theguardian.com/world/2015/jan/27/georgia-execute-intellectually-disabled-inmate-warren-hill>. The "reasonable doubt" standard has been upheld with respect to proving mental disability by the Georgia Supreme Court as recently as June 2021, where the Court upheld a death penalty sentence for Rodney Young for a murder he committed in 2008, despite multiple attempts to prove to the Court that Young had a mental disability. See *Young v. State*, 312 Ga. 71, 860 S.E.2d 746 (2021). The Court held there was too much conflicting testimony to prove that Young met the reasonable doubt standard to be considered suffering from an intellectual disability. *Id.* Later, in January 2015, Warren Hill was executed even though every expert who interviewed him affirmed his intellectual disability. Pilkington *supra* note 57.

⁵⁹ Jeffrey Stern, *The Cruel and Unusual Execution Of Clayton Lockett*, THE ATLANTIC (June 2015), <https://www.theatlantic.com/magazine/archive/2015/06/execution-clayton-lockett/392069>. In December of 2011, Oklahoma performed a botched execution on Clayton Lockett while using a drug ideal for euthanasia in animals. The execution lasted nearly 50 minutes from start to finish. The results of an autopsy suggested that Lockett's struggles against his restraints had been so violent that he caused blunt-impact injuries. A lawyer for Lockett characterizes what happened to Lockett as "human experimentation."

⁶⁰ *Id.* As times change, less companies want to be associated with manufacturing a drug that kills. *Id.* Georgia has gone to extreme lengths in the past to access these drugs, including buying the drugs from an unlicensed broker. *Id.*

⁶¹ Kevin Sack, *Executions in Doubt in Fallout Over Drug*, N.Y. TIMES (Mar. 16, 2011), <https://www.nytimes.com/2011/03/17/us/17drugs.html>. The sources to access these drugs are single-person brokers, not pharmaceutical companies. *Id.* There are no FDA-approved suppliers of the drugs needed to perform an execution. *Id.* There are no American suppliers of the drugs. *Id.* These drugs are also chosen and administered by non-doctors. *Id.*

⁶² See *infra* Exhibit 2. With Virginia recently outlawing capital punishment, there are 24 states with the death penalty, 23 without the death penalty, and 3 states with a current moratorium. *Id.*

⁶³ Telephone Interview with Representative Beth Moore, *supra* note 16.

⁶⁴ DATA MGMT. INMATES UNDER DEATH SENTENCE, GA. DEP'T OF CORRECTIONS (2021),

LEGISLATIVE GENEALOGY

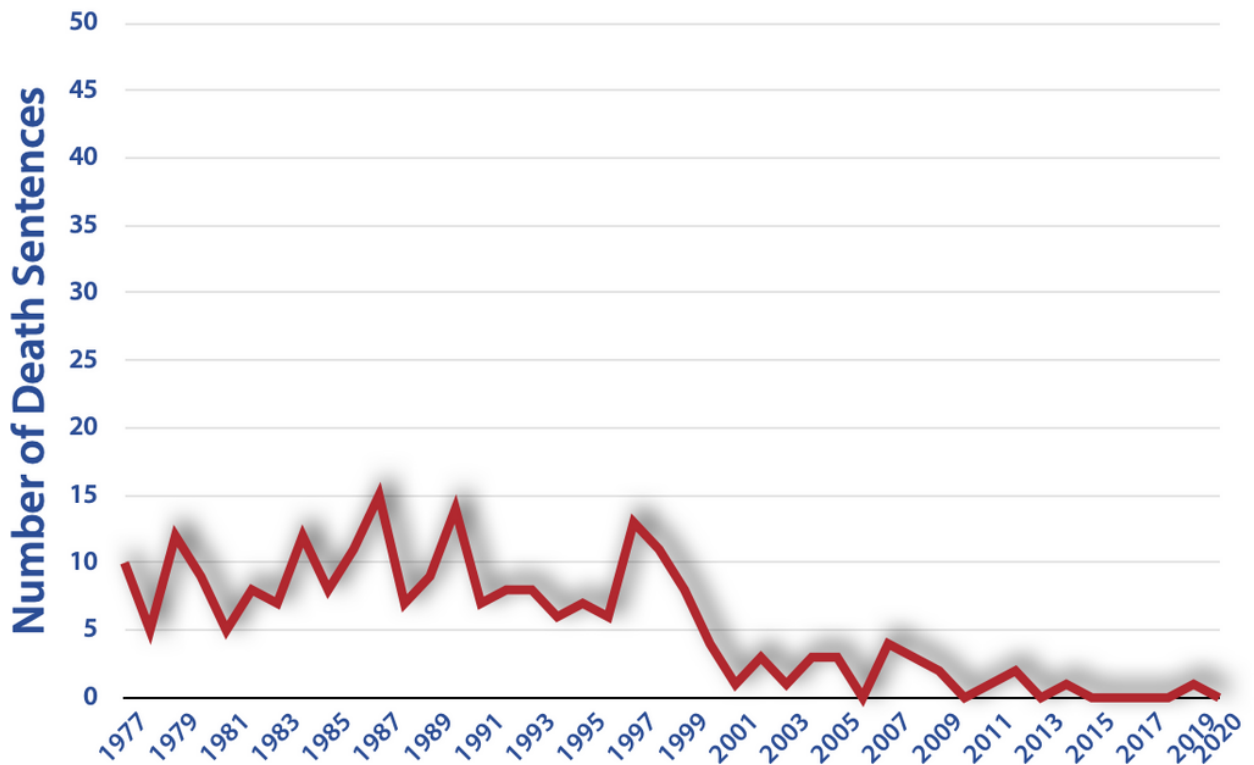
This current Bill was introduced in the House on Feb. 17, 2021 and given its First Readers on Feb. 18, 2021.⁶⁵ The Bill was given its Second Readers on Feb. 22, 2021, and subsequently assigned to the Non-Civil Judiciary Committee.⁶⁶ The Bill did not advance further in the 2020-2021 session.

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EXHIBITS

Exhibit 1⁶⁷

Georgia Death Sentences, 1977 - 2020



http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Roster_death_row_CY_2021.pdf.

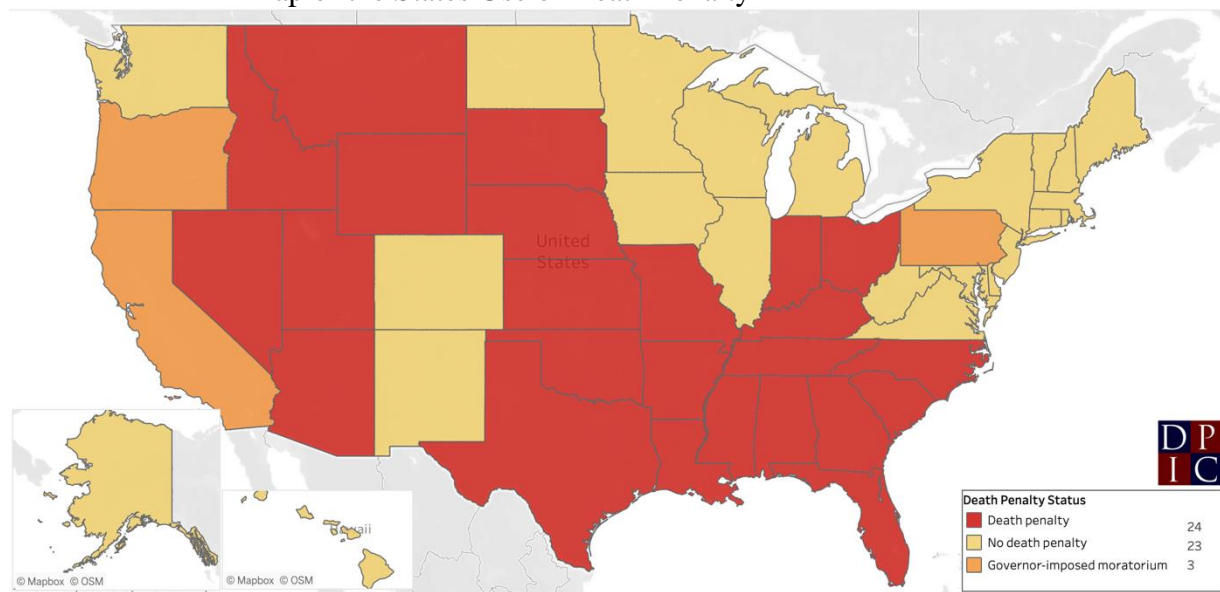
⁶⁵ H.B. 485 Status Sheet.

⁶⁶ *Id.*

⁶⁷ *Supra Georgia, History of the Death Penalty*, note 7.

Exhibit 2⁶⁸

Map of the States Use of Death Penalty



⁶⁸ *State by State*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (last visited April 15, 2022).