HOUSE BILL 702[1]: CRIMINAL PROCEDURE; IMPOSITION OF THE DEATH PENALTY IN THIS STATE; REPEAL

Amending O.C.G.A. § 17-10-1; Repealing Procedures Related to Capital Cases; Repealing Conflicting Laws

First Signature: Representative Brett Harrell (106th)

Co-Sponsors: Representative Bill Werkheiser (157th), Representative Robert Trammell (132nd), Representative Scott Holcomb (81st), Representative William Boddie (62nd), and Representative Scot Turner (21st)

Summary: The purpose of Bill 702 is "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: Presented in the House for its second reading on April 2, 2019.[3]

TEXT OF HOUSE BILL 702

SECTION 1.

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 there

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[1] H.B. 702, 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), *available* at www.legis.ga.gov/Legislation/20192020/186394.pdf (last visited November 10, 2019).

[2] *Id.*

[3] *2019-2020 Regular Session – HB 702, Criminal Procedure; Imposition of the Death Penalty in This State; Repeal*, GA. GEN. ASSEMB., http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/702 (last visited November 10, 2019) [hereinafter H.B. 702 Status Sheet].

(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 <u>or her</u> 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 impaneling 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 <u>or her</u> 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, b 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 impair 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

(F) 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. 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.

~~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 1613-2 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 if 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 guilty 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 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 a 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 on 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 limited 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 determinate 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 personal 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 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 an 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, stated, 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 administer 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 entireties.

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 officers 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 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 direct 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 office 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 for the ground for the arrest, as provided in Code Section 17-13-33; and thereafter the answer of the accused shall be hard as if he or she has 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 int his 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 multi-defendant 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 a 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 a written request of the victim, the prosecuting attorney shall notify the victim of the following:

(1) That the accused has filed a motion for a 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.

(a) 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 written request of the victim provide the victim with a report on the statute 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 proceedings 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 proceedings, 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 int his 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 int his 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 requires 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 suspending 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

The sponsors of House Bill 702 have two main reasons for the repeal of the death penalty in Georgia: 1) it is economically irresponsible and 2) it is applied unequally and has resulted in innocent people being sentenced to death.

The sponsors of House Bill 702 argue that the death penalty is economically irresponsible because it creates a significant expense resulting in property tax increases in order to help fund the process.[4] Georgia Conservatives Concerned about the Death Penalty (GCCDP) recently spoke about its promotion of fiscal responsibility and the economic implications the death penalty has in the state.[5] At a GCCDP Conference, Representative Brett Harrell, a member of GCCDP and primary sponsor of House Bill 702, argued that the death penalty process, which includes the initial trial and other motions and appeals, creates a huge economic burden.[6] As a conservative, Harrell expressed how he is "mindful of how the government spends the taxpayers' dollars" and he believes that the alternative of life without parole is much more cost-efficient.[7] In fact, there have

[4] John Pelzel, *Press Conference: Launch of the Georgia Conservatives Concerned about the Death Penalty,* YouTube, https://www.youtube.com/watch?v=Jc30hA7pC60 (January, 20, 2017).

[5] *Id.*
[6] *Id.*
[7] *Id.*

been several recent studies showing how sentencing someone to life without parole costs significantly less than the death penalty.[8]

Harrell is not the only one concerned about the economic impact the death penalty has on Georgia. Professor Michael Mears is a seasoned Georgia defense attorney who has defended over 150 capital punishment cases and is the author of the book, *The Death Penalty in Georgia: A Modern History*.[9] Professor Mears asserts that many studies show that the average death penalty case in the United States can cost around $2,000,000.[10] This number considers the expense of the trial itself which usually requires more police investigations, expert witnesses, prosecutors and defense attorneys, as well as the time and expense required for the appeal process and other court motions.[11] One study published in the Susquehanna University Political Review shows that the cost of housing an inmate on death row costs substantially more than housing an inmate in the general population of the prison.[12] The study goes on to explain that this is because death row inmates are housed away from the general population and placed in higher security areas of the prison which require single-roomed cells and increased supervision that results in higher costs.[13] For these reasons, the alternative of life without parole tends to cost significantly less than the death penalty, which is why Harrell and the other sponsors of House Bill 702 believe the death penalty to be economically irresponsible.[14]

Sponsors also argue that the unequal application of the death penalty has led to the execution of innocent people.[15] While both Harrell and Representative Scott Holcomb believe the death penalty process to be both constitutional and moral if applied correctly, history has shown that this has not always been the case.[16] Harrell has stated that "[s]ince the re-imposition of the death penalty . . . 156 people have been wrongly convicted, sentenced to death, and later exonerated and released from death row[] . . . ."[17] He further emphasized that six of these cases occurred in Georgia.[18] A study conducted by Professors David Baldus, George Woodworth and Charles Pulaski, shows the racial disparity in the application of the death penalty.[19] This study, known as the "Baldus Study," analyzed 2,484 homicide cases in which the defendant was convicted and charged.[20] The results showed that defendants who were charged with murdering white victims received the death penalty 11% of the time while defendants charged with killing black victims received the death penalty only 1% of the time.[21] Furthermore, the Baldus study showed prosecutors sought the death penalty in 70% of cases involving black defendants and white victims while they sought the death penalty in 19% of cases involving white defendants and black victims.[22] In addition to the unequal application of the death penalty, Holcomb also believes the death penalty affects low-income defendants who lack adequate legal resources to defend their case.[23] Since history has shown an unequal application of the death penalty and the execution of innocent people, the sponsors believe the death penalty should be repealed to protect the innocent.[24]

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[8] Torin McFarland, *The Death Penalty vs. Life Incarceration: A Financial Analysis*, 7 SUSQUEHANNA UNIV. POL. REV. 46, 59 (2016).

[9] Interview with Michael Mears, Defense Attorney, in Atlanta, Ga. (October 4, 2019) [hereinafter Mears Interview].

[10] *Id*.

[11] *Id.*

[12] McFarland, *supra* note 8.

[13] *Id.*

[14] Pelzel, *supra* note 4.

[15] Telephone Interview with Representative Scott Holcomb, in Sandy Springs, Ga. (October 11, 2019) [hereinafter Holcomb Interview].

[16] *Id.*

[17] *What Georgia Conservatives and Libertarians are Saying,* CONSERVATIVES CONCERNED ABOUT THE DEATH PENALTY, *available at* https://conservativesconcerned.org/in-the-states/georgia/ (last visited November 10, 2019).

[18] *Id.*

[19] Mears, Michael, THE DEATH PENALTY IN GEORGIA: A MODERN HISTORY 1970-2000 (Ga. Indigent Def. 1999).

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Holcomb Interview, *supra* note 15.

[24] *Id.*

OPPOSITION'S RATIONALE

The use of negotiating tactics plays a major role in why many prosecutors are against repealing the death penalty.[25] This is because the death penalty can serve as leverage when initiating plea deals with defendants.[26] In a 2006 Harvard Study, researchers found that defendants were more likely to plead guilty to their original crime when threatened with the death penalty.[27] Additionally, another study published by Susan Ehrhard in the Justice System Journal, showed that in cases where prosecutors leveraged the death penalty, defense attorneys were more likely to ask for a plea deal.[28] In contrast, however, defendants were more likely to take their chances at trial when prosecutors did not pursue the death penalty.[29] Repealing the death penalty, therefore, means that prosecutors lose this as a powerful bargaining tool.[30]

Many proponents of the death penalty also argue that the death penalty acts as a deterrence to commit crimes.[31] Exacting a more severe punishment, such as the death penalty, will deter potential murderers from killing, thus, preventing future crimes.[32] A well-known economist in the 1970's, Isaac Ehrlich, analyzed the effect the death penalty has on deterrence.[33] Between 1933 and 1969, Ehrlich examined the national execution and homicide rates and found a negative relationship between the two.[34] His research led to the conclusion that an additional execution per year between 1933 and 1969 resulted on an average of 7 to 8 fewer murders.[35] This research continues to be widely accepted by many proponents of the death penalty.[36]

Proponents additionally argue that executing those who have committed the most heinous crimes gives victims' families a sense of justice.[37] This morality debate has both religious and non-religious connotations.[38] Religious supporters of the death penalty mainly rely on the Old Testament's principle "an eye for an eye."[39] Many families of victims, even if not necessarily religious, believe that the perpetrator's punishment should be equal to the evil inflicted upon others, and therefore justifying terminating the life of those convicted of murder.[40]

IMPLICATIONS IN GEORGIA

The main implication of the adoption of House Bill 702 is that it would repeal the death penalty in Georgia.[41] If the death penalty is repealed this will have multiple effects. First, it will likely have an effect on the capital defender's office, a sector of the public defender's office that

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[25] Rina Palta, *Death as a Bargaining Chip: Plea Bargains and Capital Punishment,* SOUTHERN CALIFORNIA PUBLIC RADIO (Aug. 8, 2012), *available at* https://www.scpr.org/blogs/news/2012/08/08/9340/death-bargaining-chip-plea-bargains-and-capital-pu/ (last visited March 21, 2021).
[26] *Id.*
[27] *Id.*
[28] Susan Ehrhard, *Plea Bargaining and the Death Penalty: An Exploratory Study,* 29 JUST. SYS. J. 313, 319 (2008).
[29] *Id.*
[30] *Id.*
[31] Michael L. Radelet & Ronald L. Akers, *Deterrence and the Death Penalty: The View of the Experts,* 87 J. OF CRIM. L. & CRIMINOLOGY 1, 3 (1996).
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] Nina Rivkind & Steven F. Shatz, CASES AND MATERIALS ON THE DEATH PENALTY 8 (Thomson/West, ed., 2nd ed. 2005).
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] H.B. 702, 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), *available* at www.legis.ga.gov/Legislation/20192020/186394.pdf (last visited November 10, 2019).

specifically deals with capital punishment cases.[42] Attorney Michael Mears, the former Head of the Capital Defender's Office, believes that it will directly affect the office itself and that it might even close down since there would not be a need to defend capital punishment cases anymore.[43] Additionally, in order to defend capital punishment cases, an attorney needs to have a certain amount of experience working as a defense attorney.[44] Those attorneys that have dedicated years to gaining this experience with the goal of working in the capital defender's office will no longer have that opportunity if the Bill is adopted.[45] Second, should the Bill be passed, it would either decrease property taxes that are used to fund the death penalty or those taxes would likely be used to fund other projects.

The adoption of House Bill 702 could also have a substantial effect on the families of victims. Specifically, it would affect those families that have already witnessed the disposition of the trial which resulted in a death sentence for the defendant. If adopted, the Bill requires that all current death row inmates have their sentences commuted to life without the possibility of parole.[46] So, those families that are proponents of the death penalty and believe executing the perpetrator brings justice to their loved ones will have to deal with the possibility that those perpetrators will not be executed and will continue living their lives within the prisons. Although the inmates will be sentenced to life without the possibility of parole and still will have no chance of getting out of prison, this might affect the families that felt that sense of justice after they were told the defendant would be sentenced to death only for that not to become a reality.

LEGISLATIVE GENEALOGY

House Bill 702 was introduced in the House hopper on March 28, 2019.[47] It was then assigned to the House Non-Civil Judiciary Committee on the same day.[48] On March 29, 2019, the Bill had its first reading.[49] Subsequently, on April 2, 2019, the Bill had its second reading.[50]

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[42] Mears Interview, *supra* note 9.
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] H.B. 702, 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), *available* at www.legis.ga.gov/Legislation/20192020/186394.pdf (last visited November 10, 2019).
[47] H.B. 702 Status Sheet, *supra* note 3.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] Third-year JD candidate at Atlanta's John Marshall Law School.