

HB 1176

Criminal Justice Reform Bill Overview (LC 29 5281S)

Section 1-1

Part I- Exemptions for Certificates of Immediate Review

Adds “order, decision or judgment setting aside or dismissing any indictment, accusation, or petition alleging that a child has committed a delinquent act or any count thereof” to the list of orders/decisions/judgments that exempt certificates of immediate review.

Part II- Drug Court Requirements

- Requires that a work plan include a risk and needs assessment. This assessment is based on an actuarial tool to be approved by the Judicial Council (JC) and should be used to identify the likelihood of recidivism and to identify criminal risk factors for future crimes. The plan should ensure that drug court should be focused on medium and high risk offenders
- Requires the JC to use guidelines from the National Drug Court Institute and from the Substance Abuse and Mental Health Services Administration in developing drug court standards
- Each drug court must adopt practices and policies consistent with the JC guidelines
- On and after January 1, 2013, the JC is required to provide technical assistance to drug courts to help implement policies and procedures
- On and after July 1, 2013, the JC is required to create and manage a certification and review process to ensure the program meets JC standards. Waivers are permitted. JC is tasked with creating the waiver process
- Any drug court **created** on or after July 1, 2013, must be certified, or must have been provided with a waiver, to receive state appropriated funding.
- On and after July 1, 2013, state funds for a drug court shall be conditioned upon that court attaining certification or a waiver The JC will publish a list of certified drug courts by September 1st annually
- AOC is required to manage and develop an electronic information system for performance measurement in a consistent format from all drug courts. The JC develops the performance measure elements.
- Starting on July 1, 2015 and every three years thereafter, the JC will conduct performance peer reviews on drug courts

Section 2-2- Mental Health Courts

- Requires that a work plan include a risk and needs assessment. This assessment is based on an actuarial tool to be approved by the Judicial Council (JC) and should be used to identify the likelihood of recidivism and to identify criminal risk factors for future crimes. The plan should ensure that mental health court should be focused on medium and high risk offenders
- Requires the JC to use guidelines and practices from but not limited to US Abuse and Mental Health Services Administration, Council of State Governments Consensus Projects and the

National GAINS Center to reduce recidivism of offenders with mental illness or developmental disabilities

- Each court must adopt practices and policies consistent with the JC guidelines
- On and after January 1, 2013, the JC is required to provide technical assistance to mental health courts to help implement policies and procedures
- On and after July 1, 2013, the JC is required to create and manage a certification and review process to ensure the program meets JC standards. Waivers are permitted. JC is tasked with creating the waiver process
- Any mental health court **created** on or after July 1, 2013, must be certified, or must have been provided with a waiver, to receive state appropriated funding.
- On and after July 1, 2013, state funds for a mental health court shall be conditioned upon that court attaining certification or a waiver. The JC will publish a list of certified mental health courts by September 1st annually
- AOC is required to manage and develop an electronic information system for performance measurement in a consistent format from all mental health courts. The JC develops the performance measure elements.
- Starting on July 1, 2015 and every three years thereafter, the JC will conduct performance peer reviews on mental health courts.

Section 2-3- Pretrial Intervention and Diversion Program

- Increases the fee for pretrial intervention and diversion programs from \$300 to a maximum of \$1000.
- Allows for waiver of part of all of the fee and allows payment by monthly installments upon a showing of good cause.
- Any fee collected goes to the general fund of the governing authority.

Section 2-4 County DATE Fund

15-12-100

Adds fine money from the following crimes to this section: unlawful manufacture, distribution or possession with intent to distribute of imitation controlled substances; possession of substances containing ephedrine, pseudoephedrine, and phenylpropanamine; possession of substances with intent to use or convey such substances for the manufacture of Schedule I or Schedule II controlled substances; trafficking ecstasy; transactions in and possession of drug related objects; use of communication facility in committing or facilitating the commission of a felony; manufacturing, distributing, dispensing, or possessing controlled substance in or around K-12 schools, housing projects, parks or drug free commercial zone.

An additional 50% penalty is also imposed **in every case** in which a fine is imposed for the following violations: furnishing alcohol to a minor or the attempt to purchase and possess alcohol by a minor; DUI; homicide or serious injury by vehicle if a DUI was involved. If no fine is provided and the person is placed on probation, then the probation fine is applicable.

15-12-101

Allows DATE funds to be used for DUI and drug courts.

Part III Crimes and Offenses

Section 3-1 Burglary

- Provides for 3 classes of Burglary, all are felonies
- First Degree Burglary: Enters and remains in a dwelling in possession of weapons/explosives, causes harm, or has 2 burglary priors, any degree. Increases penalty from 1 to 5 year minimum and from 20 to 30 year maximum.
- Second Degree Burglary: Enters and remains in a dwelling with intent to commit crime, but does not have weapons, causes harm, or has prior convictions. Provides penalty of 1 year minimum and 20 year maximum sentence.
- Third Degree Burglary: Enters and remains in an occupied/unoccupied/vacant building with intent to commit crime but does not have weapons, causes harm, or prior convictions. Provides penalty of 1 year minimum and 5 year maximum.

Section 3-2 Theft

- Creates three levels of theft felonies
- Increases the original amount of theft to commit a felony from \$500 to \$24,999.99 and increase minimum sentence from 1 year to 2 years and increase maximum from 10 to 20 years
- Provides for an intermediate felony theft for property valued at least \$5000, but less than \$25,000. Sentence is provided for 1-10 years per judge's discretion
- Provide for a lower level felony theft for property valued at least \$1500 but less than \$5000. Sentence is provided for 1-5 years, per judge's discretion
- Anyone with 2 misdemeanor theft priors that commits a third, will be guilty of a felony and sentenced to 1-5 years, per the judge's discretion
- Strikes motor vehicles or motor vehicle parts of \$100 in value from section
- Increases the value for grave marker, monument, or memorial theft from \$300 to \$1000
- Increases the fine for theft of agricultural products from \$500 to \$1000

Section 3-3- Theft by Shoplifting

- Increases the misdemeanor limit from \$300 to \$500
- Increase the minimum fine limit from \$250 to \$500 (misdemeanor or felony)
- Felony starts at \$500.01 and is based on the aggregate value taken within a 180 day period and carries a 1-10 year sentence.

Section 3-4-Counterfeit Universal Product Codes

- Increases the value from \$300 to \$500 to commit a felony. It is based on the aggregate value.

Section 3-5-Forgery

- Provides for 4 degrees of forgery
- First degree forgery is the intent to defraud by knowingly making, altering, or possessing any writing, other than a check, in a fictitious name, or as altered purports to have been made by another person at another time or without permission and delivers this writing. This is a felony offense punishable by 1-15 years.
- Second degree forgery is the intent to defraud by knowingly making, altering, or possessing any writing or as altered purports to have been made by another person at another time or without permission. This is a felony offense punishable by 1-5 years.
- Third degree forgery is the intent to defraud by knowingly making, altering, or possessing a check written in the amount of \$1000 or more in a fictitious name, or as altered purports to have been made by another person at another time or without permission. This is a felony offense punishable by 1-5 years.
- Fourth degree forgery is the intent to defraud by knowingly making, altering, or possessing a check written in the amount of less than \$1000 in a fictitious name, or as altered purports to have been made by another person at another time or without permission. This is a misdemeanor offense punishable by 1-5 years.

Section 3-6- Deposit Account Fraud

- Increases the minimum threshold from \$100 to \$500 and increases the maximum fine from \$500 to \$1000. The maximum fine and jail time (up to 12 months) can be applied to a single instrument (less than \$500) or to multiple instruments drawn within a 90 day period that equal \$500 or more.
- Increases the minimum and maximum limits for high and aggravated misdemeanor for deposit account fraud from \$300-\$499 to \$500-\$999.99. Same applies for multiple instruments.
- Increase the minimum value for felony deposit account fraud for a single instrument from \$500 to \$1,000 and increases the maximum fine from \$5000 to \$10,000.

Section 3-7A through Section 3-7C-Purchase, manufacture, distribution, possession of drugs

These sections phase in the new drug requirements over a course of 3 years from 2012-2014. It's the same code section listed 3 times with different requirements by the year of the phase in. Note that the first year does not include the weight requirement. The weight requirements are the aggregate weight and not the individual weight.

2012

- Changes the minimum sentence for an initial Schedule I (controlled substance) or Schedule II (narcotics) from two years to one year. Strikes language that requires a 5-30 year sentence for a subsequent conviction.
- Changes the minimum sentence for an initial Schedule II (controlled substance other than narcotics) violation from two years to one year. Strikes language that requires a 5-30 year sentence for a subsequent conviction.
- Creates a third conviction violation for controlled substance in Schedule I or II or for a counterfeit substance. The sentence is a term not to exceed twice the length of the sentence applicable to the particular crime.
- The maximum sentence for violators of Schedule III, IV, or V controlled substance crimes has been reduced from 5 years to 3 years.
- The maximum sentence for the possession of counterfeit substances has been reduced from 10 to 2 years. Current law included possession with manufacturing and distributing crimes.
- Breaks out manufacturing and distributing counterfeit substances from possession and keeps the current sentencing guidelines of 1-10 years for manufacturing and distribution.
- Reduces minimum sentence for flunitrazepam (Schedule IV controlled substance) from 2 to 1 year and removes specified subsequent conviction requirement.

2013

- For Schedule I (controlled substance) and Schedule II (narcotics) violations are as follows:
 - Less than 1 gram results in a sentence of 1-3 years
 - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
 - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
 - Violations involving morphine, heroin, or opium, or any salt, isomer or combination thereof is punishable by the minimum punishment through 30 years and by a fine not to exceed \$1 million
- For Schedule II controlled substance other than narcotics violations are as follows:
 - Less than 1 gram results in a sentence of 1-3 years
 - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
 - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
- A third violation for Schedule I or II results in imprisonment not to exceed twice the length of the sentence applicable to the particular crime.
- Changes maximum violations of Schedule III, IV, or V drugs from 5 to 3 years for a first or second conviction and from 10 to 5 years for third or subsequent conviction. [Current law provided a 10 year sentence of the second conviction]

- The maximum sentence for the possession of counterfeit substances has been reduced from 10 to 2 years. Current law included possession with manufacturing and distributing crimes.
- Breaks out manufacturing and distributing counterfeit substances from possession and keeps the current sentencing guidelines of 1-10 years for manufacturing and distribution.
- Reduces minimum sentence for flunitrazepam (Schedule IV controlled substance) from 2 to 1 year and removes specified subsequent conviction requirement.

2014

- For Schedule I (controlled substance) and Schedule II (narcotics) violations are as follows:
 - Less than 1 gram results in a sentence of 1-3 years
 - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
 - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
 - Violations involving morphine, heroin, or opium, or any salt, isomer or combination thereof is punishable by the minimum punishment through 30 years and by a fine not to exceed \$1 million
- For Schedule II controlled substance other than narcotics violations are as follows:
 - Less than 1 gram results in a sentence of 1-3 years
 - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
 - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
- A third violation for Schedule I or II results in imprisonment not to exceed twice the length of the sentence applicable to the particular crime.
- Changes maximum violations of Schedule III, IV, or V drugs from 5 to 3 years for a first or second conviction and from 10 to 5 years for third or subsequent conviction. [Current law provided a 10 year sentence of the second conviction]
- The maximum sentence for the possession of counterfeit substances has been reduced from 10 to 2 years. Current law included possession with manufacturing and distributing crimes.
- Breaks out manufacturing and distributing counterfeit substances from possession and keeps the current sentencing guidelines of 1-10 years for manufacturing and distribution.
- For flunitrazepam (Schedule IV controlled substance) violations are as follows:
 - Less than 2 grams results in a sentence of 1-3 years
 - At least 2 grams but less than 4 grams results in a sentence of 1-8 years
 - At least 4 grams results in a sentence of 1-15 years

Section 3-8 Trafficking in Cocaine, illegal drugs, marijuana, meth, etc.

Violations in trafficking of these drugs result in a mandatory minimum punishment and not more than 30 years of imprisonment and a fine not to exceed \$1 million. [Fine is current law]

Part IV Criminal Procedure

Section 4-1 Limitations on Prosecution

Specifically exempts certain offenses for victims under 16 from the statute of limitations for prosecution.

Section 4-2 Offenses for Victims Under 16

Provides that certain crimes against children can be prosecuted at any time including cruelty to children in the first degree, rape, aggravated sodomy, child molestation, enticing a child for indecent purposes, and incest.

Section 4-3 Fixing Sentences/Probation

- Changes all probation supervision requirements to “active probation supervision” which means the period of a probated sentence in which a probationer actively reports to his or her probation supervisor or is otherwise under the direct supervision of a probation supervisor
- Provides that active probation supervision terminates in all cases no later than 2 years from the commencement of active probation supervision, except in those cases that involve the collection of fines and restitution in which case the “active” probation supervision remains in effect until obligation is paid or sentence is terminated. Current law does not make reference to “active” probation.
- For GA Street Gang Terrorism and Prevention Act, the active probation stays into effect until sentence is terminated but not more than 5 years.
- No active probation for defendants sentenced to probation while defendant is in DOC custody.
- Court can shorten active probation supervision or administrative probation supervision on defendant’s motion or upon probation supervisor request

Repeals Section 4-4 Punishment of Repeat Offenders

Part V- Mandatory Reporting of Child Abuse

Section 5-1

- Provides for definitions of abortion, child service organization personnel, clergy, reproductive health care facility, and school
- Adds ‘nurse’s aides’ and ‘reproductive health care facility personnel and volunteers’ to the list of who upon relief belief that a child has been abused in required to report the abuse.
- Specifies that clergy aren’t required to report child abuse received solely from confession or similar communication from the perpetrator but are required if received from any other sources.

Part VI-Creating Job Opportunities

Section 6-1

- Specifies that the Georgia Crime Information Center cannot provide records of arrests, charges, or dispositions when access has been restricted under OCGA § 35-3-37

Section 6-2

This section creates a new section on modification, inspection, purging, and supplementing criminal records. A person’s criminal history record can be made available to that individual or designee by written application through the Georgia Crime Information Center

- Forms and procedures for record access may be created by the Center

- If records are thought to be inaccurate, incomplete or misleading by the individual a time can be set for review and verification of those records at the Center
- Fee may not exceed \$15 to inspect records, which shall not include the cost of fingerprinting
- If the criminal history record information is believed to be inaccurate, incomplete or misleading the individual may request that **the entity having custody, or control of that information** change or amend the information and notify the Center of these changes within 60 days of the request, except that notice to the Center is not required for county jails and detention centers.
- If the individual is not happy with the change or if the entity did not act within 90 days of the request, the individual has the right to appeal to the court with original jurisdiction of the criminal charges in the county where the entity is located.
- The purpose of appealing is to require the entity holding the records to make the changes by court order.
- If the court finds by a preponderance of the evidence that the criminal history is inaccurate, incomplete or misleading, an order will be issued to require the entity holding the records to correct each and every copy in its possession of the history within 60 days of the order.
- The entity is further required to disseminate the revised version of the criminal history to any individual, agency, Center, or company for which the incorrect information has been previously communicated within 60 days of the request.
- Access to an individual's criminal history information shall be restricted by the Center for the following types of dispositions:
 - Prior to indictment, accusation or other charging instrument
 - The case was never referred to for further prosecution to the proper prosecuting attorney by the investigating law enforcement agency
 - The case was referred to the prosecuting attorney but was later dismissed
 - The grand jury returned tow no bills
 - After indictment or accusation:
 - All charges dismissed or nolle prossed
 - Individual found guilty of drug charges but successfully completed terms and conditions of his probation
 - Individual successfully completed a drug court or mental health court program
 - Individual acquitted of all charges by a judge or jury unless DA provides proof that restricting the history is counter to public interest
 - After the filing of indictment or accusation cannot restrict access unless:
 - Charges were nolle prossed
 - Charges were tried and some but not resulted in an acquittal
 - Individual acquitted but later found only due to jury tampering or judicial misconduct
 - Youthful offender (lots of conditions go with this)
- The Center is required to notify the arresting law enforcement agency if records have been restricted

- An individual who has had their history restricted may issue a written request to a county jail or detention center to have all the records retained by that entity restricted. This should be done within 30 days of the request.
- Restricted information shall only be made available to law enforcement agencies or for criminal investigative purposes
- If the records are restricted and the entity declines to restrict access the individual may file a civil action in superior court. The standard that must be met by the entity for providing access is clear and convincing evidence.
- If the record is with the court, the individual can petition the clerk to have the record sealed and the clerk must restrict any record relating to the order to be restricted within 60 days.
- The clerk of court is required to create a separate and distinct index or docket that is sealed, locked or otherwise unavailable to the public.
- An individual can request the arresting agency in writing to restrict arrest records occurring prior to July 1, 2013. Reasonable fees can be charged by the arresting agency and center for the actual cost of restricting the records but shall not exceed \$50. That entity must provide a copy of the request to the DA within 30 days and he in turn can review to determine it meets the restriction requirements and shall notify the arresting agency within 90 days
- To restrict Center records, the individual must submit an expungement request to the Center that in turn must restrict access within 30 days of the request
- It is the duty of the entity to take reasonable action to prevent disclosure of information that would identify the individual whose records are being restricted
- The Center upon notifying a firearm dealer that an individual cannot purchase a firearm due to involuntary hospitalization within the past 5 years must provide the individual with the record of the involuntary hospitalization and must inform that person of their right to hearing before the probate judge.

Part VII: Penal Institutions

Section 7-1

Provides definitions.

Section 7-2

Transfers the requirement that penal institution employees cannot provide attorney information to inmates or receive fees for attorneys from the previous code section.

Section 7-3

Amends DOC definition

Section 7-4

- Defines “Evidence Based Practices” as supervision policies, programs and procedures that demonstrate reduction in recidivism through scientific research.
- Defines “Recidivism as returning to prison or jail within 3 years of being on probation or discharged from a department or jail facility.

Section 7-5

- Requires the clerks of court to submit sentencing packages to DOC electronically.

Repeals Section 7-6

Section 7-7

- Defines chief probation officer as highest ranking field probation officer in each judicial circuit who doesn’t have direct supervision of the probationer who is the subject of the hearing
- If graduated sanctions are a condition of probation, and probationer violates these conditions, unless it’s for a new offense, the DOC may impose graduated sanctions as an alternative to judicial modifications or parole revocations if approved by the chief probation officer
- Failure to comply with graduated sanctions constitutes a violation of probation
- Voluntary acceptance of graduated sanctions by the probationer can be provided at any time
- DOC’s decision is final unless probationer files an appeal in the sentencing court within 30 days
- Appeal shall first be reviewed by judge of record and a dev novo hearing may be held. Filing of appeal does not stay the decision.
- DOC’s decision affirmed by operation of law if sentencing judge doesn’t act within 30 days

Section 7-8

- The court may provide that the probationer wear a tracking device. DOC is authorized to assess and collect fees from the probationer for this purpose [Current law, moved up a couple of paragraphs in bill]
- The court may provide that a probationer complete a residential or nonresidential substance abuse program or mental health treatment
- The court may provide that a probationer agree to the imposition of graduated sanctions if probation supervisor thinks it is appropriate.

Section 7-9

- Provides that a court ordered program of confinement cannot exceed 180 days in a probation detention center

Section 7-10

- Amends existing law on the termination of probation so that the probation supervisor and not the chief judge reviews the case after 2 years on probation.

Section 7-11

If a probationer has violated their probation, it allows the probation supervisor to impose graduated sanctions to address the specific problems leading up to the violation if such sanctions were a condition of the probation by the court.

Part VIII: Cross References**Section 8-1**

Allows for judgments and orders to be deemed directly appealable related to error.

Section 8-2

Specifies "misdemeanor" shoplifting and strikes \$300 reference.

Section 8-3

Specifies that any degree burglary satisfies the requirements of this code section.

Section 8-4

Requires the GBI to treat confidentiality of destroyed records the same as restricted records.

Sections 8-5 through 8-8, 8-10 through 8-11, 8-15

Specifies that burglary references apply to any degree of burglary.

Section 8-9

Deletes 16-9-2 from the list of felony violations

Section 8-12 & 8-13

Strikes reference to varying degrees of forgery.

Section 8-14

Grants municipal court jurisdiction for misdemeanor shoplifting. [Current law tied it to degree of offense and dollar value of \$300 or less]

Part IX: Effective Dates

- Most of the Act is effective on July 1, 2012
- Sections 3-7A,B,& C is phased in from July 2012-July 2014
- Part VI and Sections 8-1 & 8-4 effective on July 1, 2013.