# MISDEMEANOR BOND POLICY

# Report from the Judicial Council's Bail Reform Committee and SB407

Chief Judge Wayne M. Purdom
State Court of DeKalb County
May 18, 2018

## Committee Members

- Chief Judge Wayne Purdom, DeKalb County State Court, Chair*
- Chief Judge Brenda Weaver, Appalachian Circuit Superior Court*
- Senior Judge Melodie Clayton, Cobb County State Court*
- Chief Judge Russ McClelland, Forsyth County State Court*
- Chief Judge Ben Studdard, Henry County State Court*
- Judge Mark Mitchell, Thomas County State Court/Thomasville Municipal Cou
- Chief Judge Mary Kathryn Moss, Chatham County Magistrate Court*
- Judge Michael Barker, Chatham County Magistrate Court*
- Chief Judge Bob Turner, Houston County Magistrate Court*
- Chief Judge Berryl Anderson, DeKalb County Magistrate Court/Decatur Municipal Court*
- Chief Judge W. Allen Wigington, Pickens County Magistrate Court and Probate Court
- Judge Rooney Bowen, Dooly County Probate Court*
- Judge Matthew McCord, Stockbridge Municipal Court*

**Former or current President or executive committee member of a judicial council*

Judicial Council Committee on Misdemeanor Bail Reform

## Mission

**...researching nationwide bail practices, interviewing interested stakeholders in Georgia, and producing a report on the Committee's findings to be shared with the Judicial Council, and the Council on Criminal Justice Reform.**

Judicial Council Committee on Misdemeanor Bail Reform

## Data on Pretrial Detention

**Georgia has no actionable data to show:**

- Number of misdemeanants without other holds;
- Number held on FTA bench warrants.

All we were able to obtain were a few one-day snapshots of 3 counties' jail population.

- We lack the basis to make cost-benefit analysis of the effects of lessening pretrial detention in either misdemeanors or felonies.

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## Why Pretrial Detention Matters

- Over 12 million arrests each year
  - In 2011, 69.2% of all persons arrested were white, 28.4% were black, and the remaining 2.4% were of other races.
- The cost for pretrial detention is ALL local
- On average, 60% of jail inmates are pretrial

Judicial Council Committee on Misdemeanor Bail Reform

## National Reforms

- Requiring mandatory release on personal recognizance or unsecured bond, or a presumption of release on personal recognizance or unsecured bond, in certain low- or moderate-risk cases.
- Monetary conditions are either eliminated or viewed as a last resort, to be imposed only if necessary to ensure future court appearances.
- If monetary conditions are imposed, individualized review is required.
- Providing by statute for a specific list of non-monetary conditions that may be imposed in lieu of money bail.
- If any conditions are imposed, mandating use of the least restrictive conditions or combination of conditions to ensure public safety and future court appearances.
  - If conditions are imposed, creating a procedure for timely review.
- Mandating or strongly encouraging the use of locally-validated and empirically-based risk assessment tools.
- Establishing a right to counsel at bail hearings.

Penn State University College of Law
Center for Access to Justice

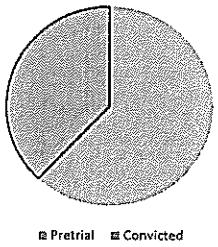
## National pretrial population in jail

1983

Jail Population


2016

Jail Population




+ Length of Stay almost doubles

## Kentucky study

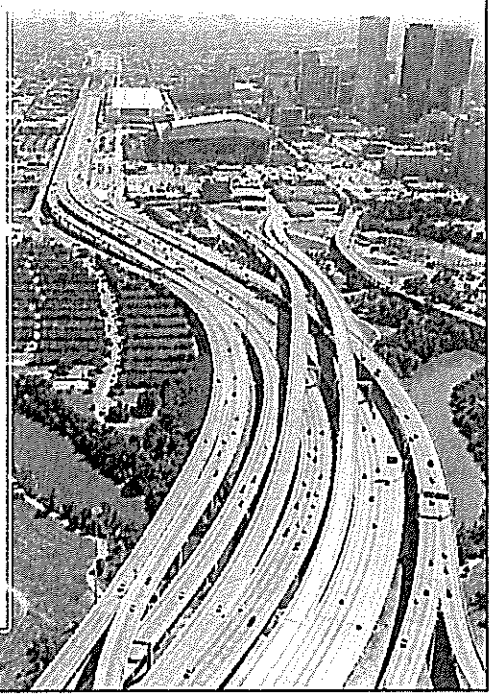
For *low to medium risk* defendants, pretrial detention was linked to:

**Increased likelihood of new criminal activity and increased FTA rates**
**Increased likelihood of jail or prison sentence Longer jail or prison sentences**
**Higher rates of recidivism post-adjudication**

See: Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation, 2013. (300,000 cases felonies and misdemeanors.)

## Setting: Harris County, TX

- 3rd largest county in the U.S., 4.4 million residents
- 20% Black, 42% Hispanic/Latino, 25% foreign born, 17% below poverty line
- ~60-70K misdemeanors per year (19% drug, 16% DWI, 15% petty larceny, 10% assault)
- Small public defender; private appointed counsel for almost all indigent defendants



## Data Description

- Court records from Harris County, TX covering criminal cases for 2008-2013
- 380,689 misdemeanor cases
- Fields include charge, defendant demographics, motions/procedural progress, case outcome, prior and future criminal charges/outcomes
- Limitations
  - Top charge
  - No failure to appear
  - Criminal histories in Harris County only

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# Harris County Bail Process

- Bail hearings held within 48 hours of arrest via videoconference, hearings convened continuously
- Cash bail of $500-$5,000 (little R.O.R), largely set from bail schedule based on current offense and priors

Source: Jon Shapley / Houston Chronicle

- Generally no representation at bail hearing
- 47% make bail; 77% of those who make bail do so within 48 hours

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# Effect on punishments

pji PRETRIAL JUSTICE INSTITUTE

Jail = less than 1 year sentence

**4x** greater likelihood of being sentenced to jail.

**3x** longer jail sentences.

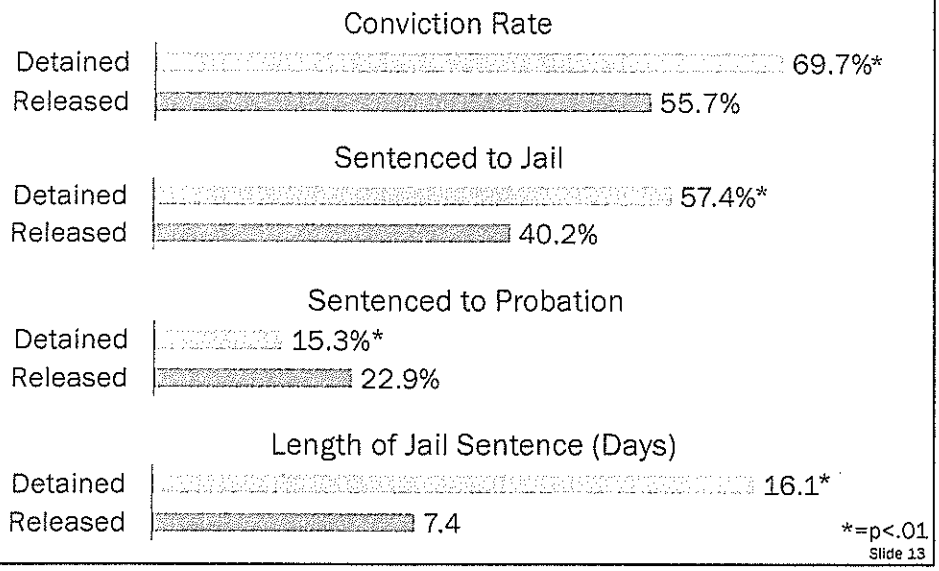
Prison = more than 1 year sentence

**3x** greater likelihood of being sentenced to prison.

**2x** longer prison sentence.

Those held pretrial receive
**harsher punishments**
than those able to purchase pretrial freedom.

## Detained Defendants Experience Worse Case Outcomes Than Similarly-Situated Releasees

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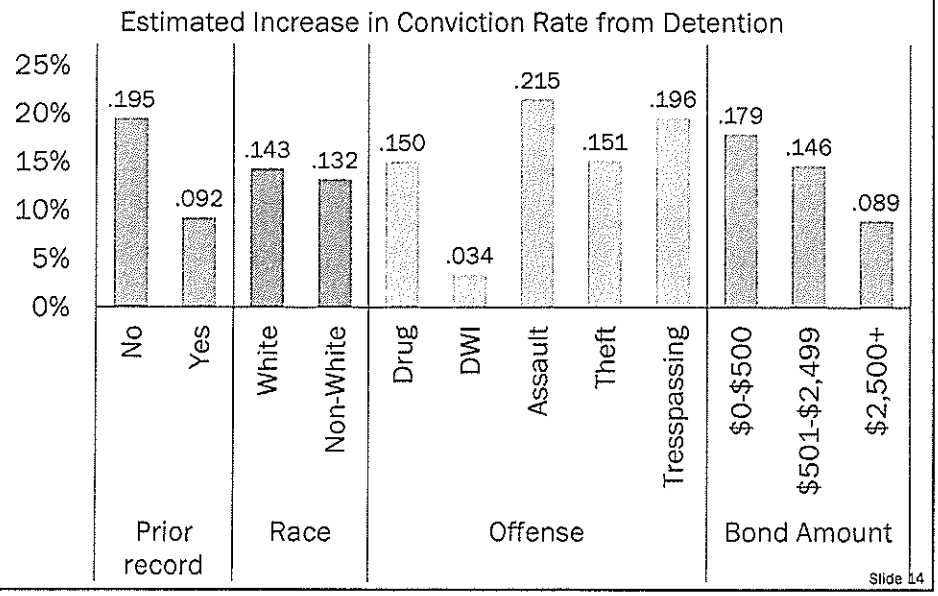
## Impacts of Pre-Trial Detention Are Larger for Some Types of Defendants

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## Undermines Public Safety

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3 days in jail makes low-risk defendants:

- 40% more likely to be re-arrested in the pretrial period
- 17% more likely to be arrested within two years

## Lengthy Pretrial Detention Undermines Public Safety

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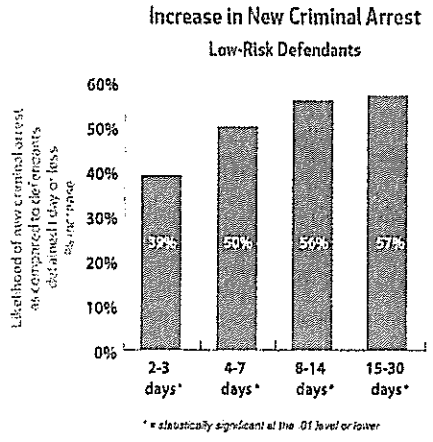


*Study of over 153,000 defendants in Kentucky from 2009 to 2010 of which 66,014 were released before trial

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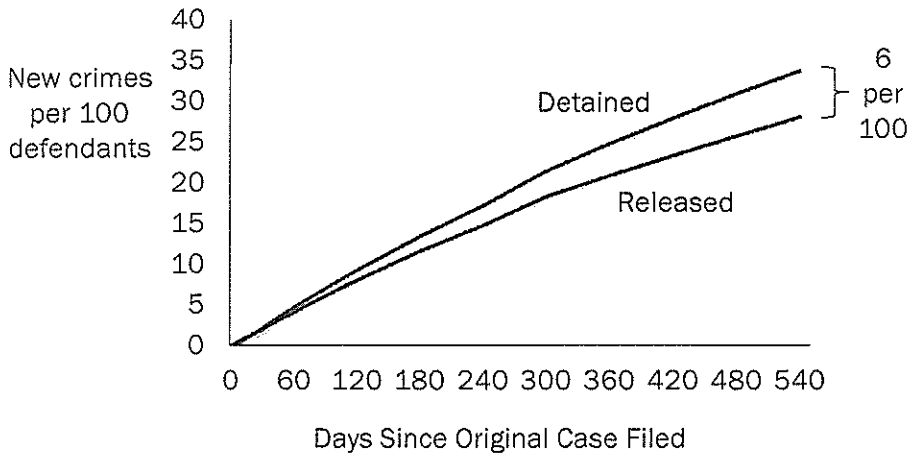
## Detained Individuals Commit More Future Crime

(Similarly Situated)

Future New Misdemeanor Charges by Pretrial Custody Status

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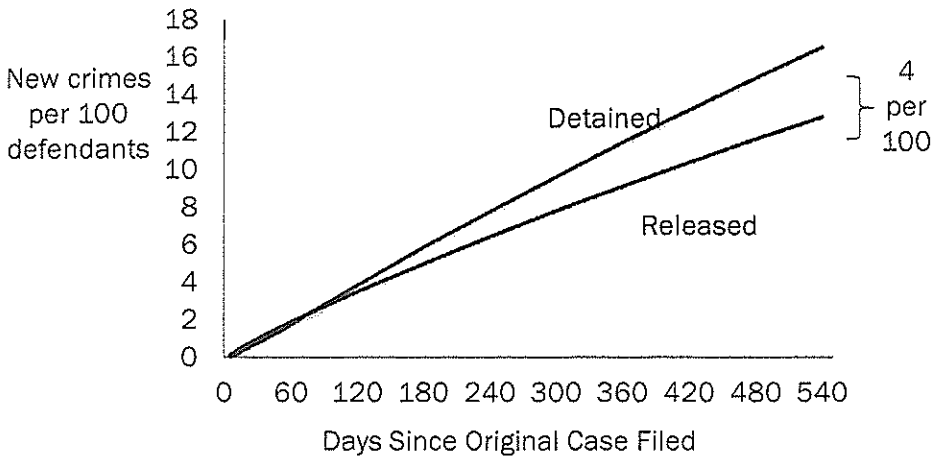
## Detained Individuals Commit More Future Crime

Future New Felony Charges by Pretrial Custody Status

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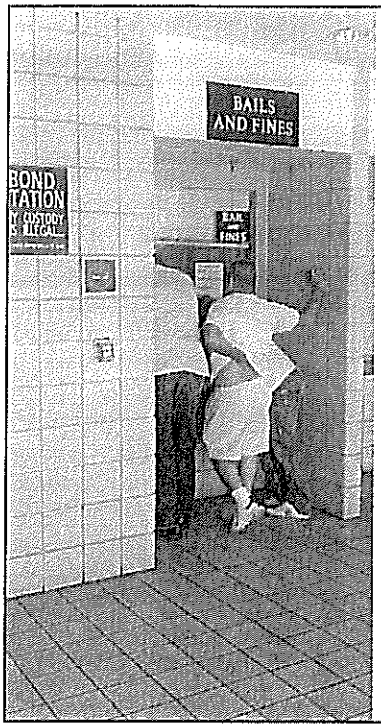


# Natural Experiment

- Goal: Identify otherwise similar groups who differ in whether they are detained for reasons unrelated to the strength of the case
- Idea: Getting released requires others to show up to post bail
- Approach: Compare defendants who would need bail help on a weekday to those who could be bailed out on a weekend

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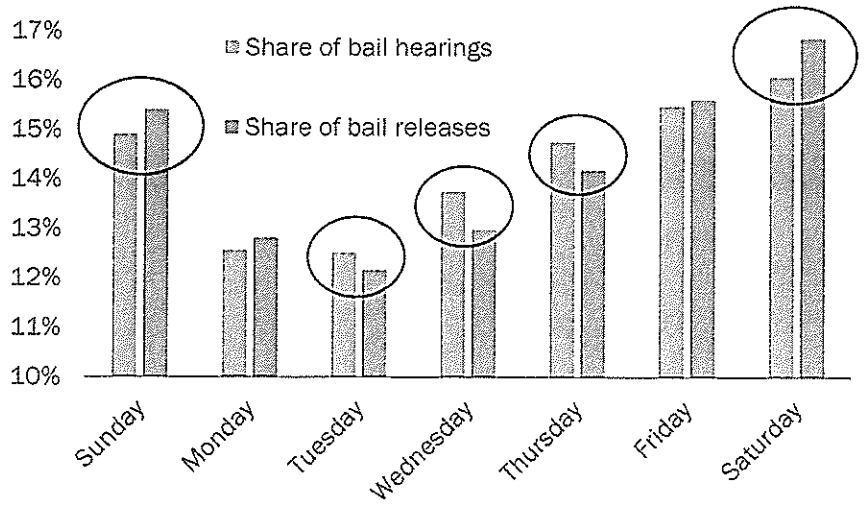
# Defendants Are More Likely to Make Bail on the Weekends

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## Tuesday, Wednesday, and Thursday Defendants Look Highly Similar

| | Average for those with bail hearing on | | |
|---|---|---|---|
| | Tues. | Wed. | Thurs. |
| Level A misdemeanor | 31.1% | 31.1% | 31.1% |
| Male | 75.3% | 74.9% | 75.2% |
| Age (years) | 30.7 | 30.7 | 30.7 |
| Black | 43.1% | 44.0% | 44.3% |
| Citizen | 76.2% | 76.0% | 76.1% |
| Height (in.) | 67.8 | 67.8 | 67.8 |
| Prior misdemeanor convictions | 1.63 | 1.65 | 1.63 |
| Prior felony convictions | 0.83 | 0.84 | 0.82 |

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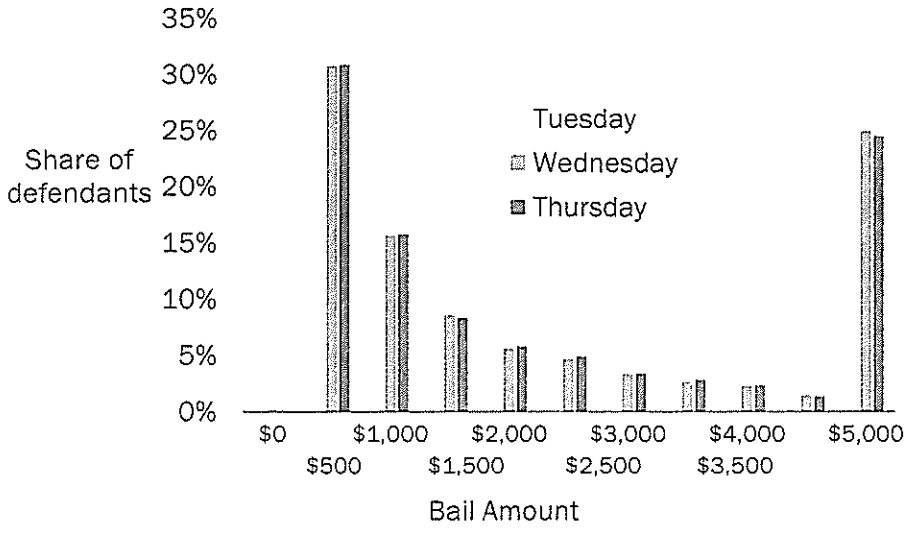
## Tuesday, Wednesday, and Thursday Defendants Are Assigned the Same Bail...

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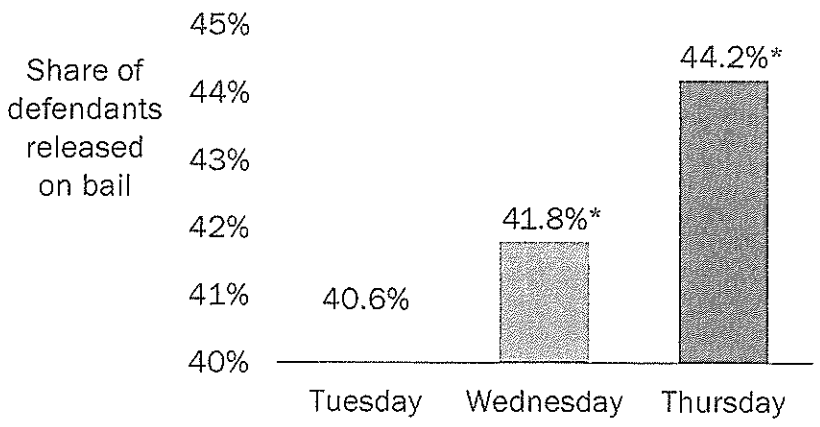
## ...But Thursday Defendants Are More Likely to Actually Be Released




*=statistically significant difference

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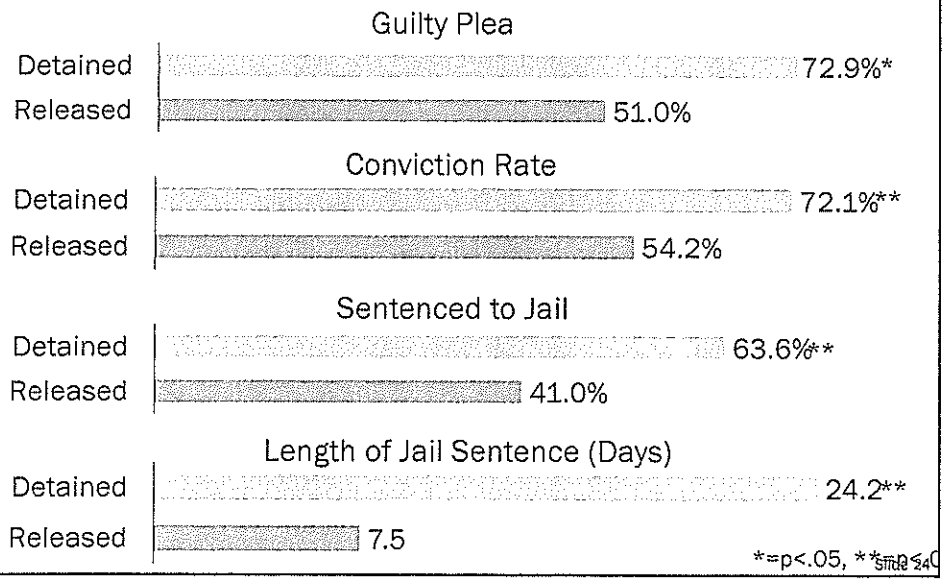
## Natural Experiment Also Finds A Large Effect of Pre-Trial Detention




*=p<.05, **

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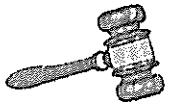
## What If Those with Low Bonds Were Released on Recognizance?

40,000 more pretrial releases

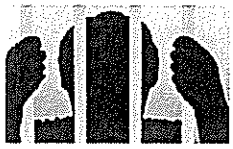
5,900 fewer criminal convictions



$20M saved in supervision costs

1,600 fewer felonies
2,400 fewer misdemeanors

400,000 fewer days of incarceration



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## Existing GA Caselaw on Bail

No Constitutional right to bail; statutory right to bail currently limited to misdemeanors; Constitutional limitation against "excessive bail"

*Constantino v. Warren,*
285 Ga. 851 (2009)

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## Existing GA Caselaw on Bail

Excessive bail is the equivalent of a refusal to grant bail; habeas corpus is [the] remedy for relief; "gist of the problem . . . is to place the amount high enough to reasonably assure the presence of the defendant . . ., and at the same time to avoid a figure higher than that reasonably calculated to fulfill this purpose, and therefore excessive" – broad discretion in court.

*Jones v. Grimes*, 219 Ga. 585 (1964)
(directed reduction in amount)

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## *Jones v. Grimes*

Defendant was a non-resident without a permanent place of abode; repeat offender of non-violent crime at issue (disrupting church services) across numerous states, but no failures to appear.

Initial bond decision OK - court had some basis to believe friends or relatives could post high bond ($20,000). By time of conviction (with sentence of 6 months in jail, 12 months on public works) and large fine, that was no longer tenable. Ordered reduced to the amount he said he could make - $5,000.

## Calhoun case (on appeal)

- Defendants for ordinances released without secured bond
- Financial affidavit made available to Defendant as soon as practical
- Defendant indicates assets, whether income below poverty level, and what amount of bond he could post

Within 24 hours:

- Determine whether affidavit qualifies Defendant under federal poverty standards
- Release Defendants who meet poverty standards without holds on unsecured bonds

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## Conference of Chief Justices amicus brief in Houston case

[T]he Constitution imposes *some* meaningful limits to protect the pretrial rights of indigent defendants because, as with other constitutional rights, an unconvicted person's right to liberty may not be infringed solely because of an inability to pay.

The precise contours of each state's or locality's bail system should remain with policymakers, of course. But such efforts need to be made against the backdrop of a settled understanding of the minimum federal constitutional requirements.

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## Houston case (5th Circuit)

ODonnell v. Harris Cty., 882 F.3d 528 (5th Cir., 2018)

Authored by Edith Brown Clement

(Conservative judge prominently mentioned in connection with filling Rehnquist and O'Connor vacancies)

Practice did not conform to nominal procedures (hearings within 24 hours and 48 hours with individualized determinations) so federal trial court stepped in with injunctive relief

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## Houston case (5th Circuit)

Disparate treatment from wealth of defendant is subject to intermediate scrutiny analysis.

[M]ust implement the constitutionally-necessary procedures to engage in a case-by-case evaluation of a given arrestee's circumstances, taking into account the various factors required by ... state law (only one of which is ability to pay).

These procedures are: notice, an opportunity to be heard and submit evidence within 48 hours of arrest, and a reasoned decision by an impartial decisionmaker.

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## Houston case (5th Circuit)

- Financial affidavit to be completed within 24 hours
- Adversary hearing on financial circumstances within 48 hours if not released or given unsecured bond
- Recorded or written findings of fact for imposing secured bond past 48 hours

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## Bond Legislation

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# Misdemeanor Bail - 17-6-1(b)

- all misdemeanors, inclusive of ordinances [new], are bailable by "a court of inquiry"
- Continues language that misdemeanors are bailable of right
- Black letter standard [new]: When determining bail for a person charged with a misdemeanor, courts shall not impose excessive bail and shall impose only the conditions reasonably necessary to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances.

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# Domestic Violence - 17-6-1(f)(2)

- For offenses involving domestic violence as defined by OCGA 19-13-1 bail and conditions of release must be set by judge on an individual basis and a bail schedule may not be used.
- Note that 19-13-1 includes family violence criminal trespass.

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# All bail - 17-6-1(e)(2):

When determining bail, as soon as possible [48 hours outside limit], the court shall consider:

(A) The accused's financial resources and other assets, including whether any such assets are jointly controlled;

(B) The accused's earnings and other income;

(C) The accused's financial obligations, including obligations to dependents;

(D) The purpose of bail; and

(E) Any other factor the court deems appropriate.

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# Monetary Bonds

- Only legal obligation is to court appearance
- *Unsecured* bonds as effective as *secured* bonds for court appearance

(Haven't personally reviewed)

See Jones, M. *Unsecured bonds: The as effective and most efficient pretrial release option*. Pretrial Justice Institute, 2013.

If you release someone who could make a monetary bond SOR - Just as likely to show up

If you just release persons who cannot make bond will FTA rate stay the same?

**NO – it will go up**

**Unless you take active measures, (improved court notifications or some form of reporting)**

**Risk Assessment selects better than monetary bonds**

**Supplemental notifications will reduce FTAs substantially**

# Citations

## Gwinnett citation study

Judge Warren Davis (now Superior Court, then Chief Magistrate) arranged randomly assignment of Theft by Shoplifting cases to arrest or citations

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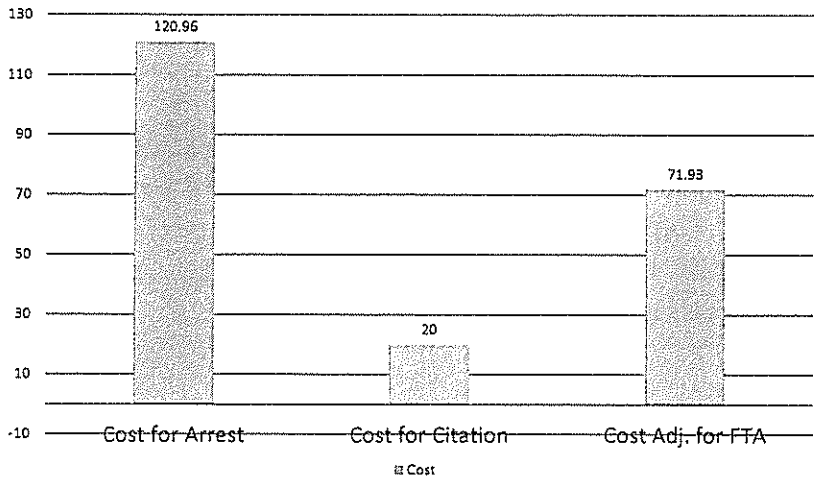
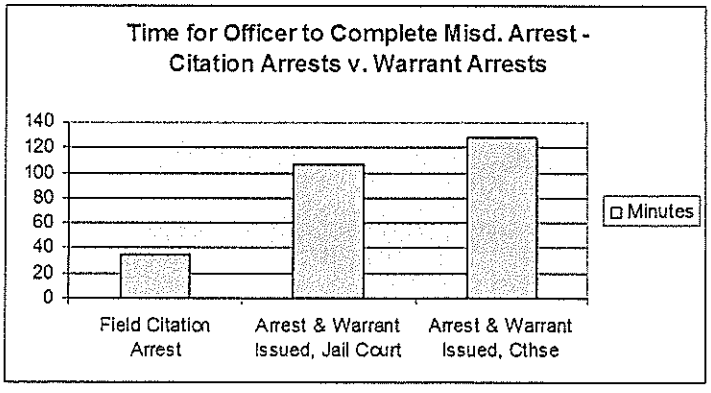
## Cost of Citation vs. Arrest
(without supplemental notices)




J. David Hirschel and Charles W. Dean, The Relative Cost Effectiveness of Citation and Arrest, 23 J. of Crim. Just. 1 (1995).

## Time for citation vs arrest



# Gwinnett County Practice on FTAs

- FTA - citation: FTA defendant given a second written notice to appear at a second court date **before** a bench warrant is issued for their arrest.
- FTA – custodial arrest: a defendant released on bond who fails to appear at this first hearing gets an **immediate** bench warrant

| Table 4a Arrest Mechanism | Sample Size | 2nd notice FTA | % FTA | 3rd notice, FTA | Final FTA |
|---|---|---|---|---|---|
| Arrest Warrant & Bond | 300 | 26 | 8.6% | ---- | ---- |
| Shoplifting Citation | 300 | 41 | 13.6% | 14 | 4.6% |

| Table 5a Arrest Mechanism | Sample size | # Failing to Appear, FTA | % FTA | Second notice, # FTA | Final FTA |
|---|---|---|---|---|---|
| Traffic Citations | 300 | 32 | 10.7% | 13 | 4.3% |
| Shoplifting Citations | 300 | 41 | 13.6% | 14 | 4.6% |

# Citation Legislation

## New Citation Forms

OCGA 15-5-21.1

- Judicial Council to develop and approve a new misdemeanor citation and summons to be used for arrest on ordinances and designated misdemeanors.
- Judicial Council to prescribe rules for use in each class of court.

## New citation authority for State Courts OCGA 15-7-42:

- 3-3-23 alcohol & minors charges
- 16-7-21 criminal trespass
- 16-8-14&14.1 - Theft by shoplifting and refund fraud
- 16-13-30 marijuana

Permits proceedings other than trials on merits to be done in chambers without other court officials –

DON'T DO IT!

## Revision of 17-4-23

- Citations issued by police as a form of arrest – before nothing said citations were issued by police, unlike for muncipalities or traffic offenses
- Based upon conduct in presence of police or witness
- Requires bench warrant unless court finds reasonable excuse
- Requires "a reasonable bond" after appearance in court on bench warrant – citation doesn't count as first bail

## Fingerprints: 17-4-23(a)(2):

When an arrest is made for such offense, prior to releasing the accused on citation, the arresting law enforcement officer shall review the accused's criminal record as such is on file with the Federal Bureau of Investigation and the Georgia Crime Information Center within the Georgia Bureau of Investigation and ensure that the accused's fingerprints are obtained.

## Citation questions: Form

Law permits citation to be charging instrument but how many citations will pass the standards of *Jackson v. State*, 301 Ga. 137, 800 S.E.2d 356 (2017) & *Budhani v. State*, 2018 WL 1179846 (Ct. App. # A18A0645, 3/7/2018):

(1) recite the language of the statute that sets out all the elements of the offense charged, or

(2) allege the facts necessary to establish violation of a criminal statute.

# Citation questions

- No way that paper tickets will practically meet that standard for most varieties of charges.
- Need for accusations for trial
- Can electronic citation programs be developed practical to be used by police in field to create a charging instrument? OCGA 15-5-21.1
- Does a plea take care of the issues posed by *Jackson*? Probably: *Jackson* quotes *Hill v. Williams*, 296 Ga. 753, 758, 770 S.E.2d 800 (2015) :"Due process requires that an indictment 'put the defendant on notice of the crimes with which he is charged and against which he must defend.'" but cases considering the issue have followed the issue being properly raised by demurrer, and *Hill* says defendant must show harm as well as error.

# Citation questions

- Will witness need to be identified on form?
- Presumably, since citation is considered a form of arrest, particularly if one is hauling defendant to jail for fingerprints, standard probable cause considerations will apply.

## Citation questions: fingerprints

- If person is adequately identified by driver's license or state ID and fingerprints are on file, can police release at scene?
- Will police begin using equipment for scene acquisition of fingerprints to avoid lost time taking Defendants to jail?
- Can any method which does not take defendant to jail or get fingerprints at scene satisfy the requirements of "ensur[ing] that the accused's fingerprints are obtained"? Or no time savings.

## RISK-BASED DECISION MAKING

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# Problems with Monetary Bail

Releasing *higher risk* defendants
<u>due to their ability to pay</u>

vs.

Detaining *lower risk* defendants
<u>due to their inability to pay</u>

## What is pretrial risk assessment?

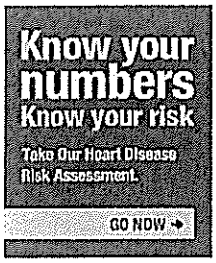
- Tool that gives judges information about a defendant's risk of

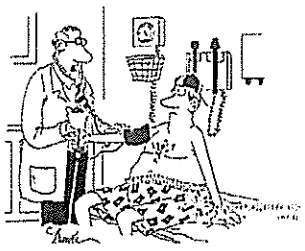
  (1)failing to appear

  (2)engaging in criminal activity during pretrial release

## Pretrial Risk Assessment
## An *Actuarial* Tool

It gives probability of success/failure for a *group of like defendants* and not any one defendant. It is limited to information relevant to pretrial decision making.



"In this case, a new high score is not a good thing."

## Risk Assessment Is...Isn't...

***Is***

- An actuarial science
- Statistical based prediction of likelihood
- Objective tool as part of the decision making process

***Isn't***

- A guarantee of an outcome
- Replacement for judicial discretion and context
- (doesn't) consider the nature and circumstances of offense nor weight of evidence (2 critical factors of release decision/may be statutorily required)

# PSA – Factor Weighting

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HOW RISK SCORES ARE CONVERTED TO THE SIX-POINT SCALES AND NVCA FLAG

| Risk Factor | Weights |
|---|---|
| **Failure to Appear (maximum total weight = 7 points)** | |
| Pending charge at the time of the offense | No = 0; Yes = 1 |
| Prior conviction | No = 0; Yes = 1 |
| Prior failure to appear pretrial in past 2 years | 0 = 0; 1 = 2; 2 or more = 4 |
| Prior failure to appear pretrial older than 2 years | No = 0; Yes = 1 |
| **New Criminal Activity (maximum total weight = 13 points)** | |
| Age at current arrest | 23 or older = 0; 22 or younger = 2 |
| Pending charge at the time of the offense | No = 0; Yes = 3 |
| Prior misdemeanor conviction | No = 0; Yes = 1 |
| Prior felony conviction | No = 0; Yes = 1 |
| Prior violent conviction | 0 = 0; 1 or 2 = 1; 3 or more = 2 |
| Prior failure to appear pretrial in past 2 years | 0 = 0; 1 = 1; 2 or more = 2 |
| Prior sentence to incarceration | No = 0; Yes = 2 |
| **New Violent Criminal Activity (maximum total weight = 7 points)** | |
| Current violent offense | No = 0; Yes = 2 |
| Current violent offense & 20 years old or younger | No = 0; Yes = 1 |
| Pending charge at the time of the offense | No = 0; Yes = 1 |
| Prior conviction | No = 0; Yes = 1 |
| Prior violent conviction | 0 = 0; 1 or 2 = 1; 3 or more = 2 |

# VPRAI

- Commissioned by the *Virginia Department of Criminal Justice Services* in response to Pretrial Services Act of VA General Assembly (1994/1995)
- Collected data for one year July 1998 - June 1999
- ~2,000 cases
- Collected exhaustive data on characteristics of case, criminal history
- Statistical analysis derived which factors most related to pretrial success/failure
- Predictive factors weighted to determine a "score"
- Ongoing revision and validation

# Risk Factors and Points

| Risk Factor | Criteria | Assigned Point(s) |
|---|---|---|
| Charge Type | If the most serious charge for the current arrest was a felony | 1 point |
| Pending Charge(s) | If the defendant had one or more charge(s) pending in court at the time of the arrest | 1 point |
| Criminal History | If the defendant had one or more misdemeanor or felony convictions | 1 point |
| Two or more Failures to Appear | If the defendant had two or more failures to appear | 2 points |
| Two or more Violent Convictions | If the defendant had two or more violent convictions | 1 point |
| Length at Current Residence | If the defendant had lived at their current residence for less than one year prior to arrest | 1 point |
| Employed/ Primary Caregiver | If the defendant was not employed or a primary caregiver at the time of arrest | 1 point |
| History of Drug Abuse | If the defendant had a history of drug abuse | 1 point |

# What do scores mean?

| VPRA Score | Pretrial Success Rate | Court Appearance Rate | Public Safety Rate | Technical Compliance Rate |
|---|---|---|---|---|
| 0-1 | 95% | 98% | 98% | 98% |
| 2 | 92% | 98% | 97% | 95% |
| 3 | 86% | 96% | 95% | 93% |
| 4 | 82% | 96% | 94% | 89% |
| 5-9 | 76% | 93% | 91% | 85% |

# Decision Making Framework: Examples

PRETRIAL JUSTICE INSTITUTE

| Pretrial Risk Category | Most Serious Charge | | | | | |
|---|---|---|---|---|---|---|
| | Less Serious Misdemeanor | More Serious Misdemeanor | Less Serious or Non-Violent Felony | Driving Under the Influence | Domestic Violence | Serious or Violent Felony |
| Lower | Recognizance Release with Court Reminder | Recognizance Release with Court Reminder | Recognizance Release with Court Reminder | Recognizance Release with Basic Supervision | Recognizance Release with Basic Supervision | Recognizance Release with Enhanced Supervision (if Released); or Detained |
| Medium | Recognizance Release with Court Reminder | Recognizance Release with Basic Supervision | Recognizance Release with Basic Supervision | Recognizance Release with Enhanced Supervision | Recognizance Release with Enhanced Supervision | Recognizance Release with Enhanced Supervision (if Released); or Detained |
| Higher | Recognizance Release with Basic Supervision | Recognizance Release with Enhanced Supervision | Recognizance Release with Enhanced Supervision | Recognizance Release with Enhanced Supervision | Recognizance Release with Enhanced Supervision | Recognizance Release with Enhanced Supervision (if Released); or Detained |

# Modified Virginia Praxis

PRETRIAL JUSTICE INSTITUTE

| Risk/Charge Category | | Non-Violent Misd. | DUI | Non-Violent Felony | Violent Misd. | Violent Fel./Firearm |
|---|---|---|---|---|---|---|
| Low (1) | Bail Status | ROR | ROR | ROR | ROR | ROR |
| | Pretrial Services | No | No | No | No | Level II |
| | Special Cond. | No | No | No | No | As needed |
| Below Average (2) | Bail Status | ROR | ROR | ROR | ROR | ROR |
| | Pretrial Services | No | Monitor | Monitor | Monitor | Level III |
| | Special Cond. | No | No | No | No | As needed |
| Average (3) | Bail Status | ROR | ROR | ROR | ROR | Per court |
| | Pretrial Services | Monitor | Level I | Level I | Level I/II | Per court |
| | Special Cond. | No | No | No | As needed | As needed |
| Above Average (4) | Bail Status | ROR | ROR | ROR | ROR | Per court |
| | Pretrial Services | Level I | Level II | Level II | Level II | Per court |
| | Special Cond. | As needed | As needed | As needed | As needed | As needed |
| High (5) | Bail Status | ROR | Per court | Per court | ROR | Per court |
| | Pretrial Services | Level II | Per court | Per court | Level III | Per court |
| | Special Cond. | As needed | As needed | As needed | As needed | As needed |

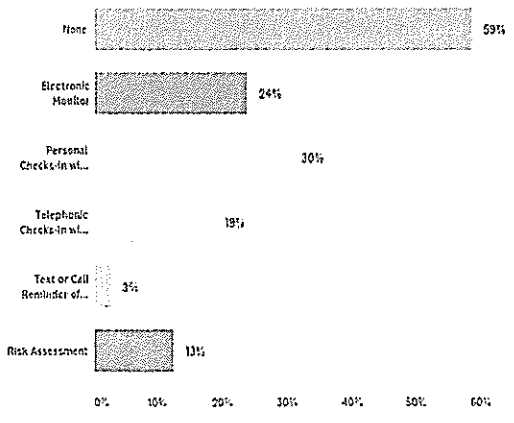
# Pretrial Risk Assessment

Barriers to risk assessment:

- Lack of data to show cost-benefit analysis
- Labor intensive with existing data bases
- County funding of misdemeanor detention and prosecution

## Georgia's Bond System

Q23 What pre-trial services do you routinely offer?



# Pretrial Management

## Supervision: Risk Principle


Level of Supervision/Monitoring

- Preventive detention
- GPS
- Stay away order
- Curfew
- Travel restrictions
- Prescribed contact/supervision
- Court reminder

## Effective Pretrial Practices

PRETRIAL JUSTICE INSTITUTE

- Pretrial Services (case management of pretrial conditions)
  - Generally results in increased court appearance rates
  - More research needed on dosage/frequency effects
  - Can have too much supervision
- Court Date Notification
  - Multiple studies of effectiveness in improving court appearance rates by 30-50% (Mail studies). Reciting consequences cuts 10% from FTAs.

Judicial Council Committee on Misdemeanor Bail Reform

## Recommendations

*Improved FTA rates:*

- **Regular court reminders by phone or text;**
- **Plain language notices noting consequences of FTA;**
- *State-wide opt-in contracts to provide electronic notifications of court appearances (and jury duty);*

Judicial Council Committee on Misdemeanor Bail Reform

# Improving FTA Rates

2006 Gwinnett study of shoplifting and traffic offenses showed that mailing an additional notice to shoplifting offenders issued citations **reduced** their **FTA rates** from **13.6%** to **4.6%** (from 10.7% for traffic to 4.3%), an FTA rate **less** than that of those arrested and released on bond (8.6%).

Judicial Council Committee on Misdemeanor Bail Reform

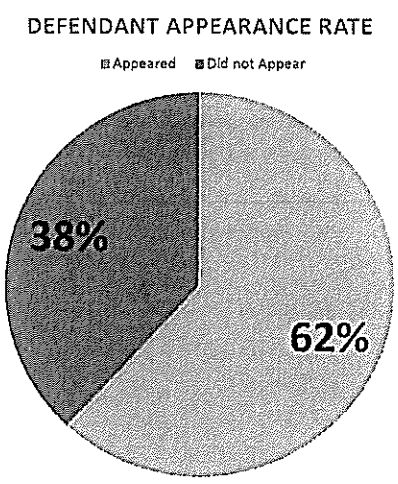
# FTC requirements

- Use of text messaging requires opt-in for text messaging for commercial activities
- Similar requirements for emails and automated calls
- May not apply to courts, but
- Commercial vendor may require it also

Judicial Council Committee on Misdemeanor Bail Reform

## Pickens Magistrate Court Notification Pilot

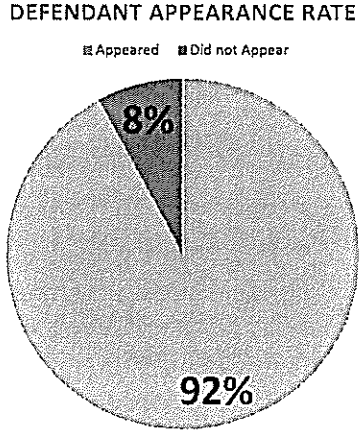
- June 2016 – October 2016
- 388 total defendants
- 148 Failure to Appears
  - 105 Bench Warrants
    - 53 Misdemeanors
    - 52 Felonies




Judicial Council Committee on Misdemeanor Bail Reform

## Pickens Magistrate Court Notification Pilot

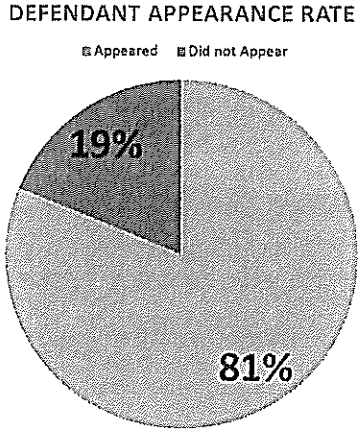
- June 2017 – October 2017
- 405 total defendants
  - 1,120 contacts in database representing 366 defendants. This is less based on citations without information included.
- 32 Failure to Appears
  - 15 Bench Warrants
    - 3 Misdemeanors
    - 11 Felonies



Judicial Council Committee on Misdemeanor Bail Reform

## Pickens Magistrate Court Notification Pilot

- June 2017 – March 2018
- 764 total defendants
  - 1,655 contacts in database representing **652** defendants. This is less based on **citations without information included.**
- 144 Failure to Appears
  - 41 Bench Warrants
    - 11 Misdemeanors
    - 30 Felonies




Judicial Council Committee on Misdemeanor Bail Reform

## Pickens Magistrate Court Notification Pilot

- Contact information and waiver of notification is captured by jail staff upon release.
  - Cell phone numbers, home phone numbers, emails and an emergency contact are all gathered at jail and forwarded to court.
- Citations issued include a phone number in narrative.
  - More information would be useful.
- Court manages contact database with a part-time intern.
- Calls, text messages and emails go out the day before Court at 7pm and again at 10am on the day of Court reminding them of the 1:30pm calendar call.
- All FTAs are checked against available jail data and most are incarcerated in other counties or may be in state prison. These cases are not bench warranted as this is not considered willful.

Judicial Council Committee on Misdemeanor Bail Reform

## Odyssey pilot

Starting in August 2018

Tyler is apparently not requiring opt-in as condition – its up to us

As a condition of release on bail I agree to provide cell phone and email addresses and to receive court communications by email and text.:

☐ Cell phone no. _____

☐ Alternate Cell Phone No. _____ (for person who can reach me)

☐ I do not have a cell phone or alternate cell phone no.

☐ Email: _____

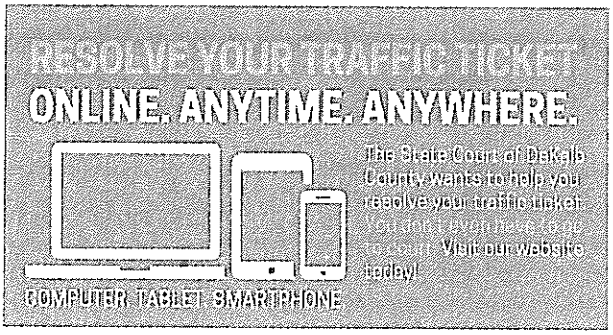
☐ I do not have an email address

Signature line

DeKalb State Court ~ Traffic Proposed "Opt-in" notice provided via Web or Officer initiated contact


COURTINNOVATIONS.COM/GASDC

DeKalb County
GEORGIA




COURTINNOVATIONS.COM/GASDC

# Odyssey pilot – jail cases

Starting in August 2018

- Tyler is apparently not requiring opt-in as condition – its up to us

As a condition of release on bail I agree to provide cell phone and email addresses and to receive court communications by email and text:

□ Cell phone no. _____

□ Alternate Cell Phone No. _____ (for person who can reach me)

□ I do not have a cell phone or alternate cell phone no.

□ Email: _____

□ I do not have an email address

Signature line

# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

No. 17-20333

United States Court of Appeals
Fifth Circuit
FILED
February 14, 2018
Lyle W. Cayce
Clerk

MARANDA LYNN ODONNELL,

Plaintiff - Appellee

v.

HARRIS COUNTY, TEXAS; ERIC STEWART HAGSTETTE; JOSEPH LICATA, III; RONALD NICHOLAS; BLANCA ESTELA VILLAGOMEZ; JILL WALLACE; PAULA GOODHART; BILL HARMON; NATALIE C. FLEMNG; JOHN CLINTON; MARGARET HARRIS; LARRY STANDLEY; PAM DERBYSHIRE; JAY KARAHAN; JUDGE ANALIA WILKERSON; DAN SPJUT; JUDGE DIANE BULL; JUDGE ROBIN BROWN; DONALD SMYTH; JEAN HUGHES,

Defendants - Appellants

---

LOETHA SHANTA MCGRUDER; ROBERT RYAN FORD,

Plaintiffs - Appellees

v.

HARRIS COUNTY, TEXAS; JILL WALLACE; ERIC STEWART HAGSTETTE; JOSEPH LICATA, III; RONALD NICHOLAS; BLANCA ESTELA VILLAGOMEZ,

Defendants - Appellants

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Appeals from the United States District Court
for the Southern District of Texas

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Before CLEMENT, PRADO, and HAYNES, Circuit Judges.

No. 17-20333

EDITH BROWN CLEMENT, Circuit Judge:

Maranda ODonnell and other plaintiffs (collectively, "ODonnell") brought a class action suit against Harris County, Texas, and a number of its officials—including County Judges,[1] Hearing Officers, and the Sheriff (collectively, the "County")—under 42 U.S.C. § 1983. ODonnell alleged the County's system of setting bail for indigent misdemeanor arrestees violated Texas statutory and constitutional law, as well as the equal protection and due process clauses of the Fourteenth Amendment. ODonnell moved for a preliminary injunction, and the County moved for summary judgment. After eight days of hearings, at which the parties presented numerous fact and expert witnesses and voluminous written evidence, the district court denied the County's summary judgment motion and granted ODonnell's motion for a preliminary injunction. The County then applied to this court for a stay of the injunction pending appeal, but the motion was denied, and the injunction went into effect. Before this court now is the County's appeal, seeking vacatur of the injunction and raising numerous legal challenges.

For the reasons set forth, we affirm most of the district court's rulings, including its conclusion that ODonnell established a likelihood of success on the merits of its claims that the County's policies violate procedural due process and equal protection. We disagree, however, with the district court's analysis in three respects: First, its definition of ODonnell's liberty interest under due process was too broad, and the procedures it required to protect that interest were too onerous. Second, it erred by concluding that the County Sheriff can be sued under § 1983. Finally, the district court's injunction was overbroad. As a result, we will dismiss the Sheriff from the suit, vacate the

[1] The parties use the term "County Judges" to refer to the judges of the County Criminal Courts of Harris County, and we will use that same term. This term does not refer to the County Judge who is the head of the County Commissioners' Court of Harris County.

injunction, and order the district court to modify its terms in a manner consistent with this opinion.

I.

We need not conduct an exhaustive review of the facts. The district court's account is expansive: It comprised over 120 pages of factual findings, including not only the specific details of the County's bail-setting procedures, but also the history of bail and recent reform attempts nationwide.

Bail in Texas is either secured or unsecured. Secured bail requires the arrestee to post bond either out of the arrestee's pocket or from a third-party surety (often bail bondsmen, who generally require a 10% non-refundable premium in exchange for posting bond). Unsecured bail, by contrast, allows the arrestee to be released without posting bond, but if he fails to attend his court date and/or comply with any nonfinancial bail conditions, he becomes liable to the County for the bail amount. Both secured and unsecured bail may also include nonfinancial conditions to assure the detainee's attendance at future hearings.

The basic procedural framework governing the administration of bail in Harris County is set by the Texas Code of Criminal Procedure and local rules promulgated by County Judges. *See* Tex. Gov't Code § 75.403(f). When a misdemeanor defendant is arrested, the prosecutor submits a secured bail amount according to a bond schedule established by County Judges. *See* Harris County Criminal Courts at Law Rule 9 (*hereinafter*, "Local Rule"). Bonds are then formally set by Hearing Officers and County Judges. Tex. Code. Crim. Pro. art. 2.09, 17.15. Hearing Officers are generally responsible for setting bail amounts in the first instance. This often occurs during the arrestee's initial probable cause hearing, which must be held within 24 hours of arrest. Tex. Code Crim. Pro. art. 17.033; Local Rule 4.2.1.1. County Judges review the

Hearing Officers' determinations and can adjust bail amounts at a "Next Business Day" hearing. Local Rule 4.3.1.

The Hearing Officers and County Judges are legally proscribed from mechanically applying the bail schedule to a given arrestee. Instead, the Texas Code requires officials to conduct an individualized review based on five enumerated factors, which include the defendant's ability to pay, the charge, and community safety. Tex. Code of Crim. Pro. art. 17.15. The Local Rules explicitly state the schedule is not mandatory. They also authorize a similar, individualized assessment using factors which partially overlap with those listed in the Code. Local Rule 4.2.4. Hearing Officers and County Judges sometimes receive assessments by Pretrial Services, which interviews the detainees prior to hearings, calculates the detainees flight and safety risk based on a point system, and then makes specific recommendations regarding bail.[2]

Despite these formal requirements, the district court found that, in practice, County procedures were dictated by an unwritten custom and practice that was marred by gross inefficiencies, did not achieve any individualized assessment in setting bail, and was incompetent to do so. The district court noted that the statutorily-mandated probable cause hearing (where bail is usually set) frequently does not occur within 24 hours of arrest. The hearings often last seconds, and rarely more than a few minutes. Arrestees are instructed not to speak, and are not offered any opportunity to submit evidence of relative ability to post bond at the scheduled amount.

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[2] Individualized assessment is also assured by a preexisting federal consent decree, which requires County officials to make individualized assessments of each misdemeanor defendant's case and adjust the scheduled bail amount accordingly, or else release the defendant on unsecured or nonfinancial conditions.

The court found that the results of this flawed procedural framework demonstrate the lack of individualized assessments when officials set bail. County officials "impose the scheduled bail amounts on a secured basis about 90 percent of the time. When [they] do change the bail amount, it is often to conform the amount to what is in the bail schedule." The court further found that, when Pretrial Services recommends release on personal bond, Hearing Officers reject the suggestion 66% of the time. Because less than 10% of misdemeanor arrestees are assigned an unsecured personal bond, some amount of upfront payment is required for release in the vast majority of cases.

The court also found that the "Next Business Day" hearing before a County Judge fails to provide a meaningful review of the Hearing Officer's bail determinations. Arrestees routinely must wait days for their hearings. County Judges adjust bail amounts or grant unsecured bonds in less than 1% of cases. Furthermore, prosecutors routinely offer time-served plea bargains at the hearing, and arrestees are under immense pressure to accept the plea deals or else remain incarcerated for days or weeks until they are appointed a lawyer.

The district court further noted the various ways in which the imposition of secured bail specifically targets poor arrestees. For example, under the County's risk-assessment point system used by Pretrial Services, poverty indicators (such as not owning a car) receive the same point value as prior criminal violations or prior failures to appear in court. Thus, an arrestee's impoverishment increased the likelihood he or she would need to pay to be released.

The court also observed that Hearing Officers imposed secured bails upon arrestees after having been made aware of an arrestee's indigence by the risk-assessment reports or by the arrestee's own statements. And further, after extensive review of numerous bail hearings, the court concluded Hearing

Officers were aware that, by imposing a secured bail on indigent arrestees, they were ensuring that those arrestees would remain detained.

The court rejected the argument that imposing secured bonds served the County's interest in ensuring the arrestee appeared at the future court date and committed no further crime. The court's review of reams of empirical data suggested the opposite: that "release on secured financial conditions does not assure better rates of appearance or of law-abiding conduct before trial compared to release on unsecured bonds or nonfinancial conditions of supervision." Instead, the County's true purpose was "to achieve pretrial detention of misdemeanor defendants who are too poor to pay, when those defendants would promptly be released if they could pay." In short, "secured money bail function[ed] as a pretrial detention order" against the indigent misdemeanor arrestees.

The district court also reviewed voluminous empirical data and academic literature to evaluate the impact of pretrial detention on an arrestee. The court found that the expected outcomes for an arrestee who cannot afford to post bond are significantly worse than for those arrestees who can. In general, indigent arrestees who remain incarcerated because they cannot make bail are significantly more likely to plead guilty and to be sentenced to imprisonment. They also receive sentences that are on average twice as long as their bonded counterparts. Furthermore, the district court found that pretrial detention can lead to loss of job, family stress, and even an increase in likeliness to commit crime.

The court concluded that ODonnell had established a likelihood of success on the merits of their claim that the County violated both the procedural due process rights and the equal protection rights of indigent misdemeanor detainees. It granted the motion for a preliminary injunction,

requiring the implementation of new safeguards and the release of numerous detainees subjected to the insufficient procedures.

II.

This court reviews a "district court's grant of a preliminary injunction . . . for abuse of discretion." *Women's Med. Cty. of Nw. Hous. v. Bell*, 248 F.3d 411, 418–19 (5th Cir. 2001). "Findings of fact are reviewed only for clear error; legal conclusions are subject to *de novo* review." *Id.* at 419. "Issuance of an injunction rests primarily in the informed discretion of the district court. Yet injunctive relief is a drastic remedy, not to be applied as a matter of course." *Marshall v. Goodyear Tire & Rubber Co.*, 554 F.2d 730, 733 (5th Cir. 1977) (internal citations omitted). A district court abuses its discretion if it issues an injunction that "is not narrowly tailored to remedy the specific action which gives rise to the order as determined by the substantive law at issue." *Scott v. Schedler*, 826 F.3d 207, 211 (5th Cir. 2016) (internal quotation marks and alterations omitted).

III.

The County raises a number of arguments that do not implicate the merits of ODonnell's constitutional claims. We address these first.

*A. Liability of County Judges and Sheriff under § 1983*

The County appeals the district court's ruling that the County Judges and Sheriff could be sued under 42 U.S.C. § 1983. Liability under § 1983 attaches to local government officers "whose [unlawful] decisions represent the official policy of the local governmental unit." *Jett v. Dall. Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989). Whether an officer has been given this authority is "a question of state law." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). "Official policy" includes unwritten widespread practices that are "so common and well settled as to constitute a custom that fairly represents municipal policy." *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992) (quoting

*Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir. 1984) (en banc)). And unlawful decisions include "acquiescence in a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity." *Jett*, 491 U.S. at 737 (internal quotation marks omitted).

Though a judge is not liable when "acting in his or her judicial capacity to enforce state law," *Moore*, 958 F.2d at 94, we agree with the district court that the County Judges are appropriate parties in this suit. Texas law explicitly establishes that the Judges are "county officers," TEX. CONST. art. V § 24, imbued with broad authority to promulgate rules that will dictate post-arrest policies consistent with the provisions of state law, Tex. Gov't Code § 75.403(f). Here, ODonnell alleged that, despite having this authority, County Judges acquiesced in an unwritten, countywide process for setting bail that violated both state law and the Constitution. In other words, they sue the County Judges as municipal officers in their capacity as policymakers. Section 1983 affords them an appropriate basis to do so.

We agree with the County that its Sheriff is not an appropriate party, however. The Sheriff does not have the same policymaking authority as the County Judges. To the contrary, the Sheriff is legally obliged to execute all lawful process and cannot release prisoners committed to jail by a magistrate's warrant—even if prisoners are committed "for want of bail." *See* Tex. Code Crim. Pro. arts. 2.13, 2.16, 2.18; Tex. Loc. Gov't Code § 351.041(a) (noting the Sheriff's authority is "subject to an order of the proper court"). State statutes, in other words, do not authorize the County Sheriff to avoid executing judicial orders imposing secured bail by unilaterally declaring them unconstitutional. Accordingly, the County Sheriff cannot be sued under § 1983.

*B.* Younger *Abstention*

The County next argues that *Younger* abstention precludes our review of ODonnell's claims. We are not persuaded.

The Supreme Court held in *Younger v. Harris* that, when a party in federal court is simultaneously defending a state criminal prosecution, federal courts "should not act to restrain [the state] criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." 401 U.S. 37, 43–44 (1971). Its conclusion was motivated by the "basic doctrine of equity jurisprudence," "notion[s] of 'comity,'" and "Our Federalism." *Id.* Courts apply a three-part test when deciding whether to abstain under *Younger*. There must be (1) "an ongoing state judicial proceeding" (2) that "implicate[s] important state interests" and (3) offers "adequate opportunity" to "raise constitutional challenges." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

The third prong of this test is not met. As the Supreme Court has already concluded, the relief sought by ODonnell—i.e., improvement of pretrial procedures and practice—is not properly reviewed by criminal proceedings in state court. *See Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1975) (noting that abstention did not apply because "[t]he injunction was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution"); *see also Pugh v. Rainwater*, 483 F.2d 778, 781–82 (5th Cir. 1973) (noting that a federal question whose "resolution . . . would [only] affect state procedures for handling criminal cases . . . . is not 'against any pending or future court proceedings *as such*'" (quoting *Fuentes v. Shevin*, 407 U.S. 67, 71 n.3 (1971))), *rev'd on other grounds by Gerstein*, 420 U.S. 103. As the district court noted, the adequacy of the state court review of bail-setting procedures is essential to ODonnell's federal cause of action. In short, "[t]o find that the plaintiffs have an adequate hearing on their constitutional claim in state court would decide [its] merits."

We also note that the policy concerns underlying this doctrine are not applicable here. The injunction sought by ODonnell seeks to impose "nondiscretionary procedural safeguard[s]," which will not require federal intrusion into pre-trial decisions on a case-by-case basis. *Tarter v. Hurry*, 646 F.2d 1010, 1013–14 (5th Cir. Unit A June 1981); *compare O'Shea v. Littleton*, 414 U.S. 488, 499–502 (1974) (noting that the enforcement of the improper injunction in question required "continuous supervision by the federal court over the conduct of the petitioners in the course of future criminal trial proceedings involving any of the members of the respondents' broadly defined class"). Such relief does not implicate our concerns for comity and federalism.[3]

*C. The County's Eighth Amendment Argument*

The County contends that ODonnell's complaint "is an Eighth Amendment case wearing a Fourteenth Amendment costume." The Eighth Amendment states in relevant part that "[e]xcessive bail shall not be required." U.S. CONST. amend. VIII. It is certainly true that, when a constitutional provision specifically addresses a given claim for relief under 42 U.S.C. § 1983, a party should seek to apply that provision directly. *See Graham v. Connor*, 490 U.S. 386, 394 (1989); *cf. Manuel v. City of Joliet*, 137 S. Ct. 911, 917 (2017). But we have already concluded that "[t]he incarceration of those who cannot [pay money bail], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements."

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[3] The County also argues that we are precluded from reviewing ODonnell's claims because they should have been raised as a petition for habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475 (1973). We agree with the district court that this argument has been waived. The County neither mentioned *Preiser* nor pressed the habeas argument until its motion for a stay of the injunction. The closest the County came to preserving this argument was one sentence in its response to ODonnell's motion for preliminary injunction. This passing reference is insufficient to preserve the argument, especially given that it is dispositive of the case at the threshold stage.

*Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc). ODonnell's present claims do not run afoul of *Graham*.

IV.

We now address the merits of ODonnell's constitutional claims. For the reasons set forth below, we affirm the court's rulings that the County's bail system violates both due process and equal protection, though we modify the basis for its conclusion as to due process.

*A. Due Process Claim*

Procedural due process claims are subject to a two-step inquiry: "The first question asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." *Meza v. Livingston*, 607 F.3d 392, 399 (5th Cir. 2010) (internal quotation marks omitted). Applying this framework, we disagree with the district court's formulation of the liberty interest created by state law, but agree that the procedural protections of bail-setting procedures are nevertheless constitutionally deficient.

Liberty interests protected by the due process clause can arise from two sources, "the Due Process Clause itself and the laws of the States." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (internal citation omitted). Here, our focus is the law of Texas, which has acknowledged the two-fold, conflicting purpose of bail. This tension defines the protected liberty interest at issue here.

On the one hand, bail is meant "to secure the presence of the defendant in court at his trial." *Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. 1980). Accordingly, "ability to make bail is a factor to be considered, [but] ability alone, even indigency, does not control the amount of bail." *Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex. Crim. App. 1980). On the other hand, Texas courts have repeatedly emphasized the importance of bail as a means of

protecting an accused detainee's constitutional right "in remaining free before trial," which allows for the "unhampered preparation of a defense, and . . . prevent[s] the infliction of punishment prior to conviction." *Ex parte Anderer*, 61 S.W.3d 398, 404–05 (Tex. Crim. App. 2001) (en banc). Accordingly, the courts have sought to limit the imposition of "preventive [pretrial] detention" as "abhorrent to the American system of justice." *Ex parte Davis*, 574 S.W.2d 166, 169 (Tex. Crim. App. 1978). Notably, state courts have recognized that "the power to . . . *require* bail," not simply the denial of bail, can be an "instrument of [such] oppression." *Taylor v. State*, 667 S.W.2d 149, 151 (Tex. Crim. App. 1984) (en banc) (emphasis added).

These protections are also ensconced in the Texas Constitution. Specifically, Article 1 § 11 reads in relevant part, "[a]ll prisoners shall be bailable by sufficient sureties." TEX. CONST. art. 1, § 11. The provision is followed by a list of exceptions—i.e., circumstances in which an arrestee may be "denied release on bail." *Id.* §§ 11b, 11c. The only exception tied to misdemeanor charges pertains to family violence offenses. *See id.* § 11c. The scope of these exceptions has been carefully limited by state courts, which observe that they "include the seeds of preventive detention." *Davis*, 574 S.W.2d at 169.

The district court held that § 11 creates a state-made "liberty interest in misdemeanor defendants' release from custody before trial. Under Texas law, judicial officers . . . have no authority or discretion to order pretrial preventive detention in misdemeanor cases." This is too broad a reading of the law. The Constitution creates a right to bail on "sufficient sureties," which includes both a concern for the arrestee's interest in pretrial freedom and the court's interest in assurance. Since bail is not purely defined by what the detainee can afford, *see Charlesworth*, 600 S.W.2d at 317, the constitutional provision forbidding

denial of release on bail for misdemeanor arrestees does not create an automatic right to pretrial release.[4]

Instead, Texas state law creates a right to bail that appropriately weighs the detainees' interest in pretrial release and the court's interest in securing the detainee's attendance. Yet, as noted, state law forbids the setting of bail as an "instrument of oppression." Thus, magistrates may not impose a secured bail solely for the purpose of detaining the accused. And, when the accused is indigent, setting a secured bail will, in most cases, have the same effect as a detention order. Accordingly, such decisions must reflect a careful weighing of the individualized factors set forth by both the state Code of Criminal Procedure and Local Rules.

Having found a state-created interest, we turn now to whether the procedures in place adequately protect that interest. As always, we are guided by a three-part balancing test that looks to "the private interest . . . affected by the official action"; "the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards"; and "the Government's interest, including the function involved and the fiscal and administrative burdens" that new procedures would impose. *Meza*, 607 F.3d at 402 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

As the district court found, the current procedures are inadequate—even when applied to our narrower understanding of the liberty interest at stake. The court's factual findings (which are not clearly erroneous) demonstrate that secured bail orders are imposed almost automatically on indigent arrestees.

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[4] We also note that Texas courts have never sought to eliminate the use of bail bonds. To the contrary, the use of secured bail was affirmed by the Texas Court of Criminal Appeals in *Anderer*, despite the opinion's strong language in support of an accused's pretrial freedom. *Anderer*, 61 S.W.3d at 403.

Far from demonstrating sensitivity to the indigent misdemeanor defendants' ability to pay, Hearing Officers and County Judges almost always set a bail amount that detains the indigent. In other words, the current procedure does not sufficiently protect detainees from magistrates imposing bail as an "instrument of oppression."

The district court laid out specific procedures necessary to satisfy constitutional due process when setting bail. Specifically, it found that,

> Due process requires: (1) notice that the financial and other resource information Pretrial Services officers collect is for the purpose of determining a misdemeanor arrestee's eligibility for release or detention; (2) a hearing at which the arrestee has an opportunity to be heard and to present evidence; (3) an impartial decisionmaker; (4) a written statement by the factfinder as to the evidence relied on to find that a secured financial condition is the only reasonable way to assure the arrestee's appearance at hearings and law-abiding behavior before trial; and (5) timely proceedings within 24 hours of arrest.[5]

The County challenges these requirements on appeal. We find some of their objections persuasive.

As this court has noted, the quality of procedural protections owed a defendant is evaluated on a "spectrum" based on a case-by-case evaluation of the liberty interests and governmental burdens at issue. *Meza*, 607 F.3d at 408–09. We note that the liberty interest of the arrestees here are particularly important: the right to pretrial liberty of those accused (that is, presumed innocent) of misdemeanor crimes upon the court's receipt of reasonable assurance of their return. *See id.* So too, however, is the government's interest

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[5] The district court analyzed new efforts by both the County and State to improve their bail-setting procedures. We need not review its discussion here. We note, however, that we agree with its conclusions that the County's proposed remedies, which are beginning to be implemented, fail to address the constitutional violations at issue. We also agree that the changes proposed by the State would provide a more adequate remedy. Should these provisions become law, the need for the court's intervention must be revisited.

in efficiency. After all, the accused also stands to benefit from efficient processing because it "allow[s] [for his or her] expeditious release." *United States v. Chagra*, 701 F.2d 354, 363 (5th Cir. 1983); *cf. Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 53 (1991) (noting that defendants might be disserved by adding procedural complexity into an already complicated system). The sheer number of bail hearings in Harris County each year—according to the court, over 50,000 people were arrested on misdemeanor charges in 2015—is a significant factor militating against overcorrection.

With this in mind, we make two modifications to the district court's conclusions regarding the procedural floor. First, we do not require factfinders to issue a written statement of their reasons. While we acknowledge "the provision for a written record helps to insure that [such officials], faced with possible scrutiny by state officials . . . [and] the courts . . . will act fairly," *Wolff v. McDonnell*, 418 U.S. 539, 565 (1974), such a drastic increase in the burden imposed upon Hearing Officers will do more harm than good. We decline to hold that the Constitution requires the County to produce 50,000 written opinions per year to satisfy due process. *Cf. United States v. McConnell*, 842 F.2d 105, 110 (5th Cir. 1988) (concluding that, under the Bail Reform Act of 1984, the "court must [merely] explain its reasons for concluding that the particular financial requirement is a necessary part of the conditions for release" when setting a bond that a detainee cannot pay). Moreover, since the constitutional defect in the process afforded was the *automatic* imposition of pretrial detention on indigent misdemeanor arrestees, requiring magistrates to specifically enunciate their individualized, case-specific reasons for so doing is a sufficient remedy.

Second, we find that the district court's 24-hour requirement is too strict under federal constitutional standards. The court's decision to impose a 24-hour limit relied not on an analysis of present Harris County procedures and

their current capacity; rather, it relied on the fact that a district court imposed this requirement thirty years ago (that is, prior to modern advancements in computer and communications technology). *See Sanders v. City of Hous.*, 543 F. Supp. 694 (S.D. Tex. 1982). But *Sanders*'s holding, which was not grounded in procedural due process but in the Fourth Amendment, relied on the Supreme Court opinion, *Gerstein*, 420 U.S. 103. *Id.* at 699. And *Gerstein* was later interpreted as establishing a right to a probable cause hearing within 48 hours. *McLaughlin*, 500 U.S. at 56–57. Further, *McLaughlin* explicitly included bail hearings within this deadline. *Id.* at 58.

We conclude that the federal due process right entitles detainees to a hearing within 48 hours. Our review of the due process right at issue here counsels against an expansion of the right already afforded detainees under the Fourth Amendment by *McLaughlin*. We note in particular that the heavy administrative burden of a 24-hour requirement on the County is evidenced by the district court's own finding: the fact that 20% of detainees do not receive a probable cause hearing within 24 hours despite the statutory requirement. Imposing the same requirement for bail would only exacerbate such issues.

The court's conclusion was also based on its interpretation of state law. But while state law may define liberty interests protected under the procedural due process clause, it does not define the procedure constitutionally required to protect that interest. *See Wansley v. Miss. Dep't of Corr.*, 769 F.3d 309, 313 (5th Cir. 2014) (noting that state law cannot serve as "the source of . . . process due"); *Giovanni v. Lynn*, 48 F.3d 908, 912 (5th Cir. 1995) ("[W]here a liberty . . . interest is infringed, the process which is due under the United States Constitution is that measured by the due process clause, not that called for by state regulations. Mere failure to accord the procedural protections called for by state law or regulation does not of itself amount to a denial of due process." (internal citation omitted)). Accordingly, although the parties contest whether

state law imposes a 24- or 48-hour requirement, we need not resolve this issue because state law procedural requirements do not impact our federal due process analysis.

The district court's definition of ODonnell's liberty interests is too broad, and the procedural protections it required are too strict. Nevertheless, even under our more forgiving framework, we agree that the County procedures violate ODonnell's due process rights.

*B. Equal Protection*

The district court held that the County's bail-setting procedures violated the equal protection clause of the Fourteenth Amendment because they treat otherwise similarly-situated misdemeanor arrestees differently based solely on their relative wealth. The County makes three separate arguments against this holding. It argues: (1) ODonnell's disparate impact theory is not cognizable under the equal protection clause, *see Johnson v. Rodriguez*, 110 F.3d 299, 306 (5th Cir. 1997); (2) rational basis review applies and is satisfied; (3) even if heightened scrutiny applies, it is satisfied. We disagree.

First, the district court did not conclude that the County policies and procedures violated the equal protection clause solely on the basis of their disparate impact. Instead, it found the County's custom and practice purposefully "detain[ed] misdemeanor defendants before trial who are otherwise eligible for release, but whose indigence makes them unable to pay secured financial conditions of release." The conclusion of a discriminatory purpose was evidenced by numerous, sufficiently supported factual findings, including direct evidence from bail hearings. This custom and practice resulted in detainment solely due to a person's indigency because the financial conditions for release are based on predetermined amounts beyond a person's ability to pay and without any "meaningful consideration of other possible alternatives." *Rainwater*, 572 F.2d at 1057. Under this circuit's binding

precedent, the district court was therefore correct to conclude that this discriminatory action was unconstitutional. *Id.* at 1056–57 (noting that pre-trial "imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible" under both "due process and equal protection requirements"); *see also Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (noting that the indigent are protected by equal protection "at all stages of [criminal] proceedings"). Because this conclusion is sufficient to decide this case, we need not determine whether the equal protection clause requires a categorical bar on secured money bail for indigent misdemeanor arrestees who cannot pay it.

Second, the district court's application of intermediate scrutiny was not in error. It is true that, ordinarily, "[n]either prisoners nor indigents constitute a suspect class." *Carson v. Johnson*, 112 F.3d 818, 821–22 (5th Cir. 1997). But the Supreme Court has found that heightened scrutiny is required when criminal laws detain poor defendants *because of* their indigence. *See, e.g.*, *Tate v. Short*, 401 U.S. 395, 397–99 (1971) (invalidating a facially neutral statute that authorized imprisonment for failure to pay fines because it violated the equal protection rights of indigents); *Williams v. Illinois*, 399 U.S. 235, 241–42 (1970) (invalidating a facially neutral statute that required convicted defendants to remain in jail beyond the maximum sentence if they could not pay other fines associated with their sentences because it violated the equal protection rights of indigents). Reviewing this case law, the Supreme Court later noted that indigents receive a heightened scrutiny where two conditions are met: (1) "because of their impecunity they were completely unable to pay for some desired benefit," and (2) "as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973).

We conclude that this case falls into the exception created by the Court. Both aspects of the *Rodriguez* analysis apply here: indigent misdemeanor arrestees are unable to pay secured bail, and, as a result, sustain an absolute deprivation of their most basic liberty interests—freedom from incarceration. Moreover, this case presents the same basic injustice: poor arrestees in Harris County are incarcerated where similarly situated wealthy arrestees are not, solely because the indigent cannot afford to pay a secured bond. Heightened scrutiny of the County's policy is appropriate.[6]

Third, we discern no error in the court's conclusion that the County's policy failed to meet the tailoring requirements of intermediate scrutiny. In other words, we will not disturb the court's finding that, although the County had a compelling interest in the assurance of a misdemeanor detainee's future appearance and lawful behavior, its policy was not narrowly tailored to meet that interest.

The court's thorough review of empirical data and studies found that the County had failed to establish any "link between financial conditions of release and appearance at trial or law-abiding behavior before trial." For example, both parties' experts agreed that the County lacked adequate data to demonstrate whether secured bail was more effective than personal bonds in securing a detainee's future appearance. Notably, even after analyzing the

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[6] We acknowledge that the cited Supreme Court cases applied to indigents who were already found guilty. But this court in *Rainwater* concluded that the distinction between post-conviction detention targeting indigents and pretrial detention targeting indigents is one without a difference. We found that, regardless of its timing, "imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible." *Rainwater*, 572 F.2d at 1056 (citing *Williams* and *Tate*). Our conclusion was based on the "punitive and heavily burdensome nature of pretrial confinement" and the fact that it deprives someone who has only been "accused but not convicted of crime" of their basic liberty. *Id.*; *see also Anderson v. Nosser*, 438 F.2d 183, 190 (5th Cir. 1971) (noting that the pre-trial detainment of "unconvicted misdemeanants" was a "[p]unitive measure[ ] . . . out of harmony with the presumption of innocence"). We are bound by this analysis.

incomplete data that were available, neither expert discerned more than a negligible comparative impact on detainees' attendance. Additionally, the court considered a comprehensive study of the impact of Harris County's bail system on the behavior of misdemeanor detainees between 2008 and 2013. The study found that the imposition of secured bail might *increase* the likelihood of unlawful behavior. *See* Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 786–87 (2017) (estimating that the release on personal bond of the lowest-risk detainees would have resulted in 1,600 fewer felonies and 2,400 fewer misdemeanors within the following eighteen months). These findings mirrored those of various empirical studies from other jurisdictions.

The County, of course, challenges these assertions with empirical studies of its own. But its studies at best cast some doubt on the court's conclusions. They do not establish clear error. We are satisfied that the court had sufficient evidence to conclude that Harris County's use of secured bail violated equal protection.

In sum, the essence of the district court's equal protection analysis can be boiled down to the following: take two misdemeanor arrestees who are identical in every way—same charge, same criminal backgrounds, same circumstances, etc.—except that one is wealthy and one is indigent. Applying the County's current custom and practice, with their lack of individualized assessment and mechanical application of the secured bail schedule, both arrestees would almost certainly receive identical secured bail amounts. One arrestee is able to post bond, and the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, by contrast, must bear the brunt of all of these, simply because

he has less money than his wealthy counterpart. The district court held that this state of affairs violates the equal protection clause, and we agree.

V.

Having largely affirmed the district court's determinations that constitutional violations occurred, we turn to the court's remedy. When crafting an injunction, district courts are guided by the Supreme Court's instruction that "the scope of injunctive relief is dictated by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). A district court abuses its discretion if it does not "narrowly tailor an injunction to remedy the specific action which gives rise to the order." *John Doe # 1 v. Veneman*, 380 F.3d 807, 818 (5th Cir. 2004). Thus, an injunction must be vacated if it "fails to meet these standards" and "is overbroad." *Id.* "The broadness of an injunction refers to the range of proscribed activity . . . . [and] is a matter of substantive law." *U.S. Steel Corp. v. United Mine Workers of Am.*, 519 F.2d 1236, 1246 n.19 (5th Cir. 1975).

The County argues that, even if the panel credits every one of the district court's factual findings and conclusions of law, the injunction it ultimately crafted is *still* overbroad. We agree. There is a significant mismatch between the district court's procedure-focused legal analysis and the sweeping injunction it implemented.

The fundamental source of constitutional deficiency in the due process and equal protection analyses is the same: the County's mechanical application of the secured bail schedule without regard for the individual arrestee's personal circumstances. Thus, the equitable remedy necessary to cure the constitutional infirmities arising under both clauses is the same: the County must implement the constitutionally-necessary procedures to engage in a case-by-case evaluation of a given arrestee's circumstances, taking into account the various factors required by Texas state law (only one of which is ability to pay).

These procedures are: notice, an opportunity to be heard and submit evidence within 48 hours of arrest, and a reasoned decision by an impartial decision-maker.

That is not what the preliminary injunction does, however. Rather, it amounts to the outright elimination of secured bail for indigent misdemeanor arrestees. That remedy makes some sense if one assumes a fundamental substantive due process right to be free from any form of wealth-based detention. But, as the foregoing analysis establishes, no such right is in view. The sweeping injunction is overbroad.

We therefore conclude that the district court abused its discretion in crafting an injunction that was not "narrowly tailor[ed] . . . to remedy the specific action which gives rise to the order." *Veneman*, 380 F.3d at 818. We will vacate the injunction and remand to allow the court to craft a remedy more finely tuned to address the harm.

The following represents the sort of modification that would be appropriate here, although we leave the details to the district court's discretion:

With these principles in mind, the court will order the following relief, to take effect within 30 days, unless those enjoined move for and show good cause for a reasonable, brief extension. Any motions for extension will be set for prompt hearing and resolution.

- Harris County is enjoined from imposing prescheduled bail amounts as a condition of release on arrestees who attest that they cannot afford such amounts without providing an adequate process for ensuring that there is individual consideration for each arrestee of whether another amount or condition provides sufficient sureties.

- Pretrial Services officers, as County employees and subject to its policies, must verify an arrestee's ability to pay a prescheduled financial condition of release by an affidavit, and must explain to arrestees the nature and significance of the verification process.

- The purpose of the explanation is to provide the notice due process requires that a misdemeanor defendant's state constitutional right to be bailable by sufficient sureties is at stake in the proceedings. Pretrial Services may administer either the form of the affidavit currently used to determine eligibility for appointed counsel or the adapted form that Dr. VanNostrand testified was prepared for Pretrial Services to be administered by July 1, 2017, if they comply with the below guidelines. Pretrial Services must deliver completed affidavits to the Harris County Sheriff's Office before a declarant's probable cause hearing.

- The affidavit must give the misdemeanor arrestee sufficient opportunity to declare under penalty of perjury, after the significance of the information has been explained, the maximum amount of financial security the arrestee would be able to post or pay up front within 24 hours of arrest. The affidavit should ask the arrestee to provide details about their financial situation sufficient to help the County make reliable determinations regarding the amount of bail that would provide sufficient sureties, including: 1) arrestee and spouse's income from employment, real property, interest and dividends, gifts, alimony, child support, retirement, disability, unemployment payments, public-assistance, and other sources; 2) arrestee and spouse's employment history for the prior two years and gross monthly pay; 3) arrestee and spouse's present cash available and any financial institutions where cash is held; 4) assets owned, e.g., real estate and motor vehicles; 5) money owed to arrestee and spouse; 6) dependents of arrestee and spouse, and their ages; 7) estimation of itemized monthly expenses; 8) taxes and legal costs; 9) expected major changes in income or expenses; 10) additional information the arrestee wishes to provide to help explain the inability to pay. The question is neither the arrestee's immediate ability to pay with cash on hand, nor what assets the arrestee could eventually produce after a period of pretrial detention. The question is what amount the arrestee could reasonably pay within 24 hours of his or her arrest, from any source, including the contributions of family and friends.

- The purpose of this requirement is to provide a better, easier, and faster way to get the information needed to determine a misdemeanor defendant's ability to pay. The Hearing Officers and County Judges testified that they presently do not know who has the ability to pay.

The affidavit can be completed within 24 hours after arrest; the current process of verifying references by phone extends for days after arrest.

- The court does not order relief against the Hearing Officers or against the County Judges in their judicial or legislative capacities.

- Misdemeanor defendants who are not subject to: (1) formal holds preventing their release from detention; (2) pending mental-health evaluations to determine competency; or (3) pretrial preventive detention orders for violating a condition of release for a crime of family violence, have a constitutionally protected state-created liberty interest in being bailable by sufficient sureties before trial. If a misdemeanor defendant has executed an affidavit showing an inability to pay prescheduled money bail and has not been released either: (1) on an unsecured personal bond with nonfinancial conditions of release; or (2) on a secured money bond for which the defendant could pay a commercial surety's premium, as indicated on the affidavit, then the defendant is entitled to a hearing within 48 hours of arrest in which an impartial decision-maker conducts an individual assessment of whether another amount of bail or other condition provides sufficient sureties. At the hearing, the arrestee must have an opportunity to describe evidence in his or her favor, and to respond to evidence described or presented by law enforcement. If the decision-maker declines to lower bail from the prescheduled amount to an amount the arrestee is able to pay, then the decision-maker must provide written factual findings or factual findings on the record explaining the reason for the decision, and the County must provide the arrestee with a formal adversarial bail review hearing before a County Judge. The Harris County Sheriff is therefore authorized to decline to enforce orders requiring payment of prescheduled bail amounts as a condition of release for said defendants if the orders are not accompanied by a record showing that the required individual assessment was made and an opportunity for formal review was provided. All nonfinancial conditions of release ordered by the Hearing Officers, including protective orders, drug testing, alcohol intake ignition locks, or GPS monitoring, will remain in effect.

- The purpose of this requirement is to provide timely protection for the state-created liberty interest in being bailable by sufficient sureties

and to prevent the automatic imposition of prescheduled bail amounts without an adequate process for ensuring that there is individualized consideration of whether another amount or condition provides sufficient sureties.

- To enforce the 48-hour timeline, the County must make a weekly report to the district court of misdemeanor defendants identified above for whom a timely individual assessment has not been held. The County must also notify the defendant's counsel and/or next of kin of the delay. A pattern of delays might warrant further relief from the district court. Because the court recognizes that the County might need additional time to comply with this requirement, the County may propose a reasonable timeline for doing so.

- The purpose of this requirement is to give timely protection to the state-created liberty interest in being bailable by sufficient sureties by enforcing federal standards indicating that 48 hours is a reasonable timeframe for completing the administrative incidents to arrest. The 48-hour requirement is intended to address the endemic problem of misdemeanor arrestees being detained until case disposition and pleading guilty to secure faster release from pretrial detention.

- For misdemeanor defendants who are subject to formal holds and who have executed an affidavit showing an inability to pay the prescheduled financial condition of release, the Sheriff must treat the limitations period on their holds as beginning to run the earliest of: (1) after the probable cause hearing; or (2) 24 hours after arrest. The purpose of this requirement is to ensure that misdemeanor defendants are not prevented from or delayed in addressing their holds because they are indigent and therefore cannot pay a prescheduled financial condition of release.

- Misdemeanor defendants who do not appear competent to execute an affidavit may be evaluated under the procedures set out in the Texas Code of Criminal Procedure Article 16.22. If competence is found, the misdemeanor defendant is covered by the relief the court orders, with the exception that the 48-hour period begins to run from the finding of competence rather than from the time of arrest. As under Article 16.22, nothing in this order prevents the misdemeanor arrestee from

being released on secured bail or unsecured personal bond pending the evaluation.

VI.

For the forgoing reasons, we AFFIRM the district court's findings of fact. We AFFIRM its conclusions of law except its conclusion that the County Sheriff may be sued under § 1983 and its determination of the specific procedural protections owed under procedural due process. On those issues, we REVERSE the district court's conclusions. Accordingly, we DISMISS the Sheriff. We VACATE the preliminary injunction as overbroad and REMAND to the district court to craft a revised injunction—one that is narrowly tailored to cure the constitutional deficiencies the district court properly identified. But we also STAY the vacatur pending implementation of the revised injunction, so as to maintain a stable status quo.

# *United States Court of Appeals*

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

February 14, 2018

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 17-20333 Maranda ODonnell, et al v. Harris County, Texas, et al
USDC No. 4:16-CV-1414
USDC No. 4:16-CV-1436

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Enclosed is a copy of the court's decision. The court has entered judgment under FED R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that

this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bear its own costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk

Erica Benoit

By:_____
Erica A. Benoit, Deputy Clerk

Enclosure(s)

Ms. Rebecca Bernhardt
Mr. Samuel Jacob Brooke
Mr. Jared Brandon Caplan
Mr. Paul D. Clement
Mr. Charles Justin Cooper
Ms. Katharine D. David
Ms. Nicole Wignall DeBorde
Ms. Sheryl Anne Falk
Mr. Murray Jules Fogler
Mr. Arpit Kumar Garg
Mr. Michael Gervais
Ms. Katherine R. Goldstein
Ms. Janet Martini Himmel
Mr. Joseph David Hughes
Mr. Alec George Karakatsanis
Mr. Scott A. Keller
Mr. John R. Keville
Mr. Michael Kirk
Mrs. Linda A. Klein
Mr. Edmund Gerard LaCour Jr.
Mr. Andrew Lawrence
Mr. Neal Manne
Mr. Jonathan Lee Marcus
Mr. William C. Marra
Ms. Mary B. McCord
Ms. Morgan Mallory Menchaca
Mr. Philip J. Morgan
Mr. John E. O'Neill
Mr. Stacy R. Obenhaus
Mr. John David Ohlendorf
Mr. Bradley S. Phillips
Mr. Carter Glasgow Phillips
Mr. Thomas Royal Phillips
Ms. Susanne Ashley Pringle
Mr. Harold Reeves
Ms. Mary Margaret Roark
Mr. James Bradley Robertson
Ms. Elizabeth Anne Rossi
Mr. Ilya Shapiro
Mr. Jeffrey William Sheehan
Mr. Mike Anthony Stafford

Mrs. Michelle Simpson Tuegel
Mr. George Allan Van Fleet
Mr. Daniel Volchok
Mr. Seth Paul Waxman
Ms. Alexandra Giselle White
Ms. Elizabeth Bonnie Wydra
Mr. Evan A. Young
Ms. Krisina Janaye Zuniga

IN THE MAGISTRATE COURT OF DEKALB COUNTY

STATE OF GEORGIA

ORDER CONCERNING SHERIFF'S BOND SCHEDULE FOR MISDEMEANOR OFFENSES

This Order governs bonds for non-violent misdemeanor offenses and other misdemeanor offenses where no bond has been set. Under O.C.G.A. §15-10-2, the Magistrate Court has the authority to set bond for these offenses. The Sheriff shall accept bond for non-violent misdemeanor offenses as noted in the attached bond schedule, entitled *Sheriff's Bond Schedule* (hereinafter "bond schedule"). The bond schedule is effective immediately.

After inquiry, a Magistrate Judge may set a reasonable and just bond that falls outside of the bond schedule. The Magistrate Judge's bond order shall supersede any conflicting amount on the bond schedule.

This 18th day of April, 2018.

Beryl A. Anderson
Chief Judge, Magistrate Court of DeKalb County

FILED IN THIS OFFICE
THIS 18 DAY OF Apr 2018

Clerk, Magistrate Court, DeKalb County

# DEKALB SHERIFF'S BOND SCHEDULE

*- EFFECTIVE APRIL 18, 2018 -*

# FOR NON-VIOLENT MISDEMEANOR OFFENSES

**The Following Crimes Shall be Bondable by Signature of the Accused and Released**

| | | | | |
|---|---|---|---|---|
| ABANDONMENT | 500 SOR | | MAINTAINING JUNK YARD | 500 SOR |
| ABUSIVE / OBSCENE LANGUAGE | 500 SOR | | MARIJUANA – SIMPLE POSSESSION | 500 SOR |
| CONCEALMENT - PROP W/ SECURITY INTEREST | 500 SOR | | NO PROOF OF INSURANCE | 500 SOR |
| CONVERSION – LEASED PROPERTY | 500 SOR | | OPEN CONTAINER | 500 SOR |
| CRIMINAL TRESPASS – NOTICE / CRIMINAL TRESPASS – REFUSE | 500 SOR | | OPERATING ON OUT OF STATE DL / OPERATING ON OUT OF STATE TAG | 500 SOR |
| DISORDERLY HOUSE | 500 SOR | | PEDESTRIAN UNDER THE INFLUENCE | 500 SOR |
| DISTURBANCE IN PUBLIC SCHOOL | 500 SOR | | POSSESSION OF ALCOHOL BY MINOR | 500 SOR |
| FAILURE TO REPORT A CRIME | 500 SOR | | POSSESSION OF A FICTITIOUS LICENSE | 500 SOR |
| FALSE FIRE ALARM | 500 SOR | | PUBLIC DRUNK | 500 SOR |
| FISHING W/O A LICENSE | 500 SOR | | REVOKED / SUSPENDED LICENSE | 500 SOR |
| FRAUDULENT ATTEMPT TO OBTAIN A REFUND | 500 SOR | | SOLICITING W/O A PERMIT | 500 SOR |
| FRAUDULENT USE OF DRIVER'S LICENSE | 500 SOR | | SPITTING ON A MARTA BUS / TRAIN | 500 SOR |
| LOITERING (SEX / DRUGS) / LOITERING & PROWLING | 500 SOR | | SUPPLYING ALCOHOL TO MINOR | 500 SOR |

**The Following Crimes Shall be Bondable according to the Schedule below WITHOUT a Court Appearance**

| | | | | |
|---|---|---|---|---|
| AFFRAY | 500 / 100 | | FORGERY 4TH DEGREE | 1000 / 200 |
| BATTERY – SIMPLE **(NOT FAMILY VIOLENCE)** | 500 / 100 | | PROSTITUTION | 1000 / 100 |
| CARRYING PISTOL W/O LICENSE | 500 / 100 | | THEFT CRIMES | 500 / 100 |



***NOTES:***

1. *Do not release an accused unless the bond and any Special Conditions are clearly documented.*
2. *Do not hesitate to call the Magistrate Court Criminal Division (404-294-2150) to clarify any bonding issues.*

## The Following Crimes Shall be Bondable only AFTER the Accused Makes a Court Appearance

| | | |
|---|---|---|
| ASSAULT | | KEEPING A GAMBLING PLACE / KEEPING A PLACE OF PROSTITUTION |
| BATTERY / BATTERY – FAMILY VIOLENCE | | LEAVING SCENE OF ACCIDENT |
| CONTRIBUTING TO DELINQUENCY OF MINOR | | OBSTRUCTION OF OFFICER |
| CRIMINAL TRESPASS – UNLAWFUL PURPOSE | | PIMPING |
| CRIMINAL TRESPASS – DAMAGE TO PROPERTY | | POINTING A PISTOL |
| CRUELTY TO ANIMALS | | PUBLIC INDECENCY |
| DISCHARGING FIREARM | | RECKLESS CONDUCT |
| DISORDERLY CONDUCT | | RECKLESS DRIVING |
| DUI | | SEXUAL BATTERY |
| ESCAPE | | SOLICITING SODOMY |
| FALSE REPORT OF A CRIME | | STALKING |
| FLEE/ATTEMPT TO ELUDE | | TAMPERING W/ EVIDENCE |
| HARASSING PHONE CALLS | | VIOLATING A TPO / FVO |
| HIT & RUN | | |



***NOTES:***

1. *Do not release an accused unless the bond and any Special Conditions are clearly documented.*
2. *Do not hesitate to call the Magistrate Court Criminal Division (404-294-2150) to clarify any bonding issues.*

Senate Bill 407

By: Senators Strickland of the 17th, Walker III of the 20th, Stone of the 23rd, Miller of the 49th, Martin of the 9th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To provide for comprehensive reform for offenders entering, proceeding through, and leaving the criminal justice system so as to promote an offender's successful reentry into society, benefit the public, and enact reforms recommended by the Georgia Council on Criminal Justice Reform; to amend Title 15 and Chapter 6A of Title 35 of the Official Code of Georgia Annotated, relating to courts and the Criminal Justice Coordinating Council, respectively, so as to provide for electronic filing in criminal cases and data collection and exchange in criminal and certain juvenile cases; to provide for definitions; to establish the Criminal Case Data Exchange Board under the Criminal Justice Coordinating Council and provide for its membership, terms, compensation, and duties; to provide for confidentiality of data; to require certain court filings to be filed electronically and in writing; to provide for exceptions; to change provisions relating to electronic filings and payments; to provide for fees; to provide for a definition; to provide for policies and procedures; to amend Code Section 9-11-5 and Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to service and filing of pleadings subsequent to the original complaint and other papers and general provisions relating to courts, respectively, so as to change provisions relating to the electronic service of pleadings; to provide for contracts with electronic filing service providers; to provide for the Judicial Council of Georgia to develop a misdemeanor citation form; to allow misdemeanors to be prosecuted in state courts by use of citation; to amend Title 17, Code Section 35-3-37, Chapter 5 of Title 40, Title 42, and Code Section 43-1-19 of the Official Code of Georgia Annotated, relating to criminal procedure, review of an individual's criminal history record information, drivers' licenses, penal institutions, and grounds for refusing to grant or revoking professional licenses, respectively, so as to change provisions relating to the use of citations and setting bail; to clarify matters relating to sentencing, record restriction, first offender treatment, pay-only probation, and the use of community service; to allow the Department of Driver Services to issue certain types of licenses and permits under certain conditions; to expand the types of activities and organizations that can be used by the court in ordering community service and clarify provisions relating thereto; to require time frames for certain actions involving probation supervision; to allow different levels of courts to consider retroactive petitions for first

offender sentencing; to amend an Act relating to the effect of a confinement sentence when guilt has not been adjudicated, approved March 20, 1985 (Ga. L. 1985, p. 380), so as to repeal a contingency based upon an amendment to the Constitution; to clarify the effect that a misdemeanor conviction involving moral turpitude or first offender punishment will have on a professional license; to amend Chapter 2 of Title 31 and Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to the Department of Community Health and public assistance, respectively, so as to change provisions relating to the department's duties and responsibilities; to change provisions relating to providing assistance to inmates who are eligible for Medicaid; to amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to increase certain penalties relating to the theft of, the use of an altered identification mark on, or the transfer to certain individuals of a firearm; to change provisions relating to possession of firearms by convicted felons and first offender probationers; to change provisions relating to authorizing the release of information from the prescription drug monitoring program data base; to amend Article 2 of Chapter 4 of Title 20 and Chapter 8 of Title 20 of the Official Code of Georgia Annotated, relating to technical and adult education and to campus policemen, respectively, so as to revise the powers of arrest of campus policemen who are regular employees of the Technical College System of Georgia; to amend Chapter 69 of Title 36 of the Official Code of Georgia Annotated, relating to mutual aid regarding local government, so as to permit campus policemen of the Technical College System of Georgia to render mutual aid under certain conditions; to provide for the public safety director or chief of police of any institution within the Technical College System of Georgia to enter into mutual aid agreements with local governments under certain conditions; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

## PART I

## SECTION 1-1.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising Code Section 15-6-11, relating to electronic filings and payments, as follows:

"15-6-11.

(a) Pursuant to rules promulgated by the Criminal Case Data Exchange Board, on and after January 1, 2019, a ~~By court rule or standing order, any~~ superior court ~~may~~ shall provide for the filing of pleadings in criminal cases and any other ~~documents~~ document related thereto and for the acceptance of payments and remittances by electronic means.

(b)(1) On and after January 1, 2019, except as provided in paragraph (3) of this subsection, all pleadings and any other document related thereto filed by an attorney to initiate a civil action or in a civil case in a superior court shall be filed by electronic means through the court's electronic filing service provider. Except as provided in paragraph (3) of this subsection, once a court has commenced mandatory electronic filings in civil cases, a clerk shall not accept, file, or docket any pleading or any other form of paper document related thereto from an attorney in a civil case.

(2)(A) A court's electronic filing service provider may charge a fee which shall be a recoverable court cost and only include a:

(i) One-time fee for electronically filing pleadings or documents in a civil action and the electronic service of pleadings, regardless of how many parties shall be served, which shall not exceed $30.00 per filer, per party. Such fee shall be paid at the time of the first filing on behalf of a party; provided that when filings are submitted via a public access terminal, upon the first filing not using such terminal, such fee shall be paid;

(ii) Supplemental fee of $5.00 for each filing made in a civil action after a party has made ten electronic filings in such civil action; and

(iii) Convenience fee for credit card and bank drafting services, which shall not exceed 3.5 percent plus a 30¢ payment services fee per transaction.

(B) With respect to the fee charged pursuant to division (i) of subparagraph (A) of this paragraph, the clerk of superior court shall retain $2.00 of the transaction fee and remit it to the governing authority of the county. No other portion of the transaction fee shall be remitted to any other office or entity of the state or governing authority of a county or municipality.

(C) An attorney, or party if he or she is pro se, shall be allowed unlimited access to view and download any pleading or document electronically filed in connection to the civil action in which he or she is counsel of record or pro se litigant, and an electronic service provider shall not be authorized to charge or collect a fee for such viewing or downloading.

(3)(A) This subsection shall not apply to filings:

(i) In connection with a pauper's affidavit, any validation of bonds as otherwise provided for by law, pleadings or documents filed under seal or presented to a court in camera or ex parte, or pleadings or documents to which access is otherwise restricted by law or court order;

(ii) Made physically at the courthouse by an attorney or his or her designee or an individual who is not an attorney; provided, however, that the clerk shall require such pleadings or documents be submitted via a public access terminal in the clerk's office.

The clerk shall not charge the fee as set forth in division (2)(A)(i) of this subsection for such filing but when payment is submitted by credit card or bank draft, the clerk may charge the convenience fee as set forth in division (2)(A)(ii) of this subsection:

(iii) Made in a court located in an area that has been declared to be in a state of emergency pursuant to Article 3 of Chapter 3 of Title 38. The Judicial Council of Georgia shall provide rules for filings in such circumstances; or

(iv) Made prior to the commencement of mandatory electronic filing for such court, wherein the filer shall continue to pay fees applicable to the case on the date of the first filing; provided, however, that a party may elect to make future filings through the court's electronic filing service provider and pay the applicable fees.

(B) This subsection may have an effective date between July 1, 2018, and December 31, 2018, when by court rule or standing order, the court commences mandatory electronic filing prior to January 1, 2019.

(4) The Judicial Council of Georgia shall make and publish in print or electronically such statewide minimum standards and rules as it deems necessary to carry out this Code section. Each clerk of superior court shall develop and enact policies and procedures necessary to carry out the standards and rules created by the Judicial Council of Georgia.

(c) Nothing in this Code section shall be construed to prevent a clerk's acceptance of payments and remittances by electronic means under the clerk's own authority.

(d) A superior court judge to whom the case is assigned and his or her staff shall, at all times, have access to all pleadings and documents electronically filed and such access shall be provided upon the physical acceptance of such pleadings and documents by the clerk.

(e) Any pleading or document filed electronically shall be deemed filed as of the time of its receipt by the electronic filing service provider. A pleading or document filed electronically shall not be subject to disclosure until it has been physically accepted by the clerk. Upon such acceptance as provided for in this subsection, such pleading or document shall be publicly accessible for viewing at no cost to the viewer on a public access terminal available at the courthouse during regular business hours."

**SECTION 1-2.**

Said title is further amended by revising subparagraph (a)(4)(B) and paragraph (18) of subsection (a) of Code Section 15-6-61, relating to the duties of the clerk generally, as follows:

"(B) An automated criminal case management system which shall contain a summary record of all criminal indictments in which true bills are rendered and all criminal accusations filed in the office of clerk of superior court in accordance with rules promulgated by the Criminal Case Data Exchange Board. The criminal case

management system shall contain entries of other matters of a criminal nature filed with the clerk, including quasi-civil proceedings and entries of cases which are ordered dead docketed ~~at the discretion of the presiding judge and which shall be called only at the judge's pleasure~~. When a case is ~~thus~~ dead docketed, all witnesses who may have been subpoenaed therein shall be released from further attendance until resubpoenaed; and"

"(18) To electronically collect ~~and transmit to the Georgia Superior Court Clerks' Cooperative Authority~~ all data elements required in subsection (g) of Code Section 35-3-36, and such clerk of superior court may transmit such data to the Georgia Superior Court Clerks' Cooperative Authority in a form and format required by ~~the Superior Court Clerks' Cooperative Authority~~ such authority and The Council of Superior Court Clerks of Georgia. ~~The~~ Any data transmitted to the authority pursuant to this paragraph shall be transmitted to the Georgia Crime Information Center in satisfaction of the clerk's duties under subsection (g) of Code Section 35-3-36 and to the Georgia Courts Automation Commission which shall provide the data to the Administrative Office of the Courts for use by the state judicial branch. Public access to said data shall remain the responsibility of the Georgia Crime Information Center. No release of collected data shall be made by or through the authority;"

**SECTION 1-3.**

Said title is further amended by revising Code Section 15-7-5, relating to electronic filings and payments, as follows:

"15-7-5.

(a) Pursuant to rules promulgated by the Criminal Case Data Exchange Board, on and after January 1, 2019, a ~~By court rule or standing order, any~~ state court ~~may~~ shall provide for the filing of pleadings in criminal cases and any other ~~documents~~ document related thereto and for the acceptance of payments and remittances by electronic means.

(b)(1) On and after January 1, 2019, except as provided in paragraph (3) of this subsection, all pleadings and any other document related thereto filed by an attorney to initiate a civil action or in a civil case in a state court shall be filed by electronic means through the court's electronic filing service provider. Except as provided in paragraph (3) of this subsection, once a court has commenced mandatory electronic filings in civil cases, a clerk shall not accept, file, or docket any pleading or any other form of paper document related thereto from an attorney in a civil case.

(2)(A) A court's electronic filing service provider may charge a fee which shall be a recoverable court cost and only include a:

(i) One-time fee for electronically filing pleadings or documents in a civil action and the electronic service of pleadings, regardless of how many parties shall be served,

which shall not exceed $30.00 per filer, per party. Such fee shall be paid at the time of the first filing on behalf of a party; provided that when filings are submitted via a public access terminal, upon the first filing not using such terminal, such fee shall be paid;

(ii) Supplemental fee of $5.00 for each filing made in a civil action after a party has made ten electronic filings in such civil action; and

(iii) Convenience fee for credit card and bank drafting services, which shall not exceed 3.5 percent plus a 30¢ payment services fee per transaction.

(B) With respect to the fee charged pursuant to division (i) of subparagraph (A) of this paragraph, the clerk of state court shall retain $2.00 of the transaction fee and remit it to the governing authority of the county. No other portion of the transaction fee shall be remitted to any other office or entity of the state or governing authority of a county or municipality.

(C) An attorney, or party if he or she is pro se, shall be allowed unlimited access to view and download any pleading or document electronically filed in connection to the civil action in which he or she is counsel of record or pro se litigant, and an electronic service provider shall not be authorized to charge or collect a fee for such viewing or downloading.

(3)(A) This subsection shall not apply to filings:

(i) In connection with a pauper's affidavit, pleadings or documents filed under seal or presented to a court in camera or ex parte, or pleadings or documents to which access is otherwise restricted by law or court order;

(ii) Made physically at the courthouse by an attorney or his or her designee or an individual who is not an attorney; provided, however, that the clerk shall require such pleadings or documents be submitted via a public access terminal in the clerk's office. The clerk shall not charge the fee as set forth in division (2)(A)(i) of this subsection for such filing but when payment is submitted by credit card or bank draft, the clerk may charge the convenience fee as set forth in division (2)(A)(ii) of this subsection;

(iii) Made in a court located in an area that has been declared to be in a state of emergency pursuant to Article 3 of Chapter 3 of Title 38. The Judicial Council of Georgia shall provide rules for filings in such circumstances; or

(iv) Made prior to the commencement of mandatory electronic filing for such court, wherein the filer shall continue to pay fees applicable to the case on the date of the first filing; provided, however, that a party may elect to make future filings through the court's electronic filing service provider and pay the applicable fees.

(B) This subsection may have an effective date between July 1, 2018, and December 31, 2018, when by court rule or standing order, the court commences mandatory electronic filing prior to January 1, 2019.

(4) The Judicial Council of Georgia shall make and publish in print or electronically such statewide minimum standards and rules as it deems necessary to carry out this Code section. Each clerk of state court shall develop and enact policies and procedures necessary to carry out the standards and rules created by the Judicial Council of Georgia.

(c) Nothing in this Code section shall be construed to prevent a clerk's acceptance of payments and remittances by electronic means under the clerk's own authority.

(d) A state court judge to whom the case is assigned and his or her staff shall, at all times, have access to all pleadings and documents electronically filed and such access shall be provided upon the physical acceptance of such pleadings and documents by the clerk.

(e) Any pleading or document filed electronically shall be deemed filed as of the time of its receipt by the electronic filing service provider. A pleading or document filed electronically shall not be subject to disclosure until it has been physically accepted by the clerk. Upon such acceptance as provided for in this subsection, such pleading or document shall be publicly accessible for viewing at no cost to the viewer on a public access terminal available at the courthouse during regular business hours."

SECTION 1-4.

Said title is further amended in Code Section 15-11-64, relating to collection of information by juvenile court clerks and reporting requirements, by adding a new subsection to read as follows:

"(c) Pursuant to rules promulgated by the Judicial Council of Georgia, on and after January 1, 2019, each clerk of the juvenile court shall collect data on each child alleged or adjudicated to be a delinquent child and transmit such data as required by such rules. The Judicial Council of Georgia shall make and publish in print or electronically such state-wide minimum standards and rules as it deems necessary to carry out this subsection. Each clerk of the juvenile court shall develop and enact policies and procedures necessary to carry out the standards and rules created by the Judicial Council of Georgia."

SECTION 1-5.

Chapter 6A of Title 35 of the Official Code of Georgia Annotated, relating to the Criminal Justice Coordinating Council, is amended by revising Code Section 35-6A-2, relating to the creation of such council and assignment to the Georgia Bureau of Investigation, as follows:

"35-6A-2.

(a) There is established the Criminal Justice Coordinating Council of the State of Georgia which is assigned to the Georgia Bureau of Investigation for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) As used in this chapter, the term:

(1) 'Board' means the Criminal Case Data Exchange Board.

(2) 'Council' means the Criminal Justice Coordinating Council."

SECTION 1-6.

Said chapter is further amended by adding two new Code sections to read as follows:

"35-6A-13.

(a) There is established the Criminal Case Data Exchange Board to the council which shall consist of 15 members as follows:

(1) The director of the council, the director of the Georgia Crime Information Center, the director of the Office of Planning and Budget, the director of the Administrative Office of the Courts, the director of the Georgia Public Defender Council, the commissioner of administrative services, the commissioner of corrections, the commissioner of community supervision, the executive director of the Georgia Technology Authority, the executive counsel of the Governor, and a representative of the Prosecuting Attorneys' Council of the State of Georgia, provided that any such member may allow a designee to represent him or her at a board meeting and vote in his or her stead; and

(2) Four members, one of whom is a superior court judge, one of whom is a clerk of a superior court, one of whom is a sheriff, and one of whom is a county commissioner, shall be appointed by the Governor for terms of four years; their initial appointments, however, shall be one for a four-year term, one for a three-year term, one for a two-year term, and one for a one-year term. No individual shall serve beyond the time he or she holds the office by reason of which he or she was initially eligible for appointment.

(b) In the event of death, resignation, disqualification, or removal of any member of the board for any reason, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) The initial terms for all members shall begin on July 1, 2018.

(d) Membership on the board shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(e) The board shall elect a chairperson from among its membership and may elect such other officers and committees as it considers appropriate.

(f) Members of the board shall serve without compensation, although each member of the board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the council. Such reimbursement shall be limited to all

travel and other expenses necessarily incurred through service on the board, in compliance with this state's travel rules and regulations; provided, however, that in no case shall a member of the board be reimbursed for expenses incurred in the member's capacity as the representative of another state agency.

35-6A-14.

(a) The board shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. Such board shall also meet upon the call of the chairperson of the board, the chairperson of the council, or the Governor;

(2) Maintain minutes of its meetings;

(3) Promulgate rules with respect to courts receiving criminal case filings electronically and the exchange of data amongst agencies and entities with respect to a criminal case from its inception to its conclusion;

(4) Participate in the development and review of this state's criminal case data exchange and management system;

(5) Using the combined expertise and experience of its members, provide regular advice and counsel to the director of the council to enable the council to carry out its statutory duties under this chapter; and

(6) Carry out such duties that may be required by federal law or regulation so as to enable this state to receive and disburse federal funds for criminal case exchange and management.

(b) Public access to data that are collected or transmitted via the criminal case information exchange shall remain the responsibility of the Georgia Crime Information Center. No release of collected data shall be made by or through the Georgia Technology Authority."

## PART IA

## SECTION 1A-1.

Code Section 9-11-5 of the Official Code of Georgia Annotated, relating to service and filing of pleadings subsequent to the original complaint and other papers, is amended by revising paragraph (4) of subsection (f) as follows:

"(4) When an attorney files a pleading in a case via an electronic filing service provider, such attorney shall be deemed to have consented to be served electronically with future pleadings for such case unless he or she files a rescission of consent as set forth in paragraph (2) of this subsection.

~~(4)~~(5) If electronic service of a pleading is made upon a person to be served, and such person certifies to the court under oath that he or she did not receive such pleading, it shall be presumed that such pleading was not received unless the serving party disputes the assertion of nonservice, in which case the court shall decide the issue of service of such pleading."

SECTION 1A-2.

Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to general provisions relative to courts, is amended by adding a new Code section to read as follows:

"15-1-22.

On and after January 1, 2019, no court or clerk of court shall enter into any exclusive agreement or contract that prohibits more than one electronic filing service provider to serve a court or clerk of court; provided, however, that such prohibition shall not require a court or clerk of court to enter into more than one agreement or contract with an electronic service provider."

PART II

SECTION 2-1.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by adding a new Code section to read as follows:

"15-5-21.1.

The Judicial Council of Georgia shall develop a uniform misdemeanor citation and complaint form for use by all law enforcement officials who are empowered to arrest individuals for misdemeanors and local ordinance violations. Such form shall serve as the citation, summons, accusation, or other instrument of prosecution of the offense or offenses for which the accused is charged and as the record of the disposition of the matter by the court before which the accused is brought, and shall contain such other matter as the council shall provide. Each such form shall have a unique identifying number which shall serve as the docket number for the court having jurisdiction of the accused. The Judicial Council of Georgia shall promulgate rules for each class of court for the use of such citations."

SECTION 2-2.

Said title is further amended by revising Code Section 15-7-42, relating to hearing on merits in open court and proceedings allowed in chambers, as follows:

"15-7-42.

(a) The prosecution of misdemeanors may proceed by accusation as provided in Code Section 17-7-71, citation or citation and arrest as provided for by law, or summons.

(b) All trials on the merits shall be conducted in open court and, so far as convenient, in a regular courtroom.

(c) All other proceedings, hearings, and acts not included in subsection (b) of this Code section may be done or conducted by a judge in chambers and in the absence of the clerk or other court officials. The judge of the court may hear motions and enter interlocutory orders, in all cases pending in the court over which he or she presides, in open court or in chambers."

SECTION 2-3.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by revising Code Section 17-4-23, relating to the procedure for arrests by citation for motor vehicle violations and issuance of warrants for arrest for failure of persons charged to appear in court, as follows:

"17-4-23.

(a)(1) A law enforcement officer may arrest a person accused of violating any law or ordinance enacted by local law governing the operation, licensing, registration, maintenance, or inspection of motor vehicles or violating paragraph (2), (3), or (5) of subsection (a) of Code Section 3-3-23 by the issuance of a citation, provided that ~~the~~ such offense is committed in his or her presence or information constituting a basis for such arrest ~~concerning the operation of a motor vehicle or a violation of paragraph (2), (3), or (5) of subsection (a) of Code Section 3-3-23~~ was received by the arresting officer from a law enforcement officer observing ~~the~~ such offense being committed, except that, ~~where the~~ when such offense results in an accident, an investigating officer may issue citations regardless of whether the offense occurred in the presence of a law enforcement officer.

(2) A law enforcement officer may arrest a person accused of any misdemeanor violation of Code Section 16-7-21, 16-8-14, 16-8-14.1, or 16-13-30 by the issuance of a citation, provided that such offense is committed in his or her presence or information constituting a basis for such arrest was received by the arresting officer or an investigating officer from another law enforcement officer or other individual observing or aware of such offense being committed. When an arrest is made for such offense, prior to releasing the accused on citation, the arresting law enforcement officer shall review the accused's criminal record as such is on file with the Federal Bureau of Investigation and the Georgia Crime Information Center within the Georgia Bureau of Investigation and ensure that the accused's fingerprints are obtained.

(3) The arresting officer shall issue ~~to such person~~ a citation to the accused which shall enumerate the specific charges ~~against the person~~ and the date upon which ~~the person~~ he or she is to appear and answer the charges or a notation that ~~the person~~ he or she will be later notified of the date upon which ~~the person~~ he or she is to appear and answer the charges. ~~Whenever~~ When an arresting officer makes an arrest concerning the operation of a motor vehicle based on information received from another law enforcement officer who observed the offense being committed, the citation shall list the name of each officer and each officer must be present when the charges against the accused ~~person~~ are heard.

(b) If the accused ~~person~~ fails to appear as specified in the citation, the judicial officer having jurisdiction of the offense may issue a warrant ordering the apprehension of the ~~person~~ accused and commanding that he or she be brought before the court to answer the charge contained within the citation and the charge of his or her failure to appear as required. The ~~person~~ accused shall then be allowed to make a reasonable bond to appear on a given date before the court.

(c) Notwithstanding subsection (b) of this Code section, when an accused was issued a citation for a violation of Code Section 16-7-21, 16-8-14, 16-8-14.1, or 16-13-30, and the accused fails to appear as specified in the citation, the judicial officer having jurisdiction of the offense, absent a finding of sufficient excuse to appear at the time and place specified in the citation, shall issue a warrant ordering the apprehension of the accused and commanding that he or she be brought before the court to answer the charge contained within the citation and the charge of his or her failure to appear as required. The accused shall then be allowed to make a reasonable bond to appear on a given date before the court."

**SECTION 2-4.**

Said title is further amended by revising paragraph (1) of subsection (b) and subsections (e), (f), and (i) of Code Section 17-6-1, relating to where offenses are bailable, procedure, bail schedules, and appeal bonds, as follows:

"(b)(1) All offenses not included in subsection (a) of this Code section, inclusive of offenses that are violations of local ordinances, are bailable by a court of inquiry. Except as provided in subsection (g) of this Code section, at no time, either before a court of inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal is pending, shall any person charged with a misdemeanor be refused bail. When determining bail for a person charged with a misdemeanor, courts shall not impose excessive bail and shall impose only the conditions reasonably necessary to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances."

"(e)(1) A court shall be authorized to release a person on bail if the court finds that the person:

~~(1)~~(A) Poses no significant risk of fleeing from the jurisdiction of the court or failing to appear in court when required;

~~(2)~~(B) Poses no significant threat or danger to any person, to the community, or to any property in the community;

~~(3)~~(C) Poses no significant risk of committing any felony pending trial; and

~~(4)~~(D) Poses no significant risk of intimidating witnesses or otherwise obstructing the administration of justice.

(2) When determining bail, as soon as possible, the court shall consider:

(A) The accused's financial resources and other assets, including whether any such assets are jointly controlled;

(B) The accused's earnings and other income;

(C) The accused's financial obligations, including obligations to dependents;

(D) The purpose of bail; and

(E) Any other factor the court deems appropriate.

(3) ~~However, if~~ If the person is charged with a serious violent felony and has already been convicted of a serious violent felony, or of an offense under the laws of any other state or of the United States which offense if committed in this state would be a serious violent felony, there shall be a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person as required or assure the safety of any other person or the community. As used in this subsection, the term 'serious violent felony' means a serious violent felony as defined in Code Section 17-10-6.1.

(f)(1) Except as provided in subsection (a) of this Code section or as otherwise provided in this subsection, the judge of any court of inquiry may by written order establish a schedule of bails and unless otherwise ordered by the judge of any court, ~~a person charged with committing any offense~~ an accused shall be released from custody upon posting bail as fixed in the schedule.

(2) For offenses involving an act of family violence, as defined in Code Section 19-13-1, ~~the~~ bail or other release from custody shall be set by a judge on an individual basis and a schedule of bails provided for in paragraph (1) of this subsection shall ~~require increased bail and~~ not be utilized; provided, however, that the judge shall include a listing of specific conditions which shall include, but not be limited to, having no contact of any kind or character with the victim or any member of the victim's family or household, not physically abusing or threatening to physically abuse the victim, the immediate

enrollment in and participation in domestic violence counseling, substance abuse therapy, or other therapeutic requirements.

(3) For offenses involving an act of family violence, the judge shall determine whether ~~the schedule of bails and~~ one or more ~~of its~~ specific conditions shall be used, except that any offense involving an act of family violence and serious injury to the victim shall be bailable only before a judge when the judge or the arresting officer is of the opinion that the danger of further violence to or harassment or intimidation of the victim is such as to make it desirable that the consideration of the imposition of additional conditions as authorized in this Code section should be made. Upon setting bail in any case involving family violence, the judge shall give particular consideration to the exigencies of the case at hand and shall impose any specific conditions as he or she may deem necessary. As used in this Code section, the term 'serious injury' means bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, substantial bruises to body parts, fractured bones, or permanent disfigurements and wounds inflicted by deadly weapons or any other objects which, when used offensively against a person, are capable of causing serious bodily injury.

(4) For violations of Code Section 16-15-4, the court shall require increased bail and shall include as a condition of bail or pretrial release that the ~~defendant~~ accused shall not have contact of any kind or character with any other member or associate of a criminal street gang and, in cases involving ~~a~~ an alleged victim, that the ~~defendant~~ accused shall not have contact of any kind or character with any such victim or any member of any such victim's family or household.

(5) For offenses involving violations of Code Section 40-6-393, bail or other release from custody shall be set by a judge on an individual basis and not a schedule of bails pursuant to this Code section."

"(i) As used in this Code section, the term 'bail' shall include ~~the~~ releasing of a person on such person's own recognizance, except as limited by ~~the provisions of~~ Code Section 17-6-12."

SECTION 2-5.

Said title is further amended by revising subsections (b) and (d) of Code Section 17-6-12, relating to discretion of court to release person charged with crime on own recognizance only and the failure of such person to appear for trial, as follows:

"(b) A person charged with a bail restricted offense shall not be released on bail on his or her own recognizance for the purpose of entering a pretrial release program, a pretrial release and diversion program as provided for in Article 4 of Chapter 3 of Title 42, or a

pretrial intervention and diversion program as provided for in Article 4 of Chapter 18 of Title 15, ~~or Article 5 of Chapter 8 of Title 42,~~ or pursuant to Uniform Superior Court Rule 27, unless an elected magistrate, elected state or superior court judge, or other judge sitting by designation under the express written authority of such elected judge, enters a written order to the contrary specifying the reasons why such person should be released upon his or her own recognizance."

"(d) Upon the failure of a person released on his or her own recognizance ~~only~~ to appear for trial, if the release is not otherwise conditioned by the court, absent a finding of sufficient excuse to appear, the court ~~may~~ shall summarily issue an order for his or her arrest which shall be enforced as in cases of forfeited bonds."

SECTION 2-6.

Said title is further amended by revising subparagraph (a)(1)(B), paragraph (2) of subsection (a), and subsection (d) of Code Section 17-10-1, relating to fixing of sentence, as follows:

"(B) When a defendant with no prior felony conviction is convicted of felony offenses or is charged with felony offenses and is sentenced pursuant to subsection (a) or (c) of Code Section 16-13-2 or Article 3 of Chapter 8 of Title 42, ~~has no prior felony conviction,~~ and the court imposes a sentence of probation or not more than 12 months of imprisonment followed by a term of probation, ~~not to include a split sentence,~~ 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."

"(2)(A) Active probation supervision shall terminate in all cases no later than two years from the commencement of active probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, that in those cases involving ~~the~~:

(i) The collection of restitution, the period of active probation supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs; ~~and for those cases involving a;~~

(ii) A conviction under Chapter 15 of Title 16, the 'Georgia Street Gang Terrorism and Prevention Act,' the period of active probation supervision shall remain in effect until the termination of the sentence, but shall not exceed five years unless as otherwise provided in this paragraph; or

(iii) A conviction that requires the defendant to register on the state sexual offender registry pursuant to Code Section 42-1-12, the period of active probation supervision shall remain in effect until the court orders unsupervised probation, or until termination of the sentence, whichever first occurs.

(B) Probation supervision ~~Supervision~~ shall not be required for defendants sentenced to probation while the defendant is in the legal custody of the Department of Corrections or the State Board of Pardons and Paroles."

"(d)(1) As used in this subsection, the term:

(A) 'Developmental disability' shall have the same meaning as set forth in Code Section 37-1-1.

(B) 'Indigent' means an individual who earns less than 100 percent of the federal poverty guidelines unless there is evidence that the individual has other resources that might reasonably be used without undue hardship for such individual or his or her dependents.

(C) 'Significant financial hardship' means a reasonable probability that an individual will be unable to satisfy his or her financial obligations for two or more consecutive months.

(D) 'Totally and permanently disabled' shall have the same meaning as set forth in Code Section 49-4-80.

(2) In determining the financial obligations, other than restitution, to impose on the defendant, the court shall consider:

(A) The defendant's financial resources and other assets, including whether any such assets are jointly controlled;

(B) The defendant's earnings and other income;

(C) The defendant's financial obligations, including obligations to dependents;

(D) The period of time during which the probation order will be in effect;

(E) The goal of the punishment being imposed; and

(F) Any other factor the court deems appropriate.

(3) In any case involving a violation of local ordinance, misdemeanor, or a felony in which the defendant has been punished in whole or in part by a fine, the ~~sentencing judge~~

court shall be authorized to allow the defendant to satisfy such fine ~~through community service as defined in Code Section 42-3-50~~ or any fee imposed in connection with probation supervision through community service as set forth in Article 3 of Chapter 3 of Title 42. One hour of community service shall equal the dollar amount of one hour of paid labor at the minimum wage under the federal Fair Labor Standards Act of 1938, in effect on January 1, ~~2017~~ 2018, unless otherwise specified by the ~~sentencing judge~~ court. A defendant shall be required to serve the number of hours in community service which equals the number derived by dividing the amount ~~of the fine~~ owed by the defendant, including moneys assessed by a provider of probation services, by the federal minimum hourly wage or by the amount specified by the ~~sentencing judge~~ court. If the court orders educational advancement, the court shall determine the numbers of hours required to be completed. Prior to or subsequent to sentencing, a defendant, or subsequent to sentencing, a community supervision officer, may request that the court make all or any portion of ~~a fine~~ the amount owed by the defendant be satisfied under this subsection.

(4) At the time of sentencing, the court may waive the imposition of a fine, exclusive of the payment of statutory surcharges, upon a determination that a defendant has a significant financial hardship or inability to pay or other extenuating factors exist that prohibit payment or collection of such fine. When determining significant financial hardship, the court may consider whether the defendant is indigent and whether the defendant or his or her dependents has a developmental disability or is totally and permanently disabled. If the court waives the imposition of a fine under this paragraph, it shall instead impose a theoretical fine and the defendant shall be required to pay the statutory surcharges associated therewith."

SECTION 2-7.

Said title is further amended by revising Code Section 17-10-8, relating to the requirement of payment of fine as condition precedent to probation and the rebate or refund of fine upon probation revocation, as follows:

"17-10-8.

(a) In ~~any~~ a felony case ~~where the judge may, by any law so authorizing, place on probation a person convicted of a felony, the judge may in his discretion impose a fine on the person so convicted as a condition to such probation. The fine shall~~, when a statutory fine amount is not set by law, upon conviction, the court may impose a fine not to exceed $100,000.00 ~~or the amount of the maximum fine which may be imposed for conviction of such a felony, whichever is greater~~.

(b) In any case ~~where~~ when probation is revoked, the defendant shall not be entitled to any rebate or refund of any part of the fine ~~so~~ paid."

SECTION 2-8.

Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of individual's criminal history record information, definitions, privacy considerations, written application requesting review, and inspection, is amended by revising paragraphs (1) through (3) of subsection (j) and subparagraph (j)(4)(A), as follows:

"(j)(1) When an individual had a felony charge dismissed or nolle prossed or was found not guilty of such charge but was convicted of a misdemeanor offense that was not a lesser included offense of the felony charge, such individual may petition the court in which he or she was accused or convicted, as applicable, or, if such charge was dismissed, the superior court in the county where the arrest occurred to restrict access to criminal history record information for the felony charge within four years of the arrest. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines that the misdemeanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(2) When an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the ~~superior~~ court in ~~the county where the conviction occurred~~ which he or she was convicted to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case, and the public's interest in the criminal history record information being publicly available.

(3) When an individual's case has remained on the dead docket for more than 12 months, such individual may petition the ~~superior~~ court in ~~the county where~~ which the case is pending to restrict access to criminal history record information for such offense. Such

petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the case was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual.

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, and at the time of such conviction such individual was a youthful offender, provided that such individual successfully completed the terms of his or her sentence and, since completing the terms of his or her sentence, has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense, and provided, further, that he or she was not convicted in this state of a misdemeanor violation or under any other state's law with similar provisions of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she may petition the ~~superior~~ court in ~~the county where~~ which the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the individual's conduct and the public's interest in the criminal history record information being publicly available."

SECTION 2-9.

Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to drivers' licenses, is amended by adding a new subsection to Code Section 40-5-22, relating to persons not to licensed, minimum ages for licensees, school enrollment requirements, driving training requirements, and limited driving permits, to read as follows:

"(e) The department may issue a probationary license, limited driving permit, or ignition interlock device limited driving permit to any individual whose driver's license is expired; provided, however, that he or she is otherwise eligible for such probationary license, limited driving permit, or ignition interlock device limited driving permit pursuant to Code Section 40-5-58, 40-5-64, 40-5-64.1, 40-5-75, or 40-5-76."

SECTION 2-10.

Said chapter is further amended by revising Code Section 40-5-76, relating to reinstatement or suspension of defendant's driver's license or issuance of ignition interlock device limited driving permit, as follows:

"40-5-76.

(a)(1) A judge presiding in a drug court division, mental health court division, veterans court division, or operating under the influence court division, as a reward or sanction to the defendant's behavior in such court division, may order the department to ~~reinstate:~~

(A) Reinstate a defendant's Georgia driver's license that has been or should be suspended ~~pursuant to Code Section 40-5-75, suspend such license, or issue~~ under the laws of this state;

(B) Issue to a defendant a limited driving permit ~~or ignition interlock device limited driving permit in accordance with the provisions~~ using the guidance set forth in subsections (c), (c.1), and (d) of Code Section 40-5-64 or with whatever conditions the court determines to be appropriate under the circumstances ~~as a reward or sanction to the defendant's behavior in such court division;~~

(C) Issue to a defendant an ignition interlock device limited driving permit using the guidance set forth in subsections (c) and (e) of Code Section 40-5-64.1 or with whatever conditions the court determines to be appropriate under the circumstances; or

(D) Suspend or revoke such license, limited driving permit, or ignition interlock device limited driving permit.

(2) The court shall ~~determine what fees, if any, shall be paid to the department for such reward or sanction, provided that such fee shall not be greater than the fee normally imposed for such services~~ require the defendant to pay to the department the fee normally required for the reinstatement of such driver's license or issuance of such limited driving permit or ignition interlock device limited driving permit or waive such fee.

(3) The court may order the department to issue to a defendant a limited driving permit or ignition interlock device limited driving permit pursuant to this subsection for a one-year period, and may allow such permit to be renewed for a one-year period, and shall provide the department with such order.

(b) If the offense for which the defendant was convicted did not directly relate to the operation of a motor vehicle, a ~~A~~ judge presiding in any court, other than the court divisions specified in subsection (a) of this Code section, may order the department to reinstate a defendant's driver's license that has been or should be suspended ~~pursuant to Code Section 40-5-75 or,~~ issue to a defendant a limited driving permit ~~or ignition interlock device limited driving permit in accordance with the provisions~~ using the guidance set forth in subsections (c), (c.1), and (d) of Code Section 40-5-64 ~~if the offense for which the~~

~~defendant was convicted did not directly relate to the operation of a motor vehicle,~~ or issue to a defendant an ignition interlock device limited driving permit using the guidance set forth in subsections (c) and (e) of Code Section 40-5-64.1. The court shall ~~determine what fees, if any, shall be paid to the department~~ require the defendant to pay to the department the fee normally required for the reinstatement of such driver's license or issuance of such limited driving permit or ignition interlock device limited driving permit~~, provided that such fee shall not be greater than the fee normally imposed for such services~~ or waive such fee. Such judge may also order the department to suspend a defendant's driver's license ~~that could have been suspended pursuant to Code Section 40-5-75~~, limited driving permit, or ignition interlock device limited driving permit as a consequence of the defendant's violation of the terms of his or her probation.

(c)(1) The department shall make a notation on a person's driving record when his or her driver's license was reinstated or suspended or he or she was issued a limited driving permit or ignition interlock device limited driving permit under this Code section, and such information shall be made available in accordance with Code Section 40-5-2.

(2) The driver's license of any person who has a driver's license reinstated or suspended in accordance with this Code section shall remain subject to any applicable disqualifications specified in Article 7 of this chapter.

(d) The department shall credit any time during which a defendant was issued a limited driving permit or ignition interlock device limited driving permit under subsection (a) of this Code section toward the fulfillment of the period of a driver's license suspension for which such permit was issued."

SECTION 2-11.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by revising Article 3 of Chapter 3, relating to community service, as follows:

"ARTICLE 3

42-3-50.

(a) As used in this article, the term:

(1) 'Agency' means any private or public ~~agency or organization approved by the court to participate in a community service program~~ entity or organization that provides services to the public and enhances the social welfare and general well-being of the community. Such term may include educational institutions and religious organizations that are nonprofit corporations or are qualified as tax exempt under 26 U.S.C. Section 501(c)(3), as it existed on March 1, 2018.

(2) 'Community service' means uncompensated work by an offender with an agency ~~for the benefit of the community~~ pursuant to an order by a court as a condition of probation or in lieu of payment of financial obligations imposed by a court. ~~Such term includes uncompensated service by an offender who lives in the household of a disabled person and provides aid and services to such disabled person, including, but not limited to, cooking, housecleaning, shopping, driving, bathing, and dressing.~~

(3) 'Community service officer' means an individual appointed by the court to place and supervise offenders sentenced to community service or educational advancement. Such term ~~may mean~~ includes a paid professional or a volunteer.

(4) 'Educational advancement' means attending a work or job skills training program, a preparatory class for the general educational development (GED) diploma, or similar activity.

(b) Except as provided in subsection (c) of this Code section, it shall be unlawful for an agency or community service officer to use or allow an offender to be used for any purpose resulting in private gain to any individual.

(c) Subsection (b) of this Code section shall not apply to:

(1) ~~Services provided by an offender to a disabled person in accordance with paragraph (1) of subsection (c) of Code Section 42-3-52;~~

~~(2)~~ Work on private property because of a natural disaster; or

~~(3)~~(2) An order or direction by the ~~sentencing~~ court.

(d) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor.

42-3-51.

(a) Agencies desiring to allow offenders to participate in ~~a community service~~ their program shall file with the court a letter of application showing:

(1) Eligibility;

(2) Number of offenders who may be placed with the agency;

(3) Work to be performed by the offender; and

(4) Provisions for supervising the offender.

(b) An agency selected ~~for the community service program~~ by the court shall work offenders who are assigned to the agency by the court. If an offender violates a court order, the agency shall report such violation to the community service officer.

(c) If an agency violates any court order or ~~provision of~~ this article, the offender shall be removed from the agency and the agency shall no longer be eligible to participate in the court's community service or educational advancement program.

(d) No agency or community service officer shall be liable at law as a result of any of such agency's or community service officer's acts performed while an offender was participating in a community service or educational advancement program. This limitation of liability shall not apply to actions on the part of any agency or community service officer which constitute gross negligence, recklessness, or willful misconduct.

42-3-52.

(a) Community service or educational advancement may be considered as a condition of probation or in lieu of court imposed financial obligations with primary consideration given to the following categories of offenders:

(1) Traffic violations;

(2) Ordinance violations;

(3) Noninjurious or nondestructive, nonviolent misdemeanors;

(4) Noninjurious or nondestructive, nonviolent felonies; and

(5) Other offenders considered upon the discretion of the court.

(b) The court may confer with the prosecuting attorney, the offender or his or her attorney if the offender is represented by an attorney, a community supervision officer, a community service officer, or other interested persons to determine if ~~the~~ community service ~~program~~ or educational advancement is appropriate for an offender. A court order shall specify that the court has approved community service or educational assistance for an offender. If community service or educational advancement is ordered ~~as a condition of probation~~, the court shall order:

(1) Not less than 20 hours nor more than 250 hours in cases involving traffic or ordinance violations or misdemeanors, such service to be completed within one year; or

(2) Not less than 20 hours nor more than 500 hours in felony cases, such service to be completed within three years.

~~(c)(1) Any agency may recommend to the court that certain disabled persons are in need of a live-in attendant. The court shall confer with the prosecuting attorney, the offender or his or her attorney if the offender is represented by an attorney, a community supervision officer, a community service officer, or other interested persons to determine if a community service program involving a disabled person is appropriate for an offender. If community service as a live-in attendant for a disabled person is deemed appropriate and if both the offender and the disabled person consent to such service, the court may order such live-in community service as a condition of probation but for no longer than two years.~~

~~(2) The agency shall be responsible for coordinating the provisions of the cost of food or other necessities for the offender which the disabled person is not able to provide. The~~

~~agency, with the approval of the court, shall determine a schedule which will provide the offender with certain free hours each week.~~

~~(3) Such live-in arrangement shall be terminated by the court upon the request of the offender or the disabled person. Upon termination of such arrangement, the court shall determine if the offender has met the conditions of probation.~~

~~(4) The appropriate agency shall make personal contact with the disabled person on a frequent basis to ensure the safety and welfare of the disabled person.~~

~~(d)~~(c) The court may order an offender to perform community service hours in a 40 hour per week work detail in lieu of incarceration.

~~(e)~~(d) Community service or educational advancement hours may be added to original court ordered hours as a disciplinary action by the court, as an additional requirement of any program in lieu of incarceration, or as part of the sentencing options system as set forth in Article 6 of this chapter.

42-3-53.

The community service officer shall place an offender sentenced to community service ~~as a condition of probation~~ or educational advancement with an appropriate agency. The agency and work schedule shall be approved by the court. If the offender is employed at the time of sentencing or if the offender becomes employed after sentencing, the community service officer shall consider the offender's work schedule and, to the extent practicable, shall schedule the community service or educational advancement so that it will not conflict with the offender's work schedule. This scheduling accommodation shall not be construed as requiring the community service officer to alter scheduled community service or educational advancement based on changes in an offender's work schedule. The community service officer shall supervise the offender for the duration of the sentence which requires community service ~~sentence~~ or educational advancement. Upon completion of the ~~community service~~ such sentence, the community service officer shall prepare a written report evaluating the offender's performance which shall be used to determine if the conditions of probation or sentence have been satisfied.

42-3-54.

~~(a) The provisions of~~ Article 2 of Chapter 8 of this title shall be applicable to offenders sentenced to community service ~~as a condition of probation~~ or educational advancement pursuant to this article. ~~The provisions of~~ Article 3 of Chapter 8 of this title shall be applicable to first offenders sentenced to community service or educational advancement pursuant to this article. ~~The provisions of~~ Article 6 of Chapter 8 of this title shall be

applicable to misdemeanor or ordinance violator offenders sentenced to community service ~~as a condition of probation~~ or educational advancement pursuant to this article.

~~(b) Any offender who provides live-in community service but who is later incarcerated for breaking the conditions of probation or for any other cause may be awarded good time for each day of live-in community service the same as if such offender were in prison for such number of days.~~"

SECTION 2-12.

Said title is further amended by revising paragraph (2) of subsection (e) of Code Section 42-8-34, relating to sentencing hearings and determinations, presentence investigations, payment of fees, fines, and costs, post-conviction, presentence bond, continuing jurisdiction, and transferral of probation supervision, as follows:

"(2) The court may convert fines, statutory surcharges, and probation supervision fees to community service or educational advancement on the same basis as it allows a defendant to pay a fine through community service or educational advancement as set forth in subsection (d) of Code Section 17-10-1."

SECTION 2-13.

Said title is further amended by revising paragraph (2) of subsection (d) of Code Section 42-8-37, relating to the effect of termination of the probated portion of a sentence and review of cases of persons receiving probated sentences, as follows:

"(2) When the court is presented with such petition, it shall take whatever action it determines would be for the best interest of justice and the welfare of society. When such petition is unopposed, the court shall issue an order as soon as possible or otherwise set the matter for a hearing within 90 days of receiving such petition."

SECTION 2-14.

Said title is further amended by revising paragraph (1) of subsection (b) of Code Section 42-8-62.1, relating to limiting public access to first offender status, petitioning, and sealing a record, as follows:

"(b)(1) At the time of sentencing, or during the term of a sentence that was imposed before July 1, 2016, the defendant may seek to limit public access to his or her first offender sentencing information, and the court may, in its discretion, order any of the following:

(A) Restrict dissemination of the defendant's first offender records;

(B) The criminal file, docket books, criminal minutes, final record, all other records of the court, and the defendant's criminal history record information in the custody of the clerk of court, including within any index, be sealed and unavailable to the public; and

(C) Law enforcement agencies, jails, or detention centers to restrict the defendant's criminal history record information of arrest, including any fingerprints or photographs taken in conjunction with such arrest."

SECTION 2-15.

Said title is further amended in Code Section 42-8-66, relating to a petition for exoneration and discharge, hearing, and retroactive grant of first offender status, by revising subsection (a) and adding a new subsection to read as follows:

"(a)(1) An individual who qualified for sentencing pursuant to this article but who was not informed of his or her eligibility for first offender treatment may, with the consent of the prosecuting attorney, petition the ~~superior~~ court ~~in the county~~ in which he or she was convicted for exoneration of guilt and discharge pursuant to this article.

(2) An individual who was sentenced between March 18, 1968, and October 31, 1982, to a period of incarceration not exceeding one year but who would otherwise have qualified for sentencing pursuant to this article may, with the consent of the prosecuting attorney, petition the ~~superior~~ court ~~in the county~~ in which he or she was convicted for exoneration of guilt and discharge pursuant to this article."

"(h) There shall be no filing fee charged for a petition filed pursuant to this Code section."

SECTION 2-16.

Said title is further amended by revising subsection (d) of Code Section 42-8-102, relating to probation and supervision, determination of fees, fines, and restitution, converting moneys owed to community service, continuing jurisdiction, revocation, and transfer, as follows:

"(d) The court may convert fines, statutory surcharges, and probation supervision fees to community service or educational advancement on the same basis as it allows a defendant to pay a fine through community service or educational advancement as set forth in subsection (d) of Code Section 17-10-1."

SECTION 2-17.

Said title is further amended by revising subsection (b) of Code Section 42-8-103, relating to pay-only probation and discharge or termination of probation, as follows:

"(b) When pay-only probation is imposed, the ~~probation supervision fees~~ total maximum fee collected shall be capped so as not to exceed three months of ordinary probation supervision fees at a monthly rate not to exceed the rate set forth in the contract between

the court and the provider of services, notwithstanding the number of cases for which a fine and statutory surcharge were imposed or that the defendant was sentenced to serve consecutive sentences; provided, however, that collection of ~~any probation supervision~~ such fee shall terminate as soon as all court imposed fines and statutory surcharges are paid in full; and provided, further, that when all such fines and statutory surcharges are paid in full, the probation officer or private probation officer, as the case may be, shall submit an order to the court terminating the probated sentence within 30 days of fulfillment of such conditions. ~~The~~ Within 90 days of receiving such order, the court shall ~~terminate~~ issue an order terminating such probated sentence or issue an order stating why such probated sentence shall continue."

SECTION 2-18.

Said title is further amended by revising paragraph (2) of subsection (b) of Code Section 42-8-105, relating to a probationer's obligation to keep officer informed of certain information and tolling for failure to meet certain obligations, as follows:

"(2) In the event the probationer ~~reports~~ does not report to his or her probation officer or private probation officer, as the case may be, within the period prescribed in subparagraph (D) of paragraph (1) of this subsection, ~~the probationer shall be scheduled to appear on the next available court calendar for a hearing to consider whether the probation sentence should be tolled~~ such officer shall submit the affidavit required by this subsection to the court. If the probationer reports to his or her probation officer or private probation officer, as the case may be, within the period prescribed in subparagraph (D) of paragraph (1) of this subsection, such officer shall neither submit such affidavit nor seek a tolling order."

SECTION 2-19.

An Act relating to the effect of a confinement sentence when guilt has not been adjudicated, approved March 20, 1985 (Ga. L. 1985, p. 380), is amended by revising Section 3 as follows:

"SECTION 3.

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

SECTION 2-20.

Code Section 43-1-19 of the Official Code of Georgia Annotated, relating to grounds for refusing to grant or revoking professional licenses, is amended by revising paragraph (4) of subsection (a) and subsection (q) as follows:

"(4)(A) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, ~~where~~ when:

~~(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or~~

(i) A sentence for such offense was imposed pursuant to Article 3 of Chapter 8 of Title 42 or another state's first offender laws;

(ii) A sentence for such offense was imposed pursuant to subsection (a) or (c) of Code Section 16-13-2;

(iii) A sentence for such offense was imposed as a result of a plea of nolo contendere; or

~~(B)~~(iv) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge~~; except with respect to a plea of nolo contendere~~.

(B) An ~~The~~ order entered pursuant to ~~the provisions of~~ subsection (a) or (c) of Code Section 16-13-2, Article 3 of Chapter 8 of Title 42, ~~relating to probation of first offenders, or other~~ or another state's first offender treatment order shall be conclusive evidence of an arrest and sentencing for such ~~crime~~ offense;"

"(q)(1) Notwithstanding paragraphs (3) and (4) of subsection (a) of this Code section or any other provision of law, and unless a felony or crime involving moral turpitude directly relates to the occupation for which the license is sought or held, no professional licensing board shall refuse to grant a license to an applicant therefor or shall revoke the license of ~~a person~~ an individual licensed by that board due solely or in part to a ~~conviction~~ such applicant's or licensee's:

(A) Conviction of any felony or any crime involving moral turpitude, whether it occurred in the courts of this state or any other state, territory, or country or in the courts of the United States; ~~or due to any arrest, charge, and sentence~~

(B) Arrest, charge, and sentence for the commission of ~~any felony~~ such offense;

(C) Sentence for such offense pursuant to Article 3 of Chapter 8 of Title 42 or another state's first offender laws;

(D) Sentence for such offense pursuant to subsection (a) or (c) of Code Section 16-13-2;

(E) Sentence for such offense as a result of a plea of nolo contendere; or

(F) Adjudication of guilt or sentence was otherwise withheld or not entered.

~~unless such felony directly relates to the occupation for which the license is sought or held.~~

(2) In determining if a felony or crime involving moral turpitude directly relates to the occupation for which the license is sought or held, the professional licensing board shall consider:

(A) The nature and seriousness of ~~the~~ such felony or crime involving moral turpitude and the relationship of ~~the~~ such felony or crime involving moral turpitude to the occupation for which the license is sought or held;

(B) The age of the ~~person~~ individual at the time ~~the~~ such felony or crime involving moral turpitude was committed;

(C) The length of time elapsed since ~~the~~ such felony or crime involving moral turpitude was committed;

(D) All circumstances relative to ~~the~~ such felony or crime involving moral turpitude, including, but not limited to, mitigating circumstances or social conditions surrounding the commission of ~~the~~ such felony or crime involving moral turpitude; and

(E) Evidence of rehabilitation and present fitness to perform the duties of the occupation for which the license is sought or held."

## PART III

## SECTION 3-1.

Chapter 2 of Title 31 of the Official Code of Georgia Annotated, relating to the Department of Community Health, is amended by revising paragraph (1) of Code Section 31-2-1, relating to legislative intent and grant of authority, as follows:

"(1) Serve as the lead planning agency for all health issues in the state to remedy the current situation wherein the responsibility for health care policy, purchasing, planning, and regulation is spread among many different agencies and achieve determinations of Medicaid eligibility for inmates to attain services at long-term care facilities when he or she is being considered for parole;"

## SECTION 3-2.

Said chapter is further amended in Code Section 31-2-4, relating to the department's powers, duties, functions, and responsibilities, by deleting "and" at the end of division (d)(10)(B)(ii), by replacing the period with "; and" at the end of subparagraph (d)(11)(D), and by adding two new paragraphs to read as follows:

"(12) In cooperation with the Department of Corrections and the State Board of Pardons and Paroles, shall establish and implement a Medicaid eligibility determination procedure so that inmates being considered for parole who are eligible for long-term care services may apply for Medicaid; and

(13) Shall request federal approval for and facilitate the application of certificates of need for facilities capable of providing long-term care services, with Medicaid as the primary funding source, to inmates who are eligible for such services and funding upon

his or her release from a public institution, as such term is defined in Code Section 49-4-31."

SECTION 3-3.

Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance, is amended by revising Code Section 49-4-31, relating to definitions for old-age assistance, as follows:

"49-4-31.

As used in this article, the term:

(1) 'Applicant' means a person who has applied for assistance under this article.

(2) 'Assistance' means money payments to, medical care in behalf of, or any type of remedial care recognized under state law in behalf of needy individuals who are 65 years of age or older but ~~does~~ shall not include any such payments to or care in behalf of any individual who is ~~an inmate of a public institution (except as a patient in a medical institution) or any individual who is~~ a patient in an institution for tuberculosis or mental health or developmental disability services.

(3) 'Medical institution' means an institution that is organized to provide medical, nursing, or convalescent care.

(4) 'Public institution' means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

~~(3)~~(5) 'Recipient' means a person who has received assistance under this article."

SECTION 3-4.

Said chapter is further amended by revising Code Section 49-4-32, relating to eligibility for assistance under this article, as follows:

"49-4-32.

(a) Assistance shall be granted under this article to any person who:

(1) Is 65 years of age or older;

(2) Does not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(3) ~~Is not, at the time of receiving assistance, an inmate or patient of any public institution, except as a patient in a medical institution. An inmate or patient of such an institution may, however, make application for such assistance but the assistance, if granted, shall not begin until after he ceases to be an inmate;~~

~~(4)~~ Has not made an assignment or transfer of property for the purpose of ~~rendering himself eligible~~ attaining eligibility for assistance under this article at any time within two years immediately prior to the filing of application for assistance pursuant to this article;

~~(5)~~(4) Has been a bona fide resident of this state for not less than one year; and

~~(6)~~(5) Is not receiving assistance under Article 3 of this chapter.

(b) No applicant shall be required to subscribe to a pauper's oath in order to be eligible for assistance under this article.

(c) ~~Final conviction of a crime or criminal offense and detention of one so convicted either by this state or by any subdivision thereof shall constitute a forfeiture or suspension of all rights to assistance under this article but only during the period of actual confinement~~ Inmates of any public institution meeting the requirements of subsection (a) of this Code section may be granted assistance, provided such public institution has entered into an agreement with the Department of Community Health to determine an inmate's eligibility for assistance and services. Such agreement shall require the public institution or medical institution providing services to such inmate to provide the Department of Community Health with the required monetary payment to match the federal matching funds as set forth in federal law for the services received."

SECTION 3-5.

Said chapter is further amended in Code Section 49-4-51, relating to definitions for aid to the blind, by revising paragraph (2), by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and paragraphs (5) and (6) as paragraphs (7) and (8), respectively, and by adding new paragraphs to read as follows:

"(2) 'Assistance' means money payments to or hospital care in behalf of needy blind individuals but ~~does~~ shall not include any such payments to or care in behalf of any such individual who ~~is an inmate of a public institution (except as a patient in a medical institution) nor any individual who~~:

(A) Is a patient in an institution for tuberculosis or mental illness or developmental disability; or

(B) Has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.

(3) 'Medical institution' means an institution that is organized to provide medical, nursing, or convalescent care."

"(6) 'Public institution' means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control."

SECTION 3-6.

Said chapter is further amended by revising subsection (b) of Code Section 49-4-52, relating to eligibility for assistance under this article, as follows:

"(b) ~~All assistance under this article shall be suspended in the event of and during the period of confinement in any public penal institution after final conviction of a crime against the laws of this state or any political subdivision thereof~~ Inmates of any public institution meeting the requirements of subsection (a) of this Code section may be granted assistance, provided such public institution has entered into an agreement with the Department of Community Health to determine an inmate's eligibility for assistance and services. Such agreement shall require the public institution or medical institution providing services to such inmate to provide the Department of Community Health with the required monetary payment to match the federal matching funds as set forth in federal law for the services received."

SECTION 3-7.

Said chapter is further amended in Code Section 49-4-80, relating to definitions for aid to the disabled, by revising paragraph (2), by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively, and by adding new paragraphs to read as follows:

"(2) 'Assistance' means money payments to, or hospital care in behalf of, needy individuals who are totally and permanently disabled but does not include ~~any such payments to or care in behalf of any such individual who is an inmate of a public institution (except as a patient in a medical institution) or~~ any individual:

(A) Who is a patient in an institution for tuberculosis or mental illness or developmental disability; or

(B) Who has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.

(3) 'Medical institution' means an institution that is organized to provide medical, nursing, or convalescent care.

(4) 'Public institution' means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control."

SECTION 3-8.

Said chapter is further amended in Code Section 49-4-81, relating to eligibility for assistance under this article, by adding a new subsection to read as follows:

"(c) Inmates of any public institution meeting the requirements of subsection (a) of this Code section may be granted assistance, provided such public institution has entered into an agreement with the Department of Community Health to determine an inmate's eligibility for assistance and services. Such agreement shall require the public institution or medical institution providing services to such inmate to provide the Department of

Community Health with the required monetary payment to match the federal matching funds as set forth in federal law for the services received."

PART IV

SECTION 4-1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising subparagraph (a)(6)(B) of Code Section 16-8-12, relating to penalties for theft in violation of Code Sections 16-8-2 through 16-8-9, as follows:

"(B) If the property which was the subject of the theft offense was a destructive device, explosive, or firearm, by imprisonment for not less than one year nor more than ten years; provided, however, that upon a second or subsequent conviction, by imprisonment for not less than five nor more than ten years;"

SECTION 4-2.

Said title is further amended by revising Code Section 16-9-70, relating to criminal use of an article with an altered identification mark, as follows:

"16-9-70.

(a) As used in this Code section, the term 'firearm' shall have the same meaning as set forth in division (a)(6)(A)(iii) of Code Section 16-8-12.

(b) A person commits the offense of criminal use of an article with an altered identification mark when he or she buys, sells, receives, disposes of, conceals, or has in his or her possession a radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe, vacuum cleaner, dictaphone, watch, watch movement, watch case, or any other mechanical or electrical device, appliance, contrivance, material, vessel as defined in Code Section 52-7-3, or other piece of apparatus or equipment, other than a motor vehicle as defined in Code Section 40-1-1, from which he or she knows the manufacturer's name plate, serial number, or any other distinguishing number or identification mark has been removed for the purpose of concealing or destroying the identity of such article.

~~(b)~~(c)(1) A person convicted of the offense of criminal use of an article, other than a firearm, with an altered identification mark shall be guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than five years.

(2) A person convicted of the offense of criminal use of a firearm with an altered identification mark shall be guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than ten years; provided, however, that

upon a second or subsequent conviction, by imprisonment for not less than five nor more than ten years.

~~(c)~~(d) This Code section ~~does~~ shall not apply to those cases or instances ~~where~~ when any of the changes or alterations enumerated in subsection ~~(a)~~ (b) of this Code section have been customarily made or done as an established practice in the ordinary and regular conduct of business by the original manufacturer or by ~~his~~ its duly appointed direct representative or under specific authorization from the original manufacturer."

SECTION 4-3.

Said title is further amended by revising Code Section 16-11-113, relating to the offense of transferring a firearm to an individual other than the actual buyer, as follows:

"16-11-113.

(a) Any person who knowingly attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm ~~other than~~ to an individual who is not the actual buyer, to an individual who is on probation as a felony first offender pursuant to Article 3 of Chapter 8 of Title 42, to an individual who is on probation and sentenced for a felony under subsection (a) or (c) of Code Section 16-13-2, or to an individual who has been convicted of a felony by a court of this state or any other state, as well as any other person who willfully and intentionally aids or abets such person, shall be guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than five years; provided, however, that upon a second or subsequent conviction, by imprisonment for not less than five nor more than ten years.

(b) This Code section shall not apply to a federal law enforcement officer or a peace officer, as defined in Code Section 16-1-3, in the performance of his or her official duties or other person under such officer's direct supervision."

SECTION 4-4.

Said title is further amended by revising subsections (b), (b.1), and (f) of Code Section 16-11-131, relating to possession of firearms by convicted felons and first offender probationers, as follows:

"(b) Any person who is on probation as a felony first offender pursuant to Article 3 of Chapter 8 of Title 42, who is on probation and was sentenced for a felony under subsection (a) or (c) of Code Section 16-13-2, or who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and who receives, possesses, or transports any firearm commits a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than ~~five~~ ten years; provided, however, that upon a

second or subsequent conviction, such person shall be imprisoned for not less than five nor more than ten years; provided, further, that if the felony ~~as to~~ for which the person is on probation or has been previously convicted is a forcible felony, then upon conviction of receiving, possessing, or transporting a firearm, such person shall be imprisoned for a period of five years.

(b.1) Any person who is prohibited by this Code section from possessing a firearm because of conviction of a forcible felony or because of being on probation as a first offender or under conditional discharge for a forcible felony ~~pursuant to this Code section~~ and who attempts to purchase or obtain transfer of a firearm shall be guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than five years; provided, however, that upon a second or subsequent conviction, such person shall be punished by imprisonment for not less than five nor more than ten years."

"(f) Any person ~~placed on probation~~ sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42 or sentenced pursuant to subsection (a) or (c) of Code Section 16-13-2 and subsequently discharged without court adjudication of guilt as a matter of law pursuant to Code Section 42-8-60 or 16-13-2, as applicable, shall, upon such discharge, be relieved from the disabilities imposed by this Code section."

**SECTION 4-5.**

Code Section 16-13-60 of the Official Code of Georgia Annotated, relating to privacy and confidentiality, use of data, and security program for the prescription drug monitoring program data base, is amended by revising subsection (c) as follows:

"(c) The department shall be authorized to provide requested prescription information collected pursuant to this part only as follows:

(1) To persons authorized to prescribe or dispense controlled substances for the sole purpose of providing medical or pharmaceutical care to a specific patient;

(2) Upon the request of a patient, prescriber, or dispenser about whom the prescription information requested concerns or upon the request on his or her behalf of his or her attorney;

(3) To local or state law enforcement or prosecutorial officials pursuant to the issuance of a search warrant from an appropriate court or official in the county in which the office of such law enforcement or prosecutorial officials are located ~~pursuant to Article 2 of Chapter 5 of Title 17~~ or to federal law enforcement or prosecutorial officials ~~pursuant to the~~ as allowed by federal law by the issuance of a search warrant ~~pursuant to 21 U.S.C. or~~, a grand jury subpoena ~~pursuant to 18 U.S.C.~~, an administrative subpoena, or a civil investigative demand;

(4) To the agency, the Georgia Composite Medical Board or any other state regulatory board governing prescribers or dispensers in this state, or the Department of Community Health for purposes of the state Medicaid program, for health oversight purposes, or upon the issuance of a subpoena by such agency, board, or Department of Community Health pursuant to their existing subpoena power or to the federal Centers for Medicare and Medicaid Services upon the issuance of a subpoena by the federal government pursuant to its existing subpoena ~~powers~~ power;

(5)(A) To not more than two individuals who are members per shift or rotation of the prescriber's or dispenser's staff ~~or employed at the health care facility in which the prescriber is practicing, provided that such individuals:~~

~~(i) Are licensed under Chapter 11, 30, 34, or 35 of Title 43;~~

~~(ii) Are registered under Title 26;~~

~~(iii) Are licensed under Chapter 26 of Title 43 and submit to the annual registration process required by subsection (a) of Code Section 16-13-35, and for purposes of this Code section, such individuals shall not be deemed exempted from registration as set forth in subsection (g) of Code Section 16-13-35; or~~

~~(iv) Submit to the annual registration process required by subsection (a) of Code Section 16-13-35, and for purposes of this Code section, such individuals shall not be deemed exempted from registration as set forth in subsection (g) of Code Section 16-13-35;~~

(B) Such individuals may retrieve and review such information strictly for the purpose of:

(i) Providing medical or pharmaceutical care to a specific patient; or

(ii) Informing the prescriber or dispenser of a patient's potential use, misuse, abuse, or underutilization of prescribed medication;

(C) All information retrieved and reviewed by such individuals shall be maintained in a secure and confidential manner in accordance with the requirements of subsection (f) of this Code section; and

(D) The delegating prescriber or dispenser may be held civilly liable and criminally responsible for the misuse of the prescription information obtained by such individuals;

(6) To not more than two individuals, per shift or rotation, who are employed or contracted by the health care facility in which the prescriber is practicing so long as the medical director of such health care facility has authorized the particular individuals for such access; ~~and~~

(7) In any hospital which provides emergency services, each prescriber may designate two individuals, per shift or rotation, who are employed or contracted by such hospital

so long as the medical director of such hospital has authorized the particular individuals for such access; and

(8) To a prescription drug monitoring program operated by a government entity in another state or an electronic medical records system operated by a prescriber or health care facility, provided the program or system, as determined by the department, contains legal, administrative, technical, and physical safeguards that meet or exceed the security measures of the department for the operation of the PDMP pursuant to this part."

PART V

SECTION 5-1.

Article 2 of Chapter 4 of Title 20 of the Official Code of Georgia Annotated, relating to technical and adult education, is amended by adding a new Code section to read as follows:

"20-4-39.

Campus policemen and other security personnel who are regular employees of the Technical College System of Georgia shall have the power to make arrests for offenses committed upon any property under the jurisdiction of the Technical College System of Georgia and for offenses committed upon any public or private property within 500 feet of such property."

SECTION 5-2.

Chapter 8 of Title 20 of the Official Code of Georgia Annotated, relating to campus policemen, is amended by revising Code Section 20-8-4, relating to exemption of university system campus policemen, as follows:

"20-8-4.

A campus policeman exercising the power of arrest pursuant to Code Section 20-3-72 or 20-4-39 providing campus policemen and other security personnel of the University System of Georgia or the Technical College System of Georgia with arrest powers for offenses committed upon university system property or Technical College System of Georgia property, respectively, shall be exempt from this chapter."

SECTION 5-3.

Chapter 69 of Title 36 of the Official Code of Georgia Annotated, relating to mutual aid regarding local government, is amended by revising Code Section 36-69-3, relating to extraterritorial cooperation and assistance to local law enforcement agencies or fire departments and commander of operations, as follows:

"36-69-3.

(a)(1) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the chief of police or public safety director of any municipality or chief of police or public safety director of any county police force may, with the approval of the governing authority of any such officer's political subdivision, and the sheriff of any county may cooperate with and render assistance extraterritorially to such local law enforcement agency requesting the same.

(2)(A) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the public safety director or chief of police of any institution within the University System of Georgia or the Technical College System of Georgia may, with the approval of the president of such institution, cooperate with and render assistance extraterritorially to such law enforcement agency requesting the same.

(B) Upon the request for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, which request is made by a public safety director or chief of police of any institution within the University System of Georgia or the Technical College System of Georgia after approval by the president of such institution, the chief of police or public safety director of any municipality or ~~chief of police or public safety director of~~ any county police force may, with the approval of the governing authority of any such officer's political subdivision; and the sheriff of the county, ~~may~~ cooperate with and render assistance extraterritorially to such law enforcement agency of the institution requesting the same.

(b) Upon the request of any local fire department for assistance in a local emergency, in preventing or suppressing a fire, or in protecting life and property, the fire chief or public safety director of any local political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local fire department requesting the same.

(c) Upon the request of any local law enforcement agency or local director of emergency medical services for assistance in a local emergency or in transporting wounded, injured, or sick persons to a place where medical or hospital care is furnished, emergency medical technicians employed by a political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance

extraterritorially to such local law enforcement agency or local director of emergency services.

(d) Authorization for furnishing assistance extraterritorially may be granted by the sheriff of any county or the governing authority of a local political subdivision or the president of an institution within the University System of Georgia or the Technical College System of Georgia to any of its agencies or employees covered by this Code section prior to any occurrence resulting in the need for such assistance; provided, however, that any prior authorization granted by the president of an institution within the University System of Georgia or the Technical College System of Georgia for the furnishing of assistance extraterritorially must be submitted to and approved by the board of regents or the State Board of the Technical College System of Georgia, respectively, before it becomes effective. Such authorization may provide limitations and restrictions on such assistance furnished extraterritorially, provided that such limitations and restrictions do not conflict with the provisions of Code Sections 36-69-4 through 36-69-6.

(e) The senior officer of the public safety agency of a political subdivision or institution within the University System of Georgia or the Technical College System of Georgia which requests assistance in a local emergency as provided in this Code section shall be in command of the local emergency as to strategy, tactics, and overall direction of the operations with respect to the public safety officers and employees rendering assistance extraterritorially at the request of such public safety agency. All orders or directions regarding the operations of the public safety officers and employees rendering assistance extraterritorially shall be relayed to the senior officer in command of the public safety agency rendering assistance extraterritorially."

**SECTION 5-4.**

Said chapter is further amended by inserting "or the Technical College System of Georgia" after "University System of Georgia" each time said phrase occurs in:

(1) Code Section 36-36-2, relating to "Local emergency" defined.

(2) Code Section 36-36-4, relating to powers and duties of employees of political subdivision or institution within the University System of Georgia who are rendering aid.

(3) Code Section 36-36-5, relating to responsibility for expenses and compensation of employees.

(4) Code Section 36-36-6, relating to applicability of privileges, immunities, exemptions, and benefits.

(5) Code Section 36-36-7, relating to liability for acts or omissions of responding agency employees.

(6) Code Section 36-36-8, relating to construction of chapter.

PART VI

SECTION 6-1.

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